



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: May 05, 2017
C.A. No.61/ 2017

In the matter of

(M/s UTStarcom Inc. – Branch Office)

10th Floor, Signature Towers, Tower-B, South City I, Gurgaon 122001, Haryana

In exercise of the powers 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 November 30, 2016 (received on January 03, 2017) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The applicant has contravened provisions of Regulations 5(i) and 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 Notification No. FEMA.22/2000-RB) and para (vii) – (Conditions) of the Reserve Bank permission vide letter No.EC.CO.FID.3788 /10-I-06-02(B-520) /2001-2002 dated December 31, 2001.



2. The facts of the case are as follows:

a) The applicant is UTStarcom Inc., a company incorporated in United States of America and is engaged in the business of manufacturing and supply of telecommunication and broadband equipment and IPTV equipment. The applicant was granted Reserve Bank's permission vide letter No. EC.CO.FID. 3788 /10-I-06-02 (B-520) /2001-2002 dated December 31, 2001 to establish the captioned Branch Office at Gurugram, Haryana. However, the Branch Office was closed with the permission of the Reserve Bank accorded vide letter No. FE.CO.FID. 9739 /10.82.520 /2009-10 dated October 07, 2009.

b) The captioned Branch Office had transferred and received certain funds to/from project offices of the applicant i.e. UTStarcom Inc-BSNL Multiplay Project Office, UTStarcom Inc-BSNL 2.1 and 2.2 Project Office and UTStarcom Inc-MTNL CPE Project Office, as detailed below, without obtaining prior approval of the Reserve Bank. The details of which are given in the following table:

S. No.	Date of Transaction	Amount of Transfer	Nature of Transaction	Counter Party	Date of Regularisation	Period of Contravention
1.	31-Mar-08	1,07,45,942	Credit	BSNL2.2 PO	24-Jun-16	8 years, 2 months, 24 days
2.	31-Mar-08	4,44,021	Credit	BSNL Multiplay PO	24-Jun-16	8 years, 2 months, 24 days
3.	31-Mar-08	5,54,78,008	Credit	BSNL Multiplay PO	24-Jun-16	8 years, 2 months, 24 days
4.	31-Mar-09	1,23,852	Credit	BSNL2.2 PO	24-Jun-16	7 years, 2 months, 24 days
5.	31-Mar-09	31,33,53,242	Credit	BSNL Multiplay PO	24-Jun-16	7 years, 2 months, 24 days
6.	19-Mar-08	30,00,000	Credit	BSNL Multipay PO	24-Jun-16	8 years, 3 months, 5 days
7.	02-Feb-10	46,059	Credit	BSNL Multiplay PO	24-Jun-16	6 years, 4 months, 22 days
8.	30-Oct-07	1,11,22,000	Credit	MTNL CPE PO	24-Jun-16	8 years, 7 months, 25 days
9.	18-Nov-05	5,35,000	Debit	RailTel PO	24-Jun-16	10 years, 7 months, 6 days
10.	13-May-08	5,35,000	Credit	RailTel PO	24-Jun-16	8 years, 1 months, 11 days
11.	08-Dec-10	7,09,921	Debit	BSNL Multiplay PO	24-Jun-16	5 years, 6 months, 16 days
12.	31-Mar-07	1,06,750	Debit	BSNL2.1 PO	24-Jun-16	9 years, 2 months, 24 days
13.	05-Sep-07	1,06,750	Credit	BSNL2.1 PO	24-Jun-16	8 years, 9 months, 19 days



14.	Total	Rs.39,63,06,545/- (Thirty Nine Crore Sixty Three Lakh Six Thousand Five Hundred Forty Five only).
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3. FEMA Provisions contravened as under:

a) Regulation 5(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 stipulates that, a person resident outside India desiring to establish a branch or liaison office in India shall apply to the Reserve Bank, in form FNC 1.

b) 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 stipulates that a person resident outside India permitted by the Reserve Bank under Regulation 5, to establish a branch 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.

c) Para – (vii) – (Conditions) of the Reserve Bank permission vide letter No.EC.CO.FID.3788 /10-I-06-02(B-520) /2001-2002 dated December 31, 2001, stipulates that in case you desire to open a Head Office Account in the books of your branch office in India, we hereby grant you approval to maintain such an account. Credits to the account should represent the funds received from Head Office through normal banking channels for meeting the expenses of the office and for expenses incurred by the Head Office on behalf of the branch office and profit made by the branch office. Debits to this account could be raised for the expenses incurred by the branch office on behalf of the Head Office and losses incurred by the branch office.

4. The applicant was given an opportunity for personal hearing held on April 11, 2017 and April 21, 2017. In this connection, the applicant was informed vide our letter No. FE.COC.ND.CEFA /1280/ 15.20.061/ 2016-17 dated April 05, 2017 and email dated April 18, 2017 respectively for further submission in person and /or producing documents, if any, in support of the application. Ms.Pooja Juneja, from M/s UTStarcom Inc, Shri Abhishek Bansal, and Ms. Laxmi Sinha, Legal Counsels from



Corporate Professionals represented the applicant, for the personal hearing on April 11, 2017 and April 21, 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 and thereafter.

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 following provisions:

i) Regulations 5(i) and 6(i) of FEMA.22/2000-RB dated May 03, 2000, as amended from time to time, for carrying out transfer of funds to/from project offices without obtaining specific prior approval of the Reserve Bank.

ii) Para – (vii) – (Conditions) of the Reserve Bank permission vide letter No.EC.CO.FID.3788 /10-I-06-02(B-520) /2001-2002 dated December 31, 2001 which stipulates for opening a Head Office Account and the permitted credits and debits to the same.

iii) The period of contravention ranges from around six to eleven years approximately.

iv) Since the transactions (as shown in para 2 above) at serial numbers from 1 to 7 and again from serial numbers 11 to 13 have already been compounded at the counterparty level, the same need not be compounded again for this applicant. Therefore, the sum total of Rs.1,21,92,000/- (Rupees One Crore Twenty one Lakh Ninety two Thousand only) in respect of remaining three (3) transactions /transfers shown at serial numbers from 8 to 10 of para 2 above, were carried out involving UTStarcom Inc. – Branch Office during the period 2005-06 to 2008-09.

6. 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.1,21,400/= (Rupees One Lakh



Twenty one Thousand Four Hundred only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 5(i) and 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 Para – (vii) – (Conditions) of the Reserve Bank permission vide letter No.EC.CO.FID.3788 /10-I-06-02(B-520) /2001-2002 dated December 31, 2001, 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.1,21,400/= (Rupees One Lakh Twenty one Thousand Four Hundred 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 5th day of May, 2017

Sd/-

(J.K. Pandey)
Chief General Manager