



In the

Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present

Shri J. K. Pandey
Chief General Manager

Date: August 30, 2018

C.A. No. 765/2018

In the matter of

Zuellig Pharma (India) Private Limited
Ecstasy, 803/804, 9th floor
City of Joy, J.S.D. Road
Mulund (W)
Mumbai- 400080

(Applicant)

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

Order

1. The applicant has filed the compounding application dated April 18, 2018 (received at the Reserve Bank on April 24, 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) neither the equity instruments were issued nor the money refunded to the foreign investor, a person resident outside India within 180 days of the receipt of the inward remittance (ii) delay in reporting receipt of foreign inward remittance towards subscription to equity & (iii) delay in submission of Form FC-GPR to the Reserve



Bank after issue of shares to a person resident outside India (iv) delay in filing 'Annual Return on Foreign Liabilities and Assets' (FLA Returns), in terms of paragraphs 8, 9(1)(A), 9(1)(B) and 9(2) respectively, of Schedule 1 to 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 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts of the case are as follows: The applicant company was incorporated on June 2, 2004, under the Companies Act, 1956 as Zuellig Pharma (India) Private Limited. Its main activities are (i) to carry on the business of marketing, sales, integrated logistics services including origin/destination services, transportation, loading and unloading, customs clearances, forwarding, handling, consolidation, warehousing, distribution services for all types of pharmaceutical and health care products and other products related thereto and providing logistics consultancy services in relation to the aforesaid (ii) To carry on the business of cash and carry wholesale trading operations in India and create a sustainable presence and to develop viable business of the company all over India for all types of pharmaceutical and health care products and related products thereto.



3. The applicant received foreign inward remittance from Zuellig Pharma Holding Ltd., Malaysia towards equity / preference share capital and reported the same to the Reserve Bank as indicated below.

Sr. No.	Amount received in INR	Date of receipt	Date of reporting	Delay under Para 9(1) (A)	Date of allotment / Refund	Delay under Para 8
1	4,58,830.00	06-12-2005	10-10-2008	02Y 09M 04D	15-09-2008	NO
2	45,41,500.00	23-03-2006	10-10-2008	02Y 05M 18D	15-09-2008	NO
3	50,00,000.00	13-10-2006	10-10-2008	01Y 10M 28D	15-09-2008	NO
4	50,00,000.00	04-01-2007	10-10-2008	01Y 08M 06D	15-09-2008	NO
5	1,00,00,000.00	07-02-2007	10-10-2008	01Y 07M 03D	15-09-2008	NO
6	1,00,00,000.00	24-04-2007	10-10-2008	01Y 04M 17D	15-09-2008	NO
7	1,00,00,000.00	16-07-2007	10-10-2008	01Y 01M 25D	15-09-2008	NO
8	1,40,00,000.00	04-10-2007	10-10-2008	11M 06D	15-09-2008	NO
9	2,00,00,000.00	24-12-2007	10-10-2008	08M 17D	15-09-2008	02M 24D
10	1,00,00,000.00	29-02-2008	10-10-2008	06M 12D	15-09-2008	19D
11	70,00,000.00	26-03-2008	10-10-2008	05M 15D	15-09-2008	NO
12	50,00,000.00	26-03-2008	10-10-2008	05M 15D	15-09-2008	NO
13	2,00,00,000.00	13-06-2008	10-10-2008	02M 28D	15-09-2008	NO
14	70,00,000.00	24-03-2009	13-01-2010	8M 20D	15-02-2017	07Y 04M 26D
15	60,00,000.00	17-04-2009	13-01-2010	7M 27D	15-02-2017	07Y 04M 02D
16	40,00,000.00	24-10-2011	19-12-2011	26D	20-04-2012	NO
Total	13,80,00,330.00					

The applicant reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 26 Days to 2 Years 9 Months 4 Days approximately, in respect of remittance recorded at serial no. 1 to 16 above, beyond the stipulated time 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.



4. The company allotted equity shares/preference shares/convertible preference shares and filed FC-GPRs as indicated below:

Sr. No.	No. of shares	FV in INR	Premium in INR	Amount in INR	Date of allotment	Date of Filing	Delay
1	12100000	10	0	12,10,00,000.00	15-09-2008	14-10-2008	N0
2	400000	10	0	40,00,000.00	20-04-2012	25-06-2012	1M 6D
3	1300000	10	0	1,30,00,000.00	15-02-2017	16-03-2017	N0
			Total	13,80,00,000.00			

The applicant filed form FC-GPRs as indicated above with a delay of 1 Month 6 Days, approximately, beyond the prescribed limit in respect of allotment indicated at Sr. No. 2 above. 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 to Reserve Bank a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India.

5. In respect of remittances amounting to Rs.4,30,00,000.00 (Rupees Four Crore Thirty Lakh only), at serial no 9, 10, 14 and 15 above in para 3 above, the company allotted shares after 180 days of receipt of investment with a delay ranging from 19 Days to 7 Years 4 Months 26 Days, approximately. Whereas in terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, 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 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 20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of security by A person resident outside India) (Third Amendment) Regulations,



2007 notified, vide Notification No. FEMA 170/2007-RB dated 13th November, 2007 in the official Gazette of the Government of India.

6. The company has not filed the Annual Return on Foreign Liabilities and Assets (FLA return) to the Reserve Bank of India for the Financial Year 2008-09. Whereas, in terms of Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB read with A. P. (DIR Series) Circular No. 29 dated February 02, 2017, all Indian companies which have received Foreign Direct Investment in the previous years including the current year, shall submit to the Reserve Bank of India, on or before the 15th day of July each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time.

7. The applicant was given an opportunity for personal hearing vide e-mail dated August 6, 2018, for further submission in person and/or for producing documents, if any, in support of the application. The applicant appeared for personal hearing on August 10, 2018, during which Shri Harsh J. Vora, Associate Director, PricewaterhouseCoopers Private Limited represented the applicant in the cabin of Shri J. K. Pandey, Chief General Manager, Mumbai Regional Office. The representative of the applicant admitted the contraventions for which compounding has been sought. During the hearing it was submitted that delay was inadvertent and unintentional. The representatives of the applicant requested that in view of the foregoing a lenient view may be taken 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 as other documents and submissions made in this context by the applicant during personal hearing and thereafter.

8. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

(a) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB since the shares were not issued to the person resident outside India within 180 days from the date of receipt of the inward remittance/share application not refunded to the person



resident outside India within 180 days from the date of receipt of the inward remittance. The contravention relates to an amount of Rs.4,30,00,000.00 (Rupees Four Crore Thirty Lakh only) and with the delay ranging from 19 Days to 7 Years 4 Months 26 Days, approximately.

(b) Paragraph 9(1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in reporting of receipt of foreign inward remittance towards subscription towards shares as detailed in paragraph 3 above. The contravention relates to an amount of Rs.13,80,00,330.00 (Rupees Thirteen Crore Eighty Lakh Three Hundred Thirty only) and with a delay ranging 26 Days to 2 Years 9 Months 4 Days, approximately.

(c) Paragraph 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India and the contravention relates to an amount of Rs.40,00,000.00 (Rupees Forty Lakh Only) with a delay of 1 Month 6 Days, approximately.

(d) Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB due to non-filing of Annual Return on Foreign Liabilities and Assets for the Financial Year 2008-09.

9. It has been declared in the compounding application dated April 18, 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 declared in the declaration dated April 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/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.



10. 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 contraventions are to be compounded and I consider that an amount of Rs.6,09,210/- (Rupees Six Lakh Nine Thousand Two Hundred Ten only) will meet the ends of justice.

11. Accordingly, I compound the admitted contravention namely, the contraventions of Paragraph 8, 9(1) (A), 9(1) (B) and 9(2) 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 Rs.6,09,210/- (Rupees Six Lakh Nine Thousand Two Hundred Ten only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, 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.

12. The above order is passed only in respect of contraventions of paragraph 8, 9(1) (A), 9(1) (B) and 9(2) of Schedule I to Notification No. FEMA 20/2000-RB and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.

The application is disposed of accordingly.

Dated: August 30, 2018.

Compounding Authority

Sd/-

(J. K. Pandey)

Chief General Manager