



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
5<sup>th</sup> Floor, Amar Building  
Sir P M Road  
Mumbai - 400 001

Present

**R.K. Moolchandani**  
**Chief General Manager**

Date: October 18, 2019  
CA No 4927/ 2019

In the matter of

**Vinod Kumar**  
**VSBS, Mahatma Gandhi Road, Fort,**  
**Mumbai – 400 001.**

**(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 April 18, 2019 (received in the Reserve Bank on May 06, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder, by the company where he was a director. 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 above mentioned applicant was one of the directors of Tata Communications Ltd.(TCL) during the relevant period when the company had contravened certain provisions of FEMA 1999, namely, not obtaining prior approval from the Government of India (GoI) for making payments to overseas entities with respect to transponder hiring charges. This amounts to violation of Rule 4 read with Item no. 6(a) of Schedule II to Foreign Exchange Management (Current Account Transactions) Rules, 2000, dated May 03, 2000 amended from time to time (hereinafter referred to as FEMCAT Rules, 2000).

2. The relevant facts are as under:

The abovementioned applicant was a Director of an Indian company viz. TCL during the relevant period i.e. February 01, 2011 - April 08, 2019, when the company had hired services of two foreign satellite service providers and had remitted transponder hiring charges by way of multiple remittances to the Satellite Service Providers during the period September 2004 to December 2012, through EEFC and non-EEFC accounts. The payment towards transponder charges by TV Channels/ Internet Services provider using non-EEFC account amounts to contravention of Rule 4 of FEM (CAT) Rules, 2000, read with Item No. 6(a) of Schedule II of the said Rules. As per Rule 4 of FEM (CAT) Rules, 2000, no person shall draw foreign exchange for a transaction included in the Schedule II without prior approval from GoI. Further, as per Item No. 6(a) of Schedule II, any remittance towards hiring charges of transponders by TV channels shall require prior approval from GoI. In the instant case, prior approval from GoI was not obtained. TCL made an application on June 02, 2015 seeking post-facto approval from the Ministry of Information and Broadcasting (MIB), GoI. MIB vide letter dated April 08, 2019 granted post-facto approval to TCL for remittances / payment from the company's non-EEFC account amounting to USD 43,564,501.84 (INR 196,87,00,133/-), subject to compounding.

3. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/943/15.20.67/2019-20 dated August 19, 2019 for further



submission in person and/or producing documents, if any, in support of the application. A personal hearing was held on September 11, 2019 which was attended by the representative of the applicant and it was submitted that the contraventions were inadvertent and it was also requested that a lenient view may be taken in the matter.

4. It has been declared in the compounding application dated April 18, 2019, that the particulars given by the applicant in the application were true and correct to the best of the applicant's knowledge and belief. It has been declared in the declaration furnished along with the compounding application that the applicant was under enquiry by the Directorate of Enforcement (DoE), in connection with trade related transactions of the company and that all the details required by DoE at the time had been furnished by the applicant. The applicant has declared in the compounding application that a Show Cause Notice (SCN) No. T-4/4-D/2017, dated November 27, 2017 was issued to the applicant by the DoE. RBI, vide its letter No. FED.CO.CEFA/6709/15.20.67/2018-19 dated May 14, 2019, 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 of admitted contraventions by RBI. A reminder letter ref. No. FE.CO.CEFA/7376/15.20.67/2018-19, was sent to DoE on June 17, 2019. No response has been received from DoE to the abovementioned letters. 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. Accordingly, this Compounding Order is being passed based on the submissions of the applicant that the contraventions were inadvertent. This Order is without prejudice to any action which may be taken by DoE or any other authority under FEMA, 1999 and/or any other extant laws.

6. I have given my careful consideration to the documents on record and submissions made during the personal hearing. It was observed that the applicant has contravened the provisions of Section 42(1) of FEMA, 1999, in respect of contraventions committed by the company where he was a Director.



The amount of contravention (committed by the company) is Rs 196,87,00,133/- and period of contravention is approximately fourteen years and seven months.

7. 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, it stands to reason that payment of an amount of Rs. 14,81,525/- (Rupees fourteen lakhs eighty one thousand five hundred and twenty five only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the company, in respect of which the applicant has applied for compounding of contraventions under Section 42(1) of FEMA, 1999, on payment of a sum of Rs. 14,81,525/- (Rupees fourteen lakhs eighty one thousand five hundred and twenty five only) which shall be deposited by the applicant with the "The Chief General Manager - in - Charge, 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 18th day of October, 2019

**Sd/-**  
**(R.K. Moolchandani)**  
**Chief General Manager**