



In the

Reserve Bank of India
Foreign Exchange Department
5th Floor, Amar Building
Sir PM Road
Mumbai – 400001

Present

R. Seetharaman
Deputy General Manager

Date: October 13, 2017
CA NO: 4365/2017
In the matter of

MobileComm Technologies India Private Limited
303, Vardhman Shrenik Plaza, Local Shopping Centre,
Pocket- B, Mayur Vihar- II, New Delhi-110091

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In exercise of powers conferred under section 15(1) of the Foreign Exchange Management Act, 1999 and the Regulations / Rules / Notifications / orders made there under, I pass the following

Order

The applicant has filed a compounding application dated April 26, 2017 (received in the Reserve Bank of India on May 02, 2017) for compounding the contraventions of the provisions of the Foreign Exchange Management Act, 1999 (The FEMA) and the regulations issued there under. The contravention sought to be compounded are (i) delay in submission of Annual Performance Reports (APRs) for the year 2013 and (ii) written off the entire share capital of WOS and loans to WOS without submission of APR. The above amount to the contravention of the Regulation 15(iii) and 16(i)(v) 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 MobileComm Technologies India (a wholly owned subsidiary of MobileComm Professionals Inc, USA) on May 11, 2007 with CIN NO: U74120DL2007PTC163322. The applicant is engaged in the business of providing radio frequency (RF) based testing and support services, network optimisation, project management and related services to telecom industry clients. The applicant had set up a wholly owned subsidiary (WOS) in Australia, M/s. MobileComm Technologies Australia Pty Ltd on November 12, 2012 and remitted AUD 1000/- January 10, 2013 as share capital and sent remittances of AUD 24,000/- by way of loans of AUD 4,000/- each on six dates during the year 2013 (Viz., February 4, 2013; March 6, 2013; April 4, 2013; May 2, 2013; May 15, 2013 and July 02, 2013). The WOS was continuously making losses since the beginning and the WOS was deregistered on February 13, 2014 and its Australian Business Number was cancelled on December 16, 2014. The applicant has submitted the APR for the year ended December 2013, to AD bank on December 9, 2015 and resubmitted on December 31, 2015, contravening Regulation 15(iii) of Notification No FEMA 120-RB 2004. The applicant has written off the entire share capital of WOS and loans to WOS vide its Board resolution dated September 4, 2015 without submitting the APR contravening regulation 16(i)(v) of Notification No FEMA 120-RB 2004. These transactions were later reported to the Reserve Bank of India by the applicant through AD bank on June 21, 2016 and on September 30, 2016. The transactions were regularised and the UIN was closed on July 11, 2017.

3.1 Regulation 15(III) of the said Notification requires that 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 in respect of each Joint Venture or Wholly Owned Subsidiary outside India set up or



acquired by the Indian Party and other reports or documents as may be stipulated by the Reserve Bank.

3.2 Regulation 16(i)(v) of the said Notification requires that the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED.CO. CEFA .No./2097/15.20.67/2017-18 dated September 7, 2017 for further submission in person and /or producing documents, if any, in support of the application. The personal hearing was held on October 11, 2017 during which Shri. Yogendra Gupta, Sr. Manager Accounts and Finance of M/s. MobileComm Technologies India Private Limited and Shri. Kishore H. Dewani, Chartered Accountant, represented the applicants. The application is considered on the basis of the averments made and documents produced in the application.

5. I have given my careful consideration of 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 15(iii) and 16(i)(v) of FEMA 120-RB 2004 as amended from time to time. The amount and period of contravention is as follows.

i) Regulation 15(iii) of FEMA 120-RB 2004 as amended from time to time: The period of contravention was 1 year approximately.

ii) Regulation 16(i)(v) of FEMA 120-RB 2004 as amended from time to time: The amount and period of contravention: AUD 25,000.00 (Rs.14,20,253.18) and the period of contravention is three years and four months approximately.

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.69232.00 (Rupees Sixty nine thousand two hundred and thirty two only) will meet the end of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 15(iii) and 16(i)(v) 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.69232.00 (Rupees Sixty nine thousand two hundred and thirty two 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 the thirteenth day of October 2017.

Sd/-

(R. Seetharaman)

Deputy General Manager