



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: August 23, 2018  
CA No 4720 / 2018

In the matter of

**Aircom International India Private Limited**  
**M-12, Balrama House, Karampura Commercial Complex**  
**Opposite Milan Cinema, New Delhi - 110015**  
**(Applicant)**

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

**Order**

The applicant has filed the application dated May 31, 2018 (received in the Reserve Bank on June 05, 2018), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant company has sought compounding for (i) availing ECB from a non-recognized lender, (ii) availing ECB for an end-use that was not permitted (iii) drawdown of External Commercial Borrowing (ECB) before obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI) and (iv) delay in meeting the reporting requirements.



The above amount to contravention of Regulation 6 of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3 /2000-RB dated May 3, 2000, as amended from time to time (hereinafter referred to as Notification No. FEMA 3 /2000-RB), read with paragraphs 1(iii), (iv), (xi) and (xii) of Schedule I to this Regulation.

2. The relevant facts are as under: The applicant company, namely, Aircom International India Private Limited, was incorporated on December 27, 2000 under the Companies Act, 1956 (CIN U74899DL2000PTC109024). It is engaged in the business of import of software for further resale in India and export of management services, software consultancy and training services, and is the wholly owned subsidiary of M/s Aircom International Limited, UK.

The applicant company raised foreign currency loan of GBP 75,000 (equivalent to INR 51,15,398) on February 07, 2001 from M/s Aircom International Limited, UK for general corporate expenses. The lender was not a recognized lender at the time and became eligible only from June 2001. Further, the loan was drawn down without obtaining LRN and reporting requirements were not adhered to. All the above were in contravention of Regulation 6 of Notification No. FEMA 3/2000-RB read with paragraphs 1(iii), (xi) and (xii) of Schedule I of the same Notification.

Further, the applicant company also raised foreign currency loans of GBP 3.93,000 and USD 5,33,477 (in totality equivalent to INR 5,56,75,886) in 7 tranches from July 15, 2004 to May 15, 2006 from the parent company, for working capital purposes and without obtaining LRN. The reporting requirements were also not adhered to. Working capital was permitted as end-use only with effect from September 04, 2013. This loan was, thus, in contravention of Regulation 6 of Notification No. FEMA 3/2000-RB read with paragraphs 1(iv), (xi) and (xii) of Schedule I of the same Notification.

The LRNs for the above loans were obtained in March 2018.

3. In terms of Regulation 6 of Notification No. FEMA 3/2000-RB, "a person resident in India .... may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule....".



Paragraph 1(iii) of Schedule I to FEMA Notification No. FEMA.3/2000-RB, provides that “The borrowings in foreign currency by way of issue of bonds, floating rate notes or other debt instruments by whatever name called may be made from – (a) International bank or export credit agency or international capital market, or (b) Multilateral financial institutions, namely, IFC, ADB, CDC etc., or (c) Foreign collaborator or foreign equity holder as specified by the Reserve Bank, or (d) Supplier of equipment provided the amount of loan raised does not exceed the total cost of the equipment being supplied by the lender, or (e) Any other eligible entity as prescribed by the Reserve bank in consultation with the Government of India.”

Paragraph 1(iv) of Schedule I to FEMA Notification No. FEMA.3/2000-RB provides the end-uses for which ECB is permitted. However, loan towards ‘lease deposit for office premises’ is not a permitted end-use.

Paragraph 1(xi) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that, “draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number from the Reserve Bank”.

Paragraph 1 (xii) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that “The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/669/15.20.67/2018-19 dated August 01, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on August 20, 2018, during which Shri Atul Mittal, Consultant, represented the applicant company. The representative of the applicant submitted that the company had inadvertently failed to comply with the FEMA regulations due to ignorance, and therefore requested that a lenient view may be taken in the matter.

It has also been declared in the compounding application dated May 31, 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 subsequently declared in the declaration dated



August 20, 2018, furnished as an addendum to 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 been 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 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.

The application is, therefore, being considered on the basis of the averments made in the application, the documents produced, and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant company during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(iii), (iv), (xi) and (xii) of Schedule I to this Regulation. The amount of contravention is Rs. 6,07,91,284/-and the period of contravention ranges from four months to seventeen years 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. 5,05,935/- (Rupees five lakh five thousand nine hundred and thirty five only) will meet the ends of justice in the circumstances of this case.



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7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(iii), (iv), (xi) and (xii) of Schedule I to this Regulation, on payment of a sum of Rs. 5,05,935/- (Rupees five lakh five thousand nine hundred and thirty five only), which shall be deposited by the applicant with Reserve Bank of

India, Foreign Exchange Department, 5<sup>th</sup> Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in favor 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 twenty third day of August, 2018

Sd/-

**(Ajay Kumar Misra)**  
**Chief General Manager**