



In the

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

Present

Ms. Shilpi Kumari
Assistant General Manager

Date: March 09, 2020
C.A. BGL 510/2019

In the matter of

M/s Digicert Security India Private Limited
RMZ Ecoworld, Campus 8B, 10 Floor, Sarjapur
Marathahalli Outer Ring Road, Devarabeeshanalli
Bengaluru - 560103

(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 November 04, 2019, received at this office of Reserve Bank of India, Bengaluru on November 11, 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, (i) delay in reporting receipt of foreign inward remittances towards subscription to equity, (ii) delay in refund of excess share application money to the non-resident investor, (iii) delay in submission of form FC-GPR to the Reserve Bank, after issue of shares to a person resident outside India, and (iv) delay in filing the Annual Return on Foreign Liabilities and Assets.

The above transactions resulted in contravention of (i) 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), (ii) Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB, (iii) Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB, and (iv) Paragraph 9(2) of Schedule I to Notification No. FEMA 20/2000-RB, and Regulation 13.1 (3) of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, notified vide Notification No. FEMA 20(R)/2017-RB, dated November 07, 2017, and as amended from time to time (hereinafter referred to as Notification No. FEMA 20(R)/2017-RB).

2. The relevant facts of the case are as follows: The applicant, M/s Digicert Security India Private Limited, was originally incorporated as M/s. Elastica Data Sciences India Private Limited, on October 15, 2015, under the Companies Act, 2013, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka. Subsequently, the company has changed its name as M/s Digicert Security India Private Limited, on April 06, 2018, as per the Certificate of Incorporation pursuant to change of name, issued by Registrar of Companies, Karnataka. The company is engaged in the business of providing identity, authentication and encryption solutions for the web and the Internet of Things. The applicant had received funds, towards share application money from the non-resident investors, namely, M/s Elastica LLC, USA (formerly known as M/s Elastica Inc, USA) and M/s Digicert Inc, USA, as shown below:

Table – 1

Sl. No.	Date of Receipt	Amount (INR)	Date of reporting to RBI/AD
1	05-11-2015	1,99,300.00	08-02-2016
2	21-09-2017	61,00,000.00	17-10-2017
3	29-01-2018	17,29,81,245.00	23-02-2018
4	30-01-2018	65.00	23-02-2018
	Total	17,92,80,610.00	



The applicant reported receipt of remittances to the Reserve Bank of India / Authorized Dealer Bank, with a delay of two months and three days, beyond the stipulated period of 30 days in respect of the remittances as indicated at serial number 1, in Table-1 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 company had refunded the excess share application money to the non-resident investor beyond the stipulated period of 180 days from the date of receipt of inward remittance, with prior approval of the Reserve Bank, accorded vide letter Ref No. FE.BG.FID.No.940/21.09.900/2016-17, dated August 11, 2016, as detailed below:

- i. The company had received an inward remittance of ₹1,99,300.00, on November 05, 2015, from the non-resident investor, M/s Elastica LLC, USA (formerly known as M/s Elastica Inc, USA), and allotted 10,000 equity shares worth ₹1,00,000.00, on November 19, 2015, to the investors, leaving behind an excess of ₹99,300.00. The excess share application money of ₹99,300.00 was refunded to the investor, M/s Elastica LLC, USA, on November 08, 2016, with a delay, beyond 180 days from the date of receipt of remittance.

Whereas, in terms of Paragraph 8 of Schedule 1 to Notification no. FEMA 20/2000- RB, dated May 3, 2000, and as amended from time to time, read with A. P. (DIR Series) Circular No.20 dated December 14, 2007, 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, 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 amount of contravention is **₹99,300.00**, and the period of delay is six months and five days.



4. The applicant company had allotted equity shares and filed form FC-GPR with Reserve Bank/AD, as indicated below:

Table – 2

Sl. No.	Date of Allotment	Number of shares allotted	Amount (INR)	Date of reporting to RBI/AD
1	19-11-2015	10,000 – Equity	1,00,000.00	09-01-2017
3	25-09-2017	6,10,000 – Equity	61,00,000.00	24-10-2017
4	30-01-2018	5,00,000 – Equity	17,29,81,000.00	27-02-2018
	Total	11,20,000 – Equity	17,91,81,000.00	

The applicant filed the form FC-GPR on allotment of shares with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank with a delay of one year and twenty-one days, beyond the prescribed period of 30 days in respect of the allotment of shares as indicated at serial number 1, in Table - 2 above. 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 the Reserve Bank of India, a report in form FC-GPR, along with documents prescribed therein, within 30 days from the date of issue of shares to person/s resident outside India.

5. The applicant company has not filed the Annual Return on Foreign Liabilities and Assets (FLA Return) to the Reserve Bank of India for the financial year 2017-18, on or before July 15 of the respective year. Whereas, in terms of Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB, dated May 03, 2000, and Regulation 13.1(3) of FEMA 20(R)/2017-RB, dated November 07, 2017, all Indian companies which have received Foreign Direct Investment in the previous years including the current year, shall submit to the Reserve Bank of India, on or before the 15th day of July each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time.

6. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID(CEFA) No.2024/22.09.900/2019-20, dated March 02,



2020, for further submission in person, and/or producing documents, if any, in support of the application. The applicant's authorized representative Ms. Ajita Patnaik, Associate, who appeared for the personal hearing on March 04, 2020, admitted the contraventions as stated in paragraphs 2, 3, 4 and 5 above, committed by the applicant, for which compounding has been sought. The representative of the applicant requested that as the contraventions were not intentional or with a malafide intention, and was mainly due to inadvertence, a lenient view may be taken 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.

7. 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 remittance received towards subscription to equity as detailed in Paragraph 2 above. The contravention relates to an amount of **₹1,99,300.00**, and the period of delay is two months and three days;

(b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, due to delay in refund of excess share application money beyond the stipulated period of 180 days from the date of receipt of inward remittance as detailed in Paragraph 3 above. The total amount of contravention is **₹99,300.00**, and the period of delay is six months and five days;

(c) Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in submission of form FC-GPR to the Reserve Bank after issue of shares to person/s resident outside India, as detailed in Paragraph 4 above. The contravention relates to an amount of **₹1,00,000.00**, and the period of delay is one year and twenty-one days; and



(d) Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB, and Regulation 13.1(3) to Notification No. FEMA 20(R)/2017-RB, due to delayed filing of Annual Return on Foreign Liabilities and Assets (FLAR) for the Financial Year 2017-18, as detailed in Paragraph 5 above.

8. It has been declared in the compounding application dated November 04, 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 been declared in the undertaking dated November 11, 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, 1999. Accordingly, the above contraventions which are being compounded in this order is 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.

9. 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 **₹36,472.00, (Rupees Thirty Six Thousand Four Hundred and Seventy Two only)**, will meet the ends of justice.

10. Accordingly, I compound the admitted contraventions namely, contraventions of (i) Paragraph 9(1)(A), 8 and 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB, and (ii) Paragraph 9(2) of Schedule I to



Notification No. FEMA 20/2000-RB, and Regulation 13.1 (3) to Notification No. FEMA 20(R)/2017-RB, by the applicant, based on the facts discussed above, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹36,472.00, (Rupees Thirty Six Thousand Four Hundred and Seventy Two 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”, 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 Ninth day of March, 2020.

Sd/-

(Shilpi Kumari)
Assistant General Manager