



In the

**RESERVE BANK OF INDIA**

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

**V.G. Sekar**

**Chief General Manager**

Date: July 23, 2019

CA No. NDL 404/2019

In the matter of

**Medicamen Biotech Limited**

1506, Chiranjiv Tower, 43, Nehru Place, New Delhi-110019

**(Applicant)**

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

**ORDER**

The applicant has filed the compounding application dated February 27, 2019 (received at Reserve Bank of India, New Delhi on March 5, 2019) and addendum dated March 13, 2019 for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contravention sought to be compounded are those of (i) delay in reporting foreign inward remittance received for issue of shares, (ii) delay in filing form FC-GPR after issue of shares, in terms of paragraphs 9(1)(A) and 9(1)(B) respectively of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000 (hereinafter referred to as FEMA 20/2000-RB), as amended from time to time, and (iii) delay in refund of the excess share application money, in terms of paragraph 2(3) of Schedule 1 to Foreign



Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 notified vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017 (hereinafter referred to as FEMA 20(R)/2017-RB), as amended from time to time.

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

(a) The applicant company, incorporated on December 22, 1993, is engaged in the business of manufacture of pharmaceutical products.

(b) The applicant had received foreign inward remittance of ₹54,60,000/- on July 27, 2017 from its foreign investor, M/s Pharmadanica A/s, Denmark and reported it on August 29, 2017 with a delay of 3 days beyond the prescribed period, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures or warrants in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of receipt of the amount of consideration received by Indian company for issue of shares or convertible debentures or warrants, a report in Advance Reporting Form as specified by Reserve Bank from time to time along with documents prescribed therein.

(c) The applicant had issued 40,000 warrants to M/s Pharmadanica A/s, Denmark on July 28, 2017 for a consideration of ₹2,18,40,000/- and reported the same on November 22, 2017 with a delay of 2 months and 26 days beyond the prescribed period, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures or warrants in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of issue of shares or convertible debentures or warrants, a report in form FC-GPR as specified by the Reserve Bank from time to time together with documents prescribed therein.

(d) The applicant had received foreign inward remittance of ₹3,12,96,456/- on March 1, 2018 from its foreign investor, M/s Kim Ginnerup ApS, Denmark for allotment of



50,000 shares for a consideration of ₹3,09,00,000/-. The excess amount of ₹3,96,456/- was refunded on September 26, 2018 with a delay of 4 months and 11 days beyond the prescribed period, in contravention of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable. Whereas, in terms of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, where capital instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE/ FCNR(B) accounts, as the case may be, within fifteen days from the date of completion of sixty days.

(e) Thus, there are contraventions of paragraphs 9(1)(A) and 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, and paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable.

3. The applicant was given an opportunity for personal hearing for further submission in person and/ or by producing documents, if any, in support of the application. Ms. Parul Choudhary, Company Secretary, appeared for personal hearing on July 23, 2019 on behalf of the applicant. The representative of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, she submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to delay in receipt of FIRC and KYC from the bank, misconception regarding filing form FC-GPR and delay in receipt of demand letter from the foreign investor for refund of excess share application money. She requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions:

(a) Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in reporting foreign inward remittance received for issue of shares as detailed in paragraph 2(b) above. The contravention relates to an amount of ₹54,60,000/- (Rupees Fifty Four Lakh and Sixty Thousand only) and the period of



delay is 3 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in filing form FC-GPR after issue of shares as detailed in paragraph 2(c) above. The contravention relates to an amount of ₹2,18,40,000/- (Rupees Two Crore Eighteen Lakh and Forty Thousand only) and the period of delay is 2 months and 26 days.

(c) Paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, on account of delay in refund of excess share application money as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹3,96,456/- (Rupees Three Lakh Ninety Six Thousand Four Hundred and Fifty Six only) and the period of delay is 4 months and 11 days.

5. It has been declared in the compounding application dated February 27, 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 dated February 27, 2019 furnished 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 informed of initiation of any such enquiry/ investigation/ adjudication proceedings against it, thereafter. It has further been declared that the applicant has not filed any appeal under Section 17 or Section 19 of FEMA. 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.

6. In terms of Section 13 of 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 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 **₹85,042/- (Rupees Eighty Five**



**Thousand and Forty Two only**) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraphs 9(1)(A) and 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, and paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, by the applicant based on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹85,042/- (Rupees Eighty Five Thousand and Forty Two only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi-110001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at New Delhi 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 23<sup>rd</sup> day of July 2019.

Sd/-  
**(V.G. Sekar)**  
**Chief General Manager**