



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present
P S Khual
General Manager
Date: October 21, 2019
CA No. NDL 471/2019

In the matter of
DCI India Private Limited
DTJ 203, DLF Tower B, Jasola District Centre, New Delhi- 110025
(Applicant)

In exercise of the powers under Section 15(1) of Foreign Exchange Management Act, 1999 and the Regulations/ Rules/ Notifications/ Orders made thereunder, I pass the following Order.

ORDER

The applicant has filed the compounding application dated May 30, 2019 (received at Reserve Bank of India, New Delhi on June 06, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are those of (i) delay in reporting foreign inward remittance received for issue of shares, (ii) delay in filing Form FC-GPR after issue of shares, (iii) delay in issue of shares after receipt of inward remittance, (iv) delay in refund of share application money against which shares were not issued, and (v) taking on record in its books by the applicant company, the transfer of shares by residents to non-resident without obtaining certified Form FC-TRS from the AD bank, in terms of paragraphs 9(1)(A), 9(1)(B) and 8 [read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007] respectively of Schedule 1 and Regulation 4 [read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004] of 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 (hereinafter referred to as FEMA 20/2000-RB), as amended from time to time.

2. The relevant facts of the case are as follows:

(a) The applicant company, incorporated on August 17, 2006, is engaged in the business of architectural and engineering activities and related technical consultancy.

(b) The applicant had reported receipt of foreign inward remittances from its foreign investor, M/s Excalibre Inc., USA, on nine occasions and reported eight of them with delay ranging from 6 days to 10 years, 6 months and 10 days, as detailed hereunder, beyond the prescribed period in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of receipt	Amount (₹)	Date of reporting
1	20.12.2006	5,61,000.00	22.05.2007
2	26.12.2006	15,24,558.82	22.05.2007
3	18.01.2007	5,61,000.00	19.07.2007
4	20.02.2007	6,00,000.00	22.05.2007
5	06.03.2007	9,99,901.86	22.05.2007
6	22.03.2007	5,61,000.00	31.10.2017
7	16.04.2007	14,82,649.00	22.05.2007
8	18.04.2007	26,44,607.84	19.07.2007
	Total	89,34,717.52	

Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the date of receipt of the amount of consideration, a report indicating the details prescribed therein.

(c) The applicant had reported issue of shares to its foreign investor, M/s Excalibre Inc., USA, on two occasions. The issue of shares amounting to ₹83,73,710/- on December 22, 2008 was reported by the applicant in Form FC-GPR on June 10, 2009, with a delay of 4 months and 20 days, beyond the prescribed period in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the date of issue of shares, a report in Form FC-GPR together with the documents prescribed therein.



(d) The applicant had issued 8,37,371 equity shares on December 22, 2008 for a consideration of ₹83,73,710/- against the foreign inward remittances amounting to ₹83,73,717.52/- received on seven occasions with a delay of 1 year and 24 days, without the approval of RBI, beyond the prescribed period, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007. Further, the applicant could not issue shares to its foreign investor against the remittance of ₹5,61,000/- received on March 22, 2007 and, therefore, sought approval from Reserve Bank of India for refund of the same through their AD bank on September 29, 2017 with a delay of 9 years, 10 months and 1 day. Approval was granted on December 08, 2017 and the applicant refunded the said amount on January 04, 2018 in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007.

Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007, equity instruments should be issued within 180 days of the receipt of inward remittance. In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received should be refunded immediately to the non-resident investor. Provided that 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.

(e) Shri Suresh Arora, a resident shareholder (seller) of the applicant company, transferred 100 equity shares of the company to M/s Digital Control GmbH, Germany (non-resident buyer) on September 28, 2006 for a consideration of ₹1,000/-. The applicant company took on record in its books the transfer of shares vide Board resolution dated December 18, 2006 without obtaining Form FC-TRS duly acknowledged/ certified by the AD bank. AD bank certified the Form FC-TRS on August 27, 2019. The applicant thus, took the transfer on record 12 years, 8 months and 9 days prior to AD bank's certification of Form FC-TRS, in contravention of Regulation 4 of FEMA 20/2000-RB, as then applicable, read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004. Whereas, in terms of Regulation 4 of FEMA 20/2000-RB, an Indian entity shall not issue any security to



a person resident outside India or shall not record in its books any transfer of security from or to such person provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an entity to issue any security to a person resident outside India or to record in its books transfer of security from or to such person, subject to such conditions as may be considered necessary. Further, in terms of paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004, when the transfer is on private arrangement basis, on settlement of the transactions, the transferee/ his duly appointed agent should approach the investee company to record the transfer in their books along with the certificate in the Form FC-TRS from the AD bank that the remittances have been received by the transferor/ payment has been made by the transferee. On receipt of the certificate from the AD, the company may record the transfer in its books.

(f) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 and Regulation 4 of FEMA 20/2000-RB, as then applicable.

3. The applicant was given an opportunity for personal hearing for further submission in person and/ or by producing documents, if any, in support of the application. Shri Ehteshamul Haque, Managing Director and Shri Mukesh Singhal, Lawyer, appeared for personal hearing on October 18, 2019 on behalf of the applicant. The representatives of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that contraventions were without any *malafide* or wilful intention but were mainly due to delay in issue of FIRC and lack of awareness about FEMA compliances and lack of administration support staff available in the company. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions:

(a) Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, on account of delay in reporting of foreign inward remittance received towards subscription of shares as detailed in paragraph 2(b) above. The contraventions relate to an amount of



₹89,34,717.52 (Rupees Eighty Nine Lakh Thirty Four Thousand Seven Hundred Seventeen and Paise Fifty Two only) and the period of delay ranges from 6 days to 10 years, 6 months and 10 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, on account of delay in filing Form FC-GPR after issue of shares as detailed in paragraph 2(c) above. The contravention relates to an amount of ₹83,73,710/- (Rupees Eighty Three Lakh Seventy Three Thousand Seven Hundred and Ten only) and the period of delay is 4 months and 20 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, on account of delay in issue of shares after receipt of inward remittance and delay in refund of share application money against which shares were not issued, as detailed in paragraph 2(d) above. The contraventions relate to an amount of ₹83,73,717.52 (Rupees Eighty Three Lakh Seventy Three Thousand Seven Hundred Seventeen and Paise Fifty Two only) for delay in issue of shares and ₹5,61,000/- (Rupees Five Lakh and Sixty One Thousand only) for delay in refund of share application money and the periods of contravention are 1 year & 24 days and 9 years, 10 months & 1 day respectively.

(d) Regulation 4 of FEMA 20/2000-RB, as then applicable, read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004, on account of taking on record, the transfer of shares without obtaining duly certified Form FC-TRS as detailed in paragraph 2(e) above. The contravention relates to an amount of ₹1,000/- (Rupees One Thousand only) and the period of contravention is 12 years, 8 months and 9 days.

5. It has been declared in the compounding application dated May 30, 2019, that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has also been declared in the declaration dated May 30, 2019 furnished with the compounding application 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, thereafter. It has further been declared that the applicant has not filed any appeal under Section 17 or Section 19 of FEMA. 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.

6. In terms of Section 13 of 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 compound the contraventions, in line with the Guidance Note on Computation Matrix prescribed as part of Master Direction – Compounding of Contraventions, framed in accordance with the Foreign Exchange (Compounding Proceedings) Rules, 2000. Accordingly, it stands to reason that payment of an amount of **₹1,10,651/- (Rupees One Lakh Ten Thousand Six Hundred and Fifty One only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 and Regulation 4 of FEMA 20/2000-RB, as then applicable, by the applicant based on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹1,10,651/- (Rupees One Lakh Ten Thousand Six Hundred and Fifty One only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110001 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at New Delhi 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 21st day of October 2019.

Sd/-
(P S Khual)
General Manager