



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, NCOB
Shahid Bhagat Singh Marg
Mumbai - 400 001

Present

Ajay Kumar Misra
Chief General Manager

Date: September 26, 2019
CA No 4948/ 2019

In the matter of

Pi Digital Media Network Pvt. Ltd.
Unit 1240, 12th floor, I-thum tower B, A-40
Sector 62,
Noida – 201 301
(Applicant)

In exercise of the powers conferred under section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/Orders made thereunder, I pass the following

Order

The applicant has filed the application dated May 08, 2019 (received in the Reserve Bank on May 27, 2019), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are: (i) availing External Commercial Borrowing (ECB) when the applicant was not an eligible borrower (ii) drawdown on ECB



loan before obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI) and (iii) non-compliance with reporting requirements for ECB.

The above were in contravention of Regulation 6 of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3 /2000-RB dated May 3, 2000, as amended from time to time (hereinafter referred to as Notification No. FEMA 3 /2000-RB), read with paragraphs 1(i), 1(xi) and 1(xii) of Schedule I to this Regulation, as amended from time to time.

2. The relevant facts of the case are as under:

The applicant company was incorporated on September 27, 2018 and is engaged in business of providing advertisement services in print and digital media. It is a wholly owned subsidiary of Publishers' Internationale Pty Ltd.(PIPL), a company incorporated in Australia.

The applicant company entered into a loan agreement dated December 04, 2018 with its parent company, PIPL, wherein PIPL had agreed to provide a foreign currency loan of AUD 2,50,000 (INR 1,28,12,500). The applicant company received three remittances viz. Rs 5,13,000, Rs. 4,89,500 and Rs. 4,88,000 on December 05, 2018, March 11, 2019 and May 13, 2019 respectively under the loan arrangement. This loan was provided to meet the working capital requirements of the applicant company at a rate of interest equal to LIBOR + 1% with repayment due after completion of 5 years. On the date of first inward remittance, i.e December 05, 2018, the company, being engaged in service sector, was not eligible to avail ECB. However, post the date of notification of the revised ECB framework i.e. January 16, 2019, the company became eligible to raise ECB (all entities who were eligible to receive FDI, were declared eligible to raise ECB also). Therefore, the applicant company has admitted to have contravened the following regulations of Schedule I to FEMA 3/2000-RB:

- (i) Para 1(i) (eligibility) of Schedule I further read with Para 4 of Schedule I – the applicant borrower was not an eligible borrower for ECB (only for the date of first remittance).



- (ii) Para 1(xi) (draw-down before obtaining LRN) of Schedule I –Draw-down of the ECB was made before obtaining LRN, which was not permitted.
- (iii) Para 1(xii) (ECB transaction not reported) of Schedule I – the applicant did not meet the prescribed reporting requirements for ECB.

3. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/1288 /15.20.67/2019-20 dated September 06, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on September 13, 2019 during which the representatives of the applicant submitted that the company had inadvertently failed to comply with the FEMA regulations due to ignorance, and requested that a lenient view may be taken in the matter. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

4. It has been declared in the compounding application dated May 08, 2019, that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has also been declared in the declaration furnished along with the compounding application that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application and has, in this regard, not been informed of initiation of any such enquiry/investigation/adjudication proceedings against it thereafter. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made by the applicant and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and/or incorrect.

The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the meeting with the Compounding Authority.



5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(i), 1(xi) and 1(xii) of Schedule I to this Regulation. The amount of contravention is Rs. 1,28,12,500/- and the period of contravention is from December 05, 2018 (date of first remittance) to June 27, 2019 (date of obtaining LRN). The applicant was an ineligible borrower as on the date of first remittance and undue gains were deemed to have accrued to the applicant for the amount of loan availed prior to January 16, 2019 (date of issuing revised ECB framework). Thus, in order to calculate the amount of undue gains, the average rates of interest accruing on Government of India Bonds having a ten year maturity period have been notionally applied.

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. Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, I am persuaded to take a view that undue gains made by the applicant require to be neutralized it stands to reason that payment of an amount of Rs. 1,18,039/- (Rupees One lakh eighteen thousand and thirty nine only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(i), (xi) and (xii) of Schedule I to this Regulation, as amended from time to time, on payment of a sum of Rs. 1,18,039/- (Rupees One lakh eighteen thousand and thirty nine only), which shall be deposited by the applicant with Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in



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favor of the "Reserve Bank of India" and payable at 'Mumbai' 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 accordingly.

Dated this the 26th day of September, 2019

Sd/-

(Ajay Kumar Misra)

Chief General Manager