

## In the

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

Present

G. Jeyakumar Deputy General Manager

Date: March 30, 2017 **C.A. BGL197/2016** 

In the matter of

M/s Bigtapp (India) Pvt. Ltd.
N-119, Manipal Centre, Dickenson Road,
Bengaluru - 560042
(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 November 28, 2016 (received at the Reserve Bank on December 12, 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) delay in submission of Form FC-GPRs to the Reserve Bank after issue of shares to a person resident outside India and (ii) delay in refund of share application money to the foreign investor, a person resident outside India beyond 180 days of the receipt of the inward remittance in terms of paragraphs 9 (1) (B) and 8 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. Bigtapp (India) Pvt. Ltd., was incorporated on September 17, 2014, under the Companies Act, 2013. The company is engaged in the business of Business Intelligence, Business Analytics, big data and cloud data management, etc. The company allotted equity shares and filed FC-GPRs as indicated below:

| SI.<br>No. | Date of<br>Allotment | Amount (INR) | Date of reporting |
|------------|----------------------|--------------|-------------------|
| 1          | 17.09.2014           | 75,000.00    | 03.10.2015        |
| 2          | 15.12.2014           | 9,00,000.00  | 03.10.2015        |
| 3          | 16.02.2015           | 10,00,000.00 | 03.10.2015        |
| 4          | 10.09.2015           | 30,00,000.00 | 03.10.2015        |
|            | Total                | 49,75,000.00 |                   |

The applicant filed the Form FC-GPRs on allotment of shares with the Authorized Dealer bank, with a delay ranging from six months and fifteen days to eleven months and sixteen days approximately beyond the prescribed period of 30 days in respect of allotment of shares indicated at Sr. No. 1-3. 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 persons resident outside India.

3. Shares application amount to the extent of Rs.15,290/- received on November 13, 2014 was refunded on January 25, 2016 with a delay beyond the stipulated period of 180 days from the date of receipt of amount of consideration. The company was given the approval to refund the excess share application of Rs.15,290/money vide our letter No.FE.BG.FID.No.6536/21.09.562/2015-16 dated January 13, 2016. The company had received an inward remittance of Rs.10,02,039/- on December 31, 2014 and share application amount of Rs. 2,039/- was refunded on March 14, 2016 with a delay beyond the stipulated period of 180 days from the date of



receipt of amount of consideration. The company was given the approval to refund the excess share application money of Rs. 2,039/- vide our letter No.FE.BG.FID.No.8353/21.09.562/2015-16 dated March 3, 2016 and the company refunded the excess share application of Rs.2,039/- on March 14, 2016. Whereas in terms of paragraph 8 of Schedule 1 to Notification No.FEMA 20/2000-RB, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned, provided the Reserve Bank may, on an application made to it and for sufficient reasons permit to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt. The amendment in paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of Security by A Person Resident outside India) (Third Amendment) Regulations, 2007 notified, vide Notification No. FEMA 170/2007-RB dated 13th November. 2007 in the official Gazette of the Government of India. Further, in terms of paragraph 5 of A.P. (Dir Series) Circular No. 20 dated December 14, 2007, in all cases where, as on November 28, 2007, 180 days have elapsed since receipt of funds and the equity instruments have not been issued, the companies are required to approach the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through their AD Category - I bank with a definite action plan either for allotment of equity instruments or for refund of the advance, with full details, for specific approval.

**4.** The applicant was given an opportunity for personal hearing, vide the Reserve Bank's letter No. FE.BG.FID (CEFA) No. 5591/22.09.562/2016-17 dated March 13, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing on March 20, 2017 and Shri Prakash M, Practising Company Secretary represented the applicant. The authorized representatives of the applicant admitted the contraventions as stated in paragraphs 2 and 3 above committed by the applicant, for which compounding has been sought. The



representative of the applicant requested that as the contraventions were not intentional and were beyond the control of the applicant, a lenient view may be taken 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.

- **5.** I have given my careful consideration to the documents on record. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:
  - (a) 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 and the contravention relates to an amount of **Rs. 19,75,000/-** and the duration ranges from six months and fifteen days to eleven months and sixteen days approximately.
  - (b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB as the applicant refunded share application money to an extent of **Rs. 17,329/**with a delay beyond the stipulated period of 180 days and the period of delay ranges from eight months and thirteen days to eight months and fourteen days approximately.
- 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 contraventions are to be compounded and I consider that an amount of Rs. 13,600/- (Rupees Thirteen Thousand Six Hundred only) will meet the ends of justice.
- **7.** Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1) (B) and 8 of Schedule I to Notification No. FEMA 20/2000-RB by the applicant on the facts discussed above in terms of the

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Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of **Rs. 13,600/-** (**Rupees Thirteen Thousand Six Hundred only**) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 2<sup>nd</sup> 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 Thirtieth day of March 2017.

Sd/-

(G.Jeyakumar) Deputy General Manager