



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: March 28, 2017
C.A. No.60/2016

In the matter of

M/s MAXG 1864 SE

7th Floor, Vatika Triangle, Block A, Sushant Lok, Phase – I,
M.G.Road, Gurugram, Haryana

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 December 20, 2016 (received on December 27, 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) transferring the assets between the Liaison Office and subsidiary without obtaining prior permission of the Reserve Bank (ii) 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, M/s MAXG 1864 SE (formerly Guetermann Holding SE and prior to that, Guetermann AG) is a company



formed and registered under the laws of Germany and is engaged in the business of production and sales of sewing threads and all kinds of supplementary products.

b) The applicant was granted permission for establishment of liaison office at Gurgaon, Haryana vide Reserve Bank's approval letter dated May 14, 2004.

c) The applicant incorporated Guetermann India Private Limited (GIPL) as its wholly-owned subsidiary in India in 2005. Thereafter, the applicant transferred fixed assets of the Liaison Office amounting to Rs.17,75,292.65/- to Guetermann India Private Limited (GIPL), wholly owned subsidiary without obtaining prior permission of the Reserve Bank. The applicant also transferred equity shares of Guetermann India Private Limited (GIPL), wholly owned subsidiary to the Liaison Office amounting to Rs.41,92,000/-. These transfers were made in contravention of Para (i) and Para (xi) of Annexure to our approval letter for establishment of liaison office in India dated May 14, 2004. Para (i) stipulates that *except the proposed liaison work, the office in India will not undertake any other activity of a trading, commercial or industrial nature nor shall it enter into any business contracts in its own name without our prior permission.* Para (xi) stipulates that *you shall have to obey the law of the land and there shall be no compromise or excuse for the ignorance of the Indian legal system in any manner.*

d) The applicant also transferred funds lying in the bank account of the Liaison Office amounting to Rs.12,86,090/- to Guetermann India Private Limited (GIPL), wholly owned subsidiary, without obtaining prior permission of the Reserve Bank, in contravention of Para (iv) and Para (ix) of Annexure to our approval letter for establishment of liaison office in India dated May 14, 2004. 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 *debits to this account could be raised only for meeting the local expenses of the office.*

3. The applicant was given an opportunity for personal hearing, vide our letter No. FE.CO.CEFA/ 1194/ 15.20.060/ 2016-17 dated March 20, 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 March 28, 2017, during which Shri Himanshu Mahaur, Managing Director, Gutermann India



Pvt Ltd; Shri Suresh Bhardwaj, Gutermann India Pvt Ltd and Shri Atul Mittal, Director, Deloitte Haskins & Sells LLP 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 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 (i) and Para (xi) of Annexure to our approval letter for establishment of liaison office in India dated May 14, 2004 for transferring the assets including fixed assets and equity shares amongst the Liaison Office and GIPL without obtaining prior permission 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 (iv) and Para (ix) of Annexure to our approval letter for establishment of liaison office in India dated May 14, 2004 for transferring the surplus funds of the Liaison Office to GIPL without obtaining prior permission of the Reserve Bank
- iii. The amount of contravention is Rs.73,53,316/- while the period of contravention is approximately eleven 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.85,100/- (Eighty Five Thousand One 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.85,100/- (Eighty Five Thousand One 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 28th day of March, 2017

Sd/-

(P.Shimrah)
General Manager