

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
[SETTLEMENT ORDER NO.: ORDER/SRP/HKS/2019-20/2623]

SETTLEMENT ORDER
On the Application No. 3566/2018
filed by Himachal Futuristic Communications Limited (PAN: AAACH4041D)
In the matter of its Global Depository Receipts issue

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), initiated adjudication proceedings against M/s. Himachal Futuristic Communications Limited (hereinafter referred to as “**HFCL/Applicant**”) and Shri Biju. S was appointed as the Adjudicating Officer (**AO**) under Section 23-I of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”) and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as “**SCR Adjudication Rules**”) to inquire into and adjudge under Section 23E of the SCRA, the alleged violation of the provisions of Section 21 of the SCRA read with Clause 36 (7) and Clause 50 of the Listing Agreement by HFCL. Subsequently, on July 06, 2018 the undersigned has been appointed as AO, to inquire into and adjudge under Section 23E of the SCRA, the violations alleged to have been committed by HFCL.
2. Show Cause Notice No. EAD-4/ADJ/BS/HKS/OW/18117/1/2018 dated June 27, 2018 (hereinafter referred to as “**SCN**”) was issued by AO to HFCL in terms of Rule 4 of the SCR Adjudication Rules read with Section 23-I of the SCRA.
3. It was observed that HFCL came out with a Global Depository Receipts (**GDR**) issue of 67,99,945 GDRs (amounting approximately to US\$ 50 million) with

5,43,99,560 underlying equity shares of Rs.10/- each on September 04, 2002. 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 dated September 04, 2002) from Banco Efisa, S.F.E., S.A. (hereinafter referred to as “**Banco**”), a bank based in Lisbon. HFCL had pledged GDR proceeds to the bank Banco against the loan given to Roker for subscription to GDR issue (as mentioned in Credit Agreement). HFCL signed an account charge agreement September 04, 2002 with Banco which was an integral part of the credit agreement entered into between ROKER and Banco. These agreements enabled ROKER to avail a loan from Banco for subscribing the GDRs issued by HFCL.

4. It was observed that HFCL reported to the stock exchange on September 05, 2002 that *“the GDR Committee, Constituted by the Board of Directors of the Company, at its meeting held on September 04, 2002 has issued 6,799,945 GDRs representing 54,399,560 Underlying Equity Shares of Rs 10/- each at a premium of Rs 34.608 per share aggregating to Rs 2426.60 million to Deutsche Bank Trust Company Americas, the Depository”*. This announcement made investors believe that the said GDR issue was genuinely subscribed by the foreign investors.
5. Therefore, in the SCN it was alleged that HFCL did not disclose to the stock exchange the fact of account charge agreement entered between itself and Banco for subscription of GDRs by Roker through arrangement of credit agreement which was a price sensitive information and could have impacted the performance/operation of HFCL and thus it has violated the provisions of Section 21 of the SCRA read with Clause 36 (7) of the Listing Agreement. It was also alleged in the SCN that HFCL has not complied with Accounting Standard-29 by

not disclosing the amount of US \$1.92 million lying in deposit account with Banco as contingent liability in its financial statements for the Financial Year ended March 2005 and thereby HFCL allegedly not complied with the provisions of Section 21 of the SCRA read with Clause 50 of the Listing Agreement.

6. While the adjudication proceedings were in progress, the Applicant filed a settlement application (Application No. 3566/2018) 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 its 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 (a separate Settlement Order dated March 29, 2019 has already been passed) and the instant adjudication proceedings which were initiated vide the SCN dated June 27, 2018.
7. 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.
8. 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 Rs.1,14,06,516/- (Rupees One Crore Fourteen Lakh Six Thousand Five Hundred and Sixteen 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.

9. The applicant vide Demand Draft No. 577394 dated March 27, 2019 drawn on ICICI Bank has remitted an amount of Rs.1,14,06,516/- (Rupees One Crore Fourteen Lakh Six Thousand Five Hundred and Sixteen only) towards settlement charges.
10. In view of the above and in terms of Regulation 23 and Regulation 28 read with Regulation 34 of the Settlement Regulations, 2018 it is hereby ordered that this Settlement Order disposes of the aforesaid adjudication proceedings initiated against the Applicant, namely M/s. Himachal Futuristic Communications Limited vide Show Cause Notice No. EAD-4/ADJ/BS/HKS/OW/18117/1/2018 dated June 27, 2018.
11. This Order is without prejudice to the right of SEBI to take enforcement actions including restoring or initiating the proceedings in respect to which this settlement order was passed against the Applicant, if :
- a. any representation made by the Applicant in the settlement proceedings is subsequently found to be untrue; or
 - b. the Applicant breaches any of the clauses / conditions of undertakings / waivers filed during the current settlement proceedings.
12. 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.

Date : April 05, 2019
Place : Mumbai

Satya Ranjan Prasad
Adjudicating Officer