



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

**Date: September 06, 2018**

**C.A. No. 752/2018**

In the matter of

**Elringklinger Automotive Components (India) Private Limited**  
Plot No. G2, MIDC  
Ranjangaon, Tal Shirur  
Dist- Pune – 412 220

**(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 March 28, 2018 (received at the Reserve Bank on April 02, 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) neither the equity instruments were issued, nor the money refunded to the foreign investor, a person resident outside India within 180 days of the receipt of the inward remittance (ii) delay in reporting receipt of foreign inward remittance towards subscription to equity & (iii) delay in submission of Form FC-GPR to the Reserve



Bank after issue of shares to a person resident outside India (iv) failure to obtain, specific and prior Government approval for issue of shares to person resident outside India against pre-operative / pre-incorporation expenses, in terms of paragraphs 8, 9(1) (A), 9(1) (B) and 3 (e) 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 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 company was incorporated on February 26, 2007, under the Companies Act, 1956 as ElringKlinger Automotive Components (India) Private Limited. Its main activities are (i) to carry on business of designing, assembling, manufacturing, selling, distributing, importing, exporting or otherwise dealing with repairing and servicing of all kinds and description of cylinder head gaskets, cover modules and shielding parts and related and allied products as well as spare parts, components, sub-assemblies, stores fittings, appliances and apparatus capable of being used there with or in the manufacturing maintenance thereof, accessories and such other products to be developed and manufactured. To also establish technical and engineering service centre and provide services such as drafting, designing and product development for cylinder head gaskets, cover modules and shielding parts and related and allied products and other products and to act as engineers and consultants in respect of cylinder head gaskets, cover modules and shielding parts, related and allied products and other products and components of every description whatsoever and to provide such services worldwide.



3. The applicant received foreign inward remittance from Elringklinger AG, Germany, towards equity / preference share capital and reported the same to the Reserve Bank as indicated on below.

Sr. No.	Amount received INR	Date of receipt	Date of reporting	Delay under para 9 (1) (A)	Date of allotment	Delay under Para 8
1	2,61,85,500.00	06-03-2007	27-06-2012	5Y 2M 22D	07-09-2007	0Y 0M 5D
2	1,99,14,895.00	10-04-2007	27-06-2012	5Y 1M 18D	07-09-2007	No
3	4,73,43,000.00	05-09-2007	27-06-2012	4Y 8M 23D	07-09-2007	No
4	4,64,96,000.00	29-11-2007	27-06-2012	4Y 5M 29D	28-03-2008	No
5	3,49,95,700.00	06-02-2008	27-06-2012	4Y 3M 22D	28-03-2008	No
6	55,59,860.00	19-03-2008	27-06-2012	4Y 2M 9D	28-03-2008	No
	5,69,40,140.00	19-03-2008	27-06-2012	4Y 2M 9D	20-09-2008	0Y 0M 5D
7	13,36,40,000.00	09-06-2008	27-06-2012	3Y 11M 19D	20-09-2008	No
8	10,03,50,000.00	19-10-2011	17-11-2011	No	27-02-2012	No
9	10,90,69,855.00	07-05-2012	01-06-2012	No	03-11-2012	No
10	14,99,99,999.00	28-03-2013	23-04-2013	No	23-09-2013	No
11	15,00,00,000.00	03-02-2015	11-02-2015	No	30-03-2015	No
12	30,00,00,000.00	13-03-2015	27-03-2015	No	06-05-2015	No
13	50,75,05,400.00	14-10-2015	27-10-2015	No	07-12-2015	No
14	29,24,95,610.00	15-12-2016	04-01-2017	No	19-01-2017	No
Total	1,98,04,95,959.00					

The applicant reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 03 Years 11 Months 19 Days to 05 Years 02 Months 22 Days, approximately, in respect of remittance recorded at serial no. 01 to 07 above, 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:

Sr. No	No. of shares	FV in INR	Premium in INR	Amount in INR	Date of allotment	Date of filing	Delay under para 9 (1) (B)
1	9344339	10.00	0.00	9,34,43,390.00	07-09-2007	10-06-2013	5Y 8M 4D
2	8705156	10.00	0.00	8,70,51,560.00	28-03-2008	10-06-2013	5Y 1M 13D
3	19058014	10.00	0.00	19,05,80,140.00	20-09-2008	10-06-2013	4Y 7M 21D
4	10035000	10.00	0.00	10,03,50,000.00	27-02-2012	09-04-2012	0Y 0M 12D
5	10906985	10.00	0.00	10,90,69,850.00	03-11-2012	30-11-2012	No
6	14999900	10.00	0.00	14,99,99,000.00	23-09-2013	17-10-2014	0Y 11M 25D
7	15000000	10.00	0.00	15,00,00,000.00	30-03-2015	24-04-2015	No
8	30000000	10.00	0.00	30,00,00,000.00	06-05-2015	29-05-2015	No
9	50750540	10.00	0.00	50,75,05,400.00	07-12-2015	04-01-2016	No
10	29249561	10.00	0.00	29,24,95,610.00	19-01-2017	08-02-2017	No
	Total			1,98,04,94,950.00			

The applicant filed form FC-GPRs as indicated above with a delay of 12 Days to 05 Year 08 Month 04 Days approximately, beyond the prescribed limit in respect of allotment indicated at Sr. No. 01 to 04 & 06 above. 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. In respect of remittances recorded at serial no. 01 & 06 in para 3 above, amounting to Rs.8,31,25,640.00 (Rupees Eight Crore Thirty- One Lakh Twenty-Five Thousand Six Hundred Forty only), the company allotted shares after 180 days of receipt of investment with a delay of 05 Days, approximately. Whereas in terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned, provided the Reserve Bank may, on an application made to it and for sufficient



reasons permit to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt. The amendment in paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of security by A person resident outside India) (Third Amendment) Regulations, 2007 notified, vide Notification No. FEMA 170/2007-RB dated 13th November 2007 in the official Gazette of the Government of India.

6. The company is a wholly owned subsidiary of M/s Elringklinger AG, Germany. M/s Elringklinger AG, directly made a payment of Rs.1,95,05,050.00 (Rupees One Crore Ninety Five Lakh Five Thousand Fifty Only) on November 3, 2006, to M/s Maharashtra Industrial Development Corporation ('MIDC') on behalf of the said company to acquire land for setting up its manufacturing plant in Pune, Maharashtra as pre-operative/pre incorporation expenses. In turn, the Indian company allotted 19,50,505 equity shares to M/s Elringklinger AG, Germany. The shares of the Indian company were allotted on February 27, 2007, to its parent company against pre-incorporation expenses of November, 2006. However, issue of equity shares in lieu of pre-incorporation expenses was made permissible by the Consolidated FDI Policy Circular which came into effect only from April 01, 2011, the company was required to obtain approval of The Foreign Investment Promotion Board (FIPB), Ministry of Finance. It was however denied the approval vide FIPB letter dated March 31, 2017, in which the company was also directed to unwind the said transaction by way of repatriation of the investment proceeds by the investee company to the foreign investor. In order to implement the said order the company unwound the transaction on December 29, 2017. Whereas in terms of paragraph 3 (e) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company intending to issue shares to a person resident outside India, in accordance with these Regulations directly against foreign inward remittance (or by debit to NRE account/ FCNR account) or against consideration other than inward remittance i.e., against royalty/ lump sum fee due for payment/ import of capital goods by units in SEZs/ ECBs (excluding those deemed as ECBs), shall obtain prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India, if the Indian company proposes to issue shares to a person resident outside India against pre-operative/ pre-incorporation expenses



(including payments of rent etc.), subject to compliance with the conditions specified by the Government of India and the Reserve Bank from time to time.

7. The applicant was given an opportunity for personal hearing vide e-mail dated August 27, 2018, for further submission in person and/or for producing documents, if any, in support of the application. The applicant appeared for personal hearing on August 28, 2018, during which Shri Arun Mishra, Head- Finance & IT, and Shri Sameer Maniar, Director, Deloitte Haskins & Sells LLP, 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.

8. 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 8 of Schedule 1 to Notification No. FEMA 20/2000-RB since the shares were not issued to the person resident outside India within 180 days from the date of receipt of the inward remittance/share application not refunded to the person resident outside India within 180 days from the date of receipt of the inward remittance. The contravention relates to an amount of Rs.8,31,25,640.00 (Rupees Eight Crore Thirty- One Lakh Twenty-Five Thousand Six Hundred Forty only) and with the delay of 05 Days, approximately.

(b) 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



towards shares as detailed in paragraph 3 above. The contravention relates to an amount of Rs.37,10,75,095.00 (Rupees Thirty Seven Crore Ten Lakh Seventy Five Thousand Ninety Five only) and with a delay ranging from 03 Years 11 Months 19 Days to 05 Years 02 Months 22 Days, approximately.

(c) 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 an amount of Rs.62,14,24,090.00 (Rupees Sixty Two Crore Fourteen Lakh Twenty Four Thousand Ninety Only) with a delay ranging from 12 Days to 05 Years 08 Months 04 Days, approximately.

(d) Para 3 (e) of schedule 1 to notification No. FEMA 20/2000-RB, for the amount of contravention of Rs. 1,95,05,050.00 (Rupees One Crore Ninety Five Lakh Five Thousand Fifty Only) for period of 11 Years 01 Month 26 Days, approximately.

9. It has been declared in the compounding application dated March 28, 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, which 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.

10. 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.35,28,759/- (Rupees Thirty Five Lakh Twenty Eight Thousand Seven Hundred Fifty Nine Only) will meet the ends of justice.

11. Accordingly, I compound the admitted contravention namely, the contraventions of Paragraph 8, 9(1) (A), 9(1) (B) and 3 (e) 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.35,28,759/- (Rupees Thirty Five Lakh Twenty Eight Thousand Seven Hundred Fifty Nine 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.

12. The above order is passed only in respect of contraventions of paragraph 8, 9(1) (A), 9(1) (B) and 3 (e) of Schedule I 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: September 06, 2018.

**Compounding Authority**

**Sd/-**

**(J. K. Pandey)**

Chief General Manager