



In the

**RESERVE BANK OF INDIA**

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

P S Khual

**General Manager**

Date: November 5, 2018

C.A.NDL 287/2018

In the matter of

**VMG Pharmaceuticals Private Limited**

619/19, Chattarpur Main Road, New Delhi 110074

**(Applicant)**

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

**ORDER**

The applicant has filed a suo-moto compounding application dated May 24, 2018 (received at Reserve Bank of India, New Delhi on June 06, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder on directions of Department of Pharmaceuticals, Ministry of Chemical and Fertilizers, Government of India. The contravention sought to be compounded is of issue of equity shares without the prior approval of Foreign Investment Promotion Board (FIPB) Government of India, in terms of Paragraph 3 (b) 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 as amended from time to time (hereinafter referred to as FEMA 20/2000-RB).



**VMG Pharmaceuticals Private Limited**  
**CA NDL 287/2018**



2. The relevant facts of the case are as follows:

a) The applicant company was incorporated on July 17, 2008 and allotted registration number U24100DL2008PTC180997. The company is engaged in manufacturing and export of pharmaceuticals products.

b) The company had received a total of 10 foreign inward remittances from December 27, 2010 to March 06, 2012 for issue of equity shares. Out of these remittances, six were received under greenfield investment where 100% FDI was permitted. The company received four inward remittances amounting to ₹52,19,993.22 under brownfield investment and allotted shares against them (as detailed hereunder) without seeking prior approval.

Sr. No.	Date of receipt	Date of allotment of shares	Amount in INR	Date of FIPB Approval
1.	13.07.2011	05.01.2012	15,85,068.14	30.10.2017
2.	22.11.2011	05.01.2012	4,88,109.15	30.10.2017
3.	05.01.2012	30.06.2012	13,78,944.31	30.10.2017
4.	06.03.2012	30.06.2012	17,67,871.62	30.10.2017
<b>Total</b>			<b>52,19,993.22</b>	

After allotment of shares the applicant approached the Government of India for post facto approval and the same was granted by Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers vide letter dated October 30, 2017, subject to compounding for contravention of FDI Policy for all FDIs/allotment of shares made after November 8, 2011. In terms of DIPP Press Note No. 3 (2011 Series) dated November 8, 2011, FDI upto 100% would be permitted for brownfield investments (i.e., investment in existing companies) in the pharmaceuticals sector under the Government approval route.

Whereas, in terms of Paragraph 3 read with Annex B of Schedule 1 to FEMA 20/2000- RB, an Indian company intending to issue shares to a person resident outside India in accordance with these Regulations shall obtain prior approval of FIPB of the Government of India if the activity of the company falls under the FIPB route as stipulated in Annex B to Schedule 1.

Thus, there was contravention of Paragraph 3 (b) of Schedule 1 to FEMA Notification No.20/2000-RB dated May 3, 2000, as then applicable, read with para 6.2.25.2 of Circular 2 of 2011 on Consolidated FDI Policy dated September 30, 2011. The



duration of the contravention ranges from 5 years, 7 months and 24 days to 6 years, 3 months and 17 days.

3. The applicant company was given an opportunity for personal hearing for further submission in person and/or by producing documents, if any, in support of the application. Shri Nishant Chaudhary, consultant, appeared for the personal hearing on November 5, 2018 on behalf of the applicant. The representative admitted the contravention committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that the contravention was due to unawareness of FEMA and regulations made thereunder. He further stated that the contravention was without any malafide or wilful intent and requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Paragraph 3 of Schedule 1 of FEMA 20/2000-RB, as then applicable, due to receipt of foreign inward remittances and allotment of shares without FIPB approval after November 8, 2011. The contravention relates to an amount of ₹52,19,993.22 and the duration of the contravention ranges from 5 years, 7 months and 24 days to 6 years, 3 months and 17 days.

5. It has been declared in the compounding application dated May 24, 2018 that the particulars given by the applicant are true and correct to the best of his knowledge and belief. It has been declared in the declaration furnished by director of the company 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. 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 contravention which is being compounded in this Order is 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 contraventions are to be compounded and I consider that an amount of **₹ 89,150/- (Rupees Eighty Nine Thousand One Hundred Fifty only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions of Paragraph 3 of Schedule 1 to FEMA 20/2000-RB, as then applicable, by the applicant on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹ 89,150/- (Rupees Eighty Nine Thousand One Hundred Fifty only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at New Delhi 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 5<sup>th</sup> day of November 2018.

Sd/-

(P S Khual)  
General Manager