



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 4693 / 2018

In the matter of

**Biomerieux India Private Limited**  
**43A, Okhla Industrial Estate**  
**Phase III, Modi Mill Compound**  
**New Delhi - 110020**

**(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 April 24, 2018 (received in the Reserve Bank on April 27, 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 making a downstream investment in a company engaged in manufacture and marketing of molecular diagnostic kits, without prior FIPB approval, in contravention of Regulation 14(6)(i) read with paragraphs 17.2, 17.3.1(i) and (iii) of Annex B of Schedule I (as then applicable) 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, a resident company, was incorporated as Biomerieux India Private Limited on June 10, 1998 under the Companies Act, 1956 (CIN: U85195DL1998PTC094403). The applicant is wholly owned by Biomerieux France, a non-resident company. The applicant is engaged in the business of wholesale of in vitro diagnostic products, including reagents and automated systems for clinical and industrial diagnosis, used for diagnosis in the field of healthcare and treatment to registered healthcare institutions/practitioners and support. On 19.03.2015, the applicant company acquired 10% shareholding in M/s RAS Lifesciences Private Limited, an Indian company engaged in manufacture and marketing of molecular diagnostic kits, for a consideration of Rs. 1,75,00,000/-, by purchase of 1,00,000 equity shares from Dr. K.I. Varaprasad Reddy. This acquisition increased their total shareholding in M/s RAS Lifesciences Private Limited to 70%. Since the investment was in 'brownfield' pharmaceutical sector, prior government approval was required at the time of the downstream investment, which the applicant company did-not take, thus contravening Regulation 14 read with paragraphs 17.2, 17.3.1(i) and (iii) of Annex B of Schedule I of Notification No. FEMA 20/2000-RB. The erstwhile Foreign Investment Promotion Board (FIPB), vide a letter dated 25.11.2016, advised the applicant company to seek the abovementioned approval. The Department of Pharmaceuticals, Government of India, provided the necessary post-facto approval vide letter dated 19.12.2017, subject to compounding by RBI.

. 3. Regulation 14(6)(i) of Notification No.FEMA.20/2000-RB states that "Downstream investment by an Indian company, which is not owned and /or controlled by resident entity/ies, into another Indian company, would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating."

Further, Paragraphs 17.2, 17.3.1(i) and (iii) of Annex B of Schedule I of Notification No. FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, subjects FDI in existing pharmaceutical companies to a cap of 100% under Government approval route.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/276/15.20.67/2018-19 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 28, 2018 during which Ms. Rekha Khanna, Director and Chairman of the Board, Biomerieux India Pvt. Ltd., and Shri. Saurabh Tiwari,



Luthra and Luthra Law Offices, represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to their bonafide belief that FDI in manufacturing of medical devices was allowed up to 100% under the automatic route, vide Press Note 2 of 2015. They requested that a lenient view may thus be taken in the matter.

It has also been declared in the compounding application dated April 24, 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 May 05, 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 14(6)(i) read with paragraphs 17.2, 17.3.1(i) and (iii) of Annex B of Schedule I (as then applicable) of Notification No. FEMA 20/2000-RB. The amount of contravention is Rs. 1,75,00,000/- and the period of contravention is 2 years 9 months 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. 1,55,000/- (Rupees one lakh and fifty five thousand 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 14(6)(i) read with Regulation 14(5)(iii) and paragraphs 17.2, 17.3.1(i) and (iii) of Annex B of Schedule I (as then applicable) of Notification No. FEMA 20/2000-RB, on payment of a sum of Rs. 1,55,000/- (Rupees one lakh and fifty five thousand 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**