



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, NCOB
Shahid Bhagat Singh Marg
Mumbai - 400 001

Present

Ajay Kumar Misra
Chief General Manager

Date: January 29, 2020
CA No 5003/ 2019

In the matter of

Athenese-Dx Pvt. Ltd.
Module No. 407&408, 4th floor, TICEL Bio Park II
No.5, CSIR Road, Taramani,
Chennai – 600 113.

(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 July 17, 2019 (received in the Reserve Bank of India on August 28, 2019), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are: (i) the lender was not recognized under the ECB framework (ii) drawdown on ECB loan before obtaining Loan



Registration Number (LRN) from the Reserve Bank of India (RBI) and (iii) non-compliance with reporting requirements for ECB.

The above were in contravention of Regulation 6(1) of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3 /2000-RB dated May 3, 2000, as amended from time to time (hereinafter referred to as Notification No. FEMA 3 /2000-RB), read with paragraphs 1(iii), 1(xi) and 1(xii) of Schedule I to this Regulation, as amended from time to time.

2. The relevant facts of the case are as under:

The applicant company was incorporated under the Companies Act 1956 (CIN: U85100TN2012PTC084632) in February 24, 2012 and is engaged in the business of exploring novel methods to discover and develop new drugs to treat life threatening diseases like cancer.

The applicant company had borrowed USD 199,940 from its group company, M/s Athenese Inc, USA, to set up a manufacturing facility in India. Since the funds were not sufficient, it had also borrowed from M/s CTK Biotech Inc, USA, an overseas company, which was one of its suppliers, an amount of USD 58,822.82. These loans (in the nature of external commercial borrowing, i.e.ECB) were raised during October 2013- June 2015- without obtaining LRN from RBI. While M/s Athenese Inc, USA - as a foreign equity holder, was a recognized lender; M/s CTK Biotech was not a recognized lender under the extant ECB framework. Also, the reporting requirements under ECB regulations were not complied with.

The company was advised to reverse the loan transaction by repaying the amount due to M/s CTK Biotech Inc. to complete the administrative action. The amount was refunded to M/s CTK Biotech on January 24, 2019 and LRN in respect of ECB from M/s Athenese Inc, USA was obtained on May 23, 2019 and administrative action was thus complete.

The company has contravened the following regulations of FEMA 3 as enumerated below:

Regulation 6(1) read with Schedule I of FEMA 3/2000-RB, dated May 03, 2000:



- (a) Para 1(iii) (recognised lender) of Schedule I– the lender is not a recognised lender (w.r.t to M/s CTK Biotech Inc.)
- (b) Para 1(xi) of (draw-down before obtaining LRN of Schedule I –Draw-down of the loan was made before obtaining Loan Registration Number (LRN), which was not permitted (w.r.t.to Athenese Inc)
- (c) Para 1(xii) (ECB transaction not reported) of Schedule I – the applicant did not meet the prescribed reporting requirements for ECB. (w.r.t.to Athenese Inc)

3. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/3356/15.20.67/2019-20 dated December 31, 2019 for further submission in person and/or producing documents, if any, in support of the application. The applicant chose to forego the option of personal hearing with the Compounding Authority vide their email dated January 14, 2020. The application is, therefore, being considered on the basis of the averments made in the application and the documents submitted.

4. It has been declared in the compounding application dated July 17, 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 in the declaration furnished along with the compounding application 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 been informed of initiation of any such enquiry/investigation/adjudication proceedings against it 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.

5. I have given my careful consideration to the documents on record and submissions made by the applicant. It was observed that the applicant has contravened the provisions of Regulation 6(1) of Notification No. FEMA 3/2000-RB read with Paragraphs 1(iii), 1(xi)



and 1(xii) of Schedule I to this Regulation. The amount and the period of contravention is as follows:

(a) Para 1(iii) (recognised lender) of Schedule I – the lender is not a recognised lender (w.r.t to M/s CTK Biotech Inc.) - Rs 36,63,760/- and the period of contravention is from October 18, 2013 (date on which the first remittance of this amount was received) to January 24, 2019 (date of refund of this loan amount)

(b) Para 1(xi) of (draw-down before obtaining LRN) and Para 1(xii) (ECB transaction not reported) of Schedule I (w.r.t.to Athenese Inc) – Rs 1,21,37,324/- and the period of contravention is from July 03, 2014 (date on which first remittance of this amount was received) to May 23, 2019 (date on which LRN was issued by DSIM).

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. Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, I am persuaded to compound the contraventions, in line with the Guidance Note on Computation Matrix prescribed as part of Master Direction – Compounding of Contraventions, framed in accordance with the Foreign Exchange (Compounding Proceedings) Rules 2000. Accordingly, it stands to reason that payment of an amount of Rs. 3,33,111/- (Rupees Three lakhs thirty three thousand one hundred and eleven 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, Regulation 6(1) of Notification No. FEMA 3/2000-RB read with Paragraphs 1(iii), 1 (xi) and 1(xii) of Schedule I to this Regulation, as amended from time to time, on payment of a sum of Rs. 3,33,111/- (Rupees Three lakhs thirty three thousand one hundred and eleven only), which shall be deposited by the applicant with "The Chief General Manager – In- Charge, Reserve Bank of India, Foreign Exchange Department,



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5th Floor, Amar Building, Fort, Mumbai - 400001” by a demand draft drawn in favor 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 29th day of January, 2020

Sd/-

(Ajay Kumar Misra)

Chief General Manager