



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Shekhar Bhatnagar
Chief General Manager

Date: August 29, 2017
CA No 4351 / 2017

In the matter of

Ellucian Higher Education Systems India Private Limited
Ellucian House, 8/1, Residency Road
Richmond Town, Bangaluru - 560025
(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 April 11, 2017 (received in the Reserve Bank on April 20, 2017), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) availing ECB from a non-recognized lender, (ii) availing ECB for an end-use that was not permitted (iii) non-compliance with average maturity period guidelines, (iv) receipt of ECB into EEFC account, (v) drawdown of External Commercial Borrowing (ECB) before obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI) and (vi) delay in meeting the reporting requirements.



The above were in 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), (v), (ix), (xi) and (xii) of Schedule I to this Regulation, as amended from time to time.

2. The relevant facts are as under: The applicant was incorporated as SunGard Higher Education Systems India Private Limited on November 29, 2011, under the Companies Act, 1956. It changed its name to Ellucian Higher Education Systems India Private Limited and was issued a fresh certificate of incorporation on July 26, 2012. (CIN: U72900KA2011FTC061421). The applicant is a Wholly Owned Subsidiary (WOS) of Ellucian SMS Limited, UK and is engaged in the business of providing software development services, professional services and application support services to all Ellucian group entities. The applicant executed a lease agreement for its office premises, for which it was required to place a security deposit of INR 3,43,65,600 with the lesser. Due to paucity of liquid funds at the time, the applicant borrowed USD one million (INR 4,93,18,000), from M/s Ellucian Support Global, a group entity of the applicant, and received inward remittance for the same amount on February 13, 2012. The group entity was not a recognized lender under the automatic rule as per the provisions of FEMA, and the borrowing was thus in contravention of provisions of Paragraph 1(iii) of Schedule I to Notification No. FEMA 3/2000-RB. The end-use for which the loan was availed was not a permitted end-use, thus contravening the provisions of Paragraph 1(iv) of Schedule I to Notification No. FEMA 3/2000-RB. The loan was repaid on April 30, 2013, before the minimum average maturity period of 3 years, thus contravening Paragraph 1(v) of Schedule I to Notification No. FEMA 3/2000-RB dated 3rd May 2000. The ECB was received in the EEFC account of the applicant, which was not permissible, and hence in contravention of Paragraph 1(ix) of Schedule I to Notification No. FEMA 3/2000-RB. The drawdown of the loan happened on various dates between April 30, 2012 and January 3, 2013. No Loan Registration Number (LRN) was obtained from RBI by the applicant before drawdown of the ECB, thus contravening the provisions of Paragraph 1(xi) of Schedule I to Notification No. FEMA



3/2000-RB. The reporting requirements were also not met, thus contravening Paragraph 1(xii) of Schedule I to Notification No. FEMA 3/2000-RB dated 3rd May 2000. The entire transaction was unwound on April 30, 2013.

3. In terms of Regulation 6 of Notification No.FEMA.3/2000-RB dated May 03, 2000 as amended from time to time "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 equipments 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(v) of Schedule I to FEMA Notification No. FEMA.3/2000-RB, as then applicable, provides that "the maturity of the borrowings in foreign exchange shall not be less than 3 years for the loan of an amount upto USD 20 million or its equivalent".

Paragraph 1(ix) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that, "The proceeds of borrowings in foreign exchange availed under the schedule may, pending utilization for permissible end-uses, be parked abroad or in India as directed by the Reserve Bank of India." As per the said directions, ECB was not permitted to be received in the EEFC account.

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/125/15.20.67/2017-18 dated July 06, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on July 14, 2017, during which Shri Brian Bledsoe, Vice President and Country Head, India, Ellucian Higher Education Systems India Private Limited, Ms. Geetika Setia, Senior Finance Manager, Ellucian Higher Education Systems India Private Limited and Shri Sherill Pal, Legal Counsel, represented the applicant. The representatives 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. 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 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), (v), (ix), (xi) and (xii) of Schedule I to this Regulation. The amount of contravention is Rs. 4,93,18,000/-and the period of contravention is one year two months 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. The applicant raised loans from an ineligible lender and for an end-use that was not permitted under FEMA, 1999 and the Regulations issued thereunder. Further, the applicant did not pay any interest on the borrowings to the overseas lender for the period during which the borrowings were retained. Thus, undue gains can be deemed to have



accrued to the applicant for the entire amount of loan, where the borrowings were retained without payment of interest on the loan. With a view to neutralize such undue gains to the applicant, the average rates of interest accruing on Government of India Bonds having a ten year maturity period have been notionally applied to determine the minimum rate of interest that would have been payable by the applicant if such borrowings were sourced domestically.

Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, I am persuaded to take a view that undue gains made by the applicant require to be neutralized and it stands to reason that payment of an amount of Rs. 53,67,097/- (Rupees fifty three lakh sixty seven thousand and ninety seven only), incorporating the impact of neutralization as above, will meet the ends of justice in the circumstances of this case.

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 dated 3rd May 2000 read with Paragraphs 1(iii), (iv), (v), (ix), (xi) and (xii) of Schedule I to this Regulation, as amended from time to time, on payment of a sum of Rs. 53,67,097/- (Rupees fifty three lakh sixty seven thousand and ninety seven only), which shall be deposited by the applicant with Reserve Bank of India, Foreign Exchange Department, 5th 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 ninth day of August, 2017

Sd/-

(Shekhar Bhatnagar)
Chief General Manager



FED, CEFA
Ellucian Higher Education Systems India Private Limited
CA No 4351/2017