



In the

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

Present

R Subramanian
Regional Director (Andhra Pradesh and Telangana)
and Chief General Manager (Hyderabad)

Date: August 29, 2018
C.A. HYD 313

In the matter of

M/s. Actimus Biosciences Private Limited
4th Floor, Varun Towers
7-8-1/3, Kasturibha Marg
Siripuram, Visakhapatnam
Andhra Pradesh – 530 003

(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 compounding application dated May 18, 2018 received on May 23, 2018 for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) delay in reporting receipt of foreign inward remittances; (ii) delay in submission of Form FC-GPR to Reserve Bank of India after issue of shares towards subscription to equity and (iii) delay in allotment of shares to the non-resident investor in terms of Paragraph 9(1)(A), Paragraph 9(1)(B) and Paragraph 8 respectively of Schedule 1 to Foreign



Compounding of contraventions under FEMA 1999
M/s Actimus Biosciences Private Limited
CA No. HYD 313

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 03, 2000 (hereinafter referred to as Notification No. FEMA 20/2000-RB) as then applicable.

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

- a) The applicant is a resident company originally incorporated as M/s. Tavisia Biosciences Private Limited under the Companies Act, 1956 on 28.01.2004 (CIN: U74140AP2004PTC042512) and later changed its name to M/s. Actimus Biosciences Private Limited with effect from 18.07.2005. The company is engaged in the business of research and experimental development on natural sciences and engineering.
- b) The applicant had received foreign inward remittances from single foreign investor, M/s. Actimus Inc. (formally known as, Pharma Development Inc.) USA towards advance for subscription to equity shares as indicated below.

Sl No	Name of Remitter	Total Amount (INR)	Date of Receipt	Date of Reporting
1	Actimus Inc. USA	997050	22.06.2005	28.04.2006
2	Actimus Inc. USA	4355000	24.08.2005	28.04.2006
3	Actimus Inc. USA	1568350	21.10.2005	28.04.2006
4	Actimus Inc. USA	4576000	28.11.2005	28.04.2006
5	Actimus Inc. USA	3108645	23.02.2006	28.04.2006
6	Actimus Inc. USA	1829600	22.05.2006	22.06.2006
7	Actimus Inc. USA	10000274	03.05.2007	04.06.2007
8	Actimus Inc. USA	10219373	11.05.2007	04.06.2007
9	Actimus Inc. USA	4708000	20.05.2009	12.06.2009
	Total	4,13,62,292		



Compounding of contraventions under FEMA 1999
M/s Actimus Biosciences Private Limited
CA No. HYD 313

The applicant received the foreign inward remittances amounting to **₹4,13,62,292/-** as indicated above out of which remittances amounting to **₹2,64,34,919/-** were reported to Reserve Bank of India with delays ranging from 1 day to 9 months 6 days approximately beyond the prescribed period of 30 days. Whereas in terms of Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report to the Reserve Bank of India as per the prescribed procedure not later than 30 days from the date of receipt of the amount of consideration.

c) The company allotted shares and filed form FC-GPRs as indicated below:

Sl No	Name of investor	Date of allotment of shares	Number of shares/CC PS allotted	Amount for which shares allotted (INR)	Date of reporting
1	Actimus Inc. USA	27.06.2005	99700	997000	29.04.2006
2	Actimus Inc. USA	17.04.2006	302400	13608000	29.04.2006
3	Actimus Inc. USA	08.03.2017	94160	4708000	16.03.2017
4	Actimus Inc. USA	01.07.2018	440985	22049250	13.07.2018
	Total		937245	4,13,62,250	

The applicant filed form FCGPRs for issue of shares amounting to **₹4,13,62,250/-** as indicated above out of which shares amounting to **₹9,97,000/-** were reported with a delay of 9 months 2 days approximately beyond the stipulated period of 30 days. 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



Compounding of contraventions under FEMA 1999
M/s Actimus Biosciences Private Limited
CA No. HYD 313

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

e. The applicant has delayed in allotment of 94160 shares amounting to ₹47,08,000/- which was initially kept pending because of the interim orders from Company Law Board (CLB) owing to disputes among the shareholders. Eventually, the applicant has received the final CLB order on 29.01.2010 since the disputes were settled out of court. However, the applicant did not allot the shares subsequently and made a delay of 7 years 1 month 8 days approximately for the allotment of shares. Company has also delayed in allotment of 440985 shares amounting to ₹2,20,49,250/- with a delay of 10 years 7 months 4 days approximately.

SI No	Name of Remitter	Total Amount (INR)	Date of order/Date receipt remittance	CLB of	Date of allotment
1	Actimus Inc. USA	4708000	29.01.2010		08.03.2017
2	Actimus Inc. USA	1829600	22.05.2006		01.07.2018
3	Actimus Inc. USA	10000274	03.05.2007		01.07.2018
4	Actimus Inc. USA	10219373	11.05.2007		01.07.2018
	Total	2,67,57,247			

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



Compounding of contraventions under FEMA 1999
M/s Actimus Biosciences Private Limited
CA No. HYD 313

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 20/20000-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.

3. (a) The applicant was given an opportunity for personal hearing vide Reserve Bank's letter No. HY.FE.FID/285/14.66.003/2018-19 dated August 23, 2018 for further submission in person and/or producing documents, if any, in support of the application.

(b) The applicant appeared for personal hearing on August 27, 2018 during which Shri. Murali Adapa, Head – Finance & Corp. Affairs represented the applicant. The authorized representative of the company admitted the contraventions for which the compounding has been sought. During the personal hearing it was submitted that the delay was not wilful or with a malafide intention but was on account of administrative reasons and change in the office personnel looking over the compliance matters. In view of the foregoing, the representative of the applicant requested to take a lenient view in disposal of the application. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well the submissions made in this context by the applicant during the personal hearing.

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)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB for delay in reporting the receipt of consideration towards issue of shares amounting to ₹2,64,34,919/- and the delay ranges from 1 day to 9 months 6 days approximately.



Compounding of contraventions under FEMA 1999
M/s Actimus Biosciences Private Limited
CA No. HYD 313

(b) 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 ₹ 9,97,000/- and the period of contravention is 9 months 2 days approximately.

(c) Paragraph 8 of Schedule 1 to Notification No.20/2000-RB read with A.P (DIR Series) Circular No. 20 dated December 14, 2007 for delay in allotment of shares to the foreign investor and the contravention relates to an amount of ₹ 2,67,57,247/- and the delay ranges from 7 years 1 month 8 days to 10 years 7 months 4 days approximately.

5. It has been declared in the compounding application dated May 18, 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 May 18, 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. 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 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 **₹ 3,06,557/- (Rupees Three Lakh Six Thousand Five Hundred Fifty Seven Only)** will meet the ends of justice.



Compounding of contraventions under FEMA 1999
M/s Actimus Biosciences Private Limited
CA No. HYD 313

7. Accordingly, I compound the admitted contraventions, namely, the contraventions of Paragraph 9(1)(A), Paragraph 9(1)(B) and Paragraph 8 of Schedule 1 to Notification No. FEMA-20/2000-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ **3,06,557/- (Rupees Three Lakh Six 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 29th day of August 2018

Sd/-

(R Subramanian)
Regional Director (Andhra Pradesh and Telangana)
and Chief General Manager (Hyderabad)