



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: May 7, 2018
CA No 4613 / 2018

In the matter of

S. Zhaveri Pharmakem Private Limited
308-310 Shiv Smruti Chambers
49, Dr. AB Road, Worli
Mumbai - 400018

(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 05, 2018 (received in the Reserve Bank on January 08, 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) parking of FDI proceeds in EEFC account, (ii) delay in reporting receipt of funds for issue of shares and (ii) delay in filing of form FC-GPR beyond the stipulated time period. The above amount to the contravention of Paragraph 2 to Schedule I read with Regulation 4 of Foreign Exchange Management (Foreign currency accounts by a person resident in India)



Regulations 2000 notified vide Notification No. FEMA 10/2000-RB dated May 3, 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 10/2000-RB), Paragraphs 9(1)(A) 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 S Zhaveri Pharmakem Private Limited, under the Companies Act, 1956, on June 6, 2005 (CIN:U51397MH2005PTC153790). The applicant is engaged in the business of commission and indenting agents and importers and exporters of pharmaceuticals raw materials, specialty chemicals etc.

The applicant received share application money of Rs. 5,42,85,000/- on 19.12.2012 and parked this amount in the EEFC account till 26.12.2012, after which it was utilized for import payment/ foreign currency expenditure. Parking of FDI proceeds in the EEFC account was in contravention Paragraph 2 to Schedule I read with Regulation 4 of FEMA 10.

The applicant delayed in reporting inward remittance, in contravention of Paragraph 9(1)(A) of Schedule I of Notification No. FEMA 20/2000-RB, as follows:

S.No.	Date of receipt of funds	Amount received (INR)	Date of reporting
1	19.12.2012	9,44,55,900	08.02.2013

Furthermore, there was a delay in filing Form FC-GPR, in contravention of Paragraph 9(1)(B) of Schedule I of Notification No. FEMA 20/2000-RB, as follows:

S.No.	Date of issue of shares	Amount for which shares issued	Date of filing of FC-GPR
1	10.03.2013	9,25,75,000	24.06.2013
2	28.03.2013	13,93,915	24.07.2013
3	29.03.2013	18,77,950	27.05.2013
4	30.03.2013	14,81,200	23.05.2013



3. Whereas Regulation 4 of Notification No.FEMA.10/2000-RB dated May 03, 2000 as amended from time to time regulates the opening, holding and maintenance of Exchange Earners' Foreign Currency Account, Paragraph 2 of Schedule I of the same Notification lists the permissible credits to the account. FDI proceeds does-not form a part of this list.

According to Para 9(1)(A) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, "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 receipt of the amount of consideration received by Indian company for issue of shares and convertible debentures, a report in form specified in Annex C to this Schedule along with a copy/ies of Foreign Inward Remittance Certificate/s (FIRC), Know Your Customer (KYC) report on the non-resident investor and details of the Government approval, if any".

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/8809/15.20.67/2017-18 dated April 26, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on May 04, 2018 during which Ms. Uma Javeri, Managing Director of the company and Shri Hemang Shah, Associate Director, represented the applicant. The representatives 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 05, 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 March 12, 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. 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. 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 Paragraph 2 to Schedule I read with Regulation 4 of Notification No.FEMA.10/2000-RB dated May 3, 2000, as amended from time to time and, Paragraphs 9(1)(A) 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) Paragraph 2 to Schedule I read with Regulation 4 of Notification No.FEMA.10/2000-RB – Amount of contravention – Rs. 5,42,85,000/- and Period of contravention is 8 days approximately.

(ii) Para 9(1)(A) of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 9,44,55,900/- and Period of contravention is 1 month approximately.



(iii) Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 9,73,28,065/- and Period of contravention ranges from one month to five 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. Rs. 3,48,717/- (Rupees three lakh forty eight thousand seven hundred and seventeen 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, Paragraph 2 to Schedule I read with Regulation 4 of Notification No.FEMA.10/2000-RB dated May 3, 2000, as amended from time to time and, Paragraphs 9(1)(A) 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. 3,48,717/- (Rupees three lakh forty eight thousand seven hundred and seventeen 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 seventh day of May, 2018

Sd/-

Shekhar Bhatnagar
(Chief General Manager)