



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

Present
Monisha Chakraborty
General Manager

Date: January 28, 2019
C.A.084/2019

In the matter of
M/s Sibre Brakes(India) Private Limited
2/5, Sarat Bose Road, Sukhsagar,7A, 7th Floor
Kolkata-700020
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 November 26, 2018 (received at Reserve Bank on November 29, 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 submission to the Reserve Bank of both Form ARF after receipt of inflow from a person resident outside India and Form FC-GPR after issue of shares to a person resident outside India beyond the stipulated 30 days in terms of Paragraph 9(1)(A) and 9(1)(B) respectively 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 Sibre Brakes (India) Private Limited, was incorporated under Companies Act, 1956, on December 12, 2006. The applicant is in the business of wholesale trading of metals and metal ores. The applicant had received foreign inward remittances for subscription to equity shares under the Automatic Route from foreign investor M/s Seigerland-Bremsen EMDE GMBH & Co., Germany. Out of the three inward remittances, the applicant had reported one with delay ranging of 2135 days beyond the stipulated period of 30 days, as tabulated in Table 1 below.

Table 1: Delayed reporting of inflow of foreign remittances

Sl. No.	Name of Investor	Inflow (INR)	Inflow (Euro)	Date of inflow	Date of reporting of inflow to RBI	Delay beyond 30 days (Days)
1	SEIGERLAND Holding GMBH & Co.KG	51,00,000.00	Vostro A/c	28-Aug-12	02-Aug-18	2135

3. The applicant allotted equity shares in two tranches 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.

4. The applicant allotted equity against the above receipts in three separate tranches to the foreign investor and reported two of the allotment of shares in form FC-GPR to the Reserve Bank with delay ranging from 2169 days to 3469 days beyond the stipulated period of 30 days from the date of allotment of shares, as indicated in Table 2 below.



Table 2: Allotment of shares to foreign investors and reporting thereof

Sl. No.	Inflow (INR)	Amount for which shares have been issued	Date of inflow	Date of allotment of shares	Date of reporting of allotment of shares to RBI	Delay beyond 30 days, if any (days)
1	30,60,000.00	30,60,000.00	14-Mar-07	01-Apr-07	14-May-07	13
2	33,56,820.00	33,56,820.00	01-Oct-08	28-Jan-09	28-Aug-18	3469
3	51,00,000.00	51,00,000.00	28-Aug-12	20-Aug-12	28-Aug-18	2169

Whereas in terms of para 9(1) B of schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares in accordance with these regulations has to submit to the Reserve Bank of India 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 Reserve Bank's letter No.KOL.FED.FID.1081/06.01.002/2018-19 dated January 14, 2019, for further submission in person and/or producing documents, if any, in support of the application. On the date of personal hearing, i.e., January 28, 2019, the applicant represented by Mr. Manish Kedia (Company Secretary), admitted the contraventions as stated in para 2 & 4 of this Order. During the personal hearing, the applicant requested to take a lenient view in the matter.

6. It has been declared in the compounding application dated November 26, 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.

7. I have given my 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 the following FEMA provisions issued in terms of:

- a. Paragraph 9(1)(A) of Schedule 1 of Notification No.FEMA 20/2000-RB dated May 03, 2000. The contravention relates to an amount of Rs. 51,00,000 and the period of delay, rounded off to the next month is ten months.
- b. Paragraph 9(1)(B) of Schedule 1 of Notification No.FEMA 20/2000-RB dated May 03, 2000. The contravention relates to an amount of Rs. 84,56,820 and the period of delay, rounded off to the next month is four months.

8. In terms of section 13 of the FEMA, any person contravening any provision of the act shall be liable for a penalty up to thrice the sum of the contravention upon adjudication. Considering the circumstances which led to the delay and other relevant facts of the case, I am, however, 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. 1,28,750 (Rupees One lakh Twenty Eight Thousand Seven hundred and Fifty only) will meet the end of justice.

9. Accordingly, I compound the admitted contraventions namely, the contraventions of paragraph 9(1)(A) and 9(1)(B) 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 Rs. 1,28,750 (Rupees One lakh Twenty Eight Thousand Seven hundred and Fifty only) which is 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.

The application is disposed of accordingly.

Sd/-

(Monisha Chakraborty)

General Manager

Dated this Twenty Eighth day of January, 2019