



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
Secretariat Road
Saifabad, Hyderabad 500 004

Present

Shri. P Kalyan Chakravarthy
Assistant General Manager

Date: March 28, 2019
C.A. HYD 359

In the matter of

M/s. Elixsys Lifesciences Private Limited
Door No. 55-43-70
Plot No. 42, Seethammadhara
Doctors Colony, Visakhapatnam
Andhra Pradesh – 530 013

(Applicant)

In exercise of the powers conferred under sub-section (1) of Section 15 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 compounding application dated November 05, 2018 received by us on November 22, 2018 for compounding of contraventions of the provision of the Foreign Exchange Management Act, 1999 (FEMA) and the regulations issued there under. The contraventions sought to be compounded is (i) delay in submission of Form FCGPR to the Reserve Bank after issue of shares to a person resident outside India in terms of Paragraph 9(1)(B), Paragraph 8, Paragraph 9(2) 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 3rd May 2000 as then applicable (herein after referred to as Notification no. FEMA 20/2000-RB) and Regulation 13.1(3) of Schedule I to Notification No. FEMA 20(R)/2017-RB dated November 07, 2017 as amended from time to time.

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

- a) The applicant is a resident company incorporated as Private Limited Company under the Companies Act, 2013 on 11.08.2016 (CIN: U74999AP2016PTC103840). The company is engaged in the business of human health activities.
- b) The applicant had received foreign inward remittances amounting to **₹ 2,00,244/-** from M/s Elixsys INC towards share subscription and reported the same to the Regional Office of Reserve Bank of India within the prescribed time limit in terms of Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000.
- c) The company allotted equity shares and filed form FC-GPRs as indicated below:

SI No	Name of the investor	Date of allotment of shares	Number of shares/CC PS allotted	Amount for which shares allotted (INR)	Date of reporting
1	Elixsys INC	04.02.2017	9,999	99,990	22.03.2017
	Total		9,999	99,990	

The applicant filed form FCGPR for the allotment of shares amounting to **₹ 99,990/-** as indicated above and the same was reported with a delay of 16 days approximately beyond the prescribed limit. Whereas in terms of Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report



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in form FCGPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India.

d) The applicant has delayed in refund of excess share application money of ₹ 20,754/- to the foreign investor beyond the stipulated period of 180 days from the date of receipt of remittance. Here the period of contravention is 1 year 7 months 7 days approximately as shown below. The Authorised Dealer Bank has confirmed that the refund of excess share application money was done on March 12, 2019.

Sl No	Name of Remitter	Date of receipt	Total amount received (INR)	Total amount allotted (INR)	Excess share application money (INR)	Date of seeking approval from RBI
1	Elixsys INC	24.01.2017	1,20,744	99,990	20,754	02.03.2019
	Total		1,20,744		20,754	

Whereas in terms of Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB read with A.P (DIR Series) Circular No. 20 dated December 14, 2007, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned, provided the Reserve Bank may on an application made to it and for sufficient reasons permit to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt. The amendment in Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of Security by a Person outside India) (Third Amendment Regulation, 2007 notified, vide Notification No. FEMA 170/2007-RB dated 13th November, 2007 in the official Gazette of the Govt. of India.

e) The company has delayed in filing FLA Return (Foreign liabilities and Assets) as shown below:



SI N o	Particulars	Financial year	Due date of filing the return	Date of actual filing
1	FLA Return	2016-17	15.07.2017	24.01.2019
2	FLA Return	2017-18	15.07.2018	24.01.2019

Whereas in terms of Para 9(2) of Schedule I to Notification No. FEMA 20/2000-RB dated May 03, 2000 as then applicable and Regulation 13.1(3) of Schedule I to Notification No. FEMA 20(R)/2017-RB dated November 07, 2017 as amended from time to time, "All Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank of India, on or before the 15th day of July of each year, [a report titled 'Annual Return on Foreign Liabilities and Assets' (FLA) as specified by the Reserve Bank from time to time].

3. (a) The applicant was given an opportunity for personal hearing vide Reserve Bank's letter No. HY.FE.FID/ 1985 /14.66.003/2018-19 dated March 22, 2019 for further submission in person and/or producing documents, if any, in support of the application.

(b) The applicant vide e-mail dated March 22, 2019 stated that they are foregoing appearing for the personal hearing and requested that the compounding application may be disposed of on the basis of merits in terms of the facts/submission made therein along with the compounding application. The application for compounding is, therefore, being considered on the basis of the averments made in the application.

4. I have given my careful consideration to the documents on record. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:-



(a) Paragraph 9(1)(B) of Schedule 1 to Notification No. 20/2000-RB for delay in submission of Form FC-GPR to Reserve Bank of India after issue of shares to persons resident outside India and the contravention relates to an amount of ₹ **99,990/-** and the period of contravention is 16 days approximately.

(b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB for delay in refund of excess share application money after allotment of shares to the non-resident investor and the contravention relates to an amount of ₹ **20,754/-** and the period of contravention is 1 year 7 months 7 days approximately.

(c) Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB and Regulation 13.1(3) of Schedule I to Notification No. FEMA 20(R)/2017-RB for delay in filing of Annual Return on Foreign Liabilities and Assets to Reserve Bank of India for two financial years viz. 2016-17 and 2017-18 and the delay ranges from 6 months 10 days to 1 year 6 months 10 days approximately.

5. It has been declared in the compounding application dated November 05, 2018 that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has been declared in the declaration dated November 05, 2018 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 1999. 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 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. However, taking into account the relevant facts and



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circumstances of the case as stated in the foregoing paragraphs, I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and I consider that an amount of **₹ 23,557 /- (Rupees Twenty Three Thousand Five Hundred Fifty Seven Only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions, namely, the contraventions of Paragraph 9(1)(B), Paragraph 8, Paragraph 9(2) of Schedule 1 to Notification No. FEMA-20/2000-RB and Regulation 13.1(3) of Schedule 1 to Notification No. FEMA-20(R)/2017-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount **₹ 23,557 /- (Rupees Twenty Three Thousand Five Hundred Fifty Seven Only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 1st Floor, Saifabad, Hyderabad - 500004 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Hyderabad 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 28th day of March 2019.

(Sd/-)

(P Kalyan Chakravarthy)

Assistant General Manager