



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
5<sup>th</sup> Floor, Amar Building  
Sir P M Road  
Mumbai - 400 001

Present

**Nivedita Dwivedi**  
**Assistant General Manager**

Date: January 16, 2020  
CA No 5013 / 2019

In the matter of

**Gemini Power Hydraulics Private Limited**  
**Gemini House, Bus Depot Lane**  
**Deonar, Mumbai - 400088**

**(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 the application dated August 28, 2019 (received at the Reserve Bank on September 19, 2019) 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 delay in submission of Annual Performance Reports (APRs) and repatriation of disinvestment proceeds beyond the stipulated period of 90 days, amounting to contravention of the provisions of Regulations 15(iii) and 16(2) respectively 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 and as amended from time to time (hereinafter referred to as Notification No. FEMA.120/2004-RB).

2. The relevant facts of the case are as follows: The applicant was incorporated as Tara Sinha Gemini Power Hydraulics Private Limited (CIN: U28900MH1995PTC088698) on May 23, 1995 under Companies Act 1956. Its name was changed to Gemini Power Hydraulics Private Limited on July 11, 2005. The company is engaged in the business of trading in engineering equipment and machines. The applicant set up a wholly owned subsidiary (WOS), namely Gemini Intertrade Pte. Ltd., in Singapore, on January 14, 2008. The name of the WOS was changed to Rainbow Intertrade Pte. Ltd. on February 27, 2008.

The applicant remitted USD 6500 and USD 4000 to the WOS on February 22, 2008 and March 11, 2008 respectively. It disinvested and closed down the WOS on September 30, 2017 while the disinvestment proceeds amounting to USD 8061 (INR 5,14,131) were repatriated only on January 16, 2018, beyond the stipulated time period of 90 days, thereby contravening Regulation 16(2) of FEMA 120/2004-RB.

Further the APRs for the years ending 2008 to 2017 were submitted with a delay beyond the stipulated time period, in contravention of Regulation 15(iii) of FEMA 120/2004-RB (The accounting year of the WOS was changed from December to March in 2010, hence the details of last 3 months of the financial year ending March, 2011 were combined and filed with the APR for the year 2011-12).

3. In terms of Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual performance Report (APR) in Part II of Form ODI in respect of each JV or WOS outside India.....".

Regulation 16(2) of Notification *ibid* states, " Sale proceeds of shares/securities shall be repatriated to India immediately on receipt thereof and in any case not later than 90 days from the date of sale of the shares/securities and



documentary evidence to this effect shall be submitted to the Regional office of the Reserve Bank through the designated authorized dealer".

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/3358/15.20.67/2019-20 dated December 31, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on January 14, 2020 during which Shri Rajiv Sethi, Managing Director of the applicant, Ms. Subbalakshmi Kumar, Manager- Finance and Accounts of the company, and Shri Chandresh Gandhi, Chartered Accountant, represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter.

It has been declared in the compounding application dated August 28, 2019, that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. A declaration has also been furnished along with the compounding application stating 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 been informed of initiation of any such enquiry/investigation/adjudication proceedings against it/him/her thereafter. 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.

The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing and thereafter.

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 Regulations 15(iii) and 16(2) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as



amended from time to time. The amount of contravention is Rs. 5,14,131/- (USD 8061) and the period of contravention ranges from 1 month to 6 years approximately.

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. 1,42,571/- (Rupees one lakh forty two thousand five hundred and seventy one 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 15(iii) and 16(2) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 1,42,571/- (Rupees one lakh forty two thousand five hundred and seventy one 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 16<sup>th</sup> day of January, 2020

**Sd/-**

**(Nivedita Dwivedi)**  
**Assistant General Manager**