



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: February 22, 2018
CA No 4610 / 2018

In the matter of

Enaltec Labs Private Limited
1706, 17th Floor, Kesar Solitaire
Sector 19, Sanpada
Navi Mumbai - 400075

(Applicant)

In exercise of the powers conferred under section 15 (1) 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 application dated January 02, 2018 (received in the Reserve Bank on January 04, 2018), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) transfer of shares between two Non – residents, of a company engaged in an activity that falls in approval route sector, without prior requisite approvals as advised by FIPB, and (ii) delay in filing of form FC-GPR beyond the stipulated time period. The above amount to the contravention of Paragraphs 3 and 9(1)(B) 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 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts are as under: The applicant was incorporated as Enaltec Labs Private Limited, on February 24, 2006, under the Companies Act, 1956 (CIN: U73100MH2006PTC160020). It is engaged in the business of research and development, manufacturing, refining, importing, exporting, trading, packing and developing of technologies for all types of pharmaceutical ingredients and intermediaries, medicines and medical preparations, medical drugs, bulk drugs, formulation laboratory raw materials and bio-chemicals etc. On August 29, 2011, the applicant received foreign inwards remittance amounting to Rs. 2,27,49,917/-, from Medtech Ltd., UAE for the issuance of Compulsorily Convertible Preference Shares (CCPS). On February 16, 2012, the applicant allotted 1,51,666 CCPS amounting to Rs. 2,27,49,900/- (at a premium of Rs. 140/-) to Medtech. As per the amendments to FEMA 20, dated December 9, 2011, government approval was required for any foreign investment in brownfield pharmaceutical sector. However, the abovementioned issuance of shares was done without the prior approval of Government/FIPB. FIPB, vide letter dated April 25, 2017, granted post-facto approval for the same, subject to compounding by RBI, from the date of issuance of CCPS, i.e., February, 2012 to the date of issuance of FEMA Notification No. 381 dated December 7, 2016 (vide which current foreign shareholding (70%) of the applicant fell under automatic route). The compounding for this contravention was done vide Compounding Order dated August 08, 2017.

Further the abovementioned CCPS were transferred by M/s Medtech Limited (NR) to M/s Scitech Limited (NR) on March 31, 2013. The applicant has been granted the post-facto approval for the above transfer by FIPB, vide its letter dated April 25, 2017, at the same time directing the applicant to file for compounding for the same with RBI, taking the contravention from the date of transfer of CCPS, i.e., March 31, 2013 to the date of issuance of FEMA Notification No. 381 dated December 7, 2016. The current compounding



application has thus been filed by the applicant, as directed by FIPB, for compounding of contravention of Para 3 of Schedule I to Notification No. FEMA 20/2000-RB.

Further, the applicant had issued 1,50,00,000 equity shares to M/s Scitech Limited, UAE on 30.07.2007, whereas this was reported in the Form FC-GPR on 09.10.2007, with a delay beyond the stipulated time period of 30 days, in contravention of Para 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB. The applicant has been compounded for delay in filing Form FC-GPR vide Compounding Order dated May 9, 2012. However, at the time, the date of allotment for the abovementioned shares was erroneously mentioned as 10.09.2007 in the Form FC-GPR, and thus, it was not taken as a delay and thus not compounded. The current compounding application has been filed by the applicant to correct the allotment date to 30.07.2007 and thus for the contravention of Para 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB.

3. Regulation 3 of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, provides guidelines for companies whose activities fall under the Government approval route, as is the case with the applicant.

Further, Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that “An Indian company issuing shares or convertible debentures 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, a report in the Form FC-GPR as specified by the Reserve Bank from time to time....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/6726/15.20.67/2017-18 dated February 09, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on February 22, 2018 during which Shri Ajit Talwar, Vice-President, Finance, represented the applicant. The



representative of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter.

It has also been declared in the compounding application dated January 02, 2018, that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been subsequently declared in the declaration dated January 23, 2018, furnished as an addendum to 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/him/her 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.

The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Paragraphs 3 and 9(1)(B) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time. The amount of contravention is as follows:

(i) Para 3 of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 2,27,49,917/- and Period of contravention is 3 years 9 months approximately.

(iii) Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 1,50,00,000/- and Period of contravention is two 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs. 2,16,208/- (Rupees two lakh sixteen thousand two hundred and eight 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 contravention committed by the applicant namely, Paragraphs 3 and 9(1)(B) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, on payment of a sum of Rs. 2,16,208/- (Rupees two lakh sixteen thousand two hundred and eight 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 accordingly.

Dated this the twenty second day of February, 2018

Sd/-

Shekhar Bhatnagar
(Chief General Manager)