



In the

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

Present

Shri P J Thomas
Regional Director, Karnataka and
Chief General Manager, Bengaluru

Date: August 07, 2018
C.A. BGL 299/2018

In the matter of

M/s Dimerco Express (India) Private Limited
George Court, 4th Floor No. 5C/501
15th Main, HRBR 2nd Block
Bengaluru - 560043

(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 February 20, 2018, received at this office of Reserve Bank of India, Bengaluru on June 07, 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 are, (i) delay in reporting receipt of foreign inward remittances towards subscription to equity, (ii) delay in refund of excess share application money, and (iii) delay in submission of Form FC-GPRs to the Reserve Bank, after issue of shares to a person resident outside India, in terms of paragraphs 9(1)(A), 8 and 9(1)(B), 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 May 03, 2000, and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).



2. The relevant facts of the case are as follows: The applicant, M/s Dimerco Express (India) Private Limited, was incorporated on June 20, 2012, under the Companies Act, 1956, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka. The company is engaged in the business of clearing, forwarding, freight forwarding and handling cargo in shipping, railways and all other mode of conveyances. The applicant had received funds towards share application money from the foreign investors, namely, M/s MNC Investment Holdings Pte Limited, Singapore, and M/s Dimerco Express Singapore Pte Limited, Singapore, as shown below:

Table – 1

Sl. No	Date of Receipt	Amount (INR)	Date of Reporting to RBI /AD
1	22-10-2012	51,43,114.55	14-03-2017
2	22-10-2012	53,03,000.00	14-03-2017
3	17-11-2014	49,18,462.50	14-03-2017
4	31-12-2014	14,00,000.00	14-03-2017
	Total	1,67,64,577.05	

The applicant reported receipt of remittances to the Reserve Bank / Authorized Dealer Bank with a delay ranging from two years one month and thirteen days to four years three months and twenty one days, beyond the stipulated period of 30 days, in respect of all the remittances as indicated in the 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 allotted equity shares to the foreign investors, in terms of Paragraph 8 of Schedule 1 to Notification No. FEMA.20/2000 RB dated May 03, 2000. However, in the instances mentioned here below, the company had



refunded excess share application money beyond 180 days from the date of receipt of inward remittance, with prior approval of Reserve Bank of India.

(i) The company had received an inward remittance of Rs.51,43,114.55, from the non-resident investor M/s MNC Investment Holding PTE Limited, Singapore on October 22, 2012, and allotted 4,99,999 equity shares worth Rs.49,99,990.00. The excess share application money of Rs.1,43,124.55, was refunded on August 18, 2017, to the non-resident investor, with prior approval from Reserve Bank of India. The amount of contravention is **Rs.1,43,124.55**, and the period of delay is 4 year 3 months and 29 days;

(ii) The company had received an inward remittance of Rs.53,03,000.00, from the non-resident investor M/s Dimerco Express Singapore PTE Limited, Singapore, on October 22, 2012, and allotted 5,00,000 equity shares worth Rs.50,00,000.00. The excess share application money of Rs.3,03,000.00, was refunded on August 18, 2017, to the non-resident investor, with prior approval of Reserve Bank of India. The amount of contravention is **Rs.3,03,000.00**, and the period of delay is 4 years 3 months and 29 days; and

(iii) The company had received an inward remittance of Rs.49,18,462.50, from the non-resident investor M/s Dimerco Express Singapore PTE Limited, Singapore, on November 17, 2014, and allotted 4,60,000 equity shares worth Rs.46,00,000.00. The excess share application money of Rs.3,18,462.50, was refunded on August 18, 2017, to the non-resident investor, with prior approval of Reserve Bank of India. The amount of contravention is **Rs.3,18,462.50**, and the period of delay is 2 years 3 months and 2 days.

The company was given approval to refund the total excess share application money of **Rs.7,64,587.05**, to the non-resident investors, vide Reserve Bank's letter FE.BG.FID/303/21.10.447/2017-18 dated August 01, 2017. Whereas, in terms of Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000- RB, dated May 3, 2000, read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007, an Indian company is allowed to receive the amount of consideration



in advance from the non-resident investor, and within 180 days of receipt of the same, the shares have to be issued / the excess amount needs to be refunded.

4. The applicant company allotted equity shares and filed Form FC-GPRs with Reserve Bank/AD as indicated below:

Table – 2

Sl. No.	Date of Allotment	Amount (INR)	Date of reporting to RBI/AD
1	22-10-2012	99,99,990.00	04-05-2017
2	27-02-2015	60,00,000.00	04-05-2017
	Total	1,59,99,990.00	

The applicant filed the Form FC-GPRs, on allotment of shares, with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from two years one month and five days to four years five months and fourteen days, beyond the prescribed period of 30 days, in respect of the allotments indicated 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 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 persons resident outside India.

5. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No. 450/22.10.447/2018-19 dated July 30, 2018, for further submission in person, and/or producing documents, if any, in support of the application. The applicant's authorized representative Mr. IB Harikrishna, Company Secretary in Practice, who appeared for the personal hearing on August 07, 2018, admitted the contraventions as stated in paragraphs 2, 3 and 4 above, committed by the applicant, for which compounding has been sought. During the personal hearing, it was submitted that the delay was not willful or with malafide intention but was mainly due to inadvertence, and the same would not be repeated. In view of the above, he



requested to take a lenient view 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.

6. 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 remittances received towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of **Rs.1,67,64,577.05**, and the period of delay ranges from two years one month and thirteen days to four years three months and twenty one days;

(b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, due to refund of excess share application money beyond 180 days from the date of receipt of inward remittances, with prior approval from Reserve Bank of India as detailed in paragraph 3 above. The total amount of contravention is **Rs.7,64,587.05**, and the period of delay ranges two years three months and two days to four years three months and twenty nine days; and

(c) Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in submission of Form FC-GPRs to the Reserve Bank after issue of shares to persons resident outside India, as detailed in paragraph 4 above. The contravention relates to an amount of **Rs.1,59,99,999.00**, and the period of delay ranges from two years one month and five days to four years five months and fourteen days.

7. It has been declared in the compounding application dated February 20, 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 dated February 20, 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 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.

8. 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.1,98,740.00 (Rupees One Lakh Ninety Eight Thousand Seven Hundred and Forty only)**, will meet the ends of justice.

9. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A), 8 and 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-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 **Rs.1,98,740.00 (Rupees One Lakh Ninety Eight Thousand Seven Hundred and Forty 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” and 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 Seventh day of August, 2018.

Sd/-

(P J Thomas)
Regional Director, Karnataka and
Chief General Manager, Bengaluru