



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

Central Office Cell, 2nd floor

6, Sansad Marg

New Delhi - 110 001

Present

J K Pandey

Chief General Manager

Date: December 14, 2017

C.A. No.70/2017

In the matter of

Pearson Education (Singapore) Pte. Ltd.- Branch Office

[Formerly Addison Wesley Longman (Singapore) Pte. Ltd.]

Regd. Office Address: 25, First Lok Yang Road, Singapore 629733

India Address: 11, Community Centre, Panchsheel Park, New Delhi - 110017

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

Order

The applicant has filed an application dated June 29, 2017 (received at RBI on June 30, 2017) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the Regulations issued thereunder. The contravention sought to be compounded relate to permitted activities of Branch Office in



India, in contravention of the provisions of Regulations 6(i) of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 notified vide Notification No. FEMA 22/2000-RB dated May 03, 2000, as amended from time to time (hereinafter referred to as FEMA 22 *ibid.*).

2. The relevant facts of the case are as follows: The applicant, Pearson Education (Singapore) Pte Ltd. (earlier known as M/s Addison Wesley Longman (Singapore) Pte. Ltd.) was granted permission by the Reserve Bank to open a Branch Office in India under Section 29(1)(a) of the Foreign Exchange Regulation Act (FERA), 1973 vide letter No. EC.CO.FID.2518/10-I-06-02 (B-347) 1999-2000 dated March 1, 2000. Although the Branch Office of the company ceased to carry on its activities with effect from August 1, 2005, it had kept funds amounting Rs.13,00,00,000.00 in interest bearing Term Deposit with HSBC Limited from November 8, 2013 to February 27, 2015. In terms of A.P.(DIR Series) Circular No.3 dated July 6, 2002, AD can allow term deposit account for a period not exceeding 6 months in favour of a BO of a person resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the BO furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. Further, in terms of Regulation 6(i) of Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000 notified vide Notification No. FEMA.22/2000-RB dated May 03, 2000, as amended from time to time, a person resident outside India permitted by the Reserve Bank under Regulation 5, to establish a Branch Office or a liaison Office in India may undertake or carry on any activity specified in Schedule I or, as the case may be, in



Schedule II, but shall not undertake or carry on other activity unless otherwise specifically permitted by the Reserve Bank. In the instant case, the company had ceased its operations/activities from August 1, 2005, utilising the proceeds of Term Deposit on maturity after 6 months for its business activity in India does not apply. Further, while the company kept its funds in current account until November 8, 2013, it was not enabled to place the funds in Term Deposit subsequently. Hence, the applicant has contravened Regulation 6(i) of Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000 notified vide Notification No. FEMA.22 /2000-RB dated May 03, 2000, as amended from time to time. The aforementioned contravention was regularized by RBI vide letter FE.CO.FID.1399/10.82.347/2015-2016 dated March 4, 2016, subject to compounding of contraventions.

3. The applicant was given an opportunity for personal hearing vide our email dated December 5, 2017 for further submission in person and/or producing documents, if any, in support of the application. Company's representative Shri Hitesh Khanna, GM, Finance, Shri V. K. Chettiyar, Company Secretary, and Shri R. K. Adlakha, CS appeared representing the applicant, for the personal hearing on December 7, 2017. The representatives of the applicant admitted the contraventions committed by the applicant for which they have sought compounding and submitted that the lapse was not intentional and requested to take a lenient view. The application for compounding is, therefore, being decided 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.



5. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened the provisions of Regulation 6(i) of Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000 notified vide Notification No. FEMA.22/2000-RB dated May 03, 2000, as amended from time to time. Therefore, the contravention amount comes to be of Rs. 13,00,00,000.00 (Rupees Thirteen crore only) as term deposit and the period of contravention to be 2 years 3 months and 25 days (from November 08, 2013 to March 4, 2016 i.e. up to the date of regularization of contravention.) I also hold that by placing the Term Deposit for which the company was not eligible; earning an interest of Rs. 1,33,22,010.00 (Rupees One crore thirty three lakh twenty two thousand ten only) amounts to an undue gain. However on this interest income, the company has paid income tax of Rs. 9,50,910.00 (Rupees nine lakh fifty thousand nine hundred ten only) and Rs 34,29,850.00 (Rupees thirty four lakh twenty nine thousand eight hundred fifty only) during assessment years 2014-2015 and 2015-16, respectively, aggregating to Rs. 43,80,760 (Rupees forty three lakh eighty thousand seven hundred sixty only) which after being deducted from the amount of gross undue gain gives rise to a net undue gain of Rs. 89,41,250.00 (Rupees eighty nine lakh forty one thousand two hundred fifty only) by the company, which may be neutralised.

7. In terms of Section 13 of the FEMA, 1999, 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, 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 contraventions are to be compounded and I consider that payment of an amount of Rs.94,91,250.00/-(Rupees ninety four lakh eighty one thousand two hundred fifty only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound the admitted contraventions namely, the contravention of Regulation 6(i) of Foreign Exchange Management (Establishment in India of Branch or Office or Other place of Business) Regulations, 2000, notified vide Notification No. FEMA.22/2000-RB dated May 03, 2000, as amended from time to time, and specific conditions laid out in A.P.(DIR Series) Circular No.3 dated July 6, 2002 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.94,91,250.00/- (Rupees ninety four lakh eighty one thousand two hundred fifty only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office Cell, 2nd Floor, 6, Sansad Marg, New Delhi – 110 001 by a demand draft drawn in favor of the "Reserve Bank of India" and payable at Delhi 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 03, 2000, as amended from time to time, shall apply.

The application is disposed accordingly.

Dated this the 14th day of December, 2017

Sd/-

(J .K. Pandey)

Chief General Manager