



In the

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

Present

Ajay Kumar Misra
Chief General Manager

Date: August 16, 2018
CA No 4656 / 2018

In the matter of

Raks Pharma Private Limited
882/1-871, Village Rajoda
Near Hotel Kankavati
Bavla, Gujarat - 382220

(Applicant)

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

Order

The applicant has filed the application dated February 26, 2018 (received in the Reserve Bank on March 19, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant has sought the compounding for receipt of foreign investment in a company engaged in brownfield pharmaceutical business, without prior approval of the then Foreign Investment Promotion Board (FIPB), in contravention of Regulation 5(1) read with Paragraph 25.2 (applicable from 19.10.2012 to 13.11.2014) and Paragraph 17.2 (applicable from 14.11.2014 to 30.10.2017) of Annex B of Schedule I 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 company was incorporated as Raks Pharma Private Limited on October 22, 2008. (CIN: U24233AP2008PTC061508). The applicant is engaged in the pharmaceutical industry. Its entire equity share capital is currently held by Amneal Singapore Private Ltd, which is held by the ultimate parent company Amneal Holdings LLC, USA.

Previously, in 2010, Amneal Pharma Investment Holding, Mauritius (incorporated on June 24, 2010), acquired the entire shareholding of the applicant company from third party resident investors. Thereafter, Amneal Pharma Investment Holding, Mauritius had infused funds through FDI in the applicant company under automatic route, as follows:

S.No.	Date	Amount (INR)
1	21.10.11	2,80,83,285
2	11.11.11	1,84,64,024
3	11.11.11	1,55,53,874
4	22.12.11	39,44,980
5	13.01.12	1,46,95,633
6	10.02.12	49,01,119
7	22.03.12	2,53,99,619
8	03.05.12	1,06,23,602
9	23.05.12	1,28,45,081
10	09.07.12	1,39,82,081
11	03.08.12	72,65,931
12	04.10.12	1,29,14,613
13	29.10.12	80,80,096
14	26.11.12	1,22,21,683
15	18.01.13	80,65,097
16	08.02.13	80,11,099



However, pursuant to Notification No. FEMA 242/2012 – RB, dated October 19, 2012, foreign investment in brownfield pharmaceutical was brought under approval route with effect from October 19, 2012. This Notification was pursuant to Press Note 3 of 2011.

The then FIPB had granted post-facto approval to the applicant vide letter dated October 30, 2017, subject to compounding by RBI from the date of the Press Note 3 of 2011. However, since the FEMA Notification (Notification No. FEMA 242/2012-RB) in this regard was issued only on October 19, 2012, the remittances received prior to October 19, 2012 are not being considered in contravention of the then existing FEMA guidelines and consequently, do not form a part of this Compounding Order. This Order is thus being issued only for the transactions as mentioned in Serial Nos. 13 to 16 in the table above, which were in contravention of Regulation 5(1) read with Paragraph 25.2 (applicable from 19.10.2012 to 13.11.2014) and Paragraph 17.2 (applicable from 14.11.2014 to 30.10.2017) of Annex B of Schedule I of Notification No. FEMA 20/2000-RB.

Currently, the entire shareholding of the applicant company has been acquired by Amneal, Singapore Private Limited from Amneal Pharma Investment Holding, Mauritius, after a group restructuring.

3. Regulation 5(1) of Notification No. FEMA 20/2000-RB permits purchase of shares by certain persons resident outside India under Foreign Direct Investment Scheme, subject to terms and conditions specified in Schedule I. Further, Paragraph 25.2, later renamed as Paragraph 17.2 of Annexure B of Schedule I of Notification No. FEMA 20/2000-RB classifies the brownfield pharmaceuticals sector under the approval route category.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/680/15.20.67/2018-19 dated August 01, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on August 13, 2018 during which Shri Dev Raj Singh, Shri Dhinal Shah and Shri Rushabh Doshi, represented the



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

It has also been declared in the compounding application dated February 26, 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 21, 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 Regulation 5(1) read with Paragraph 25.2 (applicable from 19.10.2012 to 13.11.2014) and Paragraph 17.2 (applicable from 14.11.2014 to 30.10.2017) of Annex B of Schedule I of Notification No. FEMA 20/2000-RB. The amount of contravention is Rs. 3,63,77,975/- and the period of contravention ranges from 4 years 8 months to 5 years 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. 3,08,686/- (Rupees three lakhs eight thousand six hundred and eighty six 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, Regulation 5(1) read with Paragraph 25.2 (applicable from 19.10.2012 to 13.11.2014) and Paragraph 17.2 (applicable from 14.11.2014 to 30.10.2017) of Annex B of Schedule I of Notification No. FEMA 20/2000-RB, on payment of a sum of Rs. 3,08,686/- (Rupees three lakhs eight thousand six hundred and eighty six 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 sixteenth day of August, 2018

Sd/-

(Ajay Kumar Misra)
Chief General Manager