



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: November 20, 2018

C.A. No. 793/2018

In the matter of

Osstem Implant India Private Limited
9th floor, Office No. 902 to 911
Crescent Business Square
Kherani Road off Saki Vihar Road
Sakinaka, Andheri (E)
Mumbai- 400 072

(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 05, 2018 (received at the Reserve Bank on September 07, 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



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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 and (iv) delay in filing 'Annual Return on Foreign Liabilities and Assets' (FLA Returns), in terms of paragraphs 8, 9(1)(A), 9(1)(B) and 9(2) 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 March 13, 2006, under the Companies Act, 1956 as Osstem Implant India Private Limited. Its main activities are to carry on the business of trading, importing, exporting, distributing and dealing in hi-tech, medical and diagnostic items in the dental field, such as dental implants, kits for dental operations and KaVo package products.

3. The applicant received foreign inward remittance towards equity / compulsory convertible preference share / compulsory convertible debentures and reported the same to the Reserve Bank as indicated below.

Sr. No.	Amount received in INR	Date of receipt	As per A.P. Dir Circular No. 20 dated Dec. 14, 2007	Date of reporting	Delay under para 9 (1) (A)	Date of issue	Delay under para 8
1	1,00,000.00	29-03-2006		13-04-2007	11M 13D	09-04-2006	No
	87,98,000.00	29-03-2006		13-04-2007	11M 13D	07-05-2007	No
2	11,02,000.00	05-01-2007		11-04-2007	2M 7D	07-05-2007	No
	33,32,000.00	05-01-2007	29-11-2007	11-04-2007	2M 7D	23-02-2010	2Y 2M 25D
3	80,60,000.00	20-07-2007	16-01-2008	06-12-2016	9Y 3M 17D	23-02-2010	2Y 1M 7D
4	2,42,50,000.00	09-10-2008		11-11-2008	3D	03-04-2009	No
5	2,42,48,000.00	19-09-2013		24-03-2014	5M 3D	06-03-2014	No
6	6,41,00,000.00	21-09-2015		28-10-2015	7D	07-10-2015	No
7	26,72,00,000.00	12-01-2017		23-01-2017	No	03-02-2017	No
8	11,56,85,036.00	25-09-2017		04-10-2017	No	18-10-2017	No
Total	51,68,75,036.00						



The applicant reported receipt of remittances to the Reserve Bank of India on dates indicated in the table with a delay ranging from 03 Days to 09 Years 03 Months 17 Days approximately, in respect of remittance recorded at serial no. 01 to 06, 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 equity / compulsory convertible preference shares / compulsory 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 / compulsory convertible preference shares / compulsory convertible debentures and filed FC-GPRs as indicated below:

Sr. No.	No. of shares	FV in INR	Premium in INR	Amount involved in INR	Date of allotment	Date of filing	Delay
1	10000	10	0.00	1,00,000.00	09-04-2006	04-02-2008	1Y 8M 27D
2	990000	10	0.00	99,00,000.00	07-05-2007	04-02-2008	7M 29D
3	485000	10	40.00	2,42,50,000.00	03-04-2009	05-12-2016	7Y 7M 2D
4	227840	10	40.00	1,13,92,000.00	23-02-2010	06-12-2016	6Y 8M 14D
5	482547	10	40.25	2,42,47,987.00	06-03-2014	13-01-2015	9M 8D
6	1282000	10	40.00	6,41,00,000.00	07-10-2015	06-11-2015	No
7	5344000	10	40.00	26,72,00,000.00	03-02-2017	27-03-2017	22D
8	2313700	10	40.00	11,56,85,000.00	18-10-2017	11-11-2017	No
			Total	51,68,74,987.00			

The applicant filed form FC-GPRs as indicated above with a delay ranging from 22 Days to 07 Year 07 Months 02 Days approximately, beyond the prescribed limit in respect of allotment indicated at Sr. No. 01 to 05 and 07 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 amounting to Rs.1,13,92,000.00 (Rupees One Crore Thirteen Lakh Ninety-Two Thousand only), indicated at serial no. 02 & 03 in para 3 above, the company allotted shares after 180 days of receipt of investment with a delay ranging from 02 Years 01 Month 07 Days to 02 Years 02 Months 25 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 has not filed the Annual Return on Foreign Liabilities and Assets (FLA return) to the Reserve Bank of India for the Financial Year 2007-08 and FLA return for Financial Years 2008-09 & 2014-15 was filed with a delay. 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, 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.

7. The applicant was given an opportunity for personal hearing vide e-mail dated October 30, 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 November 12, 2018, during which Ms Khushbu Shah, Manager; Shri Hinesh R Doshi, Chartered Accountant and Ms Aarti A Karwande, Chartered Accountant 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 neither shares were issued nor the amount was refunded to the person resident outside India within 180 days from the date of receipt of inward remittances / share application money, as detailed in paragraph 3 above. Further, the shares were allotted to Non-resident after 180 days without the prior approval of Reserve Bank of India. The contravention relates to an amount of Rs.1,13,92,000.00 (Rupees One Crore Thirteen Lakh Ninety-Two Thousand only) and with the delay ranging from 02 Years 01 Month 07 Days to 02 Years 02 Months 25 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.13,39,90,000.00 (Rupees Thirteen Crore Thirty-Nine Lakh Ninety Thousand only) and with a delay ranging from 03 Days to 09 Years 03 Months 17 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.33,70,89,987.00 (Rupees Thirty-Three Crore Seventy Lakh Eighty-Nine Thousand Nine Hundred Eighty-Seven Only) with a delay ranging from 22 Days to 07 Years 07 Months 02 Days, approximately.



(d) Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB due to Non/delayed filing of Annual Return on Foreign Liabilities and Assets for the Financial Years 2007- 08, 2008-09 & 2014-15.

9. It has been declared in the compounding application dated September 05, 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 declared in the declaration dated September 05, 2018 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.

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.10,28,460/- (Rupees Ten Lakh Twenty Eight Thousand Four Hundred Sixty 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 9(2) 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.10,28,460/- (Rupees Ten Lakh Twenty Eight Thousand



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Four Hundred Sixty 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 9(2) 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: November 20, 2018.

Compounding Authority

Sd/-

(J. K. Pandey)

Chief General Manager