

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

SETTLEMENT ORDER

On Application No.3536/2018

filed by **Vinay Maloo (PAN AFHPM5420N)**

in the matter of GDR issue by Himachal Futuristic Communications Ltd.

1. Shri Vinay Maloo (hereinafter referred to as ‘applicant’) filed a settlement application in terms of the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 which is repealed and replaced with SEBI (Settlement Proceedings) Regulations, 2018 with effect from January 01, 2019 (hereinafter referred to as ‘Settlement Regulations’). The applicant, in his application, without admitting or denying the findings of fact and conclusions of law, proposed to settle, through a settlement order, the proceedings under Section 11B of the SEBI Act, 1992 which were initiated vide Show Cause Notice dated June 22, 2018. The proceedings under Section 11B of the SEBI Act, 1992 were initiated for the alleged violation of Regulations 3 and 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with Regulation 13(2) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 .
2. Himachal Futuristic Communications Ltd. (HFCL) came out with a GDR issue of 67,99,945 GDRs (amounting approximately to US\$ 50 million) with 5,43,99,560 underlying equity shares of ₹10/- each on September 04, 2002. The applicant was a director of HFCL. Roker Securities Inc. (hereinafter referred to as ‘Roker’) was the only entity to have subscribed to the 67,99,945 GDRs (amounting to US\$ 46.50 million) of HFCL and the subscription amount was paid by Roker by obtaining loan (i.e. through a credit agreement) from Banco Efisa, S.F.E., S.A. (hereinafter referred to as ‘Banco’), a bank based in Lisbon. It is alleged that HFCL had pledged GDR proceeds to Banco against the loan given to Roker for subscription to GDR issue (as mentioned in Credit Agreement) and later GDR proceeds were repatriated to HFCL’s Indian bank account on repayment of loan by Roker. It is alleged that HFCL signed an account charge agreement with Banco which was an integral part of credit agreement entered into between Roker and Banco. These agreements enabled Roker to avail a loan from Banco for subscribing to the GDRs issued by HFCL. It is alleged that the GDR issue would not have been subscribed had

HFCL not given any such security towards the loan taken by Roker. The applicant signed the account charge agreement and has acted as party to the scheme. It is alleged that HFCL did not inform the stock exchange about the account charge agreement entered into between itself and Banco.

3. Pursuant to the application, the authorized representatives of the applicant had a meeting with the Internal Committee of SEBI on December 14, 2018 wherein the settlement terms were deliberated. Thereafter, the applicant, vide letter dated December 14, 2018, proposed the revised settlement terms to settle the defaults mentioned above.
4. The High Powered Advisory Committee ('HPAC') in its meeting held on January 30, 2019 considered the settlement terms proposed and recommended the application for settlement upon payment ₹1,36,00,000/- (Rupees One Crore Thirty Six Lakh only) as settlement amount. The Panel of Whole Time Members of SEBI accepted the said recommendation of the HPAC on March 11, 2019 and the same was communicated to the applicant vide e-mail dated March 18, 2019.
5. The applicant vide Demand Draft No. 806703 dated March 28, 2019 drawn on Indusind Bank has remitted an amount of ₹1,36,00,000/- (Rupees One Crore Thirty Six Lakh only) towards settlement charges.
6. In view of the above, in exercise of the powers conferred under Section 15JB of the Securities and Exchange Board of India Act, 1992 and in terms of Regulations 23 and 28 read with Regulation 34 of the Settlement Regulations, it is hereby ordered that:
 - i. the proceedings under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 for the alleged default as discussed in paragraph 1 above, are settled *qua* the applicant as per the above terms,
 - ii. SEBI shall not initiate any enforcement action against the applicant for the said default,
 - iii. this order disposes of the said the proceedings under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 in respect of the applicant as mentioned above and;
 - iv. passing of this order is without prejudice to the right of SEBI to take enforcement actions including commencing proceedings against the applicant, if SEBI finds that:
 - a. any representation made by the applicant in the present settlement proceedings is subsequently discovered to be untrue;
 - b. the applicant has breached any of the clauses/ conditions of undertakings/ waivers filed during the present settlement proceedings.

7. This settlement order is passed on this 11th day of April, 2019 and shall come into force with immediate effect.
8. In terms of Regulation 25 of the Settlement Regulations, a copy of this order shall be sent to the applicant and shall also be published on the website of SEBI.

-Sd-

S.K. MOHANTY

WHOLE TIME MEMBER

-Sd-

ANANTA BARUA

WHOLE TIME MEMBER