



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

Present

Eugene E Karthak
Regional Director

Date: March 16, 2017
C.A. BGL190/2016

In the matter of

M/s Diabu Diamond Tools (India) Pvt. Ltd.
No.131/132, 7th Floor,
Devatha Plaza, Residency Road,
Bengaluru -560025
(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 October 5, 2016 received at the Reserve Bank on October 18, 2016 and addendum dated February 21, 2017 received at Reserve Bank on February 28, 2017 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 and (ii) 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) (A) 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. Diabu Diamond Tools (India) Pvt. Ltd., was originally incorporated as M/s Diabu (India) Pvt. Ltd. on July 2, 1993, under the Companies Act, 1956 as per the certificate of incorporation issued by



the Registrar of Companies, Karnataka. The name of the company has been changed to M/s Diabu Diamond Tools (India) Pvt. Ltd. with effect from June 23, 2004. The activity undertaken by the company is “manufacturers, producers, exporters, importers of Diamond Tools, Diamond Wheels and Service Engineers for all types of Diamond Tools, Wheels, etc.” The applicant received funds towards share application money from one foreign investor viz., M/s Diabu Diamantwerkzeuge, Germany., as shown below:

Sl. No	Date of Receipt	Total Amount	Date of reporting to RBI
1	25-06-2004	528986.00	18-08-2004
2	23-06-2004	789150.00	18-08-2004
3	25-06-2004	9266973.00	18-08-2004
4	14-03-2006	6846797.00	23-05-2006
5	28-03-2006	388009.00	23-05-2006
6	06-12-2012	1397277.00	12-03-2013
7	06-12-2012	4034638.00	12-03-2013
8	06-12-2012	36137085.00	12-03-2013
	Total	5,93,88,915.00	

The applicant reported receipt of remittances to the Reserve Bank with a delay of 2 months 7 days approximately, beyond the stipulated time of 30 days in respect of remittances indicated at Serial Nos 6, 7 and 8. 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. Shares application amount to the extent of Rs.10,81,115/- relating to remittances received between June 25, 2004 and March 28, 2006, refund was made on September 28, 2016 after the stipulated period of 180 days with approval of Reserve Bank and period of delay is 8 years 9 months 30 days approximately. 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. 5522/22.06.008/2016-17 dated March 7, 2017, for further submission in person and/or producing documents, if any, in support of the application. The authorized representatives of the applicant did not appear for the personal hearing on March 9, 2017 during which it will be presumed that they are not willing to attend the personal hearing and the compounding application will be disposed off ex-parte. During the personal hearing, it was submitted that the delay was not willful or with a malafide intention and it was mainly due to inadvertence and the same will not be repeated. In view of the above, we may 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 and thereafter.

5. 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. 4,15,69,000/-** and the delay is 2 months 7 days approximately.



(b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB as the applicant refunded the excess share application money to an extent of **Rs.10,81,115/-** with a delay beyond the stipulated period of 180 days as detailed in the paragraph 3 above and the period of delay is 8 years 9 months 30 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. 82,100/- (Rupees Eighty Two Thousand One Hundred only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A) and 8 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. 82,100/- (Rupees Eighty Two Thousand One Hundred 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 Sixteenth day of March 2017.

Sd/-

(Eugene E Karthak)
Regional Director