



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

S.Arumugam
Assistant General Manager

Date: January 11, 2019
CA No 4785 / 2018

In the matter of

U Square Lifescience Pvt Ltd
A-1101,1102 and 1103, Solitaire Corporate Park,
Beside Divya Bhaskar Press, S.G.Highway, Sarkhej
Ahmedbad 380051

(Applicant)

In exercise of the powers conferred under section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/Orders made there under, I pass the following

Order

The applicant has filed the application dated September 15, 2018 (received at the Reserve Bank on September 17, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) Delay in submission of Form ODI Part I (effecting remittances without obtaining UIN) (ii) Delay in submission of Annual Performance Reports (APRs) within the stipulated time period (iii) Delay in



receipt of share certificates and (iv) Undertaking ODI without the submission of APR. The above amount to the contravention of Regulations 6(2) (vi), 15(iii), 15(i) and 6 (2)(iv) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).

2. The relevant facts are as under: The applicant, U Square Lifescience Private Limited (CIN No. U24232GJ2007PTC050857) is a company incorporated on May 17, 2007 under Companies Act 1956. The applicant company is engaged in sales and distribution of Pharmaceutical products. The applicant Indian Party (IP) effected a remittance of USD 4,040 on May 20, 2013 towards pre incorporation expenses out of which USD 1,000(INR 56,000) was utilized towards equity and balance USD 3,040 was utilized as pre incorporation expenses. However, the IP later declared it (USD 1,000) as a part of ODI and Form ODI Part I for the same was submitted to the AD bank on November 17, 2017 which in turn was reported to RBI on February 01, 2018. The delay in reporting of Form ODI is not in compliance with Regulation 6 (2) (vi) of Notification. No. FEMA. 120/RB-2004 dated July 07, 2004. The IP has effected two more remittances of USD 4,000(INR 228000) on May 27, 2014 and USD 2, 500(INR 150275) on August 12, 2014. The two remittances were effected without the submission of APRs for the previous year (2013), thus contravening the Regulation 6(2)(iv) of the Notification *ibid*. Further the Share Certificates for the remittances were received with a delay beyond six months as prescribed under Regulation 15(i) of the Notification *ibid*. The Share Certificate for the remittance of USD 1,000 was received on November 17, 2017 and for the other two remittances (USD 4,000 and USD 2,500) on February 26, 2016. The IP has filed APRs for the years 2013, 2014, 2015 and 2016 on January 09, 2018 with a delay beyond the prescribed time frame thereby contravening Regulation 15(iii) of the Notification *ibid*.

3. (i) In terms of Regulation 6(2)(iv) an IP may make direct investment in a JV/WOS outside India provided It has submitted Annual Performance Report in



respect of all its overseas investments in the format given in Part III of the Form ODI as prescribed by the Reserve Bank from time to time.

(ii) In terms of Regulation 6(2)(vi) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, Overseas Direct Investment is permitted in certain cases provided the Indian Party submits Part I of the Form ODI, duly completed, to the designated branch of an authorized dealer.

(iii) Further, in terms of Regulation 15(i), “An Indian Party which has acquired foreign security in terms of the Regulation in Part I, shall receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months.....”.

(iv) Further, Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, states that, “An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India.....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FED.CO.CEFA/3101/15.20.67/2018-19 dated November 27, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on December 05, 2018 during which Mr. Manoj Kumar Singh, Vice President U Square Lifescience Pvt. Ltd, represented the applicant. The representative, of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations and was unintentional. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulations 6(2)(iv), 6(2) (vi),15(i) and 15(iii) Notification No.FEMA.120/2004-RB. The total amount and period of contraventions are as under:



- (i) For Regulation 6(2) (iv) the amount of contravention was Rs 3,78,275 and the period of contravention was one year
- (ii) For Regulation 6(2) (vi) the amount of contravention was Rs 56,000 and the period of contravention was 57 months
- (iii) For regulation 15 (i) the amount of contravention was Rs 4,34,275 and the period of contravention ranges from one year to four years
- (iv) For Regulation 15(iii) there were three APRs submitted with a delay beyond the stipulated period as indicated above in para 2.

6. It has been declared in the compounding application dated September 15, 2018, that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the Compounding Application dated September 15, 2018, that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application and has, in this regard, not informed of initiation of any such enquiry/investigation/adjudication proceedings against it/him/her thereafter. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made by the applicant and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and/or incorrect.

7. In terms of section 13 of the FEMA, any person contravening any provision of the Act shall be liable to a penalty up to thrice the sum involved in such contravention upon adjudication. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs.1,65,191/- (Rupees One lakh sixty five thousand one hundred and ninety one only), will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulations 6(2)(iv), 6(2)(vi),15(i) and



15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 1,65,191/- (Rupees One lakh sixty five thousand one hundred and ninety one only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at 'Mumbai' within a period of 15 days from the date of this order. In case of failure to deposit the compounded amount within the above mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 3, 2000 shall apply.

The application is disposed accordingly.

Dated this the eleventh day of January, 2019

Sd/-

(S Arumugam)
Assistant General Manager