

**BEFORE THE ADJUDICATING OFFICER
THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI**

CONSENT ORDER

(Application No. 2752 of 2013)

On the application submitted by

MERRILL LYNCH INTERNATIONAL

In the matter of

GEMINI COMMUNICATIONS LIMITED

(PAN No. AABCM1026G)

Consent Order No: ISD/EAD-6/AO/AK/102/2014

1. The Securities and Exchange Board of India (SEBI) had initiated adjudication proceedings against Merrill Lynch International (hereinafter referred to as the "**Noticee**") in the matter of Gemini Communications Limited to inquire into and adjudge under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), for the alleged violation/contravention of the provisions of Regulation 29(1) and 29(2) read with Regulation 29 (3) and 28(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as "**Takeover Regulations**").
2. Gemini Communications Ltd (hereinafter referred to as the **company/GCL**) had issued Euro 15,000,000 Foreign Currency Convertible Bonds (hereinafter referred to as '**FCCB**') @ 6% per annum to the Noticee in the year July 2007 with a maturity date on July 18, 2012. As per the FCCB agreement, the bondholder i.e. Noticee had a right to convert the bonds into shares @ Rs 41.68 per share during the conversion period effective from August 01, 2007 to June 18, 2012 which would represent 19,746,885 shares (15.59%) of the issuer's share capital upon conversion. Upon examination it was observed that the Noticee had made a disclosure of cessation of its right to convert Foreign Currency Convertible Bonds of the

company issued to it by the company to the stock Exchanges on October 26, 2012, after a delay of four months, which should have been made on June 20, 2012 in terms of Regulation 29 (2) and (3) read with Regulation 28 (2) of the Takeover Regulations, i.e. one month prior to the maturity date of July 18, 2012. It was also observed that Noticee had made disclosure of revival of conversion right on November 12, 2012, i.e. with a delay of more than three months, which should have been disclosed by July 20, 2012 in terms of Regulations 29 (1) and (3) read with Regulation 28 (2) of the Takeover Regulations (since as per the terms of the FCCBs the conversion right revives *inter alia* if the FCCBs are not redeemed on the maturity date).

3. Smt. Barnali Mukherjee was appointed as Adjudicating Officer (**AO**) vide order dated March 18, 2013 under section 15 I of the SEBI Act to inquire into and adjudge under Sections 15A(a) of the SEBI Act for the aforesaid alleged violations. Consequently, Show Cause Notice dated April 05, 2013 was issued to the Noticee under rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, seeking reply of the Noticee as to why an inquiry should not be held in respect of the violations alleged to have been committed by the Noticee. Upon transfer of Smt. Barnali Mukherjee, I was appointed as AO on August 08, 2013.
4. While the Adjudication Proceedings were in progress, the Noticee submitted an application for settlement of the proceedings which was received by SEBI on August 16, 2013. The Noticee, vide letter dated December 6, 2013 proposed Rs. 40,34,185/- (Rupees Forty Lakhs, Thirty Four Thousand, One Hundred and Eighty Five Only) as revised consent terms towards settlement charges in respect of the aforesaid proceedings before SEBI.
5. The revised consent terms as proposed by the Noticee were placed before the High Powered Advisory Committee (**HPAC**) on January 7, 2014 and HPAC after deliberation recommended the case for settlement on payment of Rs. 40,34,185/- (Rupees Forty Lakhs, Thirty Four Thousand, One Hundred and Eighty Five Only) towards settlement charges.

Thereafter, SEBI vide letter dated June 6, 2014 conveyed to the Noticee that in view of the recommendations of HPAC, SEBI has in principle agreed to accept the terms of the consent proposed by the Noticee subject to the clauses of Undertakings/Waivers mentioned in the consent application and advised the Noticee to pay in accordance with the revised consent terms.

6. In terms of the proposal of the Noticee, for the sole purpose of settling the matter on hand, without admitting or denying the guilt on the part of the Noticee to the finding of fact or conclusion of law, the Noticee has remitted a sum of Rs. 40,34,185/- (Rupees Forty Lakhs, Thirty Four Thousand, One Hundred and Eighty Five Only) favouring Securities and Exchange Board of India having demand draft No. 843549 dated June 18, 2014 drawn on Citi Bank towards the terms of consent in the matter.
7. In view of the above, in terms of Regulation 15 (1) of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014, it is hereby ordered that:
 - A) this Consent Order disposes of the said Adjudication Proceedings pending in respect of the Noticee as mentioned in para 1 and 2 above and;
 - B) passing of this Order is without prejudice to the right of SEBI to take enforcement actions including commencing / reopening of the pending proceedings against the Noticee, if SEBI finds that:
 - a. any representations made by the Noticee in the consent proceedings are subsequently discovered to be untrue.
 - b. the Noticee has breached any of the clauses / conditions of undertakings / waivers filed during the current consent proceedings.
8. This consent order is passed on the **30th day of June, 2014** and shall come into force with immediate effect.

9. In terms of Regulation 17 of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014, copies of this order are being sent to the Noticee and also to Securities and Exchange Board of India, Mumbai.

Anita Kenkare

Adjudicating Officer

Place: Mumbai