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OK

DJM/HC/10082/ 7392/2012

3rd September, 2012

To,
Special Director,
Directorate of Enforcement
Government of India, Ministry of Finance,
Department of Revenue,
Janambhoomi Chambers,
Walchand Hirachand Marg,
Mumbai - 400 001



Ref. : Your various Show Cause Notices issued on 25.11.2011 in respect of Complaint bearing No.T-3/44-B/2010/AD(DKS)/Part (BCCI-II) dated 17th November, 2011.

Sub.: Preliminary reply to the Show Cause Notices referred above.

Sir,

1. We address this communication under instructions and on behalf of our client Mr. Lalit Kumar Modi.
2. We had received the various Show Cause Notices issued on 25th November, 2011 alongwith annexed complaint bearing No. T-3/44-B/2010/AD(DKS)/Part (BCCI-II) dated 17th November, 2011 on 15th December, 2011.

Our Applications:

3. Vide our letter dated 10th January, 2012 we had requested you to supply copies of all documents on which reliance had been placed and for detailed inspection of records and supply of documents. Subsequently, vide our letter dated 23rd January, 2012 we had made an application seeking supply of complete set of copies of documents relied upon in the Show Cause Notices and Complaint. We had requested you to

- (i) provide us with a copy of the complete set of relied upon documents/materials including the documents set out in para 3 of our application dated 23rd January, 2012 and any other document or material collected during the investigation.
- (ii) confirm if the statements given at serial number 6 to 13 of the Annexure to the Complaint are the only statements recorded by the Enforcement Directorate of the persons mentioned therein and if there are any further or previous

statements of those persons recorded by the enforcement directorate then a copy of the same may kindly be provided to us.

(iii) disclose to us if there is any other document, material collected and statement recorded during the investigation and if so a copy of the same may kindly be provided to us.

(iv) grant us an inspection of the records and the file.

4. Vide our letter dated 7th May, 2012 we had requested you that since the Show Cause Notices had been issued to our client on the basis of Section 42(1) of FEMA, you may kindly supply us copy of the reply filed by noticee No.1 BCCI so that we may file a detailed and factual reply to the Show Cause Notices.
5. We regret to mention that none of our aforesaid communications have been replied by your office. We further do not know whether the applications we had made are still pending consideration or have been allowed or disallowed by you. In case, if these applications have been disallowed, before such an order being passed we should have been provided opportunity of personal hearing. However we have not been provided any communication or the order(s), if any, passed on these applications or have been intimated about the fate of these applications.
6. We submit that the proceedings initiated by you are quasi judicial proceedings where principles of natural justice are required to be complied with. We wish to record our objections to the manner of conduct of proceedings so far which have indicated complete violation of principles of natural justice.
7. That so as not to prejudice the case of our client pending before you, while reiterating our request to supply the documents sought for in the previous applications we are submitting the instant communication to you putting on record our preliminary reply. This preliminary reply is being filed on a without prejudice basis and we reserve our right to file a detailed reply upon supply of all the documents by you as sought by us.

Scope of Show Cause Notice

8. The Foreign Exchange Management (Adjudication proceedings and Appeals Rules) 2000 mandate that for the purpose of adjudication whether any person has committed any contravention, the Adjudicating Authority shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. It is clear from a bare reading of the rule that show cause notice to be so issued is not for the purposes of

making any adjudication into alleged contravention but only for the purpose of deciding whether an inquiry should be held against him or not. That after considering the cause, if any, shown by such person, the Adjudicating Authority is required to form an opinion as to whether an inquiry is required to be held into the allegations of contravention. It is only then the real and substantial inquiry into allegations of contravention begins.

We submit that there is no good ground of initiating any substantive inquiry against our client and the proceedings against him are required to be dropped.

No Personal Allegation against our Client

9. The Show Cause Notice indicates that there is no personal allegation against our Client of having violated any of the provisions of FEMA. Show Cause Notices dated 25.11.2011 in respect of holding IPL season II tournament in South Africa have been issued to the BCCI in which notice has been issued to our Client with the aid of Section 42 (1) of the FEMA which provides for vicarious liability. The other noticees are Mr. Shashank Manohar, the then Honorary President, BCCI, Mr. N. Srinivasan, Honorary Secretary, BCCI, Mr. M.P. Pandov, Honorary Treasurer, BCCI and Mr. Ratnakar Shetty, CEO, BCCI.
10. Our Client through his constituted attorney voluntarily received the show cause notices from the office of the Enforcement Directorate so that he can participate in the adjudication proceedings. It is pertinent to point out here that the FEMA permits participation in such proceedings through authorized representatives. It is pertinent to point out that the said show cause notice has been issued in respect of agreement dated 30.3.2009 signed between BCCI and CSA (Cricket South Africa) and transactions undertaken pursuant to that agreement. The said agreement has been executed by Mr. N. Srinivasan, Secretary BCCI. All the remittances sent were authorized by the Treasurer, BCCI. The adjudication proceedings are essentially directed against the BCCI. The alleged infringement of not obtaining prior approval of the BCCI is also technical in nature and there are various instances where ex post facto approval is given by RBI. Further any contravention of any regulations under FEMA, if any, would have been done by the Secretary BCCI as he alone is authorized by BCCI under its constitution to file all necessary papers, seek all statutory and regulatory approvals, as also open any accounts etc under his signature.
11. The Enforcement Directorate (ED) Show Cause Notices reveal that ED has been investigating alleged violations under FEMA in relation to BCCI contracts and in respect of the general conduct of the IPL. The allegations reflect collective responsibilities rather

than personal responsibilities. It is significant to note that the Enforcement Directorate has not identified any specific contravention under FEMA committed by our Client.

12. Yet on such allegations the Enforcement Directorate moved the Regional Passport Officer Mumbai ("RPO") to impound the Passport of our Client and the RPO revoked the passport of our Client vide order dated 31.3.2011.
13. Given the allegations as set out in the Show Cause Notices under reference, the action seeking impounding our Client's passport was wholly unreasonable, arbitrary and disproportionate action on the part of ED.
14. Before dealing with the averments of Show Cause Notice, we wish to place on record certain facts in respect of BCCI and IPL, as these would have bearing upon the allegations leveled in the Show Cause Notices under reference.

BCCI/IPL

15. The Board of Cricket Control of India (BCCI) is a society registered under the Tamil Nadu Societies Registration Act, 1975. It has its own Memorandum of Association and Rules and Regulations. The President, the Secretary and the Treasurer are the office bearers of BCCI.
16. A separate sub committee unit of BCCI was set up known as Indian Premier League (IPL) to establish and oversee the operation of a domestic Twenty20 competition in India. IPL is not a separate entity but forms part of BCCI and is managed by a Governing Council having 14 members in which the office bearers of the BCCI are ex officio members. IPL as a sub-committee does not have any independent existence. It also does not have financial drawing or disbursing powers and all bank accounts are BCCI bank accounts operated by the Treasurer, BCCI. The Governing Council submits a report of its activities and decisions as well as audited final accounts for the approval of general body of the BCCI at its AGM.
17. The IPL as a sub-committee was brought about in existence when on 13th September, 2007 the Working Committee of the BCCI approved the launch of Indian Premier League and set up a sub-committee. Vide amendment in Memorandum of Association and Rules and Regulations of BCCI on 16th December, 2007, IPL was made a standing committee of BCCI.
18. Thus IPL like any other committee of BCCI for example Finance Committee, Legal Committee or Marketing Committee is merely to assist and aid the BCCI. The members

of such Committees including the Chairman thereof can not be said to be person in-charge of or responsible to the BCCI for the conduct of business of the BCCI. This is so because IPL is merely a sub committee of the BCCI and has no control over the affairs of BCCI rather it is controlled by BCCI. IPL also has no say upon any financial drawings, disbursements or remittances as such matters are controlled by persons who are incharge of BCCI namely the President, the Secretary and the Treasurer. IPL does not also have any separate existence.

Key Role of Mr. N. Srinivasan

19. At the time of formation of IPL Mr. N. Srinivasan was the Treasurer of BCCI. Since IPL was not a separate entity but only a committee of the BCCI, all decisions in respect of IPL which had any financial implication or required drawing or disbursing of any funds or providing any guarantees or decisions which required financial compliances including RBI approvals were taken by Mr. N. Srinivasan. Without his being at the centre of such decision making- being incharge of and responsible for all financial matters, none of these decisions could have been made. Further, compliance with obligations of BCCI including giving of funds and guarantees was the responsibility of the Treasurer in the internal working of BCCI. It has been the standard practice of BCCI that all FEMA compliances and RBI approvals are required to be taken by the Treasurer's office. The same is also the position under the BCCI constitution and also been recorded at various BCCI meetings. In respect of powers of the office bearers in general and Secretary BCCI in particular your attention is invited to Regulation 1(k), 13 and 14 of the BCCI Rules and Regulations.
20. Another aspect of the matter is that India Cement Ltd., whose promoter is Mr. N. Srinivasan, participated in the IPL Franchisee Auction and was awarded the Chennai Franchisee of IPL namely the Chennai Super Kings. Thus, Mr. N. Srinivasan as the defacto owner of Chennai Super Kings was at all times well aware both as officer bearer of BCCI and owner of franchisee about the entire working of IPL and was at all times personally interested in its pecuniary and financial matters.
21. On 27th September, 2008 Mr. N. Srinivasan became the Secretary of BCCI and Mr. M.P. Pandove became the Treasurer of BCCI. However, even after Mr. N. Srinivasan came to occupy Secretary's chair he continued the old reporting structure by which all clearances of individual bills, payment approvals, disbursement, approvals from regulatory bodies continued to be routed through him. In fact, all of the bills which were sent to the Treasurer's office to pay were routed through the office of the Secretary. Mr. N.

Srinivasan as Secretary made the office of Treasurer almost redundant and unconstitutionally took over his work too.

22. Even though Mr. Pandove was the Treasurer, Mr. N. Srinivasan insisted that all approvals regarding finance be taken from him and was defacto also acting as Treasurer of the BCCI. All cheques and financial instruments were signed by Treasurer only after approvals given by the Secretary, BCCI.

Finance Department of IPL:

23. That the IPL itself had a finance department. This finance department was reporting to the office of the Treasurer, BCCI and was headed by Mr. Prasanna Kannan who was the Chief Financial Officer of the IPL. The finance department also functioned in tandem with the Secretary's office. The financial consultant of IPL was Mr. P.B. Srinivasan who was as well the internal auditor of BCCI. These two persons namely Mr. Prasanna Kannan and Mr. P.B. Srinivasan are closely connected to India Cements Ltd. Mr. Prasanna Kannan is employee of India Cements Ltd. while Mr. P.B. Srinivasan is an internal auditor of India Cements Ltd. All contracts and other actions having the financial implication were cleared by the finance department of the IPL. This clearance was done with a priori approval of Mr. N. Srinivasan and then was processed through the Treasurer's office. The financial persons of IPL namely Mr. Prasanna Kannan and Mr. P.B. Srinivasan directly reported to Mr. N. Srinivasan. Thus, Mr. N. Srinivasan was at the fulcrum of the entire financial dealings of IPL. Mr. N. Srinivasan conflict of interest was highlighted at various times by our client and this resulted into Mr. N. Srinivasan harboring malice against our client.

Role of our Client:

24. That our client Mr. Lalit Kumar Modi was Chairman of Governing Council of Indian Premier League. The entire functioning of the IPL was undertaken by the Governing Council. All activities of IPL are acts that have documented approval from collective Governing Council or Working Committee Meetings in accordance with BCCI/IPL process. Our client has earlier provided documentary evidence to the complainant which illustrate collective council or board approval for all activities. Thus, no action of our client can be termed as unauthorized, unilateral actions on his behalf.
25. In so far as the role of our client is concerned it is significant to point out that the Enforcement Directorate has not identified any specific contravention under FEMA committed by our client. There is nothing in the entire Show Cause Notice that suggests

that he has been responsible personally or in his official position for any contravention of FEMA or has committed any foreign exchange violation.

26. It is important to state that our client was not in any manner, ever involved in any monetary transactions concerning the BCCI or the IPL. He had no cheque signing power. He was not mandated with any authority to exercise control over BCCI accounts, either operationally or in respect of withdrawals or authorized to make ANY payments. Thus, he had no role to play in any of alleged contraventions under FEMA. The only persons who were authorized to do the same were the BCCI Treasurer, the BCCI Secretary and the BCCI President.
27. That rather than causing loss of any foreign exchange , our client has been singlehandedly responsible for earning huge foreign exchange for the country. It is largely due to him that the BCCI has become financially most powerful board in the world cricket. In this process our client had brought various contracts in BCCI kitty worth over USD 6 Billion which have earned significant foreign exchange for the country. Thus, rather than causing loss of any foreign exchange, our client has contributed to significant amount of foreign exchange coming into the country. Some of the these contracts are Team Sponsorship Deal for Team India with Sahara, Team Apparel Sponsor Deal for Team India with Nike, Media Rights Deal with Nimbus for 4 years, Media Rights for overseas matches with Zee for 4 years, BCCI Sponsorship Deal with WSG, Indian Premier League Eight franchise contracts in 2008, ESPN deal for Twenty20 global rights, IPL Media Rights Deal with Sony, IPL Web Media Rights, IPL Title sponsorship and Ground sponsors, Renegotiated contracts of BCCI-IPL with Sony & WSG for the IPL Media rights, Nimbus Communication's 4 year deal for the rights to India's home international games, IPL Theatrical Rights Deal with UFO and ESD, IPL Entertainment Broadcast deal with Viacom and IPL two new franchise contracts in 2010.
28. That all FEMA related compliances were being taken care of by the Treasurer's office. The bank accounts were also being opened / operated by Treasurer. In the Annual General Meeting of BCCI held on 28.09.2007 it was resolved that Mr. N. Srinivasan would open and operate the bank account in the name of BCCI – IPL and that he would be authorized to open and operate an EEFC (Dollar A/c) and EEFC (Pound A/c) in the name of BCCI – IPL. Copy of the Minutes of AGM dated 28.09.2007 is annexed and marked as **Annexure-A**. It is pertinent to mention that all FEMA and income tax compliances were being handled by the Treasurer's office along with internal auditor of the BCCI namely, Shri P.B. Srinivasan and all compliances were being reported to the Finance Committee of the BCCI as is evident from various minutes of the Finance

Committee. As an example the minutes of Finance Committee meeting dated 12th May, 2009 are annexed and marked as **Annexure-B**. If the ED feels there has been a violation of FEMA or any of its regulations, or the same requires any adjudication then the same should be directed against the President, the Secretary and the Treasurer of the BCCI who alone, have the responsibility under the BCCI constitution to ensure that all Acts/Regulations are complied with at all times by them.

Shifting IPL-2 to South Africa

29. That IPL Season-2 was initially announced to be played in India between 10th April 2009 to 24th May 2009. However, the Election Commission announced election schedule for general elections starting 13th April, 2009 to 13th May, 2009. The Ministry of Home Affairs informed BCCI that IPL schedule was required to be changed. Since, the window available between the international fixtures for IPL to be played was between April to May of 2009, it was not possible to shift the tournament. The working committee of BCCI in a meeting held on 22nd March, 2009 therefore decided that the tournament should be shifted out of country to either England or South Africa. It was decided that for the purpose of the tournament an account be opened abroad to take care of expenses for staging of IPL. It was decided that BCCI should seek clearance from RBI and account would be operated by Treasurer Mr. M.P. Pandove. Mr. N. Srinivasan, the Secretary was to frame appropriate resolution in this regard and rightly so as secretary is the person responsible for the same as per constitution of BCCI.

30. Subsequently, as hosting tournament in England was cost wise not suitable therefore it was decided to host the tournament in South Africa. Mr. N. Srinivasan executed an agreement on behalf of BCCI with Cricket South Africa (CSA) on 30th March, 2009. When the agreement was negotiated and signed our client was not even present. To the best of knowledge of our client, Mr. M.P. Pandove was present along with Mr. N. Srinivasan for negotiating and executing the agreement between BCCI and CSA.

31. That one of the conditions under the agreement dated 30th March, 2009 was that CSA would open and operate a dedicated bank account for conducting the tournament under Clause-4(e) of the said agreement. This too was learnt by our client only post the execution of the agreement by BCCI Secretary. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary as he is the person responsible for and on behalf of BCCI.

32. That though the working committee in its meeting dated 22nd March, 2009 had agreed that BCCI would operate a bank account after taking due approval of RBI and Mr. N.

Srinivasan was to circulate an appropriate resolution in this regard, to the best of knowledge of our client no such resolution was circulated by Mr. N. Srinivasan rather Mr. N. Srinivasan entered into an agreement whereby CSA and not BCCI was to open and operate a dedicated bank account. The reason for the same can only be answered by N. Srinivasan. This too was learnt by our client only post the same was executed by BCCI Secretary. Whether this was in contravention or not of FEMA or any other regulation under it will have to be answered by the BCCI Secretary as he is the person responsible for and on behalf of BCCI.

33. That on 25th March, 2009 Mr. N. Srinivasan circulated an email marked to our client, the President BCCI, Mr. Shashank Manohar, the Treasurer BCCI, Mr. M.P. Pandove, and Mr. Sundar Raman, COO of IPL enclosing a letter dated 24th April, 2009. In the said letter, it was mentioned that the Reserve Bank policies in South Africa prohibited that foreign entities can not operate account through cheque/pay orders in South Africa. He, therefore, suggested that the system, as followed by ICC during international tournaments, be followed in this case. It was mentioned that CSA would operate a separate bank account and makes payments on behalf of BCCI and BCCI will replenish the amount as and when required and after the tournament CSA can send final statement for settlement. The payment authorization system was as under :-

- (i) Bills will be raised in a payment requisition form.
- (ii) The bills will be checked by Mr. Prasanna Kannan, Manager- Business & Commercial and Mr. Sundar Raman COO, IPL.
- (iii) The bills will be approved by our client who was Chairman IPL (But this stage was not followed in practice as is evident from facts set out below).
- (iv) The bills will be forwarded to Mr. N. Srinivasan, Secretary, BCCI for final authorization.

Mr. N. Srinivasan had mentioned that this was approved by the President Mr. Shashank Manohar. This clearly shows that our client was merely marked on the email to advise him of how the Secretary BCCI wishes to operate the operations as far as payments, accounts, treasury related or fiscal issues are concerned. We annex herewith the email dated 25th March, 2009 sent by Shri N. Srinivasan to our client alongwith the annexed letter dated 24th March, 2009 marked as **Annexure-C**.

In terms of Secretary's communication dated 25.3.2009 our client was only to check whether the invoices were correctly raised or not, while the final approval for all such

invoices and payments was to be given by Mr. N. Srinivasan. However, as a matter of practice our client did not approve any payment but was merely marked on the mails sent by Mr. Prasanna Kannan to Mr. N. Srinivasan seeking approval of the payments and invoices and which were directly approved by Mr. N. Srinivasan. Copy of two such emails dated 10th April, 2009 sent by Mr. Prasanna Kannan to Mr. N. Srinivasan and 24th April, 2009 sent by Mr. Prasanna Kanan to Mr. N. Srinivasan and approval of Mr. N. Srinivasan thereto are annexed and marked as **Annexure-D & E**. These emails show that the payment structure was that Mr. Prasanna Kanan as the Chief Finance Officer of IPL was directly reporting to Mr. N. Srinivasan and seeking his approval on various invoices and payments to be made while our client was merely copied on such emails. The prerogative to release payment lies only with the Treasurer and ultimately the Secretary BCCI. Various Committees and sub committees of BCCI from time to time send requests for payments. Not all are approved or paid as requested. It's the job of the Treasurer and Secretary to ensure if any payment is made –its meets all BCCI/ Fiscal guidelines and it's there responsibility to take all statutory or regulatory approvals before making ANY payments.

The remittance of payment to CSA was done under instructions of Mr. N. Srinivasan and Mr. Pandove. They alone were aware how this remittance was put in a dedicated account and on what basis. The payments made to various vendors out of this dedicated account was also controlled by Mr. N. Srinivasan and Mr. Pandove and our client had no involvement in the authorization structure for operation of the said bank account. Whether this was in contravention or not of FEMA or any regulation under FEMA will have to be answered by the BCCI Secretary as he is the person responsible for and on behalf of BCCI.

Further in case of all tax related issues in South Africa and compliances with requirement of South African Revenue Service (SARS), Mr. P.B. Srinivasan was representing IPL and was coordinating with franchises and CSA /SARS. An illustrative case on the point is the email sent by Mr. P.B. Srinivasan on 9th April, 2009. Copy of such email is annexed and marked as **Annexure-F**.

34. It was Mr. N. Srinivasan's view that since the bank account is being opened and operated by CSA and not by BCCI therefore the same would not require any approval from RBI and that the transfer of funds from BCCI to CSA would be covered under current account transactions. Our client relied on the Secretary and the Treasurer to ensure all compliances. He was not an expert on this issue, and as FEMA compliances were not part of his responsibility he was not really concerned for the same as these issues were

being handled by the Secretary and Treasurer of BCCI. Whether this was in contravention or not of FEMA or any other regulation under them will have to be answered by the BCCI Secretary and Treasurer as being responsible for and on behalf of BCCI.

35. It is submitted that it was Mr. N. Srinivasan who earlier as Treasurer, BCCI and thereafter as Secretary, BCCI was handling all financial matters as well as statutory compliances to be made in such matters and our client had no role in these matters. He has the authority for ALL BCCI related transactions and is solely responsible for all approvals and financial payouts and has to approve them after obtaining due statutory and regulatory approvals. There are thousands of instances where a sub committee of BCCI may recommend or approve a transaction or event and the BCCI Secretary may at his discretion decide to go along with it or choose to take it to Finance committee for further approval, or outrightly reject it.
36. It is submitted that IPL-2 was a BCCI tournament which had to be shifted out of country for reasons already submitted above. CSA was to provide its stadiums as also provide network of various vendors to organize the tournament. CSA was to open a dedicated open bank account in which BCCI was to put in money, as was learnt by our Client only post the execution of BCCI -CSA agreement by the Secretary BCCI, to conduct the tournament. In fact there was a meeting attended by COO -CSA Mr. Don Mcintosh, Mr. Sundar Raman and Mr. Prasanna Kannan with SARS on 3.4.2009 whose report was submitted by Mr. Prasanna Kanan to BCCI. The said report noted as under :-

"Don Mcintosh explained that IPL South Africa will be a division / special project vehicle of Cricket South Africa and that the structure of IPL (South Africa) will be similar to the ICC World Cup 2007 i.e. to meet operational expenditure incurred in South Africa only. It was explained to SARS that monies will be sent from the overseas IPL entity for the purpose of meeting operational expenditures of IPL in South Africa. Beside this foreign funding the gate revenues will be accounted for as income in IPL (South Africa). Don then explained that since the monies from off shore entities are received only to meet the expenditure of the tournament, on a net – net basis, IPL South Africa entity should not have any entity income tax liability. SARS instructed CSA to apply for the exemption of income tax of this SPV in any case. Since there is a precedent in giving exemption to ICC World Cup 2007, Franz explained that it would not be a problem in issuing the exemption. Don Mcintosh told the members of SARS that CSA will be applying for the exemption next week".

The copy of email dated 4th April, 2009 sent by Mr. Prasanna Kannan is enclosed and marked as **Annexure-G**. Whether this was in contravention or not of FEMA or any other regulation under FEMA will have to be answered by the BCCI Secretary as he is the responsible person for and on behalf of BCCI. Further whether the decided route chosen by the BCCI Secretary contrary to the Working committee resolution passed on 23 May 2010 – authorizing him to apply to RBI for approval to open a BCCI Bank account in South Africa to conduct the IPL or to go with the route he chose that is to make an agreement with CSA providing for CSA to open a Bank Account and operate the same for IPL as if a BCCI account and BCCI approves all payments made from such an account - was the rightful and FEMA compliant way for BCCI to have adopted is something only he will be able to answer as he was the sole deciding authority in this case.

37. That it is significant to point out that our client had no financial powers and therefore, was not personally involved with foreign exchange transactions or disbursement of any funds in respect of any contract entered in South Africa by the BCCI.
38. That as a consequence of that agreement dated 30th March, 2009, money was transferred by the BCCI to the CSA. This was organized by the BCCI Treasurer, Mr. M.P. Pandove with the approval of the BCCI Secretary, Mr. N. Srinivasan and our client was not involved in these matters. Whether this was in contravention or not of FEMA or any other regulation will have to be answered by the BCCI Secretary alone as he is the person responsible for and on behalf of BCCI.
39. The entire budget for IPL2 in South Africa was approved by Mr. Srinivasan. The Budget was prepared By Mr. Prasanna Kanan in consultation with Mr. Sundar Raman. Upon approval by Shri N. Srinivasan, Shri M.P. Pandove released the required payments. Each and every head of expenditure in South Africa was approved personally by the then BCCI Secretary. Our client's knowledge of financial activity was solely via e-mails copied to him for information. In this regard various contemporaneous emails clearly show that all financial issues were being dealt with by Mr. N. Srinivasan and his team. Others involved in the payment process were the Chief Financial Officer of the IPL, Mr. Prasanna Kannan and the financial advisor of the BCCI, Mr. P.B. Srinivasan.

Non applicability of Section 42(1) of FEMA on our client :

40. It is submitted that Section 42(1) of FEMA in which the show cause notice has been issued to our client has no application qua him. It is well settled that Section 42(1) is a highly penal Section as it makes the person who was in-charge and responsible to the

company for the conduct of its business vicariously liable for an offence committed by the company. Therefore in accordance with the well-settled principles of interpretation this section should be construed strictly. The Supreme Court in Giridhari Lal Gupta V/s. D.N. Mehta, AIR 1971 SC 28 held that in the context a person in-charge must mean the person should be in overall control of the day to day business of the company or firm.

41. It is submitted that our client at the relevant time was one of the Vice President of the BCCI as well as the Chairman and Commissioner of IPL which was a sub-committee of the BCCI. Our Client also sat on various other Committees of BCCI but had no financial powers. He was not an office bearer of BCCI. He was not the person responsible for conduct of business of BCCI nor in-charge thereof. He had no financial powers. He was not involved in making of any remittances a foreign exchange or repatriation thereof. He was also not involved in issuing instructions or giving payment advice to AD. In these circumstances Section 42(1) has no application to him. The provisions of Section 42 of FEMA do not make any person liable for consequences. It is only that person who was in-charge and responsible for the business of the whole organization who can be made liable u/s 42(1).

Preliminary Submissions:

42. Although 11 show cause notices have been issued, inasmuch as the alleged contraventions relate to the same Complaint, our client is filing this one combined preliminary reply to all the said show cause notices, reserving the right to file a detailed reply.
43. At the outset, our client denies all the averments in the Show Cause Notices/Complaint except to the extent expressly admitted hereinafter.
44. That the complaint upon which Show Cause Notice has been issued makes various factually incorrect statements. Thus, before making parawise submissions, it is pertinent to state certain facts by way of preliminary submissions.
45. That IPL (SA) (PTY) Ltd. was not a subsidiary created by CSA. Though at one point of time, CSA did contemplate creation of a Special Purpose Vehicle ("SPV"), no such SPV was created. IPL-2 consequently was supervised by the BCCI and facilitated by CSA by creating a division IPL-SA. Again this division was a part of CSA with no separate legal entity. The name "IPL-SA" was used to open a dedicated Bank Account by CSA for IPL season 2 in South Africa. This was done, as our client was informed by Mr. N. Srinivasan so that for all monies remitted by BCCI and subsequently paid by CSA, BCCI may have

a clearer control on that account as if it was their own. In fact the agreement dated 30th March, 2009 signed by Mr. N. Srinivasan with CSA mentioned that one of the conditions to be fulfilled by CSA was to operate through a dedicated Bank Account. Whether this was in contravention or not of FEMA or any other regulation under it will have to be answered by the BCCI Secretary as he is the person responsible for and on behalf of BCCI. Further whether the decided route chosen by the BCCI Secretary contrary to the Working committee Resolution passed on 23 may 2010 – authorizing him to apply to RBI for approval to open a BCCI Bank account in South Africa to conduct the IPL or to go with the route he eventually chose that is to make an agreement with CSA and CSA opens the Bank Account and operates the same for IPL as if a BCCI account and BCCI approves all payments made from such an account - was the right and lawfully compliant way for BCCI to have adopted is something only he will be able to answer as he was the sole deciding authority in this case.

46. The financial arrangement for the conduct of IPL – 2 in South Africa was decided primarily by Mr. N. Srinivasan. Whether this was in contravention or not of FEMA or any other Act of GOI will have to be answered by the BCCI Secretary alone as he is the responsible person for and on behalf of BCCI. Further whether the decided route chosen by the BCCI Secretary contrary to the Working committee Resolution passed on 23 may 2010 – authorizing him to apply to RBI for approval to open a BCCI Bank account in South Africa to conduct the IPL or to go with the route he eventually chose that is to make an agreement with CSA and for CSA to open a Bank Account and operate the same for IPL as if a BCCI account and BCCI approves all payments made from such an account - was the right and FEMA compliant way for BCCI to have adopted is something only he will be able to answer as he was the sole deciding authority in this case.
47. CSA was to be paid an amount of US\$ 3,000,000/- as a fee for providing stadium and held conduct the tournament. It was also to be funded so that all the costs for conducting the tournament could be met. This funding was to be done by the BCCI. Mr. N. Srinivasan scrutinised, verified and authorised all expenditure. At the time of execution of the Agreement, our client was not present and therefore, is not in a position to comment as to why the budget could not be filled in the Schedule to the Agreement, This aspect can also be answered by the BCCI Secretary at that time and who is now the current President of BCCI. The Current President has held various roles in BCCI first being a member of various committees, then BCCI Treasurer, subsequently the Secretary of BCCI and now the President. Mr. Srinivasan has been President of TNCA and held various offices in other sporting organisations like All India Chess Federation. He had knowledge, wherewithal and the responsibility to take all statutory and regulatory

approvals from time to time on issues relating to ED/IT/Banking/ various statutes and various rules and regulations that a Society like BCCI has to abide by. If there is anything amiss – then he only can answer. Entire BCCI Finance department was appointed by him or and comprised persons on pay roles of India Cements Ltd whose promoter is against Mr. Srinivasan. The internal Auditors of BCCI are also internal Auditors of India Cement. The external Auditors work through him and his office alone. The BCCI Legal counsel are also appointed by him and are also has personal legal Counsel and those of his Companies. All Employees in BCCI are directly reporting to him.

48. All payments made by BCCI to CSA were transferred to a dedicated bank account of CSA in the name of IPL South Africa; the payments for IPL related expenditure were to be met from this bank account; all ticket revenues were to be deposited into this bank account. This was a scheme devised by the BCCI Secretary with approval of BCCI President. Whether this was in contravention or not of FEMA or any other regulation under it will have to be answered by the BCCI Secretary alone as he is the person responsible for and on behalf of BCCI.
49. CSA opened a bank account in the name of CSA Pty Ltd- IPL SA. BCCI transferred to CSA the sums of money in foreign exchange through its authorised dealer. In turn CSA transferred the sums of money to its own bank account styled Cricket South Africa Pty Ltd - IPL SA. Whether this was in contravention or not of FEMA or any other regulation will have to be answered by the BCCI Secretary alone as he is the person responsible for and on behalf of BCCI.
50. The bills, invoices and other relevant evidence was checked and approved by Secretary BCCI Mr. N. Srinivasan before payments were released by CSA. Besides CSA was entitled to a fee of US\$3,000,000. Thus the total consideration payable to CSA for the services rendered by it to BCCI in conducting IPL-2 was to include expenditure incurred plus a fee of US\$ 3 Million.
51. CSA was to remit the revenue realized by CSA from sale of tickets, and VAT refund. The position regarding pouring rights (amounts accruing from rights fee of sale of beverages in the stadium) was not clarified.
52. It is submitted that the transaction contemplated under the BCCI's contract with CSA was in the nature of a service / trade transaction. The payment of USD 3 million by the BCCI was in respect of the services rendered by the CSA in providing the stadium and allied services for conducting the IPL in South Africa. Payment made to CSA beyond the sum

of USD 3 million was payment towards funding the costs incurred in conducting the tournament.

53. The transaction undertaken by BCCI was a current account transaction as presented to our client and the rest of the members by the Secretary BCCI. The definition of "current account transaction" under Section 2(j) read with Section 5 of FEMA is an inclusive definition and covers within its ambit a BCCI-CSA agreement which was presented to be the case in IPL-2 by Secretary BCCI. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary as he is the person responsible for and on behalf of BCCI.
54. In respect of budgeting of the costs, it is submitted that all arrangements relating to shifting of the tournament to South Africa were done on an emergent basis. Our client was not present when the agreement was signed and therefore, cannot comment as to why the schedule of budgeting was left blank in the agreement.
55. To the knowledge of our client the BCCI paid costs incurred to conduct the tournament. All payments were made by Secretary and Treasurer of the BCCI and our client had no role to play in the same and therefore, can not comment as to whether payments were delayed from BCCI's end and as to whether BCCI borrowed any amount from CSA. All costs incurred by CSA were to be reimbursed by the BCCI. The understanding our client had was that the said account was always to be operated by CSA but all payments into that account or out of that account were controlled by BCCI and only IF AUTHORISED by BCCI Secretary N Srinivasan could CSA make any payments. BCCI if it wanted any payments to be done from the account would need to go to N Srinivasan for the same. If Mr Srinivasan approved then he would instruct Prasanna Kannan his appointee to go ahead and get the same done by CSA. Similarly all payments paid by CSA on behalf of any team, or if any advances to any IPL Teams were required to be made the Teams would make a request to Prasanna Kanan, who then would take approval directly from BCCI Secretary and then instruct CSA to either advance in cash, bank transfer or by Cheque the same. CSA on its own was not allowed to make any payments to ANYBODY, as the monies belonged to the BCCI. CSA did not at any time treat the said account as their own neither did they treat the tournament IPL 2 as their own. It was always a BCCI tournament and CSA was just a service provider for facilities and manpower for which it was paid. BCCI all along maintained IPL 2 to be there tournament and all costs and revenues belonged to BCCI alone. If BCCI has contravened any FEMA regulations then the BCCI Secretary is responsible as he alone was required to get all statutory and regulatory approvals. Our client was never involved nor had the authority to do the same

and these matters did not fall within the duties allocated to him. For further evidence that this was truly a BCCI event please look at all coverage in Media and elsewhere at that time. In fact our client is shocked to say the least that BCCI is now portraying IPL 2 as a CSA tournament. Our client states that such a stand is false to the knowledge of BCCI office bearers and reiterates that IPL 2 has always been a BCCI Tournament. All intellectual rights vests with BCCI. CSA was merely provider of some of the services BCCI needed and for which we paid them a fees.

56. The Schedule III of the Foreign Exchange Management (Current Account Transaction) Rules, 2000 prescribe the areas of operation where on a withdrawal of foreign exchange the prior permission of the Reserve Bank of India is a pre-condition Further whether the decided route chosen by the BCCI Secretary contrary to the Working committee Resolution passed on 23 May 2010 – authorizing him to apply to RBI for approval to open a BCCI Bank account in South Africa to conduct the IPL or to go with the route he chose that is to make an agreement with CSA and for CSA to open a Bank Account and operate the same for IPL as if it were a BCCI account and BCCI approves all payments made from such an account - was the right and FEMA compliant way for BCCI to have adopted is something only the Secretary will be able to answer as he was the sole deciding authority in this case. - -

57. The proviso to Section 5 of FEMA enjoins upon the Central Government (in consultation with the Reserve Bank of India) such discretion as to impose restrictions on the nature of transactions contemplated under the said provisions. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary as he is the person responsible for and on behalf of BCCI.

AGREEMENT BETWEEN BCCI AND CSA

58. The CSA was to be paid a fee of US\$3,000,000 for providing facilities including stadiums for conducting the tournament. They were also to be funded for the costs incurred in the conducting of the tournament. All the expenditure was pre-approved and pre-authorised by BCCI. The nature of contract between BCCI and CSA was on a principal to a principal basis. The vendors, contractors and suppliers were selected and appointed by the BCCI alone. However, since they had to be paid in terms of the agreement executed by the Secretary, BCCI through CSA, therefore, all bills, invoices, etc. were raised by these vendors, suppliers, agents, etc. on IPL – SA c/o CSA Pty Ltd. It is submitted that IPL in terms of the logistic exercise is the biggest tournament of its kind. Since BCCI knew its requirements, it selected the vendors, suppliers, agents etc. solely and at times some

vendors who had prior experience with CSA were suggested by CSA but since payments were to be made by CSA the vendor contracts were executed on behalf of CSA on specific and clear instructions of BCCI. All contracts were negotiated by BCCI employees reporting to Mr N Srinivasan. CSA had nothing to do with the contracts except to sign them as instructed by the BCCI Secretary. The execution of all such agreements was with the consent of the President BCCI Mr. Shashank Manohar, Secretary BCCI Mr. N. Srinivasan and Treasurer, BCCI Mr. M.P. Pandove. In fact, the Governing Council of IPL in its meeting dated 11.8.2009 approved all such vendor contracts. Copy of the minutes of meeting dated 11.8.2009 is annexed and marked as **Annexure-H**.

59. It is submitted that the BCCI has been charged with contravention of Section 3(b) of the Act, on account of making payment to or for the credit of any person resident outside India. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary as he is the person responsible for and on behalf of BCCI.

60. The BCCI has also been charged with contravention of Section 4 of the Act. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary as he is the person responsible for and on behalf of BCCI.

Parawise Comments

61. All statements made in the Complaint, which are inconsistent with the statements made hereinabove are incorrect and expressly denied. Without prejudice to the generality of the foregoing, the following statements are in particular denied: -

(1) Paragraph 1.1 cannot be replied to at this juncture, as the information, material documents referred therein have not been supplied to our client.

(2) Paragraph 1.2 to the effect that the status of BCCI as the Governing Body for the Sport of Cricket is on the strength of its affiliation to the ICC is incorrect inasmuch as BCCI is the apex cricket body regulating the sport of cricket in India and as a consequence, BCCI is a member of ICC.

(3) That in respect of paragraph no.1.3 it is submitted that our client was appointed of the Chairman and Commissioner of the Governing Council of IPL and not as Commissioner, IPL only.

(4) The contents of paragraph 1.4 are correct.

- (5) That the contents of paragraph 1.5 is correct
- (6) That in response to paragraph no.1.6, it is submitted that our client is not aware of any other investigation relating to conduct of IPL-2 Tournament pending with the ED as no complaint or show cause notice in respect of any other matter except the matters for which show cause notices have been issued to him.
- (7) That contents of paragraph 2.1 do not require a reply and are correct.
- (8) The contents of paragraph 2.2 to the effect that the consideration for CSA's services was a fixed fee of \$3,000,000 is not completely correct in as much as the cost of the tournament was also required to be funded by the BCCI. The statement that CSA incorporated a wholly owned subsidiary called IPL (SA) (PTY) Ltd for incurring expenses on behalf of BCCI for IPL matches is also incorrect since CSA did not incorporate any such subsidiary and the expenses were not incurred by CSA rather the expenses of the tournament were incurred by BCCI through CSA.
- (9) The contents of paragraph 2.3 to the effect that no budgeting was done is denied since budgets were prepared subsequently. However, why budgeting was not done in the agreement is not for our client to comment as he was not present when the agreement was signed. This is an issue for BCCI Secretary to answer.
- (10) The contents of paragraph 2.4 that the Agreement was made for services to be rendered by CSA for a consideration of \$3,000,000 is not completely correct as there had to be reimbursement of cost incurred for IPL-2 plus \$3,000,000. Rest of the statement is correct.
- (11) In respect of the contents of paragraph 2.5 it is stated that remittances made by BCCI to CSA or payments received by BCCI after 24.4.2010 are not within the knowledge of our Client as he was suspended from his positions in BCCI on that day. However our client submits that the period of 90 days to repatriate the revenues from sale of tickets the VAT refund to India and pouring rights would commence from the moment the said monies have come into the hands of the BCCI. Further the steps to repatriate the revenue from Cricket South Africa was the responsibility of the office bearers namely the President BCCI, the Secretary BCCI and the Treasurer BCCI and in regard to this our client had no role whatsoever.

- (12) That our client has no information regarding paragraph 2.6 , as these events are post his suspension from BCCI, and therefore can not give a reply thereto.
- (13) The contents of paragraph 2.7 disclose correct state of affairs in respect of shifting of tournament to South Africa,
- (14) That paragraph no.2.8, itself makes it evident that our client had no role to play between execution of agreement between BCCI and that CSA. In so far as the agreement with IMG Media is concerned, this agreement was entered with approval of BCCI and was ratified by the Governing Council of IPL in its meeting held on 11th August, 2009.
- (15) The contents of paragraph 2.9 disclose correct state of affairs in respect of shifting of tournament to South Africa.
- (16) That in respect of paragraph 2.10, it is submitted that although as originally provided in the letter of the Secretary, BCCI dated 25th March, 2009, the payment needed provisional approval of our client and subsequent final approval of the Secretary, BCCI, however in practice the payments were practically approved only by the Secretary BCCI as Mr. Prasanna Kannan, the CFO of IPL was directly reporting to Shri N. Srinivasan. This is also evident from the email exchanges copies of which have been annexed hereinbefore setting out guidelines for operations in South Africa circulated by N Srinivasan to our Client with approval of the then BCCI President.
- (17) The contents of paragraph 2.11 needs no comment from our client as reconciliation of accounts and obtaining approval of statutory authorities etc. were the role of the Secretary and the Treasurer BCCI.
- (18) The contents of paragraph 2.12 needs no comment from our client as outward remittances was the responsibility of role of the Secretary and the Treasurer BCCI. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary as he is the person responsible for and on behalf of BCCI.
- (19) The contents of paragraph 2.13 it is submitted that our client was not involved in the advices given to AD in respect of remittance made to CSA. Further our client post 24.4.2009 was suspended to BCCI had no knowledge of the payments made by BCCI to CSA or by CSA to BCCI thereafter. Whether this was in contravention or not of FEMA or any Regulation under it will have to be answered by the BCCI

Secretary and BCCI Treasurer as they are the responsible persons for and on behalf of BCCI.

- (20) That in respect of paragraph 2.14, it is submitted that IPL (SA) not a subsidiary of CSA, but was merely an artificial division within CSA without having any separate legal entity. This was done specifically for BCCI at the request of BCCI Secretary. The BCCI Secretary had full albeit indirect Control over the account as CSA had no power under the agreement to use any of the funds without the explicit approval of BCCI through its Secretary.
- (21) That in respect of paragraph 2.15, it is submitted that the statement of Mr. Prasanna Kannan relating to payments to be made from BCCI / IPL is incorrect. Mr Prasanna Kannan was obtaining all payment related approvals directly from Secretary BCCI and our client was merely copied on such mails where approval of payment was sought by Mr Kannan from Mr. N. Srinivasan. For tournaments held in India our client would appoint vendors on the term and conditions set out in their respective contracts. The vendors would then on rates mentioned in the contract raise invoices on BCCI .The invoices would then be verified by Mr Kannan who would then seek approval of Secretary for payment and after such approval send them to the Treasurer's office for payment. In respect of IPL held in South Africa all approval on invoices and payments to be made were given by the Secretary BCCI and the payments were all made after explicit approval of the Secretary BCCI only. The same was copied to our Client. Our Client would have met some vendors to explain what he expected from them in terms of there deliverables for the tournament. If satisfied with their credentials the COO Sunder Raman and Prasanna Kanan would work with them negotiating the contracts and payment terms and finalise the same and then get the same executed after final approval of the Secretary BCCI .At an intermediate level mails in this regard were marked to our client .It was only after approval of the Secretary that the funds were released to Vendors. Verification and noting of compliances from the vendors etc was done by Mr Sundar Raman and Mr Prasanna Kanan who were the only people who were authorised by BCCI Secretary to do the same.
- (22) That in respect of paragraph 2.16, it is submitted that vendors were selected and appointed by BCCI as BCCI knew the logistic requirements of conducting IPL. However, since payment had to be made through CSA under arrangements entered by Secretary, BCCI all bills, invoices, etc. were raised by these vendors, suppliers, agents, etc. IPL – SA c/o CSA Pty Ltd. These were scrutinised and

approved by Secretary BCCI and then paid by CSA through its bank account. The execution of such agreements was with consent of the President BCCI Mr. Shashank Manohar, Secretary BCCI Mr. N. Srinivasan. All these vendor contracts were approved by Governing Council of IPL in its meeting held on 11.08.2009. In respect of payments all approval on invoices and payments to be made were given by the Secretary BCCI and not our client who was merely copied on the emails and the payments were all made after approval of the Secretary BCCI. It has been incorrectly stated by Mr Sundar Raman that he was not aware of the processes for approval of contracts for the tournament. Our client did sign the Ireland Davenport agreement as was presented to him for his signature by Mr Prasana Kanan or Mr Sunder Raman. As per procedure laid down by BCCI Secretary the operational team was required to route various approvals through IPL Chairman. The final approval would be that of BCCI Secretary and our Client states that was taken as no payment could have been released without approval of BCCI Secretary.

- (23) That contents of paragraphs 2.17 2.18, 2.19, 2.20 and 2.21 do not require any comments from our Client.
- (24) That in respect of contents of paragraphs 2.22 and 2.23 it is submitted that all decisions in respect of IPL were result of due deliberations and approval of Governing Council of IPL. The Governing Council had every document presented to them at every meeting and at times the agenda papers ran into hundreds of pages. All items were unanimously approved. All Governing Council members had fiduciary duty to read the Agenda items and related papers which they did. Various luminaries were in the Governing Council. The approved various agenda items exercising free and informed consent. Our Client as well as all the Governing Council Members do sit on various Boards and the objective for having a seat on those Boards is to ensure transparent corporate governance. In IPL Governing Council the members did everything transparently however now it has become a classic case of first consenting and then feigning ignorance. Such members on their own showing are unsuitable to hold any position on any board or committee.
- (25) That in respect of contents of paragraphs 2.24 it is submitted that Mr Manohar as President of BCCI was fully aware of the circumstances of opening of Bank Account by CSA. In fact he had approved the Secretary's letter dated 25th March 2009 wherein the idea of BCCI opening bank account with RBI's approval was

dropped and opening of account by CSA was mooted. This only came to be known to our client post the execution of Agreement. Our client was given an impression that all FEMA compliances have been undertaken, moreover he did not have a role in this matter anyway. The Secretary BCCI in our Client's view should not have decided to go for a route to avoid taking RBI approval for opening a Bank Account.

- (26) That in respect of contents of paragraphs 2.25 and 2.26 it is submitted that no authorisation to transfer money or make payments was given by our Client. All approvals related to payments were given by Secretary BCCI. Further in respect of advice given to AD by Treasurer or in respect of payments made or received post 24.04.2009 our client had no role to play. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary and BCCI Treasurer.
- (27) That in respect of contents of paragraphs 2.27 it is submitted that our Client had no role to play either in request letter sent by BCCI to AD or in respect of filling purpose of payments as per form A2 and these were required to be done by Secretary's or Treasurer's office. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary and BCCI Treasurer.
- (28) That contents of paragraphs 2.28 are denied in the manner stated. Infact our client fully co-operated with the summons and provided all documents as sought by ED and which were in his possession. However he could not personally appear before ED on account the grave security threat to his life which was also confirmed by Mumbai police. Our Client had at various occasions offered to give evidence either by video link or even on a commission at Indian High Commission in UK but this offer was not responded to by ED. Our client had also given reply to the Show cause notice dated 20.09.2010 and requested for early hearing of the same.
- (29) That the contents of paragraph 3 being reproduction of statutory provisions need no reply. However our client craves leave to refer and rely on them for the true purport and meaning thereof.
- (30) That the contents of paragraph 4.1 to 4.4 being reproduction of provisions of BCCI-CSA agreement need no reply. However our client craves leave to refer and rely on them for the true purport and meaning thereof

- (31) The contents of paragraphs 4.5 that IPL – SA (Pty) Ltd was holding foreign Exchange on behalf of BCCI is correct. Our client was under an impression that all FEMA compliances have been undertaken, moreover he did not have a role in this matter anyway. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary
- (32) In respect of the contents of paragraph 4.6 that the remittances were made by BCCI to CSA without disclosing to the authorised dealer that the amount of US\$ 49,862,799.42 remitted to CSA it is stated that the BCCI remitted the money for paying the cost of the tournament and for monies to be paid to franchisees etc. BCCI treated the dedicated account operated by CSA as if its own account. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary. Our client was under an impression that all FEMA compliances have been undertaken, moreover he did not have a role in this matter anyway. The probable contraventions have been brought to our clients notice after the matter was highlighted by your notice. There is no entity called IPL (SA) (Pty) Ltd. The total amount payable to CSA by BCCI was the fixed sum of \$3,000,000 plus the actual costs incurred. Further our client has no knowledge of remittances made on 27.08.2010 as he had been suspended from BCCI on 24.04.2010.
- (33) The contents of paragraph 4.7 that IPL (SA) Pty Ltd was brought into existence by virtue of the Agreement dated 30.03.2009 for the specific purpose of securing receipt of money by BCCI in South Africa through CSA is incorrect and denied. In fact, there is no entity called IPL (SA) Pty Ltd at all. The Agreement only required CSA to open a separate bank account in the name of IPL – SA and did not require that a separate subsidiary be used for this purpose. The entire decision of opening of bank account by CSA for hosting IPL Season 2 was taken by Mr. N. Srinivasan. Our client was not party to the said decision and had nothing to do with it, nor attended any meeting to approve or discuss the same. Our client had no involvement in any authorisation structure relating to operation or control over the bank account and the said matters were being handled by Mr. N. Srinivasan and Mr. M.P. Pandove. The statement that the amounts deposited in this account do not represent any payment due in connection with any trade or service is not something our client can comment upon as he was not party to that decision.
- (34) The contents of paragraph 4.8 are replied in terms that CSA had opened the account in South Africa in pursuance of the agreement dated 30.3.2009. Mr. N.

Srinivasan maintained that there was no requirement of obtaining RBI approval. The decision that BCCI would not open and operate bank account was taken by the Secretary BCCI Mr. N. Srinivasan with approval of the President BCCI Mr. Shashank Manohar. Mr. N. Srinivasan had maintained all along that as the bank account was opened and operated by CSA there was no requirement to obtain RBI approval. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary and Treasurer as it was a matter in which our client had no role as this was in the domain of Secretary and Treasurer BCCI.

- (35) Facts in paragraph 4.9 proceed on the assumption that the CSA was entitled only to a fixed fee of US\$ 3,000,000. The fact is CSA was only to be paid a fees of USD 3,000,000.00 as a Facilitator for providing their Stadiums and infrastructure etc. But balance money was paid to the account of CSA to pay for services BCCI needed for its tournament. Whether this was in contravention or not of FEMA or regulation will have to be answered by the BCCI Secretary who devised this mechanism. Our client in any case had no say on these matters as these were not part of his responsibilities.
- (36) The contents of paragraph 4.10 that CSA incorporated a wholly owned subsidiary called IPL (SA) (Pty) Ltd are denied. The agreement only required CSA to maintain a separate bank account and CSA opened a bank account with Standard Bank of South Africa in the name of CSA Pty Ltd- IPL SA and it was operated by CSA. No subsidiary called IPL (SA) (Pty) Ltd was ever incorporated to our Client's knowledge. If there is a subsidiary than best person who can answer that is Mr N Srinivasan the then Secretary of the Board. Our client submits that the account opened by CSA was specifically for use of BCCI for its tournament and was done as per the agreement with CSA by BCCI Secretary. Whether this was in contravention or not of FEMA or any regulation will have to be answered by the BCCI Secretary who devised this mechanism. Our client in any case had no say on these matters as these were not part of his responsibilities.
- (37) The contents of paragraph 4.11 are denied as far IPL (SA) Pty Ltd being created as a vehicle. There is no entity called IPL (SA) Pty Ltd. Our client had no control over credits and debits of the bank account opened in South Africa. These issues were being handled by Mr. N. Srinivasan and Mr. M.P. Pandove. The use of a designated bank account was for ease of accounting and monitoring of

expenditure as it was defacto a BCCI Account. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary who devised this mechanism. Our client in any case had no say on these matters as these were not part of his responsibilities.

- (38) That the contents of paragraph 4.12 are not admitted. In fact bills were solely approved by the Secretary BCCI and our Client was merely copied on such mails. Bills or agreements may have been routed through our Client. But they still needed final approval from BCCI Secretary. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary as all statutory compliances was the responsibility of the BCCI Secretary.
- (39) The contents of paragraph 4.13 are correct. Our client was not involved in any monetary transaction or operation of the bank account in South Africa and these issues were being handled by Mr. N. Srinivasan and Mr. M.P. Pandove. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary and Treasurer.
- (40) That the contents of para 4.14 are not completely correct. It is submitted that vendors were selected and appointed by BCCI, however, the vendor contracts were signed on behalf of IPL (SA) C/o Cricket South Africa. It is submitted that these agreements were signed with consent of the Secretary BCCI. In fact it is on the basis of these agreements that amounts were approved to be disbursed by the Secretary BCCI. It is submitted that there was virtually not much time to organise a tournament like IPL in South Africa. BCCI had to ensure that Vendors met the requirement of IPL as well as for the purpose that the costs are controlled. The vendor agreements were entered by BCCI in the name of CSA. The invoices raised by these vendors were verified by Mr Kannan CFO IPL and duly approved by Secretary, BCCI and thereafter the same were paid by CSA. All of these agreements were ratified in the Governing Council meeting of IPL dated 11th August, 2009. The Bank account operated by CSA was solely for benefit of BCCI and CSA was just administrating the same. All contracts needed to be finally approved by BCCI Secretary. The tournament was a BCCI tournament on all accounts. The secretary BCCI was to get all requisite approvals as mandated by the working committee and he should have chosen the route of opening BCCI bank account after obtaining RBI approval but for reason, which our client does not know he chose to operate through CSA bank account. There was never a

possibility that CSA could execute an agreement, appoint a vendor or make any payment to anyone without the explicit approval of the Secretary BCCI. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary as the same was the responsibility of the BCCI Secretary. Thus for all effect and purposes it was a BCCI account operated by BCCI.

- (41) The contents of paragraph 4.15 that the obligation of CSA did not extend beyond providing stadia and that BCCI was not permitted to remit to CSA in excess of US\$ 3,000,000 is incorrect. The remittances were towards actually incurred costs, based on actual delivery of services. Whether this was in contravention or not of FEMA or any other regulation will have to be answered by the BCCI Secretary
- (42) The contents of paragraph 4.16 as stated by you may be correct in hind sight. But our client had no role to play in that.. CSA did not open a subsidiary but only created a division of CSA. Whether this was in contravention or not of FEMA or any other regulation will have to be answered by the BCCI Secretary. Further whether the decided route chosen by the BCCI Secretary contrary to the Working committee Resolution passed on 23 May 2010 – authorizing him to apply to RBI for approval to open a BCCI Bank account in South Africa to conduct the IPL or to go with the route he chose that is to make an agreement with CSA and they open a Bank Account and operate the same for IPL as if a BCCI account and BCCI approves all payments made from such an account - was the FEMA compliant way for BCCI to have adopted is something only he will be able to answer as he was the sole deciding authority in this case.
- (43) The contents of paragraph 4.17 that the agreement was to remain in force only until 24th May 2009 and that BCCI continued to remit money after 24.05.2009 and therefore the agreement dated 30.03.2009 was not a genuine trade or service agreement as stated by you may be correct in hind sight. But our client had no role to play in that. The services in relation to IPL – 2 were to come to an end on 24.05.2009 when the tournament was scheduled to end but that does not preclude CSA getting payment. CSA had a right to receive cost incurred besides fee of US Dollars 3 million and the right to receive such sum did not get defeated by the conclusion of the term of the contract. It is denied that the BCCI-CSA Agreement was a sham or a device. It was an agreement that was negotiated by BCCI Secretary in his wisdom. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary.

- (44) The contents of paragraph 4.18 that staging IPL outside was never a normal activity of BCCI, is incorrect as BCCI had staged tournament in Abu Dhabi in the year 2006. Further it has staged matches in Malaysia, Ireland, Scotland and Canada amongst other countries. Whether permission was required /taken for the same or not again needs to be asked of the Secretary of the BCCI as he alone is required to obtain all statutory approvals if needed. The tournaments in Abu Dhabi, Malaysia, Ireland and Scotland in the Years 2006-7 were also conducted by BCCI. Here again the Secretary of BCCI at that time would have made or taken all approvals that were needed to conduct the tournament. Our Clients responsibility was to ensure the logistic part of organising the tournament. All contracts with the Governing Bodies of those Countries – were dealt by the then Secretary or Treasurer of the BCCI. The same was the responsibility of the BCCI Secretary or Treasurer at that time. Our client believes that the BCCI would have been following the same procedure as it did with CSA during IPL 2. Copies of accounts and payments for these can be available at BCCI Offices.
- (45) That in respect of contents of paragraph 4.19 it is submitted that though the BCCI in its Working Committee Meeting dated 22.3.2009 decided to open a bank account in India after RBI approval, however Mr. N. Srinivasan who had earlier been Treasurer BCCI and was Secretary BCCI and was incharge of not only drafting of proper resolution in this regard, but also of obtaining approvals chose to execute agreement with CSA on different terms. Further whether the decided route chosen by the BCCI Secretary contrary to the Working committee Resolution passed on 23 may 2010 – authorizing him to apply to RBI for approval to open a BCCI Bank account in South Africa to conduct the IPL or to go with the route he chose that is to make an agreement with CSA and CSA to open a Bank Account and operate the same for IPL as if a BCCI account and BCCI approves all payments made from such an account - was the lawful way for BCCI to have adopted is something only he will be able to answer as he was the sole deciding authority in this case. Whether this was in contravention or not of FEMA or any other regulation under it will have to be answered by the BCCI Secretary.. In any case our client had no say or role in matters relating to FEMA compliances within the BCCI.
- (46) The contents of paragraph 4.20 are denied in the manner stated. Our client had no role to play as far as the remittances to CSA were concerned. But the Agreement contemplated that remittances would be made by BCCI to CSA. Moreover post 24.4.2009 our Client had no knowledge of any remittance made as

he was suspended from BCCI. Further our Client submits that remittances were made to CSA's account more than the amount mentioned in the agreement as BCCI needed the amounts to conduct IPL and pay for other services and further to advance monies to Teams which BCCI would have deducted from their payments post the tournament. The FEMA compliances regarding the same was the responsibility of the BCCI Secretary, and if they have been contravened the Secretary BCCI has to answer for them.

- (47) The contents of paragraph 4.21 are incorrect. These remittances to CSA were made in accordance with a contract with another national sports body. All the costs are supported by adequate documentary evidence that were scrutinised by Mr Prasanna Kannan and approved by Mr N. Srinivasan. The statement that from the bank account of IPL (SA) (Pty) Ltd BCCI made payments to various parties in South Africa is denied though BCCI did approve such payments. In fact all payments were made by CSA, which was operating the bank account on behalf of and for BCCI. The vendors were selected by BCCI and appointed on behalf of CSA for BCCI. All invoices by vendors were raised on CSA. That further transfer of funds by CSA to its own bank account styled CSA Pty Ltd- IPL SA can by no stretch of imagination be said to be a borrowing of BCCI from CSA. Further all FEMA compliances were the responsibility of the BCCI Secretary, and if there is any contravention he is answerable for the same.
- (48) That in respect of paragraph No.4.22, it is submitted that the vendors were selected by BCCI and appointed by BCCI on behalf of CSA. The vendors raised their invoices on CSA. BCCI would check the invoices and payments would be released only after the invoices were scrutinized by Shri Prasanna Kannan and thereafter approved by Shri N. Srinivasan. Our client was merely marked on the emails seeking approval of the payments sent to Mr N Srinivasan.
- (49) That with regard to paragraph 4.23 to 4.25 of the complaint, it is submitted that on 24.4.2010 our client was suspended from his position as Chairman of IPL and therefore, has no knowledge of the position accruing post that date and therefore, cannot comment on the contents of para 4.23 to 4.25.
- (50) The contents of paragraph 4.26 that there was no co-relation between the amounts remitted to CSA and the services rendered by the CSA is something which only Secretary BCCI and Treasurer BCCI can comment on . The statement that there was no agreement by which BCCI was entitled to remit the amounts

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and that BCCI bypassed the norms of banking and avoided the regulatory mechanism under FEMA is something our Client cannot comment on as this fell outside his area of his responsibility and duties. The same can be only answered by the Secretary BCCI who is SOLELY responsible for getting such approvals if required. This is clearly Laid down in the BCCI Constitution.

- (51) The contents of paragraph 4.27 being the reproduction of notification dated 3.5.2000 needs no reply. However our client craves leave to refer and rely the same for the true purport and meaning thereof.
- (52) The contents of paragraph 4.28 need no comments from our Client. Whether this is correct or not is something our client cannot comment as it was a matter that needed no input from him, and this was in the domain of Secretary and Treasurer BCCI.
- (53) The conclusions in paragraph 4.29 are incorrect:
- a) It is incorrect to state that conducting a tournament outside India is not a regular activity of BCCI since BCCI has conducted such tournaments in the past. It would also be incorrect to impugn the genuineness of transaction.
 - b) It is correct to state that CSA was a facilitator with a fixed fee of US\$ 3,000,000/- but over and above that it was entitled to receive any payments from BCCI apart from the fixed fee of US\$ 3,000,000. In fact the cost of the tournament was also required to be funded by BCCI to CSA.
 - c) It is denied that by the Agreement, the BCCI created a wholly artificial scheme to transfer foreign exchange from India to an account under the absolute control of BCCI with a view to avoid FEMA. This was never told to our Client to be the case. But if this is the case then only BCCI Secretary can answer this as it was he who designed this scheme.
 - d) In so far as opening of the account is concerned our client had nothing to do with the same. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary as he is the person responsible for and on behalf of BCCI.
 - e) It is denied that the transfer of US\$ 49,862,799.42 to CSA was for the sole purpose of getting the sum of ZAR 290,550,000 credited by CSA to IPL (SA) Pty Ltd and that there was no legal obligation to make such payment. It is further submitted that our client had no say or role in transfer of foreign

exchange. Whether this was in contravention or not of FEMA or any regulation under it will have to be answered by the BCCI Secretary and BCCI Treasurer.

- f) It is submitted that our client had no role or involvement in operation or control over the bank account of IPL (SA) Pty Ltd. The bank account was in the name of CSA Pty Ltd- IPL SA. The account was operated by officials of CSA at the instructions of Secretary and Treasurer BCCI. Further these matters were being exclusively handled by Mr. N. Srinivasan and Mr. M.P. Pandove. Whether this was in contravention or not of FEMA or any other regulation will have to be answered by the BCCI Secretary and BCCI Treasurer.
- g) That the purpose of remittances to AD is disclosed by the Treasurer of the BCCI and our client does not come into picture in these matters. Whether this was in contravention or not of FEMA or regulations thereunder will have to be answered by the BCCI Secretary and BCCI Treasurer.
- h) It is denied that there was no back up agreement or invoices against which remittances were made to CSA and that the remittances were made without any quid pro quo and that the remittances were effected against artificial or non-existent transactions. BCCI received valuable services from CSA in the conduct of IPL 2 and the fee of \$3,000,000 is included in the total consideration paid to CSA.
- i) It is denied that there was no specific transaction against which remittances were made and that BCCI was not to receive any service against these remittances and that the sole purpose of the remittances were to transfer the amounts to the bank account of IPL (SA) Pty Ltd intended to be used by BCCI. The funds were transferred by CSA to its own bank account named CSA Pty Ltd - IPL SA for ease of accounting and the funds in the said account were under CSA's control for the benefit of BCCI to conduct BCCI's tournament in South Africa. Whether this was in contravention or not of FEMA or any regulation under FEMA will have to be answered by the BCCI Secretary and BCCI Treasurer.
- j) It is true that the schedule to the Agreement relating to IPL budget was blank but our client had nothing to do with the same as he was not even present and the agreement was signed.
- k) That the purpose of remittances to AD is disclosed by the Treasurer of the BCCI and our client does not come into picture in these matters. This also

applied to the declarations made to the Authorised Dealer and the A2 Form . The purpose of the remittance was consideration to CSA for services rendered. As pointed out earlier, there was no entity called IPL (SA) PTY Ltd. Whether this was in contravention or not of FEMA will have to be answered by the BCCI Secretary and BCCI Treasurer.

- l) Regarding payment structure it is submitted that Mr. Prasanna Kanan as the Chief Finance Officer of IPL was directly reporting to Mr. N. Srinivasan and he was scrutinising various invoices for payment and sought direct approval of Mr Srinivasan on various invoices and payments to be made while our client was merely copied on such emails. All payments were directly approved by Mr Srinivasan and two tier system of approvals was not followed in practice. Our client had no role in matters concerning interacting with AD which was exclusive domain of the Secretary and Treasurer of BCCI. Whether this was in contravention or not of FEMA or any regulation thereunder will have to be answered by the BCCI Secretary and BCCI Treasurer.

- (54) That with respect to the contents of paragraph 4.30 it is submitted that the remittance of US\$ 10,362,799.42 was made on 27.8.2010 at which time our client had already been suspended from the position of Chairman IPL. Whether this was in contravention or not of FEMA will have to be answered by the BCCI Secretary and BCCI Treasurer.
- (55) The contents of Paragraph 4.31 that the payment to CSA was not towards a current account transaction and that the only purpose of the remittances totalling to \$49,862,799.42 was for transferring funds to the bank account of IPL (SA) (PTY) Ltd is incorrect and denied. The statement that CSA was only entitled to \$3,000,000 under the Agreement is incorrect as CSA was also required to pay from that account cost for conducting the BCCI tournament.
- (56) The contents of paragraph 4.31.1 that the mode of payment was not in accordance with FEMA and was not a current account transaction is something which was in the exclusive domain of BCCI Secretary and Treasurer and our client neither had any role nor any say in these matters.
- (57) That in regard to paragraph 4.31.2 and 4.31.3 it is submitted that the purpose of remittances to AD is disclosed by the Treasurer of the BCCI and our client does not come into picture in these matters. However, it is submitted that the

remittances were made for services of hosting and operating the IPL 2 tournament. Whether this was in contravention or not of FEMA will have to be answered by the BCCI Secretary and BCCI Treasurer.

- (58) The contents of paragraph 4.32 are something our client cannot comment on and needs to be addressed to BCCI Secretary.
- (59) The contents of paragraph 4.33 are something our client cannot comment on and needs to be addressed to BCCI Secretary.
- (60) The contents of paragraph 4.34 are something our client cannot comment on and needs to be addressed to BCCI Secretary.
- (61) That in respect of paragraphs 4.35 and 4.36, it is stated that the said remittance were made by which time our client had already been suspended from BCCI. Further these are matters our client cannot comment on and needs to be addressed to BCCI Secretary.
- (62) The contents of paragraph 4.37 and 4.38 are something our client cannot comment on and needs to be addressed to BCCI Secretary. But yes payments were for BCCI tournament.
- (63) The contents of paragraph 4.39 again relate to remittance of funds by BCCI on 27.8.2010 and remittance by CSA to BCCI on 8.9.2010 and by then our client had already been suspended from BCCI. It is however, necessary to clarify that under para 4.39 (c) the payments were made to third party vendors, service providers in SA by CSA and not by BCCI though with explicit approval of BCCI for BCCI's tournament. It is further submitted that the responsibility of getting remittance of foreign currency back into India is of the Office bearers namely the Secretary and Treasurer BCCI and our client does not come into picture at all. Whether this was in contravention or not of FEMA will have to be answered by the BCCI Secretary and BCCI Treasurer.
- (64) The contents of paragraph 4.40 does not concern our client and needs no comment.
- (65) That in respect of paragraphs 4.41, it is submitted that our client was not involved in remittance made by BCCI to CSA on 27.8.2010 and by CSA to BCCI on 8.9.2010 as he had already been suspended from the BCCI on 24.4.2009. Further if FEMA provisions are violated due to BCCI operating the account through CSA

then only the then BCCI Secretary is answerable and responsible as he had decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved through his Vote, Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be answered by him as he alone without consultation with any Committee decided to go down that route.

(66) The contents of paragraph 4.42 that BCCI is a company within the meaning of section 42 is incorrect and denied in as much as BCCI is a society and it is an unincorporated body and besides, it is not an association of individuals since none of its members are individuals.

Response to Conclusions and Contraventions:

SHOW CAUSE NOTICE NO. T-4/16-B/SDE/R/2011(SCN I)

62. The Complainant in paragraph 5.1 has concluded that BCCI had remitted US\$ 49,862,799.42 (equivalent to Rs. 243,45,30,781) to CSA, a person resident outside India in a manner otherwise than provided in the Act and therefore appears to have contravened section 3(b) of FEMA as set out in paragraph 8(i). However if any violation is done, the same is done by the Secretary BCCI as set out in preceding paragraphs.
63. Para 5.2, 5.3 can be only commented upon by BCCI Secretary. Further if any FEMA provisions are violated due to BCCI operating the account through CSA then those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved through his vote. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.
64. BCCI was forced by circumstances beyond its control to shift IPL – 2 outside India.
65. CSA is a member of ICC and controls the stadiums in South Africa. It would have been impossible for BCCI to have conducted the IPL – 2 in South Africa without CSA's assistance.
66. Our client has no comment to offer on the reason why schedule of budget was left blank of the agreement as he had no role to play in the execution of the said agreement.

67. If there is any contravention of section 3(b) as alleged, then only the BCCI Secretary at that time is answerable and responsible as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved through his Vote.. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

SHOW CAUSE NOTICE NO. T-4/16-B/SDE/R/2011(SCN II)

68. The Complainant has concluded in paragraph 5.1.1 that the payment of ZAR 29,05,50,000 was made by BCCI to the credit of IPL (SA) (Pty) Ltd, a person resident outside India, through CSA in violation of section 3(b) of FEMA and has committed contravention as set out in paragraph 8(ii). CSA had transferred an amount of ZAR 29,05,50,000/- to its own bank account styled CSA Pty Ltd-IPL SA. If FEMA provisions are violated then only the BCCI Secretary at that time is answerable and responsible as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved through his Vote.. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

69. BCCI made payments for services to CSA, who were required by the Agreement to transfer the funds to a separate bank account. CSA transferred ZAR 29,05,50,000 in accordance with the Agreement and incurred the expenditure in conducting IPL – 2 out of such bank account. The payment was neither made to IPL (SA) Pty Ltd nor was the transfer to CSA IPL (PTY) Ltd on behalf of BCCI as alleged in the Complaint. In fact the transfer was between two bank accounts both belonging to CSA. It is correct that CSA operated the account for and to the benefit of BCCI as this was a route adopted by BCCI Secretary. Further FEMA provisions if are violated then only the BCCI Secretary at that time is answerable and responsible as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved through his Vote.. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

70. If there is contravention of section 3(b) as alleged then those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by The working committee on 23.5.2010 which was a decision our client participated and also approved through his Vote.. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

SHOW CAUSE NOTICE NO. T-4/16-B/SDE/R/2011(SCN III)

71. The complainant in paragraph 5.2 if correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by The working committee on 23.5.2010 which was a decision our client participated and also approved through his Vote. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

72. Section 4 of FEMA provides that "save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property outside India".

73. The transfer of USD 49,862,799.42 was made to CSA towards conduct of the IPL-2 tournament. The remittances were made through Authorised Dealer. If any FEMA violations as alleged are correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by The working committee on 23.5.2010 which was a decision our client participated and also approved through his Vote. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

It is the case of the complainant in Paragraph 5.1 the remittance to CSA is a contravention of 3 (b) of FEMA thereby accepting the position that the amount of USD 49,862,799.42 had been transferred to CSA. This is inconsistent with the statement above that the amount transferred constituted to be held, owned and possessed by BCCI. The amount was transferred to CSA for use by BCCI to pay for its vendors through CSA. If any FEMA violations are done by this act then those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of

operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 .

SHOW CAUSE NOTICE NO. : T-4/16-B/SDE/R/2011(SCN IV)

74. The complainant in paragraph 5.3 has concluded that a total amount of US\$ 10,362,799.42 (equivalent to INR 48,56,00,781 was remitted to CSA by BCCI from its EEFC account No. 57027644400 held with State Bank of Travancore and that such remittance was not a permissible debit specified in Para 3 of the Schedule to Regulation of the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations 2000. It is further alleged that the said remittance is not permissible under section 4 read with section 9 of FEMA and further read with Regulation 4 and Para 3 of the Schedule to the said Regulation as set out in Paragraph 8(iv) of the complaint.
75. As submitted earlier, the said remittance was made after the suspension of our client and as such our client had nothing to do with the said remittance. These violations if correct can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by The working committee on 23.5.2010 which was a decision our client participated and also approved through his Vote. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

SHOW CAUSE NOTICE NO. T-4/16-B/SDE/R/2011(SCN V)

76. The complainant in paragraph 5.4 has concluded that BCCI had exclusive control over the bank account opened in the name of IPL (SA) Pty Ltd and that CSA was under a legal obligation to deal with the account only under BCCI's explicit instructions; that consequently BCCI had full custody and control over the funds deposited in the said account; that BCCI had therefore acquired foreign exchange of ZAR 290,550,000/- equivalent to Rs. 2,03,38,500 which was deposited in the said account, thereby contravening the provisions of section 9 of FEMA read with Regulation 3 of Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulation 2000 and section 4 of FEMA as set out in paragraph 8(v) of the complaint. This is correct. Whether this was in contravention or not of FEMA or any other FEM Regulations will have to be answered only by the BCCI Secretary. If any FEMA violations as alleged are correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by The working committee on

23.5.2010 which was a decision our client participated and also approved through his Vote. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

77. As stated earlier, the above bank account belonged to CSA though the account was styled CSA Pty Ltd-IPL SA. The account was operated by officials of CSA and our client had no connection whatsoever with operation of such bank account. Further these issues were being dealt with by Mr. N. Srinivasan and Mr. M.P. Pandove and our client had no say in control/authorisation structure of the bank account. If any FEMA violations as alleged if correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved through his vote. . Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

SHOW CAUSE NOTICE NO. T-4/16-B/SDE/R/2011(SCN VI)

78. The complainant in paragraph 5.5 has concluded that out of the funds deposited in the account of IPL (SA) Pty Ltd, BCCI has paid amounts totalling to ZAR 33,08,83,690.55 (equivalent to Rs. 231,61,85,830) to various parties in South Africa in contravention of section 4 of FEMA as set out in paragraph 8 (vi) of the complaint . If any FEMA violations as alleged are correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved through his vote. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

SHOW CAUSE NOTICE NO. T-4/16-B/SDE/R/2011(SCN VII)

79. The complainant in paragraph 5.6.1 and 5.6.2 has concluded that BCCI had borrowed foreign exchange of US\$ 6,000,143 (equivalent to INR 30,00,07,155) from CSA in contravention of section 6(3)(d) of FEMA read with Regulation 3 and 5 of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulation 2000 as set out in paragraph 8(vii) of the complaint. The allegation is based on the fact that upto

19.05.2009, BCCI had remitted a sum of US\$ 35,500,000 to CSA but during the same period, CSA had transferred ZAR 290,550,000 equivalent to US\$ 41,507,143 to IPL (SA) Pty Ltd. it is alleged that the difference of US\$ 6,000,143 constitutes borrowing by BCCI from CSA. This can only be answered by BCCI Secretary as he operated the account in South Africa. If any FEMA violations as alleged are correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved through his Vote, which further was Unanimously approved by BCCI working Committee. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

80. Section 6(3)(d) only provides that RBI by regulations prohibit or regulate any borrowing or lending in foreign exchange in any form. The account for IPL in CSA was his was an BCCI operated account thru CSA. If any FEMA violations as alleged if correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from -RBI as mandated by The working committee on 23.5.2010 which was a decision our client participated and also approved thru his Vote, which further was Unanimously approved by BCCI working Committee. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

81. Our client had no role or say in transfer of foreign exchange. It is submitted that CSA was required to be funded for the cost of the tournament by the BCCI. This was the responsibility of the Secretary, BCCI and our client had nothing to do with the remittances to be made by BCCI to CSA. Our client therefore, can not comment as to whether there was any borrowing by BCCI. However, the transfer of funds from CSA, a National Sports Federation to its own bank account cannot be said to be a loan to BCCI, for the sole reason that payments from such bank account had to be authorised by BCCI. If any FEMA violations as alleged if correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by The working committee on 23.5.2010 which was a decision our client participated and also approved thru his Vote, which further was Unanimously approved by BCCI working Committee. Any deviation from that can only be attributed to BCCI Secretary and the

motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

SHOW CAUSE NOTICE NO. T-4/16-B/SDE/R/2011(SCN VIII)

82. The complainant in paragraph 5.6.3 has erroneously concluded that BCCI had lent foreign exchange equivalent to Rs. 44,15,99,200 to CSA, a person resident outside India, without the permission of RBI and thereby contravened the provisions of section 6(3)(d) of FEMA read with Regulation 3 and 5 of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations 2000 as set out in paragraph 8 (viii) of the Complaint. It was a defacto BCCI account run by CSA. If any FEMA violations as alleged if correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by The working committee on 23.5.2010 which was a decision our client participated and also approved thru his Vote, which further was Unanimously approved by BCCI working Committee. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

83. The purported basis for this allegation (para 4.25 of the Complaint) is that BCCI remitted US\$ 10,362,799.42 (equivalent to Rs. 48,56,00,781) to CSA on 27.08.2010. As submitted earlier, the said remittance was made after the suspension of our client and as such our client had nothing to do with the said remittance.

SHOW CAUSE NOTICE NO. T-4/16-B/SDE/R/2011(SCN IX)

84. The complainant in paragraph 5.7 has erroneously concluded that BCCI utilised the foreign exchange of ZAR 3,82,85,667 (equivalent to INR 26,79,99,239/-) being income from the sale of tickets and thus committed an act which had the effect of securing that the said foreign exchange ceased in whole to be receivable in India; that consequently BCCI had contravened provisions of section 8 and 10(6) of FEMA read with Clause (b) of Regulation 3 of the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations 2000 as set out in paragraph 8(ix) of the complaint.

85. The proceeds from the sale of tickets were deposited by CSA in its own bank account as stipulated in the contract and were mingled with other funds related to IPL – 2. The payments were also made by CSA to meet expenses on IPL 2. This was done as it was a defacto BCCI account and CSA operated the same under direct instructions of BCCI

Secretary and as such Our Client is of the View that in actuality BCCI Secretary did not order the amount to be bought back separately as He would have to send more monies to cover costs and used it to offset costs in South Africa. If any FEMA violations as alleged if correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by The working committee on 23.5.2010 which was a decision our client participated and also approved thru his Vote, which further was Unanimously approved by BCCI working Committee. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

86. It is submitted that the responsibility of bringing in the remittance of foreign exchange was upon that Secretary of the BCCI are not of our client. If any FEMA violations as alleged if correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

SHOW CAUSE NOTICE NO. T-4/16-B/SDE/R/2011(SCN X)

87. The complainant in paragraph 5.8 has concluded that BCCI did not take reasonable steps to repatriate to India till date an amount of ZAR 9,31,567 (equivalent to Rs. 66,54,050) being revenue from 'Pouring Rights' within ninety days thereby contravening Section 8 of FEMA read with Clause (b) of Regulation 3 of the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations 2000 as set out in paragraph 8(x) of the complaint .

88. It is submitted that the responsibility of bringing in the remittance of foreign exchange was upon the Secretary of the BCCI are not of our client. If any FEMA violations as alleged if correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010

89. However, 'Pouring Rights' (that is the amount from beverage companies for rights to sell beverages in the stadiums) by convention and established practice in South Africa, belonged to the stadium owners. The Agreement is also not explicit on this point.

Because of this the amount towards Pouring Rights couldn't come in hands of BCCI and therefore could not be repatriated to India.

SHOW CAUSE NOTICE NO. T-4/16-B/SDE/R/2011(SCN XI)

90. The complainant in paragraph 5.9 has concluded that BCCI had credited the amount of US\$ 8,934,040 (equivalent to INR 41,72,19,671.70) received from CSA to its EEFC Account No. 57027644400 with State Bank of Travancore, which was not a permissible credit; that the said amount was shown as repatriation of sale of tickets and VAT refund; that the amount was transferred back to India out of the remittance of US\$ 10,362,799.42 made by BCCI to CSA on 27.08.2010 that consequently it was not foreign exchange earnings of BCCI; that it consequently is not a permissible credit to the EEFC Account; that BCCI had thus contravened section 4 and 9 of FEMA read with Regulation 3 and 4 read with para 1(2) and para 2 of the Schedule to Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulation 2000 as set out in paragraph 8(xi) of the complaint.

91. As submitted earlier, the said remittances were made after the suspension of our client and as such our client had nothing to do with the said remittance. But If any FEMA violations as alleged are correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

92. However, it is submitted if BCCI had not collected the sale proceeds of tickets and VAT refund from CSA, it would have contravened FEMA.

93. That conclusions drawn in paragraph 5.10.1, 5.10.2 and 5.10.3 as well as contraventions set out in paragraph 8(xiv) of the Complaint do not pertain to BCCI or our Client.

Vicarious Liability:

94. That the contents of paragraph 6.1 and 6.2 are denied. Section 42 of FEMA has to be strictly construed. BCCI is not a company within the meaning of section 42 in as much as BCCI is a society and it is an unincorporated body and besides, it is not an association of individuals since none of its members are individuals.

95. That the contents of paragraph 6.3 are incorrect and denied. Though the decision to shift the IPL season 2 out of India was taken at the Working Committee meeting of BCCI dated 22.03.2009 all the actions undertaken in respect of conduct of tournament in South Africa were ratified and approved by IPL Governing Council in its meeting dated 11.08.2009. The matters pertaining to South Africa IPL were also discussed in the Annual General Meeting of the BCCI dated 24.09.2009 (Copy annexed and marked as **Annexure I**) as also in the Finance Committee meeting dated 12.08.2009 (Copy annexed and marked as **Annexure J**). The entire reports of Working Committee and Governing Council were also placed in that AGM.
96. That the contents of paragraph 6.4(a) are denied. It is submitted that Section 42(1) of FEMA in which the show cause notice has been issued to our client has no application qua him. It is well settled that Section 42(1) is a highly penal Section as it makes the person who was in-charge and responsible to the company for the conduct of its business vicariously liable for an offence committed by the company. Therefore in accordance with the well-settled principles of interpretation this section should be construed strictly. In the context a person in-charge must mean the person should be in overall control of the day to day business of the company or firm. It is submitted that our client at the relevant time was one of the Vice President of the BCCI as well as the Chairman and Commissioner of IPL which was a sub-committee of the BCCI. He was not an office bearer of BCCI. He was not the person responsible for conduct of business of BCCI nor in-charge thereof. He had no financial powers. He was not involved in making of any remittances a foreign exchange or repatriation thereof. The payment relating to foreign exchange had been made by the Treasurer, BCCI and cleared by Secretary, BCCI. Our Client did not make any payments in respect of South Africa IPL. At no point of time had he any control over finances of BCCI. If any FEMA violations as alleged if correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved through his vote. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.
97. He was also not involved in issuing instructions or giving payment advice to AD. In these circumstances Section 42(1) has no application to him. The provisions of Section 42 of FEMA do not make any person liable for consequences. It is only that person who was in-charge and responsible for the business of the whole organization who can be made

liable u/s 42(1). If any FEMA violations as alleged if correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

TRANSACTIONS WERE CONDUCTED BONA FIDE

98. Our client was under the bonafide belief that Mr N Srinivasan who had been the treasurer of BCCI, currently then secretary of BCCI, President of TNCA and Managing Director Of India Cements and the person solely authorised by BCCI constitution to liaise with Government agencies and take appropriate approvals etc was knowing what he was doing. The copy of BCCI constitution is annexed and marked as **ANNEXURE K**. If any FEMA violations as alleged are correct than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.
99. Even, the Hon'ble Supreme Court in Hindustan Steel Limited v State of Orissa 1972 83 ITR 27 had observed that penalties are leviable only for contumacious conduct or when a person does not act bona fide.
100. In the present case, there is no allegation in the Complaint that were willfull contravention of FEMA or that there was reckless disregard for law or that foreign exchange transaction were conducted outside normal banking channels. On the contrary, the transaction was between two national boards and all relevant documents were furnished to the Authorised Dealer. In these circumstances, we submit that no penalty is leviable on our client. If any penalty is to be levied than it cannot be on the organisation but on the individual who decided to take the route he did (in this case the then Secretary BCCI), contrary to resolutions passed at the working committee of BCCI on 23.5.2010. The working committee rightly advised BCCI secretary to take RBI approval to open and operate a bank account in South Africa, to which and to only that very approval is our client a party to and none other.

Request for Personal Hearing.

101. We also request you to grant us a personal hearing.

102. It is clear from a bare reading of the reply that no ground is made out for holding any substantive inquiry against our client and the proceedings against him are required to be dropped. If any FEMA violations at all are made out than those can only be answered by BCCI Secretary at that time as he was the sole person who decided to adopt the route of operating in this manner instead of taking approval from RBI as mandated by the working committee on 23.5.2010 which was a decision our client participated and also approved. Any deviation from that can only be attributed to BCCI Secretary and the motives for the same can only be asked from him as he alone without consultation of any Committee decided to go down that route.

Following is the Index of Annexures attached with this letter:

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| 3. | Annexure C - Email dated 25 th March, 2009 sent by Shri N. Srinivasan to our client alongwith the annexed letter dated 24 th March, 2009 | 70-72 |
| 4. | Annexure D - Copy of email dated 10 th April, 2009 sent by Mr. Prasanna Kannan to Mr. N. Srinivasan | 73-77 |
| 5. | Annexure E - Copy of two such emails dated 24 th April, 2009 sent by Mr. Prasanna Kanan to Mr. N. Srinivasan and approval of Mr. N. Srinivasan thereto | 78-81 |
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Yours truly,
For Wadia Ghandy & Co.


Partner

GG/SL