



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: April 25, 2018
CA No. 4617/2018

In the matter of

Dorma India Private Limited
No. 14, Pattulous Road
Chennai 600 002

(Applicant)

In exercise of the powers conferred under section 15 (1) of the Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/ Orders made there under, I pass the following

Order

The applicant has filed a compounding application dated January 09, 2018 (received in the Reserve Bank on January 10, 2018) 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 relate to (i) the delay in reporting foreign inward remittances; (ii) the delay in reporting allotment of shares after receipt of funds to Reserve Bank of India (RBI) and; (iii) failure to comply with the conditions of Foreign Investment Promotion Board (FIPB) approval pertaining to disinvestment of 20% of equity to Indian partners after five years in contravention of paragraphs 9(1)(A), 9(1)(B) and 3 respectively 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 3rd May 2000, as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB).



2. The relevant facts of the case are as follows: The applicant, was initially incorporated as Dorma Door Controls India Private Limited on May 08, 1997 under the Companies Act, 1956 (CIN U93090TN1998PTC040720) and subsequently its name was changed to Dorma India Private Limited (DIPL) on July 09, 2004. DIPL is a wholly-owned subsidiary ('WOS') of Dorma Vertrieb International GmbH, Germany which in turn is a subsidiary of Dorma GmbH & Co. KG, Germany. It is engaged in the business of manufacturing and marketing automatic doors and related accessories. DIPL received foreign investment amounting to Rs.114,74,81,670/- towards subscription to the equity and redeemable preference shares during the period from July 1997 to April 2011 as under:-

Table A

Sr. No.	Remitter	Amt (INR)	Date of receipt	Date of reporting	Towards
1.	Dorma GmbH & Co. KG	10	July 03, 1997	-	Equity shares
2.	Dorma Vertrieb International GmbH	10	July 03, 1997	-	
3.		35,54,300	August 03, 1998	-	
4.		46,42,950	October 15, 1998	-	
5.	Dorma GmbH & Co. KG	5,54,94,400	October 31, 2001	October 31, 2001	6% redeemable preference shares
6.	Dorma Vertrieb International GmbH	5,37,90,000	May 05, 2004	May 05, 2004	
7.		30,00,00,000	November 14, 2007	December 20, 2007	Equity shares
8.		23,00,00,000	November 19, 2008	January 20, 2009	
9.	50,00,00,000	February 04, 2011	March 09, 2011		
	Total	114,74,81,670			

The inward remittances at serial numbers 1 to 4 pertain to FERA regime. The company delayed reporting of the inward remittance in three instances i.e. at serial number 7,8 and 9 above thereby contravening para 9(1)(A) of schedule 1 to FEMA 20/2000-RB, as then applicable.

2.2 The applicant allotted the equity and preference shares to the overseas investors against the foreign inward remittances received as under:-



Table B

Sr. No.	Date of allotment	No. of shares	Amount for which shares allotted	Date of reporting	Type of shares allotted
1.	July 03, 1997	1	10	-	Equity shares
2.	July 03, 1997	1	10	-	
3.	August 03, 1998	3,55,430	35,54,300	-	
4.	October 15, 1998	4,64,295	46,42,950	-	
5.	October 31, 2001	55,49,440	5,54,94,400	May 13, 2002	6% redeemable preference shares
6.	May 05, 2004	53,79,000	5,37,90,000	July 14, 2004	
7.	December 07, 2007	3,00,00,000	30,00,00,000	December 20, 2007	Equity shares
8.	December 01, 2008	2,30,00,000	23,00,00,000	December 15, 2008	
9.	April 10, 2011	5,00,00,000	50,00,00,000	April 11, 2011	
		11,47,48,167	114,74,81,670		

The allotment of shares at serial numbers 1 to 4 pertain to FERA period. The company delayed reporting of the allotment of shares in two instances i.e. at serial number 5 and 6 above thereby contravening para 9(1)(B) of schedule 1 to FEMA 20/2000-RB, as then applicable.

2.3 Secretariat of Industrial Assistance, Department of Industrial Policy & Promotion, Government of India vide letter No. FC II: 105(97)/1131(96) dated February 13, 1997 granted its approval to Dorma GmbH to set up a WOS in India subject to the condition, as specified in clause no. 7 of the letter, that the WOS proposes to disinvest 20% of its equity to Indian partners after five years and no dividend would be repatriated in the first five years of operation. DIPL did not comply with this condition after the five year period. With enactment of Foreign Exchange Management Act, 1999 and liberalization of foreign direct investment in India vide press Note 04 of 2006 issued by DIPP read with RBI Notification No. FEMA.179/2008-RB dated August 22, 2008, the activities undertaken by DIPL became eligible for 100% FDI under the automatic route with effect from February 10, 2006. DIPL vide its letter dated November 15, 2012 requested FIPB for waiver/deletion of the said clause. FIPB, Department of Economic Affairs, Ministry of Finance, Government of India vide letter No. FC II: 105(97)/1131(96)-amend dated October 20, 2014 approved the deletion of the said clause subject to the applicant applying to RBI for compounding for not meeting the requisite condition of divesting 20%



as per the approval dated February 13, 1997. The total amount of foreign inward remittances received by DIPL prior to February 10, 2006 was Rs.11,74,81,670/-. The applicant further reported vide email dated June 23, 2017 of having remitted overseas a total amount of Rs.34,58,36,498/- towards the dividend during the period 2002-2016 (out of which Rs.28,11,80,716/-was remitted until 2013-14), the details of which are as under:

FY	Dividend (INR)
2002-03	-
2003-04	-
2004-05	-
2005-06	-
2006-07	4,91,836
2007-08	61,63,069
2008-09	2,30,66,631
2009-10	3,22,91,836
2010-11	3,22,91,836
2011-12	6,22,91,836
2012-13	6,22,91,836
2013-14	6,22,91,836
2014-15	-
2015-16	6,46,55,782
Total	34,58,36,498

Failure to comply with the condition as contained in the FIPB approval dated February 13, 1997 pertaining to disinvestment of 20% of its equity to Indian partners after five years and the proportionate amount of dividend remitted until receipt of the approval dated October 20, 2014 from FIPB was in contravention of para 3 of schedule 1 to FEMA 20/2000-RB, as then applicable.

3. During the course of its operations, DIPL committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 20/2000-RB as amended:-

3.1 Whereas, in terms of Paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report foreign inward remittances 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.



DIPL has reported the inward remittances beyond the prescribed period in 3 instances as per the details given in Table A above thereby contravening the said FEMA provision. The amount of contravention was Rs.1,03,00,00,000/- and the period of contravention ranges one month to two months approximately.

3.2 Whereas in terms of Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these regulations has to submit to Reserve Bank a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India.

DIPL reported the allotment of shares in Form FC-GPR beyond the prescribed period thereby contravening the said FEMA provision. The amount of contravention was Rs.10,92,84,400/- and the period of contravention ranges two months to six months approximately.

3.3 In terms of paragraph 3 of Schedule I to Notification No. FEMA 20/2000-RB, 'An Indian company intending to issue shares to a person resident outside India in accordance with these regulations directly against foreign inward remittance (or by debit to NRE account / FCNR account) or against consideration other than inward remittance i.e., against royalty / lump sum fee due for payment / import of capital goods by units in SEZs / ECBs (excluding those deemed as ECBs) shall obtain prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India, if the Indian company proposes to issue shares to a person resident outside India beyond sectoral limits or the activity of the Indian company falls under the FIPB route, as stipulated in Annex B to this Schedule'.

Whereas the applicant failed to comply with the condition as contained in the FIPB approval dated February 13, 1997 pertaining to disinvestment of 20% of its equity to Indian partners after five years thereby contravening the said FEMA regulation. The amount of contravention was Rs.7,97,32,477/- and the period of contravention was twelve years nine months approximately.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No.FE.CO.CEFA/8042/15.20.67/2017-18 dated March 26, 2018 for further



submission in person and/or producing documents, if any, in support of the application. Shri I. Sairaja, Senior Manager-Finance and Shri Narayana, Manager, Customer Service from DIPL attended the personal hearing held on April 17, 2018. The representatives of the applicant admitted the contraventions for which compounding had been sought and requested that a lenient view may be taken in the matter. 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.

5. I have given my careful consideration to the documents on record and the submissions made by the applicant. Accordingly, I hold that the applicant has contravened the provisions of FEMA, 1999 issued in terms of para 3, para 9(1)(A) and para 9(!)(B) of schedule 1 to FEMA 20/2000-RB, as then applicable as per the details given in paragraphs 2 and 3 above.

6. It has been declared in the compounding application dated January 09, 2018 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 furnished along with the 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 as required in terms of the said undertaking. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made/undertaking furnished 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/undertakings are subsequently discovered to be false and/or incorrect.

7. 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 Rs.7,42,994/- (Rupees seven lakhs forty two thousand nine hundred and ninety four only) will meet the ends of justice in the circumstances of the case.

8. Accordingly, I compound the admitted contravention namely, the contravention of paragraphs 3, 9(1)(A) and 9(!)(B) of schedule I to Notification No. FEMA 20/2000-RB, as then applicable, by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.7,42,994/- (Rupees seven lakhs forty two thousand nine hundred and ninety four only) which shall be deposited by the applicant with the Reserve Bank of India, Counter number 3, Main Building, Mumbai Regional Office, 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 of accordingly.

Dated this the twenty fifth day of April, 2018.

Sd/-

(Shekhar Bhatnagar)
Chief General Manager