



In the

Reserve Bank of India
Foreign Exchange Department
11th floor, NCOB
Fort, Mumbai - 400 001

Present

Tuli Roy
General Manager

Date: June 1, 2017
CA No 4258/2017

In the matter of

M/s Immortal Life Sciences Private Limited
237/40-41, Banjari Tola Chowk, Lucknow, UP-226 003

(Applicant)

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

Order

The applicant has filed a compounding application dated December 27, 2016 (received at the Reserve Bank on December 30, 2016) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded involve Regulation 15 of FEMA 120.

2. The relevant facts of the case are as follows: The applicant opened a bank account in UAE in the name of Immortal Life Sciences Private Limited as formation of wholly owned subsidiary (WOS), required proof of share capital from any bank operating in UAE. The certificate of incorporation was later issued on 30.9.2012. The same bank account name was changed to Immortal Life Sciences FZ LLC by the bank on incorporation of the WOS. Consequent to the delay in formation of the WOS, there was delay in issue of share certificates which were formally signed on issue of certificate of incorporation of the WOS and there was a delay in issue of shares. The applicant, being the parent company, has sent three remittances abroad to fund the operations to be carried out by the WOS. The applicant delayed reporting the following three remittances to Reserve Bank of India (RBI) within the prescribed period.



Sl. No.	Date of remittance	Date of reporting of APRs to RBI	Amount in AED	Amount in Indian Rupees	Amount in USD	Purpose
1	18.10.2011	19.11.2012	292,602.64	39,40,275.75	80,000	Equity
2	10.01.2012	19.11.2012	72,959.42	10,69,275.75	20,000	Equity
3	06.03.2012	19.11.2012	182,975	25,23,275.75	50,000	Equity
	Total			75,32,827.25		

The share certificates were not received within six months from 18.10.2011 which was the date of remittance but was received on 15.01.2015. The balance of unallotted share application money of USD 13,126.53 was repatriated on 17.06.2015. The four APRs were received with much delay as given above. The amount of contravention is Rs 75,32,827.25 and the period of contravention is from 18.10.2011 to December 27, 2016 when the transaction was regularized on submission of their compounding application.

3. Regulation 15 (1) and Regulation 15 (iii) of Notification No.FEMA 120/2004-RB deals with Permission for Direct Investment in certain cases. Regulation 15 (i) on Obligations of the Indian Party states as follows: "An Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, shall receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalised became due to the Indian Party or the date on which the amount due was allowed to be capitalised"; and Regulation 15 (iii) states "submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited annual accounts of the JV / WOS for the preceding year, unless specifically exempted by the Reserve Bank."

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/9826 dated March 31, 2017 for further submission in person and/or producing documents, if any, in support of the application. The representatives of the applicant, Shri Mazhar Alavi, CA and Shri Madhur Jain, CA appeared for the personal hearing on May 04, 2017. During the personal hearing, the representatives of the applicant admitted the contraventions committed by them for which they have sought compounding.



The representatives of the applicant stated that the company had taken action to rectify the mistakes. They requested that 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 submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record. Accordingly, I hold that the applicant has contravened the FEMA provisions issued in terms of provisions of under Regulation 15 (i) and 15 (iii) of Notification No.FEMA 120/2004-RB.

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 Rs.60,000 /- (Rupees Sixty thousand only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of Regulation 15(i) 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.60,000/- (Rupees Sixty 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 of accordingly.

Dated this the first day of June 2017

Sd/-

(Dr. Tuli Roy)
General Manager