



In the

Reserve Bank of India
10/3/8, Nrupathunga Road,
Bengaluru-560001

Present

Shri. G. Jeyakumar
Deputy General Manager

Date: July 05, 2017
C.A. BGL 210/2017

In the matter of

M/s. Aeroflex Systems Private Limited
602, 6th Floor, Raheja Paramount
Residency Road
Bengaluru - 560025
(Applicant)

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

ORDER

The applicant has filed a compounding application dated February 22, 2017, received on February 28, 2017 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 receipt of foreign inward remittances towards subscription to equity (ii) delay in submission of Form FC-GPRs to the Reserve Bank after issue of shares to a person resident outside India and (iii) non-issue of equity instruments to the foreign investor, a person resident outside India, within 180 days of the receipt of the inward remittance, in terms of paragraphs 9(1) (A), 9(1) (B) and 8 respectively, of Schedule I 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. M/s. Aeroflex Systems India Private Limited, was incorporated on March 22, 2012, under the Companies Act, 1956. The activity undertaken by the company is a worldwide provider of highly specialized test and measurement equipment and microelectronics solutions. The applicant had received funds towards share application money from foreign investor M/s Aeroflex Limited, United Kingdom, as shown below:

Sr. No.	Date of Receipt	Total Amount (INR)	Date of Reporting
1	01-10-2012	16,61,000.00	21-12-2012
2	21-06-2013	99,990.00	02-06-2015
	Total	17,60,990.00	

The applicant reported receipt of remittances to the Reserve Bank / Authorized Dealer Bank with a delay ranging from 1 month and 20 days to 1 year 10 months and 11 days approximately, beyond the stipulated time of 30 days in respect of remittances indicated above at Sr. Nos. 1 and 2. Whereas, in terms of paragraph 9(1) (A) of Schedule I 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.

3. The company allotted equity shares and filed Form FC-GPRs with RBI / AD bank as indicated below:

Sl. No.	Date of Allotment	Amount (INR)	Date of reporting to RBI / AD bank
1	13-03-2013	16,61,000.00	12-04-2013
2	26-03-2012	99,990.00	12-06-2015
	Total	17,60,990.00	

The applicant filed the Form FC-GPRs on allotment of shares with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer bank with a



delay 3 years 1 month and 17 days approximately beyond the prescribed period of 30 days in respect of allotment of shares indicated at Sr. No. 2. Whereas, in terms of Paragraph 9(1) (B) of Schedule I to Notification No.FEMA.20/2000-RB, dated May 3, 2000, 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 persons resident outside India.

4. Shares to the extent of Rs.99,990.00 relating to remittances received on June 21, 2013 were allotted on March 26, 2012, prior to the receipt of inward remittance without approval of Reserve Bank. 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 November 13, 2007 in the official Gazette of the Government of India. Further, in terms of paragraph 5 of A.P. (DIR Series) Circular No. 20 dated December 14, 2007, in all cases where, as on November 28, 2007, 180 days have elapsed since receipt of funds and the equity instruments have not been issued, the companies are required to approach the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through their AD Category – I bank with a definite action plan either for allotment of equity instruments or for refund of the advance, with full details, for specific approval.



5. The applicant was given an opportunity for personal hearing, vide the Reserve Bank's letter FE.BG.FID (CEFA) No. 6799/22.08.478/2016-17 dated June 29, 2017, for further submission in person and/or producing documents, if any, in support of the application. Shri Chinmaya, Chartered Accountant and Kum Shilpa Kumari, Chartered Accountant, represented the applicant in the personal hearing, held on July 4, 2017. The authorized representatives of the applicant admitted the contraventions as stated in paragraphs 2, 3 and 4 above committed by the applicant, for which compounding has been sought. During the personal hearing, it was submitted that the delay was not willful or with a malafide intention and, it was mainly due to inadvertence and the same will not be repeated. In view of the above, they requested to take a lenient view 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.

6. 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 I to Notification No. FEMA 20/2000-RB due to delay in reporting of foreign inward remittances received towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of **Rs.17,60,990.00** and the period of delay ranges from one month, 20 days to one year, 10 months and 11 days approximately.

(b) Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB due to delay in submission of Form FC-GPRs to the Reserve Bank after issue of shares to persons resident outside India. The contravention relates to an amount of **Rs.99,000.00** and the period of delay is three years, one month and 17 days approximately.



(c) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB as the applicant allotted shares for an amount of **Rs.99,990.00** before the receipt of share application money. The period of delay in receiving share application money is one year two months and 25 days approximately.

7. 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. 38,100.00 (Rupees Thirty Eight Thousand and One Hundred only)** will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1) (A), 9(1) (B) and 8 of Schedule I 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. 38,100.00 (Rupees Thirty Eight Thousand and One Hundred only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 2nd Floor, 10/3/8, Nrupathunga Road, Bengaluru - 560001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Bengaluru 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 of accordingly.

Dated this, the Fifth day of July 2017.

Sd/-

(G. Jeyakumar)
Deputy General Manager