



In the

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

Present

G. Jeyakumar
Deputy General Manager

Date: July 5, 2017
C.A. BGL 215/2017

In the matter of

M/s Italind Engineers Private Limited
Plot No. 4, First Floor, NGEF Industrial Estate
Off Whitefield Road, Mahadevapura Post
Bengaluru 560048
(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 28, 2017 (received at the 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 is refund of share application money to the foreign investors, persons resident outside India beyond 180 days of receipt of the inward remittances in terms of paragraph 8 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 Italind Engineers Private Limited, was incorporated on July 19, 2004. The company is engaged in the business of designing, assembling, importing, distribution, consultancy and trading of various types of CNC machines and engineering equipment etc.

3. The company had received inward remittances of Rs.3,34,200.00 and Rs.6,24,825.00 on January 16, 2014, and April 21, 2014, respectively. The company, vide their letter dated February 16, 2016, sought our approval to refund the entire share application money with a delay. The company was accorded the approval to refund the share application money of Rs.9,59,025.00 vide our letter No. FE.BG.FID.No.8557/21.09.767/2015-16 dated March 15, 2016. The company refunded the entire amount in two tranches of Rs.8,57,210.00 and Rs.1,01,815.00 on March 29, 2016 and May 23, 2016, respectively, with a delay beyond the stipulated period of 180 days from the date of receipt of amount of consideration. The company had further received an inward remittance of Rs.16,20,059.00 on September 24, 2015, and the excess share application money of Rs.1,20,059.00 was refunded on January 13, 2017, with a delay beyond the stipulated period of 180 days from the date of receipt of amount of consideration, vide our approval letter FE.BG.FID.No.2392/21.09.767/2016-17 dated December 01, 2016. Whereas, in terms of paragraph 8 of Schedule 1 to Notification No.FEMA20/2000-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 November 13, 2007 in the official



Gazette of 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 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 Reserve Bank's letter FE.BG.FID (CEFA) No. 6801/22.09.767/2016-17 dated June 29, 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 July 04, 2017 and Shri Binoy Chacko, Company Secretary in Practice, represented the applicant. The authorized representative of the applicant admitted the contraventions as stated in paragraphs 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 8 of Schedule I to Notification No. FEMA 20/2000-RB as the applicant refunded the share application money to the foreign investors with a delay beyond the stipulated period of 180 days from the date of receipt of amount of consideration as detailed in paragraph 3 above. The contravention



relates to an amount of **Rs.10,79,084.00** and the period of contravention ranges from nine months and 22 days to one year eight months and 14 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.50,600.00 (Rupees Fifty Thousand and Six Hundred only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraph 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.50,600.00 (Rupees Fifty Thousand and Six 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 Fifth day of July 2017.

Sd/-

(G Jeyakumar)
Deputy General Manager