



In the

Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present

Shri. S. V. Potphode
Assistant General Manager

Date: December 07, 2018

C.A. No. 780/2018

In the matter of

Maharashtra Transmission Communication Infrastructure Limited
Prakashganga, C-19
E-Block, Bandra Kurla Complex
Bandra (E), Mumbai- 400051

(Applicant)

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

Order

1. The applicant has filed the compounding application dated July 20, 2018 (received at the Reserve Bank of India on July 24, 2018) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contravention sought to be compounded is under Paragraph 3 to Schedule I to FEMA 20/2000- RB dated May 03, 2000 (as amended from time to time) (hereinafter referred to as Notification No. FEMA 20/2000-RB), wherein the applicant company failed to obtain prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India, to issue



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shares to a person resident outside India beyond the sectorial limits stipulated in Annexure B to Schedule I to FEMA 20/2000- RB.

2. The relevant facts of the case are as follows: The applicant company was incorporated on August 09, 2012, under the Companies Act, 1956 as Maharashtra Transmission Communication Infrastructure Limited (MTCIL). The main activities of the applicant are to carry on the business in the field of telecom by creating, raising, developing and maintaining infrastructure of dark fibre through OPGW/ cabling, right of way, duct space and towers on lease/ rent out basis and to acquire space for provision of co-location facilities, for telecom equipment, towers, antennas or any other transmitting devices; to engage in sales and marketing of the above services and providing total infrastructure solution to all the entities including telecom sector, in the state of Maharashtra and outside.

3. The Applicant company viz. MTCIL allotted 25,500 shares to M/s Sterlite Technologies Ltd (STL) for INR 2,55,000 on 09-08-2012. It is a case of downstream investment wherein the FDI came in the applicant company from M/s Twinstar Overseas Ltd (TOL) through STL. The foreign collaborator in this transaction was TOL. With this transaction the company had received foreign equity of 51% against 49 % allowed under Automatic route by Annex B to Schedule I under FEMA 20/2000- RB. Whereas, as per the provisions of Para 3 to Schedule I under FEMA 20/2000- RB, applicable at the time of investment. "An Indian company intending to issue shares to a person resident outside India in accordance with these Regulations directly against foreign inward remittance (or by debit to NRE account/ FCNR account) or against consideration other than inward remittance i.e., against royalty/ lump sum fee due for payment/ import of capital goods by units in SEZs/ ECBs (excluding those deemed as ECBs) shall obtain prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India, if the Indian company proposes to issue shares to a person resident outside India beyond sectorial limits or the activity of the Indian company falls under the FIPB route, as stipulated in Annex B to this Schedule".



4. There was a delay on the part of the applicant company in obtaining post facto approval from FIPB, as detailed below:

S. No	Date of allotment	Amount (Rs.)	Date of FIPB Approval	Delay Under Para 3 to Schedule I under FEMA 20/2000-RB.
1	09-08-2012	2,55,000	12-09-2013	1Y 1M 3D

5. The applicant was given an opportunity for personal hearing vide email dated October 30, 2018, for further submission in person and/or for producing documents, if any, in support of the application. The applicant appeared for personal hearing on November 02, 2018 during which Ms. Tanu Singh, Company Secretary and Ms. Pooja Singhal, Associate Director of the company represented the applicant. The representatives of the applicant admitted the contraventions for which compounding has been sought. During the personal hearing, it was submitted that the delay was inadvertent and unintentional. They requested that in view thereof, the matter may be viewed leniently. 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 submitted along with the application.

6. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of Para 3 of Schedule 1 to Notification No. FEMA 20/2000-RB due to failure to obtain prior approval of the Foreign Investment Promotion Board (FIPB) to issue shares to a person resident outside India beyond sectorial limits stipulated in Annexure B to Schedule I to FEMA 20/2000- RB, the contravention relates to an amount of Rs. 2,55,000 with a delay of 1 Year 1 Month 3 Days, approximately.



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7. It has been declared in the compounding application dated July 20, 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 been declared in the declaration furnished 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 informed of initiation of any such enquiry/investigation/adjudication proceedings against it/him/her thereafter. It has further been declared that the applicant has not filed any appeal under section 17 or section 19 of FEMA, 1999. Accordingly, the above contravention which is being compounded in this Order is 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.

8. 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 contraventions 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. 51,403.00 (Rupees Fifty-one Thousand Four Hundred Three only) will meet the ends of justice.

9. Accordingly, I compound the admitted contravention namely, the contravention of paragraph 3 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. 51,403.00 (Rupees Fifty-one Thousand Four Hundred Three only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, 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



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mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 03, 2000 shall apply.

10. The above order is passed only in respect of contravention of paragraph 3 of Schedule 1 to Notification No. FEMA 20/2000-RB and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.

The application is disposed of accordingly.

Date: December 07, 2018.

Compounding Authority

Sd/-

(S. V. Potphode)

Assistant General Manager