



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office Cell, 2nd floor
6, Sansad Marg
New Delhi 110 001

Present

P. Shimrah
General Manager
Date: February 01, 2017
C.A. No.58/2016

In the matter of

(M/s Bitzer SE)

Eschenbrunnlestr. 15, 71605, Sindelfingen, Germany

In exercise of the powers 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 an application dated September 09, 2016 (received on September 16, 2016) 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) operating beyond the validity period without taking prior approval of the Reserve Bank (ii) Annual Activity Certificate not representing a factual position of the operations (iii) transferring the assets of the Liaison Office to subsidiary without obtaining prior permission of the Reserve Bank (iv) transferring the surplus funds of the Liaison Office to subsidiary without obtaining prior permission of the Reserve Bank in contravention of the provisions of Regulation 5 of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 notified vide Notification No. FEMA.22/2000-RB dated May 03, 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA.22/2000-RB).



2. The facts of the case are as follows: The applicant company, M/s Bitzer SE, is based in Germany.

b) The applicant was given our permission for establishment of liaison office at Mumbai on November 03, 1999. Subsequent extensions of the permission to continue operating the Liaison Office in India were granted by the Reserve Bank up to November 30, 2008. However, the Liaison Office continued to operate without valid permission after expiry of its renewal in November 2008, thereby contravening Regulation 5(i) of FEMA Notification No.22 dated May 03, 2000, as amended from time to time, which stipulates that *a person resident outside India desiring to establish a branch or liaison office in India shall apply to the Reserve Bank, in form FNC 1.*

c) The applicant incorporated Bitzer India Private Limited (BIPL) on July 15, 2007 as its wholly-owned subsidiary. Thereafter, the applicant transferred the assets with book value of Rs.25,04,274/- of the Liaison Office to Bitzer India Private Limited, wholly owned subsidiary without prior permission of the Reserve Bank, thereby in contravention of Para 2 of AP (DIR Series) Circular No.88 dated March 01, 2012, which stipulates that *powers as regards the transfer of assets of LO / BO to others have not been delegated. It is, therefore, clarified that transfer of assets of Liaison / Branch Office to subsidiaries or other LO / BO or any other entity is permitted only with the specific approval of the Central Office of the Foreign Exchange Department, Reserve Bank of India.*

d) The applicant also transferred surplus funds amounting to Rs.33,84,802.85/- of the Liaison Office to Bitzer India Private Limited, wholly owned subsidiary, in contravention of Para iv and Para ix of Annexure to our approval letter for establishment of liaison office in India dated November 03, 1999. Para iv of the Annexure stipulates that *the office in India shall not borrow or lend any money from/to any person in India without our prior permission.* While Para ix of the Annexure stipulates that *debts to this account could be raised only for meeting the local expenses of the office.*

e) The Annual Activity Certificate submitted by the Liaison Office for the year ended March 31, 2008 did not represent a factual position of LO operations, thereby in contravention of AP (DIR Series) Circular No.6 dated August 09, 2010



read with Para 5(i) of AP (DIR Series) Circular No.24 dated December 30, 2009, which stipulates that *at present, BO/ LOs are required to submit Annual Activity Certificate (Annex) from their Auditors to the Central Office / Regional Office of the Reserve Bank, certifying that the BO / LO has carried out only those activities which are approved by the Reserve Bank.*

3. The applicant was given an opportunity for personal hearing, vide our letter No. FE.CO.CEFA/ 952/ 15.20.058/ 2016-17 dated January 19, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant company appeared for personal hearing on February 01, 2017, during which Shri Harvinder S Bhatia, Managing Director, BITZER India Pvt Ltd; Shri Pragya Shrivastava, Company Secretary & Compliance Officer, BITZER India Pvt Ltd; Shri Sujoy Chatterjee, National Sales Manager, BITZER India Pvt Ltd and Harsh Vora, Associate Director, PricewaterhouseCoopers Private Limited represented the Liaison Office. The representatives of the applicant admitted the contraventions committed by the applicant for which they have sought compounding and submitted that the lapse was due to ignorance of FEMA provisions in the matter and not intentional. The representatives of applicant have also requested the Bank to take a lenient view in the matter. The application for compounding is, therefore, being decided on the basis of the averments made in the application as well as other documents and submissions made in this context by the applicant.

4. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened the following provisions of FEMA:

- i. Regulation 5(i) of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 notified vide Notification No. FEMA.22/2000-RB dated May 03, 2000, as amended from time to time, for operating beyond the validity period without taking prior approval of the Reserve Bank.
- ii. Regulation 5 of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 notified vide Notification No. FEMA.22/2000-RB dated May 03, 2000, as amended from



time to time, read with Para 2 of AP (DIR Series) Circular No.88 dated March 01, 2012 for transferring assets of the Liaison Office to subsidiary without obtaining prior permission of the Reserve Bank

- iii. Regulation 5 of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 notified vide Notification No. FEMA.22/2000-RB dated May 03, 2000, as amended from time to time, read with Para iv and Para ix of Annexure to our approval letter for establishment of liaison office in India dated November 03, 1999 for transferring surplus funds of the Liaison Office to subsidiary without obtaining prior permission of the Reserve Bank
- iv. Regulation 5 of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 notified vide Notification No. FEMA.22/2000-RB dated May 03, 2000, as amended from time to time, read with AP (DIR Series) Circular No.6 dated August 09, 2010 read with Para 5(i) of AP (DIR Series) Circular No.24 dated December 30, 2009 for submitting Annual Activity Certificate for the year ended March 31, 2008 that did not represent a factual position of LO operations.
- v. The amount of contravention is Rs.58,89,076.85/- while the period of contravention is approximately nine years.

5. In terms of Section 13 of the FEMA, 1999, 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, 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 I consider that the payment of an amount of Rs.74,200/- (Seventy Four Thousand Two Hundred only) will meet the ends of justice in the circumstances of this case.

6. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 5 of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 notified vide Notification No. FEMA.22/2000-RB dated May 03, 2000, as amended from time to time, 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.74,200/- (Seventy Four Thousand Two Hundred only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office Cell, 2nd Floor, 6, Sansad Marg, New Delhi – 110 001 by a demand draft drawn in favor of the "Reserve Bank of India" and payable at Delhi 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 03, 2000 shall apply.

The application is disposed of accordingly.

Dated this the 01st day of February, 2017

Sd/-

(P.Shimrah)
General Manager