



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Shekhar Bhatnagar
Chief General Manager

Date: February 06, 2018
CA No 4517 / 2017

In the matter of

Abicor Binzel Production (India) Private Limited
Indo-German Technology Park, Survey No. 297-298
299, Post Urawade, Tal – Mulshi
Pune - 412115

(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 September 11, 2017 (received in the Reserve Bank on September 12, 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) transfer of shares from resident Indians to Non – resident Indians, without prior approval of the Reserve Bank of India, (ii) delay in reporting receipt of funds for issue of shares and (ii) delay in filing of form FC-GPR beyond the stipulated time period. The above amount to the contravention of Regulation 4 read with 10(A)(b)(ii), Paragraphs 9(1)(A) and 9(1)(B) of



Schedule 1 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 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts are as under: The applicant was incorporated as Abicor Binzel Production (India) Private Limited, on May 6, 1999, under the Companies Act, 1956 (CIN: U29299PN1999PTC013579). The applicant is a subsidiary of Alexander Binzel Schweisstechnik GmbH and Co.KG, an entity incorporated in Germany. It is engaged in the business of manufacture of Binzel products, viz., Gas and water cooled MIG and TIG torches, robotic torches, plasma cutting and welding torches, master wire feeding systems and robotic peripheral equipment.

The applicant was set-up with a subscribed equity share capital of Rs. 20,000/- (10 equity shares of Rs. 1000/-each subscribed by Shri Anshul Majumdar and Shri Shamit Majumdar, both resident Indian shareholders). In addition to this, Shri Shamit Majumdar held 16 equity shares of Rs. 1000/- each, which were issued on August 31, 1999. These 36 shares were subsequently transferred, without prior approval of the Reserve Bank of India, as under:

21 equity shares held by Shri Shamit Majumdar (resident) and 10 equity shares held by Shri Anshul Majumdar (resident), transferred to Alexander Binzel (Non-resident) on 31.08.1999. 5 equity shares held by Shri Shamit Majumdar (resident) transferred to Alexander Binzel (Non-resident) on 10.10.2000. The post facto approval was granted by RBI vide letter dated June 16, 2016. Since the transfer of 31 equity shares happened when Foreign Exchange Regulation Act (FERA), 1973, was in place, the applicant cannot be compounded for the same. The compounding is thus for the transfer of 5 equity shares when FEMA was in place, which was, in contravention of Regulation 4 read with 10(A)(b)(ii) of Notification No. FEMA 20/2000-RB.

Further, there was a delay in reporting inward remittance, beyond a period of 30 days, in contravention of Paragraph 9(1)(A) of Schedule I of Notification No. FEMA 20/2000-RB, as follows:



Date of receipt of funds	Amount received (INR)	Date of reporting
17.12.2007	1,98,43,537	03.01.2015

Furthermore, there was a delay in filing Form FC-GPR, beyond a period of 30 days, in contravention of Paragraph 9(1)(B) of Schedule I of Notification No. FEMA 20/2000-RB, as follows:

Date of issue of shares	Amount for which shares issued	Date of filing of FC-GPR
05.06.2008	15000000	03.01.2015
16.06.2008	4844000	03.01.2015

3. Regulation 4 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that, "Save as otherwise provided in the Act or Rules or Regulations made thereunder, an Indian entity shall not issue any security to a person resident outside India or to record in its books transfer of security from or to such person...."

Further, Regulation 10(A)(b)(ii) also prohibits such transfer without prior approval of the Reserve Bank of India.

According to Para 9(1)(A) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, "An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of receipt of the amount of consideration received by Indian company for issue of shares and convertible debentures, a report in form specified in Annex C to this Schedule along with a copy/ies of Foreign Inward Remittance Certificate/s (FIRC), Know Your Customer (KYC) report on the non-resident investor and details of the Government approval, if any".



Further, Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that “An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of issue of shares, a report in the Form FC-GPR as specified by the Reserve Bank from time to time....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/4664/15.20.67/2017-18 dated November 24, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on December 08, 2017 during which Shri Uday Godbole from Abicor Binzel, Shri Shabbir Motorwala, Chartered Accountant and Ms. Davinder Banga, 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 also been declared in the compounding application dated September 11, 2017, that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been subsequently declared in the declaration dated January 29, 2018, furnished as an addendum to 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 been informed of initiation of any such enquiry/investigation/adjudication proceedings against it/him/her 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 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 Regulation 4 read with 10(A)(b)(ii), Paragraphs 9(1)(A) and 9(1)(B) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time. The amount of contravention is as follows:

(i) Regulation 4 read with 10(A)(b)(ii) of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 5,000/- and Period of contravention is sixteen years approximately.

(ii) Para 9(1)(A) of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 1,98,43,537/- and Period of contravention is 8 years approximately.

(iii) Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 1,98,44,000/- and Period of contravention is six and a half 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. Rs. 7,99,250/- (Rupees seven lakh ninety nine thousand two hundred and fifty 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 contravention committed by the applicant namely, Regulation 4 read with 10(A)(b)(ii), Paragraphs 9(1)(A) and 9(1)(B) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, on payment of a sum of Rs.



7,99,250/- (Rupees seven lakh ninety nine thousand two hundred and fifty 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 sixth day of February, 2018

Sd/-

Shekhar Bhatnagar
(Chief General Manager)