



In the

Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present

Shri R. K. Mahana
General Manager

Date: December 31, 2018

C.A. No. 794/2018

In the matter of

Diffusion Engineers Limited
T-5&6, MIDC, Hingna Industrial Area,
Nagpur - 440016

(Applicant)

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

Order

1. The applicant has filed the compounding application dated September 14, 2018, (received at the Reserve Bank of India on September 18, 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 are (i) delay in reporting receipt of foreign inward remittance towards subscription to equity and (ii) delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to a person resident outside India, in terms of paragraphs 9 (1) (A) and 9 (1) (B) respectively, of 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 3, 2000 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 company was incorporated on November 05, 1982, under the Companies Act, 1956, as Diffusion Engineers Private Limited in the state of Maharashtra. The company changed its name to Diffusion Engineers Limited on July 03, 1995. It is engaged in carrying on business of Manufacturers, dealers, marketers, importers and exporters of welding electrodes, flux coated and bare gas welding rods, powders, fluxes, pastes, welding wires (flux-cored and solid), wear resistant plates, polymer epoxy resins of engineering and other grades.

3. The applicant received foreign inward remittance from Non – Residence investors towards equity / compulsory convertible preference shares/ compulsory convertible debentures and reported the same to the Reserve Bank of India on dates as indicated in the table below.

S No	Date of inward remittance	amount received in INR	Date of reporting to RBI	Para 9 (1)A delay
1	30-11-2005	13,00,560.00	27-10-2017	11Y 9M 27D
2	05-12-2005	12,00,000.00	27-10-2017	11Y 9M 21D
	Total	25,00,560.00		

The applicant reported receipt of remittances to the Reserve Bank of India with a delay ranging from 11 Years 09 Months 21 Days to 11 Years 09 Months 27 Days, approximately, listed at serial no. 1 & 2 above. Whereas in terms of paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report foreign inward remittances to the Reserve Bank of India as per the prescribed procedure not later than 30 days from the date of receipt of the amount of consideration.



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4. The company allotted equity shares / compulsory convertible preference shares/ compulsory convertible debentures and filed FC-GPR on dates as indicated below:

Sr. No/	Date of allotment	number of shares	FV+ premium in INR	Amount in INR	Date of reporting	Para 9 (1) (B) delay
1	01-12-2003	125029	10.00	12,50,290.00	25-10-2017	13Y 09M 23D
2	22-12-2005	62514	40.00	25,00,560.00	27-10-2017	11Y 09M 04D
3	22-11-2006	171915	10.00	17,19,150.00	05-07-2017	10Y 06M 13D
4	17-11-2008	171915	10.00	17,19,150.00	07-07-2017	8Y 06M 20D
	TOTAL			71,89,150.00		

The applicant filed form FC-GPR as indicated at serial No. 1 to 4 above with a delay ranging from 08 Years 06 Months 20 Days to 13 Years 09 Months 23 Days, approximately. Whereas, in terms of Paragraph 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India.

5. The applicant was given an opportunity for personal hearing vide e-mail dated December 20, 2018, for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing on December 24, 2018, during which Shri Harshal Bhuta, CA and Shri Naisar Shah, CA, represented the applicant in the cabin of Shri R. K. Mahana, General Manager, Mumbai Regional Office. The representatives of the applicant admitted the contraventions for which compounding has been sought. During the personal hearing, it was submitted that the delay was inadvertent and unintentional. They requested that in view thereof, the matter may be viewed leniently. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as other documents and submissions submitted along with the application.



6. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

(a) Paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in reporting of receipt of foreign inward remittances towards subscription to equity as detailed in paragraph no. 3 above. The contravention relates to an amount of Rs.25,00,560.00 (Rupees Twenty-Five Lakh Five Hundred Sixty Only) and the delay ranges from 11 Years 09 Months 21 Days to 11 Years 09 Months 27 Days, approximately.

(b) Paragraph 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in submission of Form FC-GPR to the Reserve Bank of India after issue of shares to persons resident outside India as detailed in para 4 above. The contravention relates to an amount of Rs.71,89,150.00 (Rupees Seventy-One Lakh Eighty-Nine Thousand One Hundred Fifty Only) and the delay ranges from 08 Years 06 Months 20 Days to 13 Years 09 Months 23 Days, approximately.

7. It has been declared in the compounding application dated September 14, 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 further been stated in the declaration 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's 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.

8. In terms of Section 13 of the FEMA, any person contravening any provision of the Act shall be liable to a penalty up to thrice the sum involved in such



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contravention upon adjudication. However, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, I am persuaded to take a lenient view on the amount for which the contraventions are to be compounded and I consider that an amount of Rs.1,91,250.00 (Rupees One Lakh Ninety-One Thousand Two Hundred Fifty only) will meet the ends of justice.

9. Accordingly, I compound the admitted contraventions namely, the contraventions of paragraphs 9(1) (A) and 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.1,91,250.00 (Rupees One Lakh Ninety-One Thousand Two Hundred Fifty only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, Fort, Mumbai-400001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at "Mumbai" within a period of 15 days from the date of this order. In case of failure to deposit the compounded amount within the above-mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 3, 2000 shall apply.

10. The above order is passed only in respect of contraventions of para 9 (1) (A) and 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.

The application is disposed of accordingly.

Dated: December 31, 2018.

Compounding Authority

**Sd/-
(R. K. Mahana)
General Manager**