



In the  
**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
5th floor, Amar Building  
P M Road  
Mumbai - 400 001

Present

**Sharmila Thakur**  
**General Manager**

Date: August 16, 2017  
CA No 4332 / 2017

In the matter of

**Ascend Telecom Infrastructure Ltd**  
**H.No 37-2, Plot No.332, Mani Mansion**  
**Defence Colony, Sainikpuri**  
**Secunderabad - 500094**

**(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 March 23, 2017 (received in the Reserve Bank on March 27, 2017), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) disinvestment in the overseas Joint Venture, Infrastructure and Energy Ltd, Nigeria, without submission of Annual Performance Reports (APRs) (ii) non submission of forms APR relating to the JV. The above are in contravention of paragraphs 16(1)(v) and 15 (iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4,



2004, as amended from time to time (hereinafter referred to as Notification No FEMA 120-RB 2004).

2. The relevant facts of the case are follows:

The applicant was incorporated as Aster Infrastructure Pvt Ltd on March 28, 2002 under the Companies Act, 1956. (CIN NO: U70102AP2002PTC38713) and changed its name to Ascend Telecom Infrastructure Pvt Ltd (Indian Party) on August 9, 2010. The company was in the business of providing ready to use site infrastructure for telecom operators or others in need of such infrastructure. In 2008, Ascend invested NGN 11,736,243 equivalent to INR 48,23,456 in the shares of Infrastructure and Energy Limited ("JV"), Nigeria holding 51% stake in the company, for the business of leasing of towers to mobile operators.

Ab initio, the management of the JV was non-cooperative and did not share the financial and other related documents with the company despite many efforts made by the Indian Party. Resultantly, it was never in a position to file the APRs. When the company failed to obtain any information from its JV partners, in the year 2015, the management of the Indian Party decided to write off the entire amount of investment from its books of accounts and did so in the Balance Sheet as on March 31, 2015, without approval of the Reserve Bank.

3. According to paragraph 16(1)(v) read with paragraph 16(1A) of Notification No FEMA 120-RB 2004 as amended from time to time, an Indian party may disinvest, where the amount to be repatriated on disinvestment is less than the amount of original investment, subject to the condition, inter-alia, that the overseas concern has submitted the Annual Performance Report together with the audited accounts for that year to the Reserve Bank. According to paragraph 15(iii) *ibid*, an Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, shall "submit to the Reserve Bank every year within 60 days from the date of expiry of the statutory period as prescribed by the respective laws of the host country for finalisation of the audited accounts of the Joint Venture/Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, an annual performance report in form APR ...".



4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/109/15.20.67/2017-18 dated July 6, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on July 18, 2017 in which Shri Naga Anil Kumar, Dy. General Manager (Legal) and Ms Shilpa Kumari, Qualified Associate from M/s Guru & Jana-Chartered Accountants, represented the company before the undersigned. Shri Naga Anil Kumar explained that the company ran into problems from start and that the estimated cost of obtaining all necessary information could be much higher than the investment itself. The company was unaware of the provisions of FEMA and the management failed to get the right consultants who could guide the company and hence the failure to comply with FEMA regulations.

5. I have carefully considered the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulation 16 (1) (v) and 15(iii) (v) of FEMA 120-RB 2004 as amended from time to time. The amount and period of contravention is as follows. The equity contribution of NGN 11,736,243 equivalent to INR 48,23,456 was written off on March 31, 2015 without prior approval of RBI. The disinvestment was finally reported to RBI on March 15, 2017. For Regulation 16(1)(v), therefore the period of contravention is taken as two years. Further, six APRs, from 2008-2009 to 2013-2014 were not submitted by the company.

6. In terms of provisions of section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, taking into account the relevant facts and circumstance 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 Rs.1,36,529/- (Rupees One Lakh Thirty Six Thousand Five Hundred Twenty Nine only) will meet the ends of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 16(1) (v) and 15(iii) of Foreign Exchange Management (Transfer or Issue



of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4, 2004, as amended from time to time, by the applicant stated above on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.1,36,529/- (Rupees One Lakh Thirty Six Thousand Five Hundred Twenty Nine only) which shall be deposited by the applicant with the Reserve Bank of India, 11th Floor, Central Office Building, Shahid Bhagat Singh Marg, Mumbai-400001 by a Demand Draft drawn in favour of “Reserve Bank of India” and payable at “ Mumbai” within a period of 15 days from the date of the 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 shall apply. The application is disposed accordingly.

Dated this sixteenth day of August 2017.

Sd/-

(Sharmila Thakur)

General Manager