



In the

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

Present

R Subramanian
Regional Director

Date: July 24, 2018
C.A. HYD 307

In the matter of

M/s. Alphamed Formulations Private Limited
Survey No. 225
Sampanbola Village, Shamirpet Mandal
Medchal-Malkajgiri District
Telangana – 500 078

(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 02, 2018 received on May 03, 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) receipt of foreign investment under approval route without obtaining specific and prior approval from Government of India and (ii) taking on record the transfer of shares from residents to non-resident investor without prior approval from Government of India in terms of Paragraph 3 of Schedule 1 and Regulation 4 respectively of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India)



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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. The relevant facts of the case are as follows:

- a) The applicant is a resident company incorporated as a Private Limited Company under the Companies Act, 1956 on 20.11.2006 (CIN: U24239TG2006PTC051732). The company is engaged in the business of manufacturing and dealing with pharmaceuticals, formulations, medicines, chemical preparation and drug formulation and the company had been receiving inward remittances since December 2006 which are permitted up to 100% under automatic route.
- b) In terms of Department of Industrial Policy and Promotion's Press Notification No. 1/16/2010-FC-I dated November 08, 2011, the FDI policy has been revised such that the foreign investment up to 100% would be permitted for brownfield investments in the pharmaceutical sector, under the Government approval route. The applicant did not obtain prior approval from Government of India for the remittances received after 08.11.2011 as per the extant rules. Later, Department of Pharmaceuticals, on an application being made to it by the company granted its post facto approval vide their approval no. 13012/13/2017-FDI-Policy dated February 23, 2018 subject to compounding of the said contravention by Reserve Bank of India. Details of the said transactions are as indicated below:

Sl No	Name of the Remitter	Total Amount (INR)	Date of Receipt	Date of approval
1	Wisdom Holdings Pte. Ltd	117081791	23.05.2013	23.02.2018
2	Wisdom Holdings Pte. Ltd	49527062	30.08.2013	23.02.2018
3	Wisdom Holdings Pte. Ltd	12601551	18.09.2013	23.02.2018



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	Total	17,92,10,404		
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Whereas in terms of Paragraph 3 of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company which is otherwise not eligible to issue shares to a person resident outside India, may issue shares to a person resident outside India provided it has secured prior approval of Secretariat for Industrial Assistance or, as the case maybe of the Foreign Investment Promotion Board of the Government of India and the terms and conditions of such an approval are complied with. Here the amount of contravention is ₹ 17,92,10,404/- and the period of contravention ranges from 4 years 5 months 5 days to 4 years 9 months approximately.

SI No	Transferor	Number of shares	Amount of consideration (INR)	Date of taking the transfer on record	Date of approval
1	Ashok Vasudevan	2190823	35675467	24.05.2012	23.02.2018
2	G Sunitha	210000	4340700	27.02.2013	23.02.2018
3	G Hemalatha	200000	4134000	27.02.2013	23.02.2018
4	G Suresh Balreddy	655000	13538850	27.02.2013	23.02.2018
5	M Rajavardhan	200000	4134000	27.02.2013	23.02.2018
6	G Meena	420000	8681400	27.02.2013	23.02.2018
7	G Sekhar Reddy	1488225	30760123	27.02.2013	23.02.2018



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8	Vishar Portfolio Investments	1000000	17854808	27.02.2013	23.02.2018
	Total	63,64,048	11,91,19,348		

c) The applicant has taken on their record the transfer of 6364048 equity shares held by eight resident shareholders to the foreign investor, M/s. Wisdom Holdings Pte. Ltd., without obtaining prior approval from Government of India. Department of Pharmaceuticals, vide their approval no. 13012/13/2017-FDI-Policy dated February 23, 2018 granted its post facto approval for the transfer of shares subject to compounding by Reserve Bank of India. Details of the transaction are as shown below:

Whereas in terms of Regulation 4 of Notification No. FEMA 20/2000-RB, an Indian entity shall not issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such person, provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an entity to issue any security to a person resident outside India or to record in its books transfer of security from or to such person, subject to such conditions as may be considered necessary. Here the amount of contravention is ₹ **11,91,19,348/-** and the period of contravention ranges from 4 years 11 months 27 days to 5 years 9 months approximately.

3. (a) The applicant was given an opportunity for personal hearing vide Reserve Bank's letter No. HY.FE.FID/66/14.66.003/2018-19 dated July 13, 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 July 18, 2018 during which Shri T. Bala Murali Krishna, Director of the company represented the applicant. The Director of the company admitted the contraventions for which the compounding has been sought. During the personal hearing it was submitted that the delay was



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neither wilful nor with a malafide intention but was on account of lack of awareness of the extant rules and regulations guiding foreign investment in pharmaceutical companies. 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 3 of Schedule 1 to Notification No. FEMA 20/2000-RB for issue of shares to the foreign investor without prior approval from Government of India and the contravention relates to an amount of ₹ 17,92,10,404/- and the period of contravention ranges from 4 years 5 months 5 days to 4 years 9 months approximately.

(b) Regulation 4 of Notification No.20/2000-RB for taking on record transfer of shares from resident shareholders to non-resident company without prior permission from the appropriate authority, here Department of Pharmaceuticals, Government of India and the contravention relates to an amount of ₹ 11,91,19,348/- and the period of contravention ranges from 4 years 11 months 27 days to 5 years 9 months approximately.

5. It has been declared in the compounding application dated May 02, 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 02, 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



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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 **₹ 24,91,973/- (Rupees Twenty Four Lakh Ninety One Thousand Nine Hundred Seventy Three Only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions, namely, the contraventions of Paragraph 3 of Schedule 1 and Regulation 4 of 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 **₹ 24,91,973/- (Rupees Twenty Four Lakh Ninety One Thousand Nine Hundred Seventy Three 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 24th day of July 2018



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Sd/-

(R Subramanian)
Regional Director