



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office Cell, 2nd floor
6, Sansad Marg
New Delhi 110 001

Present

Dr. M. K. Singh
Assistant General Manager
Date: May 08, 2017
C.A. No.59/ 2016

In the matter of

(M/s UTStarcom Inc. – MTNL CPE Project 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 09, 2016 (received on December 05, 2016) 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 Sub-Regulations (ii) and (iii) of Regulation 5 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) read with amendment Notification No. FEMA 95/2003-RB dated July 2, 2003.

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 awarded a contract by Mahanagar Telephone Nigam Limited (MTNL) and established UTStarcom Inc–MTNL CPE project office on July 05, 2006 at Gurgaon under general permission granted by the Reserve Bank.

b) The applicant's Project Office transferred certain funds to UTStarcom Inc.– Branch Office and also received funds from another project office i.e. UTStarcom Inc–BSNL Multiplay Project Office, as detailed below, without obtaining prior approval of the Reserve Bank. The details of which are given in the following table:

Sr. No.	Date of Transaction	Amount (INR) Credit	Amount (INR) Debit	Counter Party	Period of Contravention	Date of Regularisation
1	30-Oct-2007		1,11,22,000	UTStarcom Inc- Branch Office	8 years, 7 months, 24 days	24-Jun-2016
2	31-Mar-2013	1,33,255		UTStarcom Inc-BSNL Multiplay Project Office	3 years, 6 months, 27 days	28-Oct-2016
3	31-Mar-2014	51,487		UTStarcom Inc-BSNL Multiplay Project Office	2 years, 6 months, 27 days	28-Oct-2016
	Total	Rs.1,13,06,742/- (One Crore Thirteen Lakh Six Thousand Seven Hundred Forty Two only)				

3. FEMA Provisions contravened as under:

(A) In terms of Regulation 5 (ii) 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, *where a person resident outside India has secured from an Indian company a contract to execute a project in India, and*

- (a) the project is funded directly by inward remittance from abroad; or*
- (b) the project is funded by a bilateral or multilateral International Financing Agency, or*
- (c) the project has been cleared by an appropriate authority; or*
- (d) a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the Project,*



such person shall apply to the Reserve Bank in form FNC 1 for permission to establish a Project or Site Office in India.

(B) In terms of Regulation 5 (iii) of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 notified vide Notification No. FEMA.22 *ibid.*, *the Reserve Bank may grant permission subject to such terms and conditions as may be considered necessary.*

4. The applicant was given an opportunity for personal hearing, vide our letter No. FE.COC.ND.CEFA/ 1276 / 15.20.059/ 2016-17 dated April 04, 2017 and again vide email dated April 18, 2017 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) Sub-Regulations (ii) and (iii) of Regulation 5 of FEMA.22 /2000-RB dated May 03, 2000, as amended from time to time, for carrying out inter-project transfer of funds and also to branch office of the applicant without obtaining specific prior approval of the Reserve Bank.
- ii) The period of contravention ranges from three to four years approximately.
- iii) Since the transaction (as shown in para 2 above) at serial no. 1 has already been compounded at the counterparty level, the same need not be compounded again for this applicant. Therefore, the sum total of Rs.1,84,742/- (One Lakh Eighty four Thousand Seven Hundred Forty Two only) in respect of remaining two (2) transactions /transfers shown at serial



nos.2 and 3 at para 2 above, were carried out involving UTStarcom Inc. - MTNL CPE Project Office during the period 2012-13 to 2013-14.

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.30,800/- (Rupees Thirty Thousand Eight 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 Sub-Regulations (ii) and (iii) of Regulation 5 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, 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.30,800/- (Rupees Thirty Thousand Eight 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 shall apply.

The application is disposed accordingly.

Dated this the 8th day of May, 2017

Sd/-

(Dr. M. K. Singh)
Assistant General Manager