



In the

Reserve Bank of India
10/3/8, Nrupathunga Road
Bengaluru-560001

Present

Shri Jose J Kattoor
Regional Director, Karnataka and
Chief General Manager, Bengaluru

Date: May 14, 2019
C.A. BGL 383/2018

In the matter of

M/s Binatone Telecommunication Private Limited
GF7, Karuna Complex, 337
Sampige Road, Malleshwaram
Bengaluru - 560003
(Applicant)

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

ORDER

The applicant has filed a compounding application dated February 08, 2019, received at this office of Reserve Bank of India, Bengaluru on February 14, 2019, for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999, (the FEMA), and the regulations issued there under. The contraventions sought to be compounded are, (i) delay in reporting receipt of foreign inward remittances towards subscription to equity, (ii) delay in refund of share application money and delay in allotment of shares, beyond 180 days from the date of receipt of inward remittance, and (iii) delay in submission of form FC-GPRs to the Reserve Bank, after issue of shares to a person resident outside India, in terms of Paragraphs 9(1)(A), 8 and 9(1)(B) respectively, of Schedule I to 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 03, 2000, and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts of the case are as follows: The applicant, M/s Binatone Telecommunication Private Limited, was originally incorporated as M/s Voxtel Telecom Private Limited on November 17, 2006, under the Companies Act, 1956, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka. Subsequently name of the company has been changed as M/s Binatone Telecommunication Private Limited with effect from August 05, 2010, under the Companies Act, 1956, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka. The company is engaged in the business of wholesale trading in telecommunication products. The applicant had received funds towards share application money from the foreign investor, namely, M/s Binatone Electronics International Limited, Hongkong, as shown below:

Table – 1

Sl. No.	Date of Receipt	Amount (INR)	Date of reporting to RBI/AD
1	21-09-2016	3,34,96,315.00	02-03-2017
2	27-09-2016	3,31,96,348.00	02-03-2017
3	05-10-2016	3,32,50,000.00	02-03-2017
4	20-12-2016	1,43,67,108.82	17-08-2017
5	20-04-2017	64,55,385.75	27-08-2018
	Total	12,07,65,157.57	

The applicant reported receipt of remittances to the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from three months and twenty six days to one year three months and seven days, beyond the stipulated period of 30 days in respect of the remittances as indicated in the Table-1 above. Whereas, in terms of Paragraph 9(1)(A) of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report to the Reserve Bank of India,



as per the prescribed procedure, not later than 30 days from the date of receipt of the amount of consideration.

3. The company had allotted equity shares to the foreign investors, in terms of Paragraph 8 of Schedule 1 to Notification No. FEMA.20/2000 RB dated May 03, 2000. However, in the instances mentioned here below, the company had refunded the share application money or allotted shares, to the non-resident investor, beyond the stipulated period of 180 days from the date of receipt of inward remittances.

i) The company had received inward remittances in three tranches amounting to ₹9,99,42,663.00, during the period September 21, 2016 to October 05, 2016, from the non-resident investor M/s Binatone Electronics International Ltd, Hong kong. The company had allotted shares worth ₹9,99,42,000.00, on October 10, 2016, and the excess share application money of Rs. 663.00, was refunded on January 09, 2019, to the non-resident investor M/s Binatone Electronics International Ltd, Hong Kong, with prior approval from Reserve Bank. The company was given approval vide Reserve Bank's letter Ref No.FE.BG.FID.No.1684/21.10.540/2018-19, dated December 06, 2018. The amount of contravention is **₹663.00**, and the period of delay is one year nine months and six days;

ii) The company had received an inward remittance of ₹1,43,67,108.82, from the non-resident investor M/s Binatone Electronics International Ltd, Hong kong, on December 20, 2016, and the entire share application money was refunded to the non-resident investor on January 09, 2019, with prior approval from Reserve Bank. The company was given approval vide Reserve Bank's letter Ref No.FE.BG.FID.No.1684/21.10.540/2018-19 dated December 06, 2018. The amount of contravention is **₹1,43,67,108.82**, and the period of delay is one year six months and twenty two days; and

iii) The company had received an inward remittance of ₹64,55,385.75, from the non-resident investor M/s Binatone Electronics International Ltd, Hong kong, on April 20, 2017, and the company had allotted 6,45,538 equity shares worth



₹64,55,380.00, to the investor, on February 04, 2019, beyond 180 days from the date of receipt of inward remittance without prior approval of Reserve Bank. The amount of contravention is **₹64,55,380.00**, and the period of delay is one year three months and eighteen days.

Whereas, in terms of Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000 and as amended from time to time, read with AP (Dir series) Circular No. 20, dated December 14, 2007, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned, provided the Reserve Bank may, on an application made to it and for sufficient reasons, permit to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt. In the above mentioned instances, the total amount of contravention is **₹2,08,23,151.82**, and the period of delay ranges from one year three months and eighteen days to one year nine months and six days.

4. The applicant company allotted equity shares and filed Form FC-GPRs with Reserve Bank/AD as indicated below:

Table – 2

Sl. No.	Date of Allotment	Number of shares allotted	Amount (INR)	Date of reporting to RBI/AD
1	10-10-2016	9994200	9,99,42,000.00	11-07-2017
2	04-02-2019	645538	64,55,380.00	05-04-2019
	Total	10639738	10,63,97,380.00	

The applicant filed the form FC-GPRs on allotment of shares with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank with a delay of eight months and two days, beyond the prescribed period of 30 days in respect of allotment of share as indicated at serial number 1, in the Table - 2 above. Whereas, in terms of Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000, an Indian company issuing shares in



accordance with these Regulations has to submit to the Reserve Bank of India, a report in form FC-GPR, along with documents prescribed therein, within 30 days from the date of issue of shares to person/s resident outside India. In respect of the reporting of allotment of share, indicated at serial number 2, in the Table – 2 above, the company had paid Late Submission Fee (LSF) and regularized the contravention, in terms of Notification No. FEMA 20(R)/2000-RB, dated November 07, 2017.

5. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No. 5557/22.10.540/2018-19 dated May 06, 2019, and email dated May 08, 2019, for further submission in person, and/or producing documents, if any, in support of the application. The applicant's authorized representatives Mr. Neeraj Kumar, Director, and Mr. Navneet Arora, Company Secretary, who appeared for the personal hearing on May 14, 2019, admitted the contraventions as stated in paragraphs 2, 3 and 4 above, committed by the applicant, for which compounding has been sought. During the personal hearing, it was submitted that the delay was not willful or with malafide intention, but was mainly due to inadvertence, and the same would not be repeated. In view of the above, they requested to take a lenient view in disposal of the application. 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 made in this context by the applicant during personal hearing and thereafter.

6. I have given my careful consideration to the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

- (a) Paragraph 9 (1) (A) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in reporting of foreign inward remittances received towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of **₹12,07,65,157.57**, and the period of delay ranges



from three months and twenty six days to one year three months and seven days;

(b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, due to delay in allotment of shares and delay in refund of share application money, beyond 180 days from the date of receipt of inward remittances, as detailed in paragraph 3 above. The total amount of contravention is **₹2,08,23,151.82**, and the period of delay ranges from one year three months and eighteen days to one year nine months and six days; and

(c) Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in submission of form FC-GPR to the Reserve Bank after issue of shares to person/s resident outside India, as detailed in paragraph 4 above. The contravention relates to an amount of **₹9,99,42,000.00**, and the period of delay is eight months and two days.

7. It has been declared in the compounding application dated February 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 been declared in the undertaking, 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 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 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.

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 contravention 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 **₹2,87,983.00, (Rupees Two Lakh Eighty Seven Thousand Nine Hundred and Eighty Three only)**, will meet the ends of justice.

9. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A), 8 and 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB, by the applicant, based on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹2,87,983.00, (Rupees Two Lakh Eighty Seven Thousand Nine Hundred and Eighty Three only)**, which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 2nd Floor, 10/3/8, Nrupathunga Road, Bengaluru – 560001, by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Bengaluru 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 of accordingly.

Dated this, the Fourteenth day of May 2019.

Sd/-

(Jose J Kattoor)
Regional Director, Karnataka and
Chief General Manager, Bengaluru