



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
11<sup>th</sup> Floor, Central Office Building  
Shahid Bhagat Singh Marg  
Mumbai - 400 001

Present

**J. K. Pandey**  
**Chief General Manager**

Date: April 13, 2017  
CA No 4199 / 2016

In the matter of

**Nitin Fire Protection Industries Limited**  
**801-802, C-Wing, Neelkanth Business Park,**  
**Vidyavihar West, Mumbai – 400076**

**(Applicant)**

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

### **Order**

The applicant has filed a compounding application dated October 25, 2016 for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) delay in reporting of capitalization of expenses incurred (ii) delay in reporting of issuance of bank guarantee (iii) delay in reporting of Annual Performance Reports (APR) within the stipulated time period. The above are in contravention of Regulations 6(2)(vi) and 15(iii) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA



120/2004-RB dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).

2. The relevant facts are as under: The applicant was incorporated as Nitin Fire Protection Industries Limited on September 04, 1995. The applicant is engaged in the business of manufacturing, buying, selling, export of fire extinguishers and other equipment. A Wholly Owned Subsidiary (WOS) of the applicant company, namely, Nitin Ventures FZE was incorporated in Dubai on July 25, 2007. The applicant incurred expenses in the nature of refundable bank charges of USD 149000 on behalf of its subsidiary which were later capitalized instead of repayment. This capitalization of expenses was reported with a delay in Part I of Form ODI.

The applicant had also issued 2 Bank guarantees on behalf of its WOS for USD 2.32 million and USD 15.92 million in favor of Axis Bank, Dubai through its AD bank (Axis Bank, Mumbai) which were again reported with a delay in Form ODI.

The details of the above remittances are as under:

S.No.	Date of remittance	Amount in FCY (USD)	Amount (INR)	Date of reporting to RBI
1	29.01.2013	149000	80,01,300	30.06.2016
2	27.03.2015	2320000	14,50,69,600	30.06.2016
3	27.03.2015	15920000	99,54,77,600	23.02.2016
Total			1,14,85,48,500	

Delayed submission of Form ODI is a contravention of Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB.

The Annual Performance Reports (APRs) for the years 2014 and 2015 were submitted with a delay beyond the stipulated time period, thus contravening Regulation 15(iii) of Notification No. FEMA 120/2004-RB.



3. In terms of Regulation 6(2)(vi) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, an Indian party is permitted to make Overseas Direct Investment in certain cases, provided “The Indian Party submits duly completed Part I of the Form ODI, as prescribed by the Reserve Bank from time to time, to the designated branch of an authorized dealer”.

Further, in terms of Regulation 15(iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, the applicant is required to submit to the Reserve Bank of India an Annual Performance Report (APR) in Form ODI Part III in respect of each JV or WOS outside India and other reports or documents as may be specified by the Reserve Bank from time to time, on or before the 30<sup>th</sup> of June every year.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/8964/15.20.67/2016-17 dated March 07, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on March 16, 2017 during which Shri Rahul Shah, ED of the applicant company, Shri Kishore Ved, Company Secretary, Sraban Karan, Company Secretary, Kamlesh Gandhi, CFO of the applicant represented the applicant. During the course of the hearing, the representatives of the applicant submitted that all the documents for reporting of SBLCs were submitted by them to the SBLCs issuing Bank for onward submission to their AD bank and the delay in reporting the SBLCs issued by them was due to delay in furnishing No Objection Certificate (NOC) by their AD Bank. The applicant was advised to submit documentary evidence regarding submission of Form ODI part I to their AD bank to substantiate their claim. In response the applicant furnished several email correspondences and letters submitted by them to the SBLC issuing bank and to their AD bank. However the document submitted by the applicant in this regard were not conclusive in nature and thereby failing to prove beyond a reasonable doubt the claim of the applicant in this regard. The application is, therefore, being considered on the



basis of the averments made in the application, the documents produced and submissions made during and after the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation 6(2)(vi) and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. Duration of reporting contraventions in respect of SBLCs is taken from the date of their issue till the date of submission of Form ODI to the AD bank by the applicant.

The amount and period of contravention involved is:

- (i) For contravention of Reg. 6(2)(vi) = Rs. 1,14,85,48,500/- and the period of contravention ranges from nine months to forty one months approximately.
- (ii) For contravention of Reg.15 (iii) –as specified in Para 2 above.

6. 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs. 2,53,920/- (Rupees two lakh fifty three thousand nine hundred and twenty only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulations 6(2)(vi) and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 2,53,920/- (Rupees two lakh fifty three thousand nine hundred and twenty only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, 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.

The application is disposed accordingly.

Dated this the thirteenth day of April, 2017

**Sd/-**

**J.K. Pandey**  
**Chief General Manager**