



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present
V. G. Sekar
Chief General Manager
Date: December 5, 2019
CA No. NDL 491/2019

In the matter of
Daiichi Sankyo India Pharma Private Limited
Unit 62, Level 18, One Horizon Center, Golf Course Road, DLF Phase -5, Sector 43,
Gurgaon, Haryana 122002
(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 July 16, 2019 (received at Reserve Bank of India, New Delhi on July 18, 2019) and addendum dated November 20 and November 26, 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 contraventions 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, and (iii) delay in issue of shares after receipt of inward remittance in terms of paragraphs 9(1)(A), 9(1)(B) and 8 [read with paragraph 5 of A.P. (DIR Series) Circular No. 20 dated December 14, 2007] respectively of Schedule 1 of 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.



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

(a) The applicant company was incorporated on March 13, 2007 in the State of Maharashtra and was engaged in research and experimental development on natural sciences and engineering. The applicant shifted its registered office from Mumbai in the State of Maharashtra to Gurugram in the State of Haryana on September 26, 2011.

(b) The compounding application has been filed by Mr. Ajit Krishnan who was appointed as liquidator at an extraordinary general meeting (EGM) held on September 7, 2017 wherein voluntary liquidation of the company was approved in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

(c) The applicant had reported receipt of foreign inward remittances from its foreign investor, Daiichi Sankyo Company Limited, Japan, on three occasions and reported two of them with delay of 1 year & 14 days and 1 year, 2 months & 3 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of receipt	Amount (₹)	Date of reporting
1	09.05.2007	1,20,00,000.00	11.08.2008
2	28.06.2007	23,79,00,000.00	11.08.2008
	Total	24,99,00,000.00	

Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the date of receipt of the amount of consideration, a report indicating the details prescribed therein.

(d) The applicant had reported issue of shares to its foreign investor, Daiichi Sankyo Company Limited, Japan, on two occasions with delay of 1 year, 6 months & 26 day and 10 years, 2 months & 15 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of Issue	Amount (₹)	Date of reporting
1	20.03.2009	24,99,00,000.00	04.07.2019
2	26.06.2010	1,52,00,00,000.00	21.02.2012
	Total	1,76,99,00,000.00	

Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these



Regulations shall submit to Reserve Bank, not later than 30 days from the date of issue of shares, a report in Form FC-GPR together with the documents prescribed therein.

(e) The applicant had received the consideration of ₹24,99,00,000.00 in two tranches for issue of 24990000 equity shares but neither issued shares nor refunded the amount of consideration within the prescribed period of 180 days and approached RBI with request for issue of shares vide letter dated March 11, 2008 with delay of 2 months & 15 days and 3 months & 12 days beyond the prescribed period, as detailed below, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007.

Sl. No.	Date of receipt	Amount (₹)	Date of seeking approval
1	09.05.2007 *	1,20,00,000.00	11.03.2008
2	28.06.2007	23,79,00,000.00	11.03.2008
	Total	24,99,00,000.00	

(* Cut-off date taken as 28.11.2007)

Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007, equity instruments should be issued within 180 days of the receipt of inward remittance. In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received should be refunded immediately to the non-resident investor. Provided that 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. And, in terms of paragraph 5 of A.P (DIR Series) Circular No. 20 dated December 14, 2007, in all cases where, as on November 28, 2007, 180 days have elapsed since receipt of funds and the equity instruments have not been issued, the companies are required to approach the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through their AD category- I bank with a definite action plan either for allotment of equity instruments or for refund of the advance, with full details, for specific approval.

(f) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 [read with paragraph 5 of A.P. (DIR Series) Circular No. 20 dated December 14, 2007] of Schedule 1 of FEMA 20/2000-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. Shri Dev Raj Singh, Executive Director, Sh. Sunil Kumar, Director and Sh. Akash Chauhan, Manager from Ernst & Young LLP, Consultants, appeared for personal hearing on December 5, 2019 on behalf of the applicant. The representatives of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that the contraventions were without any *malafide* or wilful intention but was mainly due to inadvertence and change in the Registered Office of the Company from Mumbai to Gurugram. 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, on account of delay in reporting foreign inward remittances received for issue of shares as detailed in paragraph 2(c) above. The contraventions relate to an amount of ₹24,99,00,000.00 (Rupees Twenty Four Crore and Ninety Nine Lakh only) and the period of delays are 1 year & 14 days and 1 year, 2 months & 3 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, on account of delay in filing Form FC-GPR after issue of shares as detailed in paragraph 2(d) above. The contraventions relate to an amount of ₹1,76,99,00,000.00 (Rupees One Hundred Seventy Six Crore and Ninety Nine Lakh only) and the period of delays are 1 year, 6 months & 26 days and 10 years, 2 months & 15 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB [read with paragraph 5 of A.P. (DIR Series) Circular No. 20 dated December 14, 2007], on account of delay in issue of shares after receipt of inward remittance, as detailed in paragraph 2(e) above. The contraventions relate to an amount of ₹24,99,00,000.00 (Rupees Twenty Four Crore and Ninety Nine Lakh only) and the period of contraventions are 2 months & 15 days and 3 months & 12 days.



5. It has been declared in the compounding application dated July 16, 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 July 16, 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 **₹23,11,200/- (Rupees Twenty Three Lakh Eleven Thousand and Two Hundred 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), 9(1)(B) and 8 [read with paragraph 5 of A.P. (DIR Series) Circular No. 20 dated December 14, 2007] of Schedule 1, 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 **₹23,11,200/- (Rupees Twenty Three Lakh Eleven Thousand and Two Hundred 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 5th day of December 2019.

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