



In the

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

Present

**Pawanjeet Kaur Rishi**  
**Assistant General Manager**

Date: October 4, 2017  
CA No 4341 / 2017

In the matter of

**Idea Cellular Infrastructure Services Limited**  
**Suman Tower, Plot No.18, Sector 11**  
**Gandhinagar, Gujarat - 382011**

**(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 12, 2017 (received in the Reserve Bank on April 12, 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 downstream investment by an Indian company which is not owned and / or controlled by resident entity / ies, into another Indian company, which is not in accordance / compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating. The above amounts to the contravention of



Paragraph 14(6) of FEMA 20 read with Para 15 of Annexure B to Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts are as under: The applicant, Idea Cellular Infrastructure Services Limited (ICISL) is a public limited company incorporated under the Companies Act, 1956. The applicant is engaged in the business of providing passive infrastructure support through telecom towers. ICISL is a wholly owned subsidiary of IDEA.

3. IDEA had obtained an approval of FIPB in 2007 for foreign equity participation of up to 74% (composite) in its paid-up capital. Subsequently, while granting approval for foreign investment in Aditya Birla Telecom Limited (another subsidiary of IDEA), FIPB directed that the FDI in IDEA should not exceed 67.5%. As of March 31, 2016, the aggregate foreign investment in IDEA stood at 50.84%. Since the aggregate foreign investment in IDEA was more than 50% of its paid up capital, IDEA is a foreign owned company for the purposes of the FDI policy. As per Regulation 14(1)(v) of FEMA 20, where an investing company is foreign owned or controlled, and has made a downstream investment in a 100% owned subsidiary, the aggregate foreign investment in the investing company will be deemed to be an indirect foreign investment in the wholly owned subsidiary. Accordingly ICISL was deemed to have an indirect foreign investment.

4. FIPB had approved aggregate foreign investment in IDEA of up to 67.5%, but this approval was not supposed to extend to the indirect foreign investment in ICISL consequent to it being a wholly owned subsidiary of IDEA. Later on, obtained a separate approval from FIPB as the indirect foreign holding in ICISL exceeded 49%. FIPB gave the approval subject to compounding. Hence ICISL has approached RBI to compound ICISL's contravention of FEMA Regulations (Regulation 14(6) and Para 15 of Annexure B to Schedule 1 of FEMA 20).

5. Regulation 14(6) of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that "...Downstream investment by



an Indian company, which is not owned and / or controlled by resident entity / ies, into another Indian company, would be in accordance / compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regards to the sectors in which the latter Indian company is operating....”.

Further, Para 15 of Annexure B to Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time permits the foreign investment of up to 100% in telecom services with 49% being under the automatic route and beyond 49% requiring the approval of the Government.

6. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/107/15.20.67/2017-18 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 17, 2017, during which Mr. Pankaj Kapdeo, Vineet Choraria, Alka Bharucha and Ayesha Bharucha were present. 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 Regulation 14(6) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time read with Para “15 of Annexure B to Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, The amount and period of contravention is as follows:

(i) Regulation 14(6) of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 5,00,000/- and Period of contravention – 9.5 years approximately.



(ii) Para "15 of Annexure B to Schedule 1 of Notification No.FEMA.20/2000-RB– Amount of contravention– Rs. 5,00,000/- and period of contravention – 9.5 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. 107500/- (Rupees one lakh seven thousand and five hundred 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 contravention committed by the applicant namely, Regulation 14(6) of Notification No.FEMA.20/2000-RB Notification No.FEMA.20/2000-RB dated May 3, 2000 read with read with Para "15 of Annexure B to Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, on payment of a sum of Rs. 107500/- (Rupees one lakh seven thousand and five hundred 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 fourth day of October, 2017

**Sd/-**

**(Pawanjeet Kaur Rishi)**  
**Assistant General Manager**