



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

6, Sansad Marg

New Delhi - 110001

Present

Md. Shakir Hasan
Assistant General Manager

Date: November 20, 2018

C.A.NDL 299/2018

In the matter of

Indus Towers Limited

Building No. 10, Tower A, 4th Floor, DLF Cyber City, Gurugram, Haryana -122002

(Applicant)

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 a suo-moto compounding application dated July 27, 2018 (received at Reserve Bank of India, New Delhi on July 31, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder on directions of Department of Telecommunications, Ministry of Communications, Government of India. The contravention sought to be compounded is of increase in foreign investment beyond the sectoral cap of 49% without the prior approval of the Government of India, in terms of Regulation 16 B (i) of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 notified vide Notification No. FEMA 20 (R) /2017-RB dated November 7, 2017, as amended from time to time (hereinafter referred to as FEMA 20 (R) /2017- RB).



2. The relevant facts of the case are as follows:

a) The applicant company was incorporated on November 20, 2007 as Indus Infratel Limited and registered as Infrastructure Provider Category I (IP-I) on January 10, 2018. The name of the company was changed to Indus Towers Limited on March 28, 2008. The company is engaged in the business of building, owning, operating and maintaining passive infrastructure at telecommunication sites in different telecommunication circles across India and commercial exploitation by providing passive infrastructure services to telecommunications service providers and others in such circles.

b) The company is a joint venture of the Bharti group, Vodafone group and Idea group and the level of foreign investment (direct and indirect) in the company initially was 46.85%, i.e., within 49%, the sectoral cap permitted under the automatic route under the FDI Policy dated August 28, 2017. On February 12, 2018, the Idea group allotted equity shares to its promoters (including non-resident entities) and consequently Idea became a foreign owned company and the indirect foreign investment in the company increased by 11.15%, and, therefore, the aggregate foreign investment (direct and indirect) in the company increased to 58% (i.e. beyond 49%).

c) The company approached Department of Telecommunications (DoT), Ministry of Communications on February 20, 2018 for post-facto approval for increase in indirect foreign investment. The approval was granted vide DoT letter dated July 17, 2018 subject to compounding from RBI for contravention of Paragraph 5.2(f) read with 5.2.14 of FDI Policy (2017). In terms of paragraph 5.2(f) of FDI Policy, *ibid*, total foreign investment, direct and indirect, in an entity will not exceed the sectoral/statutory cap. The sectoral/statutory caps has been prescribed under Paragraph 5.2.14 of FDI Policy, *ibid*, whereunder FDI upto 49% is allowed under automatic route and beyond 49% under Government approval route for Telecom Services (including Telecom Infrastructure Providers Category I). The corresponding provision in FEMA 20 (R) / 2017-RB is under Regulation 16 B (1) whereunder the total foreign investment in an Indian entity shall not exceed the sectoral/ statutory cap. The sectoral cap for Telecom services (including Telecom Infrastructure Provider Category I) is 49% under automatic route and beyond 49% under



Government approval route.

Thus, there is contravention of Regulation 16 B of FEMA Notification No.20 (R) /2017-RB dated November 7, 2017, as then applicable, read with para 5.2(f) and 5.2.14 of Consolidated FDI Policy dated August 28, 2017. The duration of the contravention is 5 months and 5 days.

3. The applicant company was given an opportunity for personal hearing for further submission in person and/or by producing documents, if any, in support of the application. Ms. Tanya Aggarwal and Ms. Meher Mehta, both advocates, appeared for the personal hearing on November 16, 2018 on behalf of the applicant. The representatives admitted the contravention committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that the contravention was on account of increase in the level of foreign investment beyond 49% as a consequence of transaction in Idea group as mentioned at Para 2(b) above. The contravention was inadvertent, technical and venial resulting from events over which the company had no control. They further stated that the contravention was without any malafide or wilful intent and requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulation 16 B of FEMA Notification No.20 (R) /2017-RB dated November 7, 2017, as then applicable, due to increase in total foreign investment without Government approval beyond the sectoral cap of 49%. The contravention relates to an amount of ₹1,32,868/- (Rupees One Lakh Thirty two thousand Eight hundred Sixty Eight only) and the duration of contravention is 5 months and 5 days.

5. It has been declared in the compounding application dated July 27, 2018 that the particulars given by the applicant are true and correct to the best of their knowledge and belief. It has been declared in the undertaking furnished by the company along with the compounding application that the applicant was not under any enquiry/



investigation/ adjudication by any agency, such as, Directorate of Enforcement, CBI, etc. 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 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.

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. 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 **₹50,634/- (Rupees Fifty Thousand Six Hundred Thirty Four only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions of Regulation 16 B of FEMA Notification No.20 (R) /2017-RB dated November 7, 2017, as then applicable, by the applicant on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹50,634/- (Rupees Fifty Thousand Six Hundred Thirty Four only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at New 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 3, 2000 shall apply.

The application is disposed accordingly.

Dated this the 20th day of November 2018.

Sd/-



Indus Towers Limited
CA NDL 299/2018

(Md. Shakir Hasan)
Assistant General Manager