



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 J.K. Pandey
Chief General Manager

February 15, 2019

CA No. MUM 806/2018

In the matter of
M/s e-Emphasys Infotech Private Limited
601/602 6th Floor, Alpha Main Street,
Hiranandani Garden, Powai,
Mumbai - 400076

(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 November 20, 2018 received at the Reserve Bank on November 28, 2018 for compounding of contravention/s of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are in respect of the following paras under 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 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB); and/or Regulations under Notification No FEMA 20 (R)/2017- RB dated November 07, 2017 (as amended from time to time), (hereinafter referred to as the Notification No FEMA 20 (R)-RB.)



- i) Para 9 (1) (A): delay in reporting receipt of foreign inward remittance towards subscription to equity
- ii) Para 9 (1) (B): delay in filing Form FC GPR to Reserve Bank after issue of shares to person resident outside India
- iii) Para 9 (2): delay in filing 'Annual Return on Foreign Liabilities and Assets' (FLA Returns) and/or Regulation 13.1 (3) of FEMA Notification No. 20(R)/2017-RB.

2 Brief details of the company M/s e-Emphasys Infotech Private Limited are as follows:

Date of Incorporation	November 23, 2001
Its main activities are:	Computer consultancy and computer facilities management activities

3 The applicant received foreign inward remittances from non-resident investors towards equity / compulsorily convertible preference shares/ compulsorily convertible debentures and the company reported the same to the Reserve Bank on dates as indicated below.

<u>Delay under 9(1)(A) &/or Para 8</u>						
<u>(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, LSF stands for : Late Submission Fees</u>						
S No/ LSF	Date of inward remittance	Amount received (in INR)	Date of reporting to RBI	Para 9 (1) (A) delay	Date of allotment/ refund	Para 8 delay
1	31/12/01	3,360,000.00	24/10/18	16Y 8M 23D	16/07/02	0
2	04/01/02	5,735,000.00	24/10/18	16Y 8M 19D	16/07/02	0
3	08/01/02	4,790,000.00	24/10/18	16Y 8M 15D	16/07/02	0
TOTAL		13,885,000.00				

The applicant reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 16Y 8M 15D to 16Y 8M 23D .Further, the applicant company delayed in reporting in 3 out of 3 total remittances beyond the stipulated time of 30 days. 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 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.

4 The company allotted equity shares/preference shares/convertible preference shares and filed FC-GPRs as indicated below:



Contravention under Para 9(1)(B)						
(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, LSF stands for : Late Submission Fees and FV stands for Face Value)						
Sno / LSF	Date of allotment	Number of shares	FV+ premium (in INR)	Amount (FV*no of shares) (in INR)	Date of reporting	Para 9 (1) (B) delay
1	16/07/02	479000	10	4,790,000.00	24/10/18	16Y 2M 7D
2	16/07/02	573500	10	5,735,000.00	24/10/18	16Y 2M 7D
3	16/07/02	336000	10	3,360,000.00	24/10/18	16Y 2M 7D
	TOTAL			13,885,000.00		

The applicant filed form FC-GPRs as indicated above with a delay of 16Y 2M 7D. 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 RBI a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to Non Resident.

- 5 The company has not filed/delayed in filing the Annual Return on Foreign Liabilities and Assets (FLA return) to the Reserve Bank of India for the Financial Years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18. Whereas, in terms of Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB read with A. P. (DIR Series) Circular No. 29 dated February 02, 2017, and/or Regulation 13.1 (3) of FEMA Notification No. 20(R)/2017-RB, all Indian companies which have received Foreign Direct Investment in the previous years including the current year, shall submit to the Reserve Bank of India, on or before the 15th day of July each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time.
- 6 The applicant was given an opportunity for personal hearing, for further submission in person and/or for producing documents, if any, in support of the application vide e-mail dated February 11, 2019. The applicant appeared for personal hearing on February 14, 2019. During which Mr Kamlesh Shah, Director of the applicant company, Mr Kunal Janshali, Consultant and Ms Shreya Faria, Consultant, represented the applicant in the cabin of Shri J.K. Pandey, Chief General Manager, Mumbai Regional Office. The representatives of the applicant admitted the contraventions for which compounding has been sought. During the hearing it was submitted that delay was inadvertent and unintentional. The representatives of the applicant requested that in view of the foregoing a lenient view may be taken in disposal of the application. 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 made in this context by the applicant during personal hearing and thereafter.
- 7 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 remittance towards subscription of shares as detailed above. The contravention relates to total amount of Rs.13,885,000 (Rupees One Crore Thirty Eight Lakh Eighty Five Thousand and Zero Paise Only) and with a delay ranging from minimum 16Y 8M 15D to maximum 16Y 8M 23D 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 after issue of shares to persons resident outside India and the contravention relates to total amount of Rs.13,885,000 (Rupees One Crore Thirty Eight Lakh Eighty Five Thousand and Zero Paise Only) and with a delay of 16Y 2M 7D approximately.
- c) Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB; and/or Regulation 13.1 (3) of FEMA Notification No. 20(R)/2017-RB, due to non-filing/delay in filing of Annual Return on Foreign Liabilities and Assets for the Financial Years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 .
- 8 It has been declared in the compounding application dated November 20, 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 also been declared in a declaration attached to 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.
- 9 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 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.674,500 (Rupees Six Lakh Seventy Four Thousand Five Hundred and Zero Paise Only) will meet the ends of justice.



- 10 Accordingly, I compound the admitted contravention/s namely, the contravention/s of Para 9 (1) (A), Para 9 (1) (B) and Para 9(2) and/or Regulation 13.1 (3) of FEMA Notification No. 20(R)/2017-RB. of Schedule 1 to Notification No. FEMA 20/2000-RB by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.674,500 (Rupees Six Lakh Seventy Four Thousand Five Hundred and Zero Paise 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.
- 11 The above order is passed only in respect of contraventions of Para 9 (1) (A), Para 9 (1) (B) and Para 9(2) and/or Regulation 13.1 (3) of FEMA Notification No. 20(R)/2017-RB. 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.
- 12 The application is disposed of accordingly.
Dated: February 15, 2019

Compounding Authority

(J.K. Pandey)
Chief General Manager