



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Shekhar Bhatnagar
Chief General Manager

Date: November 14, 2017
CA No. 4485/2017

In the matter of

Boehringer Ingelheim India Private Limited
1102, 11th Floor, Hallmark Business Plaza, Guru Nanak Hospital Road
Bandra (East), Mumbai 400 051

(Applicant)

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

Order

The applicant has filed a compounding application dated August 14, 2017 (received in the Reserve Bank of India on August 14, 2017) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded relates to receiving the foreign investment in brownfield pharmaceutical sector at a time when the sector was under 100% Government Route without obtaining fresh approval from Foreign Investment Promotion Board (FIPB), Government of India as applicable, in contravention of Paragraph 2 of Schedule I 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 (hereinafter referred to as Notification No. FEMA 20/2000-RB), as then applicable.

2. Boehringer Ingelheim India Pvt Ltd (BIPL), the applicant, was incorporated on December 11, 2003 under the Companies Act, 1956 (CIN U24230MH2003PTC143499). It is engaged in the business of pharmaceuticals, consumer healthcare and clinical operations. BIPL, a wholly owned subsidiary (WOS) of Boehringer Ingelheim Auslandbeteiligungs GmbH (BIA), was setup as a greenfield pharmaceuticals company with an initial equity investment of Rs.2,35,00,000/- by BIA in December 2003 after the Foreign Investment Promotion Board (FIPB) granted approval vide letter No. FC11: 280(2003)/369(2003) dated October 29, 2003 for receiving foreign investment upto 100% valid for a period of two years. Thereafter, BIPL received following equity infusion from BIA:

Sr.No.	Name of remitter	No. of shares allotted	Amount in INR	Date of foreign investment
1	Boehringer Ingelheim Auslandbeteiligungs GmbH	3,45,000	14,14,50,000	24-03-2015
2		4,26,966	18,99,99,870	02-03-2016
3		33,47,639	1,55,99,99,774	08-02-2017
	Total	41,19,605	1,89,14,49,644	

As a part of the global agreement, ultimate parent company of BIPL initiated the process of acquiring the animal health care business of Sanofi India Limited by way of a slump sale through equity infusion in BIPL. FIPB while granting further approval to BIPL for acquisition of Sanofi Synthelabo (India) Private Limited vide letter F. No. 03(2017)/84(2016) dated January 31, 2017 advised the applicant to approach RBI for compounding within 90 days as vide DIPP's Press Note 3 (2011 series)/F No.1/16/2010-FC-1 dated November 08, 2011 read with erstwhile Paragraph 16.2 of Annex B of Schedule 1 to FEMA 20/2000-RB foreign investment in the brownfield pharmaceutical sector was brought under 100% Government route and any fresh inflow of foreign investment into any brownfield pharmaceutical company would have required fresh FIPB approval until the issue of the Consolidated FDI policy of 2015 effective from May 12, 2015 which stated vide Para 5.3.1 (iv) that additional foreign



investment into the same entity within an approved foreign equity percentage / or into a WOS would not require fresh approval. BIPL received further FDI amounting to Rs.14,14,50,000/- during the period 2011 to 2015 which required Government approval and hence was in contravention of Paragraph 2 of Schedule 1 to FEMA 20/2000-RB, as then applicable.

3. In terms of Paragraph 2 of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company, not engaged in any activity / sector mentioned in Annex A to the schedule, may issue shares or convertible debentures or warrants to a person resident outside India, subject to the limits prescribed in Annex B to the schedule, in accordance with the Entry Routes specified therein and the provisions of Foreign Direct Investment Policy, as notified by the Ministry of Commerce & Industry, Government of India, from time to time.

Whereas the applicant received foreign investment in the brownfield pharmaceutical sector without obtaining fresh approval from FIPB during the period between November 08, 2011 and May 12, 2015 when foreign investment in brownfield pharmaceutical sector was under 100% Government route and any fresh inflow of foreign investment would have required fresh FIPB approval thereby contravening the said FEMA provisions.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/4042/15.20.67/2017-18 dated November 07, 2017 for further submission in person and/or producing documents, if any, in support of the application. Ms. Sonal Sharma, Company Secretary and Ms. Kruti Shah, Legal Counsel from BIPL along with Shri Zubin F. Masani from M/s Platinum Partners represented the applicant during the personal hearing held on November 14, 2017. The representatives of the applicant admitted the contravention for which compounding has been sought. The representatives of the applicant submitted that the company had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter. The application for compounding is, therefore, being considered on the basis of the averments made in



the application as well as other documents and submissions made in this context by the applicant.

5. I have given my careful consideration to the documents on record and the submissions made by the applicant. In terms of FIPB letter F. No. 03(2017)/84(2016) dated January 31, 2017, it was held that BIPL had contravened the FEMA Regulations by receiving the foreign investment in brownfield pharmaceutical sector without obtaining fresh approval from FIPB at a time when the sector was under 100% Government Route and therefore, requiring compounding. Accordingly, I hold that the applicant has contravened the provisions of FEMA, 1999 issued in terms of Paragraph 2 of Schedule I to Notification No. FEMA 20/2000-RB. The amount of contravention was Rs.14,14,50,000/- and the period of contravention was one year ten 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. However, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, I am persuaded to take a lenient view on the amount for which the contraventions are to be compounded and I consider that an amount of Rs.8,27,975/- (Rupees eight lakhs twenty seven thousand nine hundred and seventy five only) will meet the ends of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Paragraph 2 of Schedule I to Notification No. FEMA 20/2000-RB, as then applicable, by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.8,27,975/- (Rupees eight lakhs twenty seven thousand nine hundred and seventy five 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 of accordingly.

Dated this the fourteenth day of November, 2017

Sd/-

(Shekhar Bhatnagar)
Chief General Manager