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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 12763/2018

TATA COMMUNICATIONS LIMITED
AND ORS. ..... Petitioners

Through: Mr Sandeep Sethi, Senior Advocate with Mr Dhruv Mehta, Senior Advocate with Ms Padmaja Kaul and Mr Aishwarya Chaudhary, Advocates.

versus

MINISTRY OF INFORMATION AND BROADCASTING
AND ORS. ..... Respondents

Through: Mr Anurag Ahluwalia, CGSC with Mr Kartikeya Rastogi, Advocates for R-1.
Mr Amit Mahajan, CGSC for UOI/R-2.
Mr Karan Khanna, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 12.04.2019

CM APPL. 17244/2019

1. The petitioners have filed the present application seeking further extension of the order passed on 28.11.2018 as extended by the order dated 07.02.2019.

2. The petitioners had filed the above-captioned petition, *inter alia*, impugning the proceedings initiated by respondent no.2 (Directorate of Enforcement) in respect of an allegation that the petitioners had violated the provisions of Foreign Exchange Management Act, 1999 (FEMA) in making remittances overseas.

3. It was the petitioners' contention that petitioner no.1 had already sought *ex post facto* approval for making such remittances from the Ministry of Information and Broadcasting and its application for the same was pending. Since the outcome of the said application would obviously have a bearing on the proceedings initiated by the Enforcement Directorate, this Court had, by an order dated 28.11.2018, directed the Enforcement Directorate to stay the proceedings for a further period of 10 weeks from that date. This was to enable the concerned authority to pass an appropriate decision with regard to the petitioners' application for the *ex post facto* approval for the remittance overseas.

4. The aforesaid order was subsequently extended on 07.02.2019, for a further period of eight weeks from that date.

5. The petitioners' application for *ex post facto* approval was considered by the Ministry of Information and Broadcasting and the petitioner has been granted approval for the payments of USD 12,20,861.90 made to M/s Thaicom Public Company Ltd. and USD 4,23,43,639.94 made to M/s Intelsat Global Sales & Marketing Limited, during the period September 2004 to December 2012. The petitioners have also been called upon to approach the Reserve Bank of India for getting the offence compounded and to follow the directions for regularising the payments made.

6. The above payments were made through a Non-EEFC (Exchange Earners' Foreign Currency) Account. It is relevant to point out that insofar as the payments made under the EEFC Account are concerned, the Ministry of Information and Broadcasting had clarified that the petitioners do not

require any approval of the said Ministry for remittance made through the EEFC Account in terms of the specific exception granted under Rule 6(1) of the Master Circular No. 6/2014-15 dated 01.07.2015.

7. Thus, insofar as the payments covered under the aforesaid approval are concerned, namely, specified payments made through Non-EEFC Account and payments made through the EEFC Account, it would be apposite for the Enforcement Directorate to adjourn the proceedings to enable the petitioner to approach the Reserve Bank of India for compounding of the offences.

8. Mr Amit Mahajan and Mr Anurag Ahluwalia, learned counsel appearing for the respondents, submit that in addition to the payments as specified in the order dated 06.04.2019, the petitioner has also made certain other payments from Non-EEFC Account for which approval has not been granted.

9. It is, accordingly, clarified that if there are any other payments from the Non-EEFC Account for which approval has not been granted, the Enforcement Directorate is not restrained from continuing with the proceedings. In so far as proceedings in relation to other payments are concerned (the payments made through Non-EEFC accounts as approved by the Ministry and payments named through EEFC Accounts) are concerned, they are stayed for a period of 187 days from today or as an when RBI decides the petitioners' application, whichever is earlier. This is subject to the petitioner making an application to the Reserve Bank of India within a period of one week from today.

10. The application stands disposed of.

VIBHU BAKHRU, J

APRIL 12, 2019
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