



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 5th November, 2024

Pronounced on: 17th December, 2024

+ W.P.(C) 15242/2023 & CMAPPL. 52797/2024

TIMES INTERNET LIMITED

.....Petitioner

Through: Mr. R.K. Handoo, Mr. Yoginder
Handoo and Mr. Ashwin Kataria,
Advocates.

Versus

DIRECTORATE OF ENFORCEMENT & ORS.

.....Respondents

Through: Mr. S.V. Raju, ASG with Mr. Anurag
Ahluwalia, CGSC with Mr. Samrat
Goswami, Mr. Abhigyan Siddhant
and Mr. Gaurav Sarkar, Advocates.

+ W.P.(C) 15471/2023, CM APPL. 48137/2024

BENNET COLEMAN AND CO. LTD

.....Petitioner

Through: Mr. R.K. Handoo, Mr. Yoginder
Handoo and Mr. Ashwin Kataria,
Advocates.

Versus

DIRECTORATE OF ENFORCEMENT THROUGH ITS
DIRECTOR & ORS.

.....Respondents

Through: Mr. S.V. Raju, ASG with Mr. Anurag
Ahluwalia, CGSC with Mr. Samrat
Goswami, Mr. Abhigyan Siddhant
and Mr. Gaurav Sarkar, Advocates.



CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.

1. Times Internet Limited¹ is a subsidiary of Bennet Coleman & Co. Ltd², who are widely recognized as the Times of India Group, which is one of India's largest media conglomerates. As a digital venture of the Times of India group, TIL is engaged in providing information technology-based internet/digital services, digital content, on-line advertisement services on an international scale, operating diverse portals and websites. Both the Petitioner companies have Wholly Owned Subsidiaries³ abroad by the names of *Times Internet Inc.* and *BCCL Worldwide Inc.*, respectively. These WOSs were established by the Petitioners to facilitate international operations and investments. As part of their business strategy, the Petitioners are required to remit funds to these WOS in the form of overseas direct investments.

2. For this purpose, both the Petitioners sought No Objection Certificates⁴ from Respondent No. 1 – Directorate of Enforcement⁵ under Rule 10 of the Foreign Exchange Management (Overseas Investment) Rules, 2022⁶. However, their request was denied. The Petitioners argue that the non-grant of NOC has prevented them from transferring funds to their WOS entities, thereby hampering their investment plans and disrupting global

¹ "TIL", Petitioner in W.P.(C) 15242/2023

² "Bennet Coleman", Petitioner in W.P.(C) 15471/2023

³ "WOS"

⁴ "NOC"

⁵ "ED"

⁶ "FEMA OI Rules, 2022"



operations. Thus, through the present writ petitions, the Petitioners seek to challenge the impugned communications issued by the Respondent, rejecting their applications for NOCs.

FACTS

3. Both the Petitioner companies are Indian entities classified as “*person resident in India*” in terms of Section 2(b)(ii) of the Foreign Exchange Management Act, 1999⁷. Over the years, the Petitioners have consistently engaged in overseas investments by establishing various WOSs, Subsidiaries, and Special Purpose Vehicles in various jurisdictions while strictly adhering to the applicable foreign exchange laws.

4. To meet their expanding business requirements and facilitate outbound investments, TIL incorporated a WOS by the name of ‘*Times Internet Inc.*’, on 27th December, 2006 under the laws of the United States of America. Registered in New Jersey, USA, this WOS was envisaged as a central hub to manage TIL’s overseas investments in innovative digital ventures, whether independently, in collaboration with existing subsidiaries, or through the acquisition of operational entities. The purpose was to streamline investment operations and ensure ease of management, profitability, and commercial viability.

5. Between 2006 and 2015, TIL invested a total of USD 30.90 million in *Times Internet Inc.* in multiple tranches through its Authorized Dealer, Citi Bank, New Delhi (now Axis Bank Ltd.), under the Automatic Route for Overseas Direct Investment⁸, as per the regulations of Reserve Bank of

⁷ “FEMA, 1999”

⁸ “ODI”



India⁹. For these transactions, a Unique Identification Number¹⁰ was duly allotted to TIL and they assert that they have consistently complied with requisite reporting and filing requirements, as mandated under FEMA Act, 1999 and the associated rules and regulations.

6. Similarly, in 2015, Bennett Coleman established its own WOS in USA, under the name '*BCCL Worldwide Inc.*', through the Automatic Route for ODI. This WOS was set up to introduce a *Brand Capital International (BCI)* business model in the USA, which focused on providing media and advertisement services for equity to companies aiming to enter the Indian market. Bennett Coleman also submits that it has been regular in filing its Annual Returns as required under FEMA, 1999.

7. The Petitioners highlight that the new Foreign Exchange Management (Overseas Investment) Rules, 2022, which supersede the earlier regulations, have liberalized ODI for Indian entities.

8. In 2021, both the Petitioner companies received summons under Section 37(1) of FEMA, from Respondent No. 1 - ED, seeking certain documents and information. The Petitioners assert that they duly complied with the summons, providing the requisite information, and emphasize that no proceedings under FEMA were initiated against them by the ED thereafter.

9. Against this backdrop, when the need arose to make additional investments in their respective WOSs in 2023, the Petitioners, as a matter of good governance and abundant caution, applied for NOCs under Rule 10 of the new FEMA OI Rules, 2022. These applications, however, were rejected

⁹ "RBI"

¹⁰ "UIN"



by the ED through the impugned communications dated 30th October, 2023¹¹ and 15th November, 2023¹², prompting the Petitioners to approach this Court through the present writ petitions.

10. Pertinently, after the rejection of NOC, ED issued fresh summons to TIL – i.e., the Petitioner in W.P.(C) 15242/2023, to appear before them in terms of an ongoing investigation. This was the second summons issued to TIL after two years of the first summons.

CONTENTIONS OF THE PARTIES

11. Mr. R.K. Handoo, counsel for the Petitioner makes the following submissions:

11.1 On 22nd August, 2022, the Central Government in exercise of powers under Sections 46 and 47 of FEMA, 1999 notified the FEMA OI Rules, 2022, superseding the earlier Regulations applicable on Overseas Investments – i.e.:

- (i) Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, and
- (ii) Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015.

11.2 The earlier precondition for making ODI, to the effect that the Indian entity must not be under investigation by any investigating agency, has been significantly relaxed under the new rules. Now, such Indian entities can make ODI after obtaining an NOC from the investigating agency. If an NOC is not granted within 60 days of application, there is a deemed approval for the proposed transaction.

¹¹ in W.P.(C) 15242/2023

¹² in W.P.(C) 15471/2023



11.3 The Petitioners were issued summons by the ED under Section 37(1) of FEMA in January 2021, but no formal proceedings or charges have been initiated against them since. Acting in good faith and as a measure of compliance, the Petitioners submitted applications for NOCs under Rule 10 of the FEMA OI Rules, 2022.

11.4 The mere issuance of summons under Section 37(1) of FEMA, without any material to support the allegations of contravention of Section 13 of FEMA or non-compliance under Sections 131 or 132 of the Income Tax Act, 1961, does not amount to an ‘investigation’ in terms of FEMA, 1999. Further, the Petitioners are neither classified as ‘defaulters’ nor as ‘non-performing assets’ under Rule 10 of the FEMA OI Rules, 2022.

11.5 For the sake of argument, even if one assumes that issuance of summons amounts to investigation, there has to be nexus between the ‘investigation’ and the proposed overseas investment sought to be made and pertinently, such a nexus should be reflected in the order rejecting the NOC.

11.6 FEMA, 1999 does not define the term ‘investigation’ and in any case, the purported investigation under the FEMA, 1999 would only amount to civil offence, which cannot be equated with investigations carried out by agencies like CBI, SFIO or ED under the PMLA or other Acts having penal consequences involving arrest, detention, etc.

11.7 FEMA, 1999 imposes obligations on entities availing foreign exchange and empowers banks to scrutinize all such transactions and refuse to undertake the same, if the transactions are found to be suspicious along with further provisions for financial penalties. Further, even in cases where the foreign exchange released has not been used for the purpose it was availed, the penalty under FEMA, 1999, is for the foreign exchange to be



returned and civil adjudication proceedings being initiated against the company. Thus, the rejection of the NOC by ED merely on the basis of an ‘ongoing investigation’, without evidence of wrongdoing, contradicts the spirit and purpose of FEMA, 1999, which is to encourage liberalization in foreign trade and investment.

11.8 It is imperative for the Petitioner to make the financial commitments to their subsidiaries in the USA and there is an urgent need to remit money abroad.

11.9 The rejection of the NOC lacks substantive reasons and authority, rendering it untenable in law and contrary to the principles of reasonableness and transparency. The said decision is arbitrary, lacks sufficient reasoning, and is contrary not only to the provisions of FEMA, 1999 but also to the regulations framed thereunder.

12. *Per contra*, Mr. S.V. Raju, Additional Solicitor General of India appearing for Respondent No. 1 - ED, presents the following arguments:

12.1 The denial of the NOC stems from a strong suspicion of violations under Section 4 of FEMA, 1999, specifically regarding foreign exchange held abroad by TIL. The investigations conducted by the ED revealed significant irregularities in the Petitioners’ overseas investments during the period 2015–2020.

12.2 During investigation, it has been revealed that in the years 2017 to 2019, TIL made ODI, in the form of purchase of shares in a company named MX Media Company Ltd.¹³ amounting to USD 14,62,00,000/-. MX Media Co. is a company located in the British Virgin Islands and the investment made by TIL far exceeds the actual value of their



shares at the time of investment – in 2017 and 2019, as established through an independent valuation of shares of MX Media Co. conducted by the ED for the relevant period.

12.3 As regards the involvement of Bennet Coleman, it was further revealed during investigation that a substantial part of the investment made by TIL into MX Media Co. was funded by the parent company of TIL – i.e., Bennet Coleman, while a lesser part of it was funded by the internal funds of TIL itself.

12.4 The initial valuation of shares of MX Media Co. in October 2017, was conducted by a valuer who is allegedly compromised by the Petitioners. As per the statement of a former employee, who allegedly conducted the valuation, insider information was shared with valuer in the form of documents relating to the agreed value of shares, the amount to be invested and post investment valuation of the company, even though these were non-essential for the purpose of valuation. Furthermore, the Share Subscription Agreement executed between TIL and MX Media Co. predates the valuation report of the shares.

12.5 A subsequent independent valuation of the shares conducted by ED through a SEBI empanelled valuer for the period October, 2017, August, 2019 and September, 2019 – i.e., the period when investments were made, revealed that the valuation reports furnished by the Petitioner were higher than the market rate of the shares at the time of investment. This independent valuation also indicated that the actual value of shares was way below the agreed upon share value recorded in the Share Subscription and Sale Agreement dated 26th September, 2017 as well as the Shareholders

¹³ “MX Media Co.”



Agreement dated 30th August, 2019. Further, the value of equity shares as well as the Series-A preference shares of MX Media Co. during September, 2019, were found to be of negative value.

12.6 Through this maze of overvaluation of investments, the Petitioner was successful in channelling funds from India under the guise of ODI in MX Media Co. and park the excess money overseas to the tune of USD 134.97 million, which is equivalent to INR 912.84 Crores. Hence, the Petitioner has taken precious foreign exchange reserves from the country, for purposes other than what was declared to RBI and the Authorised Bank. This amounts to violation of provisions of FEMA, 1999 and the Rules made thereunder.

12.7 On the basis of these findings ED initiated investigation under Section 37 of FEMA, 1999 along with the process of attachment of equivalent amount of property under Section 37A of FEMA, 1999, thus requiring TIL to submit a list of all of its assets. On scrutiny of the details furnished by TIL, it was found that the assets declared by them consist of 99.99% movable assets, with only one immovable asset in the form of a building worth INR 0.35 Crores. Further, the list of its other assets showed that out of a total of 10,309 assets declared, only 2259 assets have a value >Rs.1/- amounting to Rs. 71.83 Crores. The rest of the assets had no value. Thus, it was clear that TIL did not have the requisite funds in India for adequate attachment in lieu of the proposed investment abroad, for the purposes of implementing Section 37A(1) of FEMA, 1999.

12.8 Therefore, the ED deemed it appropriate to issue summons to the parent company of TIL – i.e., Bennet Coleman, calling upon them for recording of statement and submission of their financial accounts. This



investigation is currently ongoing and it has been found that the value of the Land and Building assets of the company, which can be meaningfully seized for the purposes of Section 37A of FEMA, 1999, amount to INR 451.96 Crores; whereas for the proper implementation of Section 37A of FEMA, 1999, the total asset value required is INR 912 Crores. Further investigation in this regard is currently ongoing, wherein the shareholder details as well as assets of the promoters of Bennet Coleman were sought by the ED. In this regard, on 26th August, 2024, Bennet Coleman submitted their list of assets in a PDF format which consisted of more than 2500 pages. Accordingly, the same is under scrutiny for further necessary action.

12.9 Moreover, investigations are also ongoing to identify the actual beneficial ownership of Bennet Coleman, in order to correctly invoke the provisions of Section 42(2) of FEMA, 1999, because as per the list of shareholders, Bennet Coleman has a total of 11 different shareholdings comprising of 8 limited companies, besides individual and joint venture shareholdings.

12.10 In light of the above, since a substantial sum of foreign exchange has been dubiously taken out of the country by TIL, and since TIL has itself admitted that it has not earned any money on the ODI made in MX Media Co., the NOC sought for remitting further money abroad was rightly denied by ED. Any attempt to further take foreign exchange out of the country by the Petitioners would prejudice the ED's rights of attachment under Section 37A of FEMA, 1999.

ANALYSIS AND FINDINGS

13. To address the issue of non-grant of NOC by ED, it is imperative to first examine the legal framework under FEMA, 1999, which governs the



issuance of such NOCs as a prerequisite for making ODIs. We begin with tracing the shift from the earlier regulatory regime to the current framework under the FEMA OI Rules, 2022.

THE PREVIOUS FEMA OVERSEAS INVESTMENT REGIME– BEFORE 2022

14. Under the earlier regime, there was a prohibition on direct investment outside India, save as otherwise provided under the FEMA Act, rules, regulations and directions issued thereunder¹⁴. FEMA (Transfer or Issue of Any Foreign Security) Regulations, 2004, provided for grant of prior permission for Indian entities seeking to make investments abroad¹⁵. These regulations stipulated the conditions for an Indian party to make a direct investment. Regulation 6(2)(iii) barred Indian entities who were on the RBI's caution list or under investigation by an investigating agency, from obtaining such permissions for overseas investments. The previous regime also required the submission of an Annual Performance Report (APR)¹⁶ as well as the duly completed Form ODI to the designated Authorised Dealers (AD)¹⁷. In fact, Section D of Form ODI requires a categorical declaration from Indian entities and their directors, disclosing any ongoing investigations. The RBI, through its Master Circular on Direct Investment by Residents in Joint Ventures (JVs)/Wholly Owned Subsidiaries (WOS) Abroad, further emphasized the role of ADs in scrutinizing these applications seeking to remit money abroad. Before allowing remittances, ADs were required to ensure that all necessary documents were in order¹⁸.

¹⁴ Regulation 5 of FEM (Transfer or Issue of Any Foreign Security) Regulations, 2004

¹⁵ Regulation 6 of FEM (Transfer or Issue of Any Foreign Security) Regulations, 2004,

¹⁶ Regulation 6(2)(iv) of FEM (Transfer or Issue of Any Foreign Security) Regulations, 2004

¹⁷ Regulation 6(2)(vi) of FEM (Transfer or Issue of Any Foreign Security) Regulations, 2004

¹⁸ Direction (1) and (2) of Part II of Master Direction – Direct Investment by Residents in Joint Venture (JV)/ Wholly Owned Subsidiary (WOS) Abroad



THE NEW FEMA OVERSEAS INVESTMENT REGIME – POST 2022

15. On 22nd August, 2022, in exercise of powers under Sections 46 of FEMA, 1999 the Central Government notified the new FEMA OI Rules, 2022. This was done to streamline the existing provisions, expand the scope of overseas investments as well as simplify the procedures for obtaining approvals for such transactions. These Rules superseded the earlier Regulations on overseas investment – i.e., the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, and Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015.

16. To operationalize these new rules, the RBI, as the sectoral regulator, issued delegated legislations in the form of the Foreign Exchange Management (Overseas Investment) Regulations, 2022¹⁹ *vide* Notification no. FEMA No. 400/2022-RB as well as Foreign Exchange Management (Overseas Investment) Directions, 2022²⁰, which were issued to all Category-I Authorised Dealer Banks *vide* RBI Circular No. 12, dated 22nd August 2022. These delegated legislations introduced clarity and uniformity in the overseas investment regime, with an emphasis on enabling *bona fide* business activities while maintaining safeguards against potential misuse.

17. Rule 9 of the FEMA OI Rules, 2022, allows overseas investment by Indian entities by way of financial commitments for “*bona fide business activity*”, either directly, through a step-down subsidiary or through a special purpose vehicle; subject to the limits and conditions laid down in the applicable FEMA OI Rules, 2022 and FEMA OI Regulations, 2022. Under

¹⁹ “FEMA OI Regulations, 2022”

²⁰ “FEMA OI Directions, 2022”



the Explanation of sub-rule (1) of Rule 9, the phrase “*bona fide business activity*” has been explained to mean, any business activity permissible under any law in India and in the host country or jurisdiction, as the case may be.

18. Thus, clearly, overseas investment by Indian entities has been made easy under the new rules, leaving the prudence of investment up to the Indian entity/person resident in India for ‘*bona fide business activity*’, as per laws of both countries. Rule 9 of the FEMA OI Rules, 2022 reads as under:

“9. Overseas Investment.– (1) Save as otherwise provided in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022, any investment made outside India by a person resident in India shall be made in a foreign entity engaged in a bona fide business activity, directly or through step down subsidiary or the special-purpose vehicle, subject to the limits and the conditions laid down in these rules and the said regulations:

Provided that the structure of such subsidiary or step down subsidiary of the foreign entity shall comply with the structural requirements of a foreign entity:

Provided further that Overseas Investment or transfer of such investment including swap of securities in a foreign entity formed, registered or incorporated in Pakistan or in any other jurisdiction as may be advised by the Central Government from time to time shall require prior approval of the Central Government.

Explanation.– For the purposes of this sub-rule, “bonafide business activity” shall mean any business activity permissible under any law in force in India and the host country or host jurisdiction, as the case may be:

(2) Notwithstanding anything contained in these rules or Foreign Exchange Management (Overseas Investment) Regulations 2022 –

(i) the Central Government may, on an application made to it through the Reserve Bank, permit financial commitment in strategic sectors or geographies, above the limits laid down in these rules and subject to such terms and conditions as it considers necessary.

(ii) the Reserve Bank may, on an application made to it through the



designated AD bank and for sufficient reasons, permit a person resident in India to make or transfer any investment or financial commitment outside India subject to such conditions as may be laid down by it:

Provided that Overseas Investment by a person resident in India shall not be made in a foreign entity located in a country or jurisdiction as may be decided by the Central Government from time to time.

XX ... XX ... XX

[Emphasis added]

19. One of the significant changes in the new FEMA OI Rules, 2022, is the requirement of obtaining an NOC in certain cases, before any financial commitment or undertaking disinvestment can be allowed. Rule 10 of FEMA OI Rules, 2022 reads as follows:

“10. No Objection Certificate –

(1) Any person resident in India who,–

(i) has an account appearing as a non-performing asset; or

(ii) is classified as a wilful defaulter by any bank; or

(iii) is under investigation by a financial service regulator or by investigative agencies in India, namely, the Central Bureau of Investigation or Directorate of Enforcement or Serious Frauds Investigation Office,

shall, before making any financial commitment or undertaking disinvestment under these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022, ***obtain a No Objection Certificate from the lender bank or regulatory body or investigative agency by making an application in writing to such bank or regulatory body or investigative agency concerned:***

Provided that where the lender bank or regulatory body or investigative agency concerned fails to furnish the certificate within sixty days from the date of receipt of such application, it may be presumed that there was no objection to the proposed transaction.

[Emphasis added]

21. Furthermore, it has also been clarified in paragraph 3(iii)(b) of RBI's Circular No. 12 dated 22nd August 2022, that the requirement for approval of entities under investigation by an investigating agency/ regulatory body, has been dispensed with. The same reads as follow:

3. Some of the significant changes brought about through the new rules and regulations are summarised below:

(iii) dispensing with the requirement of approval for:

c. issuance of corporate guarantees to or on behalf of second or



*subsequent level step down subsidiary (SDS);
d. write-off on account of disinvestment;
(iv) introduction of “Late Submission Fee (LSF)” for reporting delays.”*
[Emphasis added]

22. In the instant case, since the ED had issued summons to the Petitioners in the year 2021, in relation to the alleged violations of FEMA, 1999, the Petitioners sought to comply with the new FEMA regime and requirement under Rule 10 of FEMA OI Rules, 2022. Accordingly, Petitioners applied for the requisite NOC which was rejected by ED. The reasons attributed for rejection in the impugned communications issued to the Petitioners are identically worded and read as follows:

“Sir,

Sub:-Rejection of NoC in respect of M/s Times Internet Limited (TIL)-reg.

Kind reference is invited to the application dated 28.08.2023 received from M/s Times Internet Limited (TIL) regarding request to issue NOC under Rule 10 of Foreign Exchange Management (Overseas Investment) rules, 2022.

2. In this regard, it is informed that proposal regarding “Issue NOC” in this case is hereby rejected by Competent Authority.

Yours truly,

*Bedabrata Roy Choudhary
Assistant Director, HIU(2)(1)(2)”*

[Emphasis added]

23. The impugned communications do not disclose any substantive reason for rejecting the NOC. A rejection of such import, devoid of any rationale or justification, is arbitrary and falls afoul of the principles of natural justice. In the opinion of the Court, such a rejection without disclosing any reasons, is



liable to be set aside on this ground alone. Nonetheless, the Respondents have, during these proceedings, sought to substantiate the rejection by citing allegations of irregularities in prior ODI transactions, particularly concerning overvaluation and potential siphoning of foreign exchange. Thus, it is considered appropriate for this Court to examine these allegations, notwithstanding the absence of reasons in the impugned communications.

24. The Respondents' primary ground for rejecting the NOC hinges on the allegation that during previous ODI transactions in 2017 and 2018, the Petitioner in W.P.(C) 15242/2023 – i.e., TIL, invested in a company called MX Media Co. through an alleged overvaluation of shares, resulting in excessive outflow of foreign exchange under the guise of legitimate investments. This allegation, relies heavily on the valuation conducted by the valuer appointed by TIL and the share value recorded in the Share Subscription and Shareholders Agreements. The Respondents assert that this created a 'maze' of inflated valuations, facilitating the diversion of precious foreign exchange for purposes not disclosed to the RBI or the Authorised Dealer.

25. While the Respondent's denial of the NOC is ostensibly rooted in public interest – to prevent valuable foreign exchange from being taken out of the country – yet this rationale fails to withstand judicial scrutiny. The issuance of summons under Section 37(1) of FEMA, 1999, over three years ago, without any subsequent initiation of formal proceedings or adjudication against TIL or its parent company, Bennet Coleman, raises serious questions. Investigations lingering in limbo for such an extended period cannot serve as a tool to indefinitely impede a company's legitimate business activities. The justification offered — that the value of the Land



and Building assets of the company, amounting to INR 451.96 Crores, falls short of the INR 912 Crores required under Section 37A of FEMA, 1999 — is unpersuasive. This explanation does little to excuse the inaction in advancing the investigation or initiating proceedings. Nothing prevented the Respondent from confronting the Petitioners with specific charges and affording them an opportunity to respond. Thus, the ongoing investigation, devoid of any tangible progress or launch of proceedings, cannot *ipso facto* justify the denial of an NOC, particularly when the Petitioners have sought to comply with regulatory requirements in good faith.

26. The Petitioners have not been apprised of any legal proceedings initiated against them, apart from the allegations articulated in the counter-affidavit and during oral submissions. Despite this, they have duly complied with the summons and provided the requisite information. Regarding the allegations concerning the independence of the valuer engaged by TIL for the allegedly overvalued transactions, this Court deems it inappropriate to express any conclusive opinion, one way or the other as they could prejudice either of the parties. However, *prima facie* the Petitioners' emphasis on adherence to the valuation norms prescribed under FEMA regulations holds merit. They are correct in pointing out that the rules mandate that valuations must be conducted by Category-I merchant bankers registered with SEBI or overseas merchant bankers accredited by the host country's regulatory authority. TIL has complied with this requirement by engaging a SEBI-registered merchant banker. Therefore, if the Respondents indeed possess cogent material indicating overvaluation or misuse of foreign exchange, they ought to have initiated proceedings under FEMA, 1999, to substantiate these claims. Presently, it is only an allegation of ED that there has been



overvaluation. Therefore, at this stage, the valuation conducted by an expert body which is relied upon by the Petitioner has a probative force and is only being doubted by the ED on the grounds of suspicion.

27. The refusal to grant an NOC must be predicated on clear, cogent, and rational reasons. Mere issuance of summons, absent any formal finding of contravention under Section 4 of FEMA, 1999, or violations of Sections 131 and 132 of the Income Tax Act, 1961, does not meet this threshold. Furthermore, the Court also finds merit in the contention of the Petitioner that the penalty for violations of the provisions of FEMA, 1999 are fiscal in nature and under Section 13 of FEMA, the fiscal penalty would be three times the amount so invested or INR 2 Lakhs in cases where the invested amount is not quantified. On the other hand, the denial of NOC by ED in the present case, has completely restricted the Petitioners from remitting money abroad to its subsidiaries. The prolonged investigation without any conclusion, coupled with a lack of action under FEMA, is insufficient to justify the denial of the Petitioners' right to make further investments. The Petitioners have a legitimate expectation of conducting their business unhindered, particularly in the absence of definitive findings against them. In sum, mere issuance of summons under Section 37(1) of FEMA, 1999, without any finding of contravention under Section 4 of FEMA, 1999, and the alleged non-compliance with the provisions of Section 131 and 132 of the Income Tax Act, 1961, cannot be a valid ground for denial of the NOC.

28. It must also be noted that it is the Authorised Dealer (bank) who have to ensure that the person making the overseas investment has complied with the conditions prescribed in the FEMA OI Rules, Regulations and Directions. In fact, in the FEMA OI Directions, 2022, under Clause 27, it is



provided that the AD shall render themselves liable for penal action under Section 11 and 13 of FEMA, 1999, in case they facilitate remittances without obtaining the requisite documents. Furthermore, it is also important to take note of Section 10(5) of FEMA, 1999, under which, before undertaking any transaction in foreign exchange the authorised person has to reasonably satisfy themselves that the transaction will not involve and is not designed for contravention of any provision of the Act/Rules/Regulations. These regulatory provisions will continue to apply notwithstanding the issuance of LOC and therefore, safeguard the interest of the State.

29. The Respondents have thus not demonstrated the contravention of FEMA, 1999 with clear basis, in order to deny the NOC. There must be a nexus between the alleged contravention and the proposing investment which has not been established in the present case. Since the Petitioners have, in good faith, complied with regulatory requirements, it is unreasonable to subject them to indefinite uncertainty.

30. Accordingly, the present writ petitions are allowed with the following directions:

(i) In W.P.(C) 15242/2023, the impugned rejection letter dated 30th October, 2023, is hereby quashed. TIL is free to approach the Authorised Dealer for remittance of investment abroad, as sought in their application dated 28th August, 2023 under UIN-NDWAZ20070182. The said remittance shall be processed on its own merits, as per the applicable rules and regulations under FEMA, 1999.

(ii) Likewise W.P.(C) 15471/2023, the impugned rejection letter dated 15th November, 2023, is also quashed. Bennet Coleman is free to approach the Authorised Dealer for remittance of investment abroad, as sought in their



application dated 15th September, 2023 under UIN-BYWAZ20150706. The said remittance shall be processed on its own merits, as per the applicable rules and regulations under FEMA, 1999.

31. With the above directions, the writ petitions are disposed of along with pending application(s).

SANJEEV NARULA, J

DECEMBER 17, 2024/as/nk