



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
Fort, Mumbai - 400 001

Present

J.K.Pandey
Chief General Manager

Date: April 17, 2017
C.A. 4227/2016

In the matter of

Wanbury Limited
BSEL Tech Park, B Wing, 10th floor
Sector 30-A, Opposite Vashi Railway Station
Vashi, Navi Mumbai – 400 703

(Applicant)

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

Order

The applicant has filed the application dated November 18, 2016 (received in the Reserve Bank of India on November 22, 2016) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded relate to (i) non-filing of Form ODI after making the initial remittance to wholly owned subsidiary (WOS) overseas and making additional remittances before obtaining Unique Identification Number (UIN) from the Reserve Bank Of India (RBI); (ii) extending of loan (quasi equity capital) without initial equity contribution; and (iii) delayed filing of Annual Performance Report (APR) in respect of the overseas entity in contravention of the provisions of Regulations 6(2)(vi), 6(4) and 15(iii) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, notified vide Notification No. FEMA 120/2004-RB



dated July 7, 2004, as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).

2. The relevant facts of the case are as follows: The applicant was initially incorporated as Pearl Distributors Private Limited on August 11, 1988 under the Companies Act, 1956 (CIN L51900MH1988PLC048455). The name of the applicant was changed to Pearl Organics Private Limited on January 17, 1991, then to Pearl Organics Limited on August 06, 1991 and finally to Wanbury Limited on September 21, 2004. The applicant is presently a listed public company. The applicant is engaged in the business of Active Pharmaceutical Ingredients and Domestic Formulations. On August 24, 2008, the applicant set up a wholly owned subsidiary (WOS) in UAE (Wanbury Global FZE) to undertake general trading in pharmaceutical products. The applicant made the following remittances to the WOS:

Sr. No.	Date of Remittance	Foreign Currency (FC)	Amount in FC	Amount in INR	Purpose
1.	22.08.2008	AED	55,210	6,71,906	Quasi share capital
2.	10.11.2008	Euro	5,000	3,10,950	Quasi share capital
3.	06.04.2009	AED	7,000	98,280	Quasi share capital
4.	06.04.2009	AED	5,00,000	68,32,500	Equity
5.	20.05.2009	AED	13,70,000	1,78,06,575	Quasi share capital
6.	15.06.2009	AED	19,25,000	2,52,07,875	Quasi share capital
7.	22.02.2010	AED	45,840	5,94,545	Quasi share capital
8.	11.03.2010	AED	5,000	63,800	Quasi share



					capital
9.	26.08.2009	EURO	3,00,000	2,09,78,250	Quasi share capital
10.	16.10.2009	EURO	1,95,920	1,35,52,766	Quasi share capital
11.	04.03.2010	EURO	3,200	2,03,840	Quasi share capital
12.	24.07.2009	EURO	6,43,306	4,42,67,494	Quasi share capital
13.	11.06.2010	EURO	8,000	4,59,600	Quasi share capital
14.	30.07.2010	EURO	20,100	12,26,251	Quasi share capital
	Total			13,22,74,632	

The applicant made the initial remittance of AED 55,210 to the overseas subsidiary as quasi share capital in the subsidiary. At the time, the applicant did not have equity contribution in the overseas entity. The applicant did not submit a copy of the quasi share capital agreement and also did not report the initial remittance to the Reserve Bank of India (RBI) in Form ODI within the prescribed period. Thereafter, the applicant made multiple remittances as above without obtaining the Unique Identification Number (UIN) from the RBI. The UIN was allotted to the applicant in April, 2015. The applicant made only one remittance towards equity as at serial number 4 in the above table. All other remittances were made towards quasi share capital in the overseas subsidiary. The applicant also delayed in filing the APRs with the RBI in respect of the overseas entity for the years ended March 31, 2010 to March 31, 2016 (i.e. 7 years) beyond the prescribed period.

The above investments by the applicant without submission of Form ODI to the RBI and without obtaining UIN; extending of loan (quasi equity) without initial equity contribution in the WOS and delayed submission of APRs for the years 2010 to 2016 were contraventions of Regulations 6(2)(vi), 6(4) and 15(iii) of Notification No. FEMA 120/2004-RB dated July 7, 2004. The applicant is also presently under Directorate of Enforcement (DoE) investigation.



3. In terms of Regulation 6(2)(vi) of Notification No. FEMA 120/2004, the Indian Party making direct investment in a JV/WOS outside India has to submit Part I of Form ODI, duly completed, to the designated branch of an Authorized Dealer. The applicant did not report the investments made in the overseas entity within the prescribed time period of 30 days and subsequent remittances to the overseas entity were made without obtaining UIN for the overseas entity.

3.a Further, in terms of Regulation 6(4) of Notification No. FEMA 120/2000-RB dated July 7, 2004, "(i) an Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture / Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture.

The applicant made equity contribution to the overseas WOS on April 06, 2009 only, prior to which three remittances in the nature of loan were extended to the WOS.

3.b Regulation 15(iii) of FEMA 120/2004 read with A.P. (DIR Series) Circular No.29 dated September 12, 2012 provides that the applicant is required to submit to the Reserve Bank of India an Annual Performance Report (APR) in Form ODI Part III in respect of each JV or WOS outside India and other reports or documents as may be specified by the Reserve Bank from time to time, on or before the 30th of June every year.

The APRs for the years 2010-2016 (7 years) was submitted to the RBI with delay beyond the prescribed period.

4. The applicant was given an opportunity for personal hearing vide our letter No. FED.CO.CEFA No.8844/15.20.67/2016-17 dated March 03, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri Ashish Rathi, Associate Vice President, Shri Jitendra Gandhi, Company Secretary, Shri Ramakant Kini, Consultant, Sterling Associates and Shri Pradyumnya Patil, Consultant, Sterling Associates represented the applicant during the personal hearing held on March 23, 2017. The representatives of the



applicant admitted the contraventions for which compounding has been sought and submitted that the lapses were inadvertent and unintentional. They requested that in view thereof, the matter may be viewed leniently. 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.

5. 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 provisions of FEMA for the amounts and duration as below:

- i. Regulation 6(2)(vi) of Notification No. FEMA.120/2004-RB dated July 7, 2004 - Rs. 13,22,74,632/- - remittances towards investment in the WOS without submission of Form ODI to the RBI and without obtaining UIN. The duration of contravention ranges between five years to seven years approximately.
- ii. Regulation 6(4) of Notification No. FEMA.120/2004-RB dated July 7, 2004 - Rs.10,81,136/-) – extending loan (as quasi share capital) prior to equity investment in the WOS. The duration of contravention ranges between five months to eight months approximately.
- iii. Regulation 15(iii) of Notification No. FEMA.120/2004-RB dated July 7, 2004 – APRs for 7 years (2010 – 2016) were submitted with delay.

6. As there is an ongoing investigation by the Directorate of Enforcement (DoE) against the applicant, this compounding order is issued only in respect of contraventions mentioned in paragraph 2 above and is without prejudice to any action that may be taken by Directorate of Enforcement against the applicant on the issues not covered under this order.

7. 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 contravention is to be



compounded and I consider that payment of an amount of Rs.11,64,000/- (Rupees eleven lakhs and sixty four thousand only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 6(2)(vi), 6(4) and 15(iii) of Notification No. FEMA 120/2004-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.11,64,000/- (Rupees eleven lakhs and sixty four thousand only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai – 400 001 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 seventeenth day of April, 2017

Sd/-

J.K. Pandey
Chief General Manager