



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

Jyoti Kumar Pandey
Chief General Manager

Date: September 28, 2017
CA No 4360 / 2017

In the matter of

Bennett Coleman and Company Ltd.
The Times of India Building
Dr. DN Road, Mumbai - 400001

(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 03, 2017 (received in the Reserve Bank on April 13, 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) delay in filing Part I of Form ODI, beyond the stipulated time period (ii) making overseas investment in optionally convertible redeemable preference shares without any prior equity contribution and (iii) non-submission of Annual Performance Reports (APR) within the stipulated time period. The above amount to the contravention of Regulations 6(2)(vi),



6(4) and 15(iii) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).

2. The relevant facts are as under: The applicant was incorporated as Bennett Coleman and Company Limited on November 29, 1913 (CIN: U22120MH1913PLC000391). The applicant is engaged in the business of proprietors and publishers of newspapers, journals, magazines etc. The applicant entered into a Share Purchase Agreement (SPA) with Affle Ltd., UK, its Joint Venture company, on October 12, 2006, for subscribing to 10,00,000 Series-A Redeemable Cumulative Convertible Preference Shares (RCCPS) amounting to USD 2 million. The applicant remitted USD 1 million towards 5 lakh RCCPS on November 1, 2006 and further USD 1 million on December 1, 2006, towards investment in additional 5 lakhs RCCPS. In November 5, 2008, the shareholding of the applicant in its JV in UK was swapped with exact number and type of shares of its JV in Singapore, Affle Holdings Pte Ltd. The above investment was not reported in Form ODI Part I, which is in contravention of Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB. The above investment was subsequently reported in July, 2016. The UIN was allotted on February 14, 2017.

RCCPS is treated as a loan instrument under the extant ODI Regulations. The above investment was made by the applicant without having any prior equity contribution, in contravention of Regulation 6(4) of Notification No. FEMA 120/2004-RB. Further, the Annual Performance Reports (APRs) for the year 2009 to 2016 were submitted with a delay beyond the stipulated time period, thus contravening Regulation 15 (iii) of Notification No. FEMA 120/2004-RB.

3. In terms of Regulation 6(2)(vi) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, overseas direct investment is permitted, provided, "The Indian Party submits duly completed Part I of the Form ODI, as prescribed by the Reserve Bank from time to time, to the designated branch of an authorized dealer to be designated by it."



In terms of Regulation 6(4) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, “An Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture/ Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture.”

Further, in terms of Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, “An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India.....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/2114A/15.20.67/2017-18 dated September 13, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on September 19, 2017 during which Shri Chetan Agarwal, Bennett Coleman and Company, Ms. Neha Gupta, Bennett Coleman and Company, Shri Dev Raj Singh, E&Y LLP and Shri Girish Suvarna, E&Y LLP, represented the applicants. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and 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 Regulations 6(2)(vi), 6(4) and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is Rs. 88961500/- and the period of contravention ranges from one year to nine years 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. 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 contravention is to be compounded and it stands to reason that payment of an amount of Rs. 15,14,422/- (Rupees fifteen lakh fourteen thousand four hundred and twenty two only) 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, Regulations 6(2)(vi), 6(4) and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 15,14,422/- (Rupees fifteen lakh fourteen thousand four hundred and twenty two only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in favour 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 eighth day of September, 2017

Sd/-

Jyoti Kumar Pandey
(Chief General Manager)