



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

Present

Eugene E Karthak
Regional Director

Date: September 22, 2017
C.A. BGL 231/2017

In the matter of

M/s Elken International India Private Limited
No. 25, 2nd Floor, 8th Main
Vasanth Nagar
Bengaluru - 560052
(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 May 05, 2017, received at this office on May 15, 2017, and an addendum to the application dated May 08, 2017, received on May 09, 2017, for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999, (the FEMA) and the Regulations issued there under. The contravention sought to be compounded is delay in reporting receipt of foreign inward remittances towards subscription to equity, in terms of paragraph 9(1)(A) 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. The relevant facts of the case are as follows: The applicant, M/s Elken International India Private Limited, a subsidiary of M/s Elken International Inc. Pte, was incorporated on December 20, 2002, under the Companies Act, 1956.



The activity undertaken by the company is “to engage in the business of manufactures, processors, importers, exporters, buyers, sellers, suppliers, stockists, agents, merchants, distributors, and dealers in beverages of all kinds and descriptions and importers of health care products.” The applicant had received funds towards share application money from foreign investors, namely, M/s Elken International Inc. Pte Limited, Singapore and M/s Elken International Inc. Pte Limited, Malaysia, as shown below:

Table-1

Sl. No	Date of receipt	Amount (INR)	Date of Reporting to RBI/AD
1	02-07-2003	1,00,000.00	15-10-2004
2	18-06-2010	5,45,52,000.00	07-12-2010
3	06-07-2010	1,84,52,000.00	20-12-2010
4	29-04-2011	2,83,53,000.00	25-05-2011
5	17-02-2011	1,12,07,125.00	25-05-2011
6	25-07-2011	3,49,12,000.00	19-08-2011
7	04-08-2011	4,35,00,000.00	19-08-2011
8	26-03-2013	2,65,45,000.00	25-05-2013
9	14-03-2014	6,09,50,000.00	08-05-2014
10	17-12-2014	2,49,76,000.00	22-12-2014
11	12-05-2015	1,40,03,550.00	01-06-2015
12	10-02-2016	3,37,70,000.00	11-04-2016
13	06-04-2016	1,04,57,920.00	02-05-2016
14	03-02-2017	1,32,58,000.00	28-02-2017
	Total	37,50,36,595.00	

The applicant reported receipt of remittances to the Reserve Bank / Authorized Dealer Bank with a delay ranging from twenty five days to one year, two months and fourteen days approximately, beyond the stipulated time of 30 days in respect of remittances indicated at serial numbers 1 to 3, 5, 8, 9 and 12 above. 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 applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No.889/22.07.002/2017-18 dated September 18, 2017, for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing on September 22, 2017. Ms. Maitrayee Chaliha, Power of Attorney Holder and Shri K V Shankar, Consultant (JCSS Consulting Private Limited), represented the Company. The authorized representative of the applicant admitted the contraventions as stated in paragraph 2 above, committed by the applicant, for which compounding has been sought. During the personal hearing, it was submitted that the delay was not wilful or with malafide intention, but 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.

4. I have given my careful consideration to the documents on record. 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. 20,55,76,125.00**, and the period of delay ranges from twenty five days to one year, two months and fourteen days approximately.

5. 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 contravention is to be compounded, and I consider that an amount of **Rs.77,800.00 (Rupees Seventy Seven Thousand and Eight Hundred only)**, will meet the ends of justice.

6. Accordingly, I compound the admitted contravention namely, contravention of Paragraph 9(1)(A) 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.77,800.00 (Rupees Seventy Seven Thousand and Eight 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 said 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 Twenty Second day of September, 2017.

Sd/-

(Eugene E Karthak)
Regional Director