



In the

Reserve Bank of India
Foreign Exchange Department
3rd Floor
15, Netaji Subhas Road
Kolkata – 700 001

Present

R. Srivastava
Assistant General Manager

Date: December 28, 2018
C.A.079/2018

In the matter of

M/s Heinen & Hopman Engineering (I) Pvt. Ltd.
79, Barrackpur Trunk Road, Panihati
Kolkata-700 114
West Bengal
(Applicant)

In exercise of the powers under section 15 (1) of the Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/Orders made thereunder, I pass the following

Order

The applicant had filed a compounding application dated October 30, 2018 (received at Reserve Bank on November 2, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded is for delay in refund of the excess amount of inward remittances beyond the stipulated 180 days of the receipt of inflow to a person resident outside India in terms of Paragraph 8 to Schedule 1 to Foreign Exchange



Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified, vide Notification No. FEMA 20/2000-RB dated May 03, 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts of the case are as follows. The applicant, M/s Heinen & Hopman Engineering (I) Pvt. Ltd., was incorporated under Companies Act, 1956, on June 17, 1999 and is in the business of manufacturing of refrigerating and freezing equipment for industrial use, including assemblies of major components.

3. The applicant allotted equity shares on July 30, 2009 to the foreign investor within the stipulated period from receipt of foreign inward remittances, in terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB.

The applicant refunded the excess inward remittance as detailed below:

Table: Allotment of shares and refund of excess amount

Sl. No.	Inflow (INR)	Date of Inflow	Date of allotment of shares	Amount for which shares issued (INR)	Excess Amount	Date of refund	Delay in refund beyond 180 days
1	1,33,24,000.00	30-Jul-09	31-Jul-09	1,30,00,000.00	3,24,000.00	20-Aug-18	3128
	Total Amount of Material Contravention						
		₹					
		3,24,000.00					

Also, in terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, if the shares are not allotted and the amount is to be refunded within 180 days of the receipt of inflow. However, the applicant has refunded the excess INR 3,24,000 to the remitter with a delay of 3128 days, beyond the stipulated period of 180 days from the receipt of remittance.

4. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter No.KOL.FED.FID.909/03.39.557/2018-19 dated December 10, 2018, for further submission in person and/or producing documents, if any, in support of the application. The applicant, represented by Ms. Nalini Basu



(Authorized Representative), appeared for personal hearing on December 28, 2018. The representative of the applicant admitted the contraventions as stated in para 3 of this Order.

5. It has been declared in the compounding application dated October 30, 2018 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the declaration furnished with the compounding application that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application and has, in this regard, not informed of initiation of any such enquiry/investigation/adjudication proceedings against it/him/her thereafter. It has further been declared that the applicant has not filed any appeal under section 17 or section 19 of FEMA, 1999. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made by the applicant and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and/or incorrect. The contraventions being sought for compounding have taken place before November 7, 2017 and hence the application for compounding is being considered as per provisions of erstwhile Notification No. FEMA 20/2000-RB dated May 03, 2000.

6. I have given careful consideration to the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened provisions of paragraph 8 of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 03, 2000. The contravention relates to an amount of INR 48,645 and the period of delay, rounded off to the next month, is 105 months.

7. In terms of section 13 of the FEMA any person contravening any provision of the act shall be liable for a penalty upto thrice the sum of the contravention upon adjudication. However, considering the circumstances which led to the delay and other relevant facts of the case I am inclined to take a lenient view of the amount for which the contravention is to be compounded and I consider that an amount



of Rs. 48,645 (Rupees Forty Eight Thousand Six Hundred and Forty Five only) will meet the end of justice.

8. Accordingly, I compound the admitted contravention viz. Paragraph 8 of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000 by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceeding) Rules, 2000 on payment of an amount Rs. 48,645 (Rupees Forty Eight Thousand Six Hundred and Forty Five only), which are to be deposited by the applicant with the Reserve Bank of India, Kolkata by a demand draft in favor of Reserve Bank of India and payable at Kolkata within 15 days from the date of issue of the order. In case of failure to deposit the compounded amount within the above mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceeding) Rules, 2000 dated May 03, 2000 shall apply.

9. The application is disposed off accordingly.

Dated this Twenty Eighth day of December, Two Thousand and Eighteen.

Sd/-
(R. Srivastava)
Assistant General Manager