



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: February 15, 2019
CA No 4811 / 2018

In the matter of

Jan Edvard Thygesen
Unit No. 302, 3rd Floor
World Trade Tower, Barakhamba Lane
Connaught Place, New Delhi - 110001

(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 October 31, 2018 (received in the Reserve Bank on November 05, 2018), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The compounding is sought for contravention of Section 42(1) of FEMA, 1999 which stipulates that *'Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as*



well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly'. The applicant was the Director of Unitech Wireless (Tamilnadu) Private Limited when the company contravened the provisions contained in Regulation 7(1)(c) read with Paragraph 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), further read with Section 6(3)(b) of FEMA, 1999, related to delay in reporting of the allotment of shares by the company, beyond the stipulated time period.

2. The relevant facts are as under: The applicant was the Director of Unitech Wireless (Tamilnadu) Private Limited (hereinafter referred to as 'company'), which was incorporated on August 10, 2007 under the Indian Companies Act, 1956. The CIN of the company is U45400DL2007PTC166910. The company is engaged in the business of wireless telecommunications services. The company was granted permission by GOI vide letter dated November 13, 2009 for foreign investment to the extent of 74% by Telenor Asia Pte Ltd.(TAPL), Singapore, a wholly-owned subsidiary of Telenor ASA, Norway. During the year 2009-10, the company received foreign investment from TAPL amounting to Rs.541.82 crore in terms of the GOI approval and allotted the shares to the foreign investor. Pursuant to a scheme of amalgamation sanctioned by an order of Hon'ble Delhi High Court dated September 27, 2010 the following eight (nos.) companies were amalgamated with the company:

- Unitech Wireless (North) Private limited
- Unitech Wireless (South) Private limited
- Unitech Wireless (Kolkata) Private limited
- Unitech Wireless (Delhi) Private limited
- Unitech Wireless (East) Private limited
- Unitech Wireless (Mumbai) Private limited
- Unitech Wireless (West) Private limited



- Unitech Long Distance Communications Services Private Limited

Pursuant to the amalgamation, the company issued 22,21,744 (nos.) shares amounting to Rs.2,22,17,440/- to TAPL on October 01, 2010. The company further issued 6,45,62,084 (nos.) bonus shares amounting to Rs.64,56,20,840/- on October 01, 2010 to TAPL. The allotment of these shares was finally reported in the desired form in form FC-GPR to RBI on June 21, 2014.

The delay in reporting of the allotment of shares by the company was in contravention of Regulation 7(1)(c) read with para 9(1)(B) of Schedule 1 of Notification No. FEMA 20/2000-RB further read with Section 6(3)(b) of FEMA, 1999. The company was advised of these contraventions committed vide letter ND. FED. FID. No.5056/06.04.117/2016-17 dated June 08, 2017. After the company submitted a compounding application in respect of the contraventions, it was compounded for the same vide Compounding Order dated August 14, 2018. The company had paid the amount imposed on August 28, 2018.

3. Section 42(1) of FEMA, 1999 states that, "Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly".

In terms of regulation 7(1)(c) of FEMA 20 'Where a Scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of de-merger or otherwise of an Indian company, has been approved by a Court in India, the transferee company or, as the case may be, the new company may issue shares to the shareholders of the transferor company resident outside India, subject to the condition that the transferee or the new company files a report within 30 days with the Reserve Bank giving full details of the shares held by persons resident outside India in the transferor and the transferee or the new company, before and after the merger / amalgamation / reconstruction'



Further, Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB, 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....”.

Regulation 6(3)(b) of FEMA, 1999 provides for further regulation, prohibition or restriction on the transfer or issue of any security by a person resident outside India by the Reserve Bank of India.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/4150/15.20.67/2018-19 dated January 11, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on February 12, 2019 during which Shri Vikash Kukreti, Company Secretary and Legal Head, and Shri Pankaj Wadhwa, Senior Manager – Legal, represented the applicant. The two authorized representatives of the applicant submitted that the contraventions of FEMA regulations were inadvertently committed by the company where the applicant was a Director and requested that a lenient view may be taken in the matter. The application is, therefore, being considered based on the averments made in the application, the documents produced, and submissions made during the personal hearing.

The applicant has declared in the compounding application that it was issued a Show Cause Notice (SCN) No. T-4/2-D/2012/SCN/SDE, dated April 30, 2012 by the Directorate of Enforcement (DoE). RBI vide letter FE.CO.CEFA./2986/15.20.67/2018-19 dated November 20, 2018 had sought comments from DoE as to whether its investigation pertained to the contraventions sought to be compounded by the applicant and whether it had any objection to compounding by RBI. DoE vide its letter F.No.T-4/2-D/2012 dated January 17, 2019 has stated that they had no case pending against the applicant presently. Accordingly, this Compounding Order is being issued after



considering the comments offered by DoE and is without prejudice to any action which may be taken by any other authority under the extant laws.

5. I have given my careful consideration to the documents on record and submissions made by the representatives of the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Section 42(1) of FEMA, 1999 read with Regulation 7(1)(c) read with para 9(1)(B) of Schedule 1 of Notification No. FEMA 20/2000-RB, further read with Section 6(3)(b) of FEMA, 1999. The amount of contravention (committed by the company where the applicant was a Director) is Rs. 66,78,38,280/- and the period of contravention is 3 years 8 months 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. Rs. 37,667/- (Rupees thirty seven thousand six hundred and sixty seven 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, Section 42(1) of FEMA, 1999 read with Regulation 7(1)(c) read with para 9(1)(B) of Schedule 1 of Notification No. FEMA 20/2000-RB further read with Section 6(3)(b) of FEMA, 1999, on payment of a sum of Rs. 37,667/- (Rupees thirty seven thousand six hundred and sixty seven 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 fifteenth day of February, 2019

Sd/-

Ajay Kumar Misra
(Chief General Manager)