



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Ajay Kumar Misra
Chief General Manager

Date: December 13, 2018
CA No 4736 / 2018

In the matter of

AG Mercantile Company Pvt. Ltd.
127, Maker Chamber III, Nariman Point
Mumbai – 400021

(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 June 12, 2018 (received in the Reserve Bank on June 18, 2018), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant has sought to be compounded for (i) not seeking the approval of Government/erstwhile FIPB regarding downstream investment by a foreign owned and controlled company in an Indian company engaged only in the activity of investing in the capital of other Indian companies, (ii) delay in reporting receipt of funds for issue of shares and (iii) delay in filing of form FC-GPR beyond the stipulated time period. The above



amounted to the contravention of Regulation 14(6)(ii)(d)(A), Paragraphs 9(1)(A) and 9(1)(B) of Schedule 1 of 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 3, 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts are as under: The applicant company was incorporated as SMMS Investments Private Limited (CIN U65921MH2006PTC163408), under the Companies Act, 1956, on July 29, 2006. It is engaged in investment activities as a core investment company. It is wholly owned by M/s Telecom Investments India Private Limited, a company incorporated in India. The shares in M/s Telecom Investments India Private Limited are jointly held by M/s ND Callus Info Services Private Limited (incorporated in India but foreign owned and controlled after February 2014), M/s Nadal Trading Company Private Limited (incorporated in India but foreign owned and controlled after February 2014) and M/s CGP India Investments Limited (incorporated in Mauritius). M/s ND Callus Services Private limited is wholly owned by M/s MV Healthcare Private Limited, further wholly owned by M/s Scorpios Beverages Private Limited.

Prior to February 2014, M/s CGP India Investments Limited, a company incorporated in Mauritius, held a 49% stake in M/s Scorpios Beverages Limited. In February 2014, it acquired the remaining 51% stake in M/s Scorpios Beverages Limited from its Indian shareholders. Thus, M/s Scorpios Beverages Limited became a directly foreign owned and controlled company. Due to this acquisition, M/s Telecom Investments India Private Limited also became indirectly foreign owned and controlled company. The investment (Rs. 43,89,09,992/-), held by the applicant, made by M/s Telecom Investments India Private Limited, thus came under Government/erstwhile FIPB approval route from February 2014, as the applicant is engaged in the activities of a core investment company. The continuance of the investment without FIPB approval was thus in contravention of Regulation 14(6)(ii)(d)(A) read with serial No. F of Annex B to Schedule I of Notification No. FEMA 20/2000-RB, which states that "*Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior Government/FIPB approval, regardless of the extent of foreign investment...*".



The applicant is part of the group companies that were inherited by the Vodafone group pursuant to its acquisition of the Hutchison group's indirect interest in Vodafone India Limited in 2007 after the approval of the erstwhile FIPB. Now, the Department of Communications (DoT), GOI has approved the merger of Vodafone Mobile Services Limited and Vodafone India Limited, into Idea Cellular Limited, vide letter dated 04.06.2018, subject to the compounding of the abovementioned contravention by the applicant, and a similar contravention by seven other group companies. The applicant company was incorporated as Goldspot Mercantile Company Private Limited (CIN U15928MH2006PTC159281), under the Companies Act, 1956, on January 27, 2006 and its name was changed to AG Mercantile Company Private Limited on May 14, 2007. The applicant company is engaged in investment activities as a core investment company. Its 49% stake is held by CGP India Investments Ltd (a Mauritius based group company) and remaining 51% stake was indirectly owned by CGP India Investments Ltd through its India subsidiary viz., ND Callus Info Services Private Limited. M/s ND Callus Services Private limited is wholly owned by M/s MV Healthcare Private Limited, further wholly owned by M/s Scorpios Beverages Private Limited

Prior to February 2014, M/s CGP India Investments Limited, a company incorporated in Mauritius, held a 49% stake in M/s Scorpios Beverages Limited. Post FIPB approval received in February 2014, it acquired the remaining 51% stake in M/s Scorpios Beverages Private Limited from its Indian shareholders. Thus, M/s Scorpios Beverages Limited and further, M/s MV Healthcare Services Private Limited and M/s ND Callus Info Services Private Limited became directly and indirectly foreign owned and controlled companies. The downstream investment (INR 121,50,95,400/-), held by the applicant, made by M/s ND Callus Info Services Private Limited, thus came under Government/erstwhile FIPB approval route from February 2014, as the applicant is engaged in the activities of a core investment company. The continuance of the investment without FIPB approval was thus in contravention of Regulation 14(6)(ii)(d)(A) of Notification No. FEMA 20/2000-RB, which states that *"Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior Government/FIPB approval, regardless of the extent of foreign investment..."*



The applicant is part of the group companies that were inherited by the Vodafone group pursuant to its acquisition of the Hutchison group's indirect interest in Vodafone India Limited in 2007 after the approval of the erstwhile FIPB. Now, the Department of Communications (DoT), GOI has approved the merger of Vodafone Mobile Services Limited and Vodafone India Limited, into Idea Cellular Limited, vide letter dated 04.06.2018, subject to the compounding of the abovementioned contravention by the applicant, and a similar contravention by seven other group companies.

Further, there was a delay in reporting inward remittance, beyond a period of 30 days, in contravention of Paragraph 9(1)(A) of Schedule I of Notification No. FEMA 20/2000-RB, as follows:

S.No.	Name of remitter	Date of receipt of funds	Amount of received (INR)	Date of reporting
1	CGP India Investments Ltd.	09.11.2011	1,76,17,950.13	15.12.2011

Furthermore, there was a delay in filing Form FC-GPR, beyond a period of 30 days, in contravention of Paragraph 9(1)(B) of Schedule I of Notification No. FEMA 20/2000-RB, as follows:

S.No.	Name of investor	Date of issue of shares	Amount for which shares issued (INR)	Date of filing of FC-GPR
1	CGP India Investments Ltd.	10.11.2011	1,76,17,950	04.06.2012
2	CGP India Investments Ltd.	17.08.2012	114,83,56,650	26.09.2012
Total			116,59,74,600	



3. Regulation 14(6)(ii) of Notification No. FEMA 20/2000-RB states that, “Downstream investments by Indian companies will be subject to the following conditions:

(d) For the purpose of downstream investment, the Indian companies making the downstream investments would have to bring in requisite funds from abroad and not used funds borrowed in the domestic market. This would, however, not preclude downstream operating companies, from raising debt in the domestic market. Downstream investments through internal accruals are permissible by an Indian company, subject to the provisions of clause (i) above and as also elaborated below:

A. Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment.....”

According to Para 9(1)(A) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, “An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of receipt of the amount of consideration received by Indian company for issue of shares and convertible debentures, a report in form specified in Annex C to this Schedule along with a copy/ies of Foreign Inward Remittance Certificate/s (FIRC), Know Your Customer (KYC) report on the non-resident investor and details of the Government approval, if any”.

Further, Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that “An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of issue of shares, a report in the Form FC-GPR as specified by the Reserve Bank from time to time.....”.



4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/3096/15.20.67/2018-19 dated November 27, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on December 07, 2018 during which Mr. Ashraf Ali from Vodafone group, Mr. Gagan Verma and Ms. Rupali Sharma from Kochchar & Co., and Mr. Dhruv Nath and Ms. Tanya Agarwal from S&R Associates, represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter.

It has also been declared in the compounding application dated June 12, 2018, that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has also been declared in the declaration submitted 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/him/her 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 personal hearing.

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 14(6)(ii)(d)(A), Paragraphs 9(1)(A) and 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB. The amount and period of contravention are as follows:
(i) Regulation 14(6)(ii)(d)(A) of Notification No. FEMA.20/2000-RB – Amount of contravention – Rs. 121,50,95,400/- and Period of contravention is 4 years 3 months approximately.



(ii) Para 9(1)(A) of Schedule 1 of Notification No. FEMA.20/2000-RB – Amount of contravention – Rs. 1,76,17,950.13/- and Period of contravention is 6 days approximately.

(iii) Para 9(1)(B) of Schedule 1 of Notification No. FEMA.20/2000-RB – Amount of contravention – Rs. 116,59,74,600/- and Period of contravention ranges from 10 days to 5 months 25 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. 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 it stands to reason that payment of an amount of Rs. 86,21,501/- (Rupees eighty six lakh twenty one thousand five hundred and one 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 contravention committed by the applicant namely, Regulation 14(6)(ii)(d)(A), Paragraphs 9(1)(A) and 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB, on payment of a sum of Rs. 86,21,501/- (Rupees eighty six lakh twenty one thousand five hundred and one only), which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in favour 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 thirteenth day of December, 2018

Sd/-

(Ajay Kumar Misra)
Chief General Manager