



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: October 4, 2018  
CA No 4737 / 2018

In the matter of

**Alcon Laboratories (India) Private Limited**  
**3<sup>rd</sup> Floor, Crescent-IV, Prestige Shantiniketan**  
**Whitefield, Bengaluru – 560048**

**(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 May 25, 2018 (received in the Reserve Bank on June 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 to be compounded for not meeting the minimum capitalization norms, in contravention of Regulation 5(1) read with Paragraph 2 of Annex B (from 01.03.2006 to 30.12.2008), renamed as Paragraph 27 (from 31.12.2008 to 29.10.2012), further renamed to Paragraph 24.2(1)(ii) (from 30.10.2012 to 26.08.2014), and later renamed as Paragraph F.8.2(1)(iii) (from 27.08.2014 till the end date of the contravention, i.e., 31.10.2015) 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 Alcon Laboratories (India) Private Limited on July 23, 1999. (CIN: U33119KA1999FTC025496). The applicant is engaged in the business of wholesale trading in India and providing maintenance services in relation to eye care products. The applicant company has 100% foreign direct investment (FDI), contributed by Novartis AG, Switzerland (99.99% shareholding with 11,29,95,337 shares) and Alcon Pharmaceutical Limited, Switzerland (0.01% shareholding with 1 share).

The applicant carried out financial leasing of ophthalmic surgical equipment (through wholesale trading), from March 2006 to October 2015. A company having foreign investment and engaged in financial leasing was required to meet the minimum capitalization norms, which the applicant company failed to do, thus contravening Regulation 5(1) read with Annexure B of Schedule I of Notification No. FEMA 20/2000-RB.

The applicant company, however, discontinued the financial leasing activity in October 2015, due to business considerations, as admitted in the compounding application. The applicant company then filed an application before Department of Economic Affairs (DEA), Ministry of Finance, Government of India (GOI), dated December 28, 2017, to again undertake financial leasing of ophthalmic surgical equipment in India, in addition to its existing business of wholesale trading. DEA vide letter dated April 2, 2018 approved the same. DEA accorded post-facto approval for the financial leasing activity carried out by the applicant company till October 2015, without meeting the minimum capitalization norms, while directing the applicant company to approach the Reserve Bank of India for compounding of the contravention resulting therefrom.

The minimum capitalization norm expected to be met would require bringing in USD 50 million of foreign capital out of which USD 7.5 million was to be brought up front and the balance amount in 24 months.

The shortfall in meeting minimum capitalization norms was as follows:

Minimum capitalization norm	Cut-off date for complying with the norm	Actual amount received (INR)	Shortfall in meeting the prescribed norm (INR)
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USD 7.5 million upfront (equivalent to INR 33,26,25,000)	01.03.2006	3,17,11,277.54	30,09,13,722.46
USD 42.5 million to be brought in 24 months (equivalent to INR 171,10,50,000)	01.03.2008	109,99,99,999.86	61,10,50,000.14

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 2 of Annex B (from 01.03.2006 to 30.12.2008), renamed as Paragraph 27 (from 31.12.2008 to 29.10.2012), further renamed to Paragraph 24.2(1)(ii) (from 30.10.2012 to 26.08.2014), and later renamed as Paragraph F.8.2(1)(iii) (from 27.08.2014 till the end date of the contravention, i.e., 31.10.2015) of Annexure B of Schedule I of Notification No. FEMA 20/2000-RB specifies the minimum capitalization norms subject to which foreign investment in NBFC is allowed under the automatic route.”

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/1280/15.20.67/2018-19 dated August 31, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on September 21, 2018 during which Shri Krishna Jois and Shri Omkar Gayatri, Shri Devraj Singh and Shri Rahul Kakkad company represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and requested that a lenient view may be taken in the matter. They stated that the contravention had occurred based on their bonafide belief that they were not required to meet the minimum capitalization norms.

It has also been declared in the compounding application dated May 25, 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 also been declared in the declaration furnished along 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 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 applicant has also declared in the compounding application that they have not made any gain or unfair advantage as a result of the said contravention. The declaration of the applicant company has been taken on record.

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 2 of Annex B (from 01.03.2006 to 30.12.2008), renamed as Paragraph 27 (from 31.12.2008 to 29.10.2012), further renamed to Paragraph 24.2(1)(ii) (from 30.10.2012 to 26.08.2014), and later renamed as Paragraph F.8.2(1)(iii) (from 27.08.2014 till the end date of the contravention, i.e., 31.10.2015) of Annex B of Schedule I, of Notification No. FEMA 20/2000-RB. The amount of contravention is Rs. 91,19,63,772.60/- and the period of ranges from seven and a half years to nine and a half 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. 68,89,728/- (Rupees sixty eight lakh eighty nine thousand seven hundred and twenty eight 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 2 of Annex B (from 01.03.2006 to 30.12.2008), renamed as Paragraph 27 (from 31.12.2008 to 29.10.2012), further



renamed to Paragraph 24.2(1)(ii) (from 30.10.2012 to 26.08.2014), and later renamed as Paragraph F.8.2(1)(iii) (from 27.08.2014 till the end date of the contravention) of Annex B of Schedule I, of Notification No. FEMA 20/2000-RB, on payment of a sum of Rs. 68,89,728/- (Rupees sixty eight lakh eighty nine thousand seven hundred and twenty eight 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 fourth day of October, 2018

Sd/-

**(Ajay Kumar Misra)**  
**Chief General Manager**