



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

Jyoti Kumar Pandey
Chief General Manager

Date: June 22, 2017
CA No. 4263/2017

In the matter of

Alkem Laboratories Limited
Alkem House, 'Devashish'
Senapati Bapat Marg, Lower Parel (W)
Mumbai - 400013

(Applicant)

In exercise of the powers conferred 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 January 04, 2017 (received in the Reserve Bank of India on January 05, 2017), and addendums dated April 27, 2017 and June 13, 2017, for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) issuance of SBLC on behalf of first level step down subsidiary under automatic route, (ii) receipt of share certificate beyond the stipulated time period of six months and (iii) delay in submission of Annual Performance Report (APR), beyond the stipulated time period. The above were in contravention of Regulations 6(2)(i)(g), 15(i) 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 incorporated as Alkem Laboratories Private Limited under the Companies Act, 1956, on August 8, 1973 (CIN: U00305MH1973PLC174201). It later converted into a public limited company and changed its name to Alkem Laboratories Limited on August 21, 2001. The applicant is engaged in the business of manufacturing and distribution of pharmaceuticals, cosmetics, beauty-aids and related products. The applicant incorporated a Wholly Owned Subsidiary (WOS), namely, S&B Holdings B.V., Netherlands, on June 17, 2009. SBLCs were issued on behalf of the first level step-down subsidiary of the applicant, without the prior approval of the Reserve Bank of India, as follows:

S.No.	Date of issuance or renewal of SBLC	Amount in USD	Amount in INR	Expiry date of SBLC
1	08.04.2013	30,000,000	1641645000	22.06.2015
2	23.06.2015	25,000,000	1368037500	16.03.2016
3	17.03.2016	15,000,000	1003209000	28.03.2016
4	28.03.2016	25,000,000	1666700000	07.04.2017

The above issuance of SBLCs without the prior approval of RBI was in contravention of Regulation 6(2)(i)(g) of Notification No. FEMA 120/2004-RB, which permits issuance of SBLCs in automatic route only on behalf of JV/WOS.

Further the applicant received the share certificates for its investment in its WOS as follows:

S.No.	Date of remittance	Amount in foreign currencies	Amount in INR	Share Certificate date
1	11.06.2009	Euro 1050000	70142625	14.05.2014
2	27.05.2011	USD 120000	5298000	14.05.2014
3	20.06.2011	USD 750000	33806250	14.05.2014
4	29.06.2011	USD 50000	2282500	14.05.2014
5	12.07.2011	USD 800000	35818239	14.05.2014
6	12.08.2011	USD 600000	27270000	14.05.2014
7	22.08.2011	USD 350000	16021789	14.05.2014



8	30.08.2011	USD 300000	13410000	14.05.2014
9	13.09.2011	USD 400000	18856357	14.05.2014
10	13.09.2011	USD 400000	18856357	14.05.2014
11	13.09.2011	USD 3000000	141525000	14.05.2014
12	21.09.2011	USD 100000	4830914	14.05.2014
13	22.09.2011	USD 200000	9843460	14.05.2014

The receipt of share certificate beyond six months from the date of investment amounted to contravention of Regulation 15(i) of Notification No. FEMA 120/2004-RB.

The applicant did-not submit the Annual Performance Reports (APRs) for the years 2010, 2011, 2012, 2014 and 2015 within the stipulated time period, thus contravening the provisions of Regulation 15(iii) of Notification No. FEMA 120/2004-RB.

3. Regulation 6(2)(i)(g) of Notification No. FEMA 120/2004-RB permits Overseas Direct Investment in certain cases provided that, "...For the purpose of determining the 'total financial commitment' within the limit of 100%, or as decided by the Reserve Bank from time to time, of the net worth, the following shall be reckoned, namely:....(g) Hundred percent of the value of the bank guarantee issued by a resident bank on behalf of an overseas JV/WOS of the Indian party, which is backed by a counter guarantee/ collateral by the Indian party".

Regulation 15(i) of the said Notification states that, "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.....from the date of effecting remittance...."

Further, Regulation 15(iii) of the said Notification obliges the Indian Party to "submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of Form ODI, as prescribed by the Reserve Bank from time to time, in respect of each JV or WOS outside India...."

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/11901/15.20.67/2016-17 dated May 30, 2017 for further



submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on June 13, 2017 during which Shri Rajesh Dubey, CFO, Alkem Laboratories Limited, Shri Raj K. Bafna, GM, Finance, Alkem Laboratories Limited and Shri K.C. Gandhi, CA, represented the applicants. 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. 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. Accordingly, I hold that the applicant has contravened the provisions of Regulations 6(2)(i)(g), 15(i) and 15(iii) of Notification No. FEMA 120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention for contravention of Regulation 6(2)(i)(g) is Rs. 5679591500/- (USD 95,000,000/-) and period of contravention ranges from ten days to two years approximately.

The amounts and periods of contraventions for contravention of Regulations 15(i) and 15(iii) are as indicated in Paragraph 2 above.

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. 2,65,08,512/- (Rupees two crore sixty five lakh eight thousand five hundred and twelve only) will meet the ends of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 6(2)(i)(g), 15(i) 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, by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange



(Compounding Proceedings) Rules, 2000 on payment of an amount of Rs. 2,65,08,512/- (Rupees two crore sixty five lakh eight thousand five hundred and twelve 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 twenty second day of June, 2017

Sd/-

(Jyoti Kumar Pandey)
Chief General Manager