



In the

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

Present

R.K. Moolchandani
Chief General Manager

Date: May 17, 2019
CA No 4827 / 2018

In the matter of

Torrent Pharmaceuticals Limited
Torrent House, Near Dinesh Hall
Ashram Road, Ahmedabad - 380009

(Applicant)

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

Order

The applicant has filed the application dated November 22, 2018 (received in the Reserve Bank on November 28, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant has sought to be compounded for (i) non-submission of Annual Performance Reports (APR) within the stipulated time period and (ii) disinvestment with write-off and without submission of all the APRs. The above amount to the contravention of Regulations 15(iii) and 16(1)(v) 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 company, namely, Torrent Pharmaceuticals Limited (CIN L24230GJ1972PLC002126), was incorporated under the Companies Act, 1956, on July 15, 1972. The applicant company is engaged in the business of manufacturing, buying, selling, distributing, exporting, importing and dealing in all kinds of medicines, medicine preparations and drugs.

On June 01, 2001, the applicant company invested in an overseas Joint Venture (JV), namely, Charter Therapeutics Ltd., to the extent of GBP 250,000 (INR 1,68,05,000), by way of capitalization of services rendered. In December 2003, the applicant informed RBI about the weak financial position of the overseas JV and its decision to wind up its operations. In July 2010, a liquidator was appointed to conduct winding up of the overseas JV, and the liquidation was taken on record in the meeting dated February 18, 2013. However, APRs for the years 2002 to 2013 were not submitted which was in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB. The abovementioned liquidation/disinvestment by the applicant was carried out without the submission of APRs by the applicant for the years 2002 to 2013, in contravention of Regulation 16(1)(v) of Notification No. FEMA 120/2004-RB. The disinvestment was taken on record on 09.04.2018.

3. In terms of Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, “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.....”.

Further, Regulation 16(1)(v) of the same Notification as mentioned above, allows for disinvestment with write off provided, “the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank”.



4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/6393/15.20.67/2018-19 dated April 26, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on May 10, 2019 during which Shri Sudhir Menon, Chief Financial Officer and Ms. Sapan Singhani, Assistant General Manager (Finance) of the applicant company, represented the applicants. The representatives submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and requested that a lenient view may be taken in the matter.

It has been declared in the compounding application dated November 22, 2019, that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has also been declared by the applicant that they were under DRI investigation. RBI, vide letter reference No. FE.CO.CEFA/3667/15.20.67/2018-19 dated 21.12.2018 wrote to Directorate of Enforcement (DoE) seeking a No – objection Certificate (NOC) for compounding. DoE, vide their letter reference No. F.No.RBI/SDE/WR/B-212/2018/3865 dated 07.02.2019 responded that as per their available record, no investigation as on date was being conducted against the applicant company. Accordingly, the above contraventions which are being compounded in this Order are keeping in mind the response received from DoE and subject to the veracity of the above declarations made by the applicant. This Order is also 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.

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 15(iii) and 16(1)(v) of Notification No.FEMA.120/2004-RB dated July 7, 2004,



as amended from time to time. The amount and period of contravention is as follows:

(i) Regulation 15(iii) – As given in Para 2 above.

(iv) Regulation 16(1)(v) - Amount of contravention – Rs. 1,68,05,000/- and period of contravention is five years and three months approximately.

6. 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, it stands to reason that payment of an amount of Rs. 2,96,038/- (Rupees two lakh ninety six thousand and thirty eight only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulations 15(iii) and 16(1)(v) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 2,96,038/- (Rupees two lakh ninety six thousand and thirty eight 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 17th day of May, 2019

Sd/-
(R.K. Moolchandani)
Chief General Manager