



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
5th floor, Amar Building  
Fort, Mumbai - 400 001

Present

**Kamlesh Sharma**  
**Deputy General Manager**

Date: May 18, 2018  
C.A. 4587/2017

In the matter of

**Dynemic Products Limited**  
B-301, Satyamev Complex 1,  
Opp. New Gujarat High Court, Sola,  
Ahmedabad, Gujarat – 380 060

**(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 November 27, 2017 (received in the Reserve Bank of India on December 4, 2017) for compounding of contraventions of certain provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded relate to the provisions of the Regulations 6(3), 6(2)(vi), 16 and 16(1)(iii) Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations - FEMA Notification No. 120/2004-RB dated July 7, 2004, as amended from time to time (hereinafter referred to as Notification No. FEMA120/2004-RB).

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

2.1 The applicant company- Dynemic Products Limited (DPL) was originally incorporated on June 14, 1990 as Dynemic Products Private Limited, with its



registered office in Gujarat. A fresh certificate of incorporation was issued on January 28, 1993 consequent to a change of name to its current name i.e. Dynemic Products Limited. The applicant company is engaged in the business of manufacturing, trading (including exporting – importing), dealing in dyes, dyes intermediates, organic and inorganic chemicals, fine chemicals, organo-chemicals, alum chemicals, among others.

2.2 The applicant company (DPL) had set up a wholly owned subsidiary (WOS) viz. Dynemic USA Inc., USA with first outward remittance made on August 2, 2005, under the overseas direct investment (ODI) regulations under FEMA, 1999. The WOS was incorporated in September 2005 and a unique identification number (UIN) – AHWAZ20050329 was allotted. Subsequently, DPL had made further outward remittances to the WOS, including two remittances of USD 4,000.00 and USD 500.00 (on February 16, 2006 and May 08, 2006 respectively) which were made by way of purchase of foreign currency (Traveler's Cheques) from a full-fledged money changer (FFMC), to be handed over to an employee recruited and based in the US. These two amounts - used towards certain incorporation expenses, were treated as loan to the WOS. The prescribed forms for reporting the two above-mentioned remittances were not submitted within the stipulated time limit.

2.3 The WOS was liquidated in November 2009 resulting in a disinvestment of ODI which involved write-off of a major component of equity investment and other receivables (loan) of DPL from the WOS. The disinvestment was carried out without submission of a valuation certificate. Also, some proceeds from disinvestment were received in the form of cash and physical asset (laptop).

3. The following are the contraventions observed with regard to the above:

3.1 Whereas in terms of Regulation 6(3) of FEMA 120/2004, ODI may be funded out of one or more of the permitted sources - which include drawal of foreign exchange from an authorised dealer in India; use of traveler's cheques is not a permitted method for the purpose of ODI. In view of the



relatively small amounts involved and other bona fides, the transactions were permitted to be regularized through compounding of the contravention.

3.2 Whereas in terms of Regulation 6(2) (vi) of FEMA 120/2004, the Indian Party making further financial commitment under ODI is required to submit duly completed Form ODI – Part I, within stipulated time period, to the designated authorised dealer branch for that UIN; the prescribed forms in respect of the two remittances (made in the year 2006) were submitted during March 2016.

3.3 Whereas Regulation 16 of FEMA 120/2004 lays down the conditions under which an eligible Indian Party may transfer, by way of sale any share or security held by it in a joint venture (JV) or WOS outside India - under automatic route; disinvestment proceeds were received in the form of cash and other physical asset, without routing the transaction through a designated authorised dealer. In view of the relatively small amounts involved and other bona fides, the transactions were permitted to be regularized through compounding of the contraventions.

3.4 Whereas in terms of Regulation 16(1)(iii) of FEMA 120/2004, for an Indian Party having made ODI in a JV/WOS – whose shares are not listed on the stock exchange, shall be able to disinvest, under automatic route, after submission of a certificate indicating the fair value of the shares based on the latest audited financial statements of the JV/ WOS, as certified by a Chartered Accountant /Certified Public Accountant; the applicant submitted a fair valuation certificate on October 16, 2016 after a long delay since the disinvestment had already been carried in November 2009.

4. The applicant was given an opportunity (vide letter No. FE.CO.CEFA No.8038/15.20.67/2017-18 dated March 26, 2018) to opt for a personal hearing for further submission in person and/or producing documents, if any, in support of the application. The applicant chose to not opt for a personal hearing (vide e-mail dated March 28, 2018 - from Shri B K Patel, Managing Director, Dynemic Products Limited). The application for compounding was



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.

'It has been declared in the compounding application dated November 27, 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 declared in the declaration dated April 2, 2018 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/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.'

5. I have given my careful consideration to the documents on record and submissions made by the representative of the applicant during the personal hearing. Accordingly, I hold that the applicant contravened the following Regulations of Notification No. FEMA120/2004-RB dated July 7, 2004:

a) Regulation 6(3) of FEMA 120:

The amounts under this contravention have been taken as the ODI related financial commitment of USD 4,000.00 (INR 1,77,300.00) and USD 500.00 (INR 22,500.00) made using an impermissible method of funding. The period of contravention has been calculated from the date of the transaction till the date of submission of compounding application - which is more than 11 years in each of the two cases.

b) Regulation 6(2)(vi) of FEMA 120:

The amounts under this contravention have been taken as the ODI related financial commitment of USD 4,000.00 (INR 1,77,300.00 ) and USD 500.00 (INR 22,500.00), without submission of prescribed form (Form ODI Part I). The period of contravention has been taken as the length of delay in



reporting of the above-mentioned two ODI transactions i.e. 11 years 1 month and 10 years 10 months respectively.

c) Regulation 16 of FEMA 120:

The amounts under this contravention have been taken as the value of cash and other asset received as proceeds from disinvestment from ODI - outside of permitted channel of authorized dealers, i.e. USD 2,600.00 (INR 1,26,048.00 ) and USD 2,021.78 (INR 94,518.21). The period of contravention has been taken as the length of the period from date of receipt of these proceeds (on September 15, 2009 and November 17, 2009) till the date of submission of compounding application - which is more than 8 years in each of the two cases.

d) Regulation 16(1)(iii) of FEMA 120: The amount of contravention has been taken as the total amount of write-off of USD 64878.00 (INR 30,31,847.00) involved in disinvestment from ODI – without submission of valuation certificate. The period of contravention has been taken as the length of the period from date of disinvestment (on November 17, 2009) till the date of submission of compounding application in each case i.e. 8 years 1 month respectively.

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. 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 contravention is to be compounded and I consider that payment of an amount of INR 2,07,772.00 (Two Lakh Seven Thousand Seven Hundred and Seventy Two only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 6(3), 6(2)(vi), 16 and 16(1)(iii) of Notification No. FEMA120/2004-RB by the applicant on the facts discussed above in terms of the



Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of INR 2,07,772.00 (Two Lakh Seven Thousand Seven Hundred and Seventy Two only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5<sup>th</sup>Floor, Amar Building, Fort, Mumbai – 400 001 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 eighteenth day of May, 2018

Sd/-

**(Kamlesh Sharma)**  
**Deputy General Manager**