



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: June 13, 2017  
C.A. 4286/2017

In the matter of  
**Indus Biotech Private Limited**  
**Row House No. 1, Rahul residency, Plot Nos. 6 & 7**  
**Off Salunke Vihar Road, Kondhwa, Pune – 411 048, Maharashtra**

**(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 January 17, 2017 (received in the Reserve Bank of India on January 24, 2017) along with an addendum dated May 29, 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 relate to (i) making remittances to overseas entity without allotment of UIN and delayed reporting of remittances in the prescribed form to the Reserve Bank of India (RBI); (ii) using non-permissible sources for funding overseas investment; (iii) delay in submission of Annual Performance Reports (APRs) in respect of the overseas entity; (iv) disinvestment under automatic route with the applicant having outstanding dues from the overseas entity and; (v) disinvestment from the overseas entity without submission of APRs in contravention of the provisions of Regulations 6(2)(vi), 6(3), 15(iii), 16(1)(iv) and 16(1)(v) respectively 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) read with Notification No.277/2013-RB May 08, 2013.

2. The relevant facts of the case are as follows: The applicant was initially incorporated as Indus Natural Products Private Limited on February 16, 1995 under the Companies Act, 1956 (CIN U24231MH1995PTC085656). The name of the applicant was changed to Indus Biotech Private Limited (IBPL) on January 08, 2001. IBPL is engaged in the business of research and development of consumer healthcare products. In April 2008 the applicant incorporated a joint venture (JV) in USA viz., Extreme Physical Performance Inc (hereinafter referred as 'JV'). The applicant made 32 remittances to the JV during the years 2008 to 2010 (reported on September 09, 2015) without submitting Form ODI - I and without allotment of UIN in contravention of Regulation 6(2)(vi) of FEMA 120/2004-RB:

Sr. No	Date of transaction	Amount in Foreign currency	FCY	Amount in INR	Date of reporting	Mode
1	27.03.2008	1,00,000.00	USD	40,27,546.00	09.09.2015	Equity capital
2	29.08.2008	1,00,000.00	USD	43,89,248.00	09.09.2015	Working capital
3	20.10.2008	5,00,000.00	USD	2,46,85,000.00	09.09.2015	
4	17.07.2009	50,000.00	USD	24,38,500.00	09.09.2015	
5	24.07.2009	75,000.00	USD	36,31,500.00	09.09.2015	
6	04.09.2009	75,000.00	USD	36,69,000.00	09.09.2015	
7	06.11.2009	25,000.00	USD	11,73,250.00	09.09.2015	
8	07.12.2009	25,000.00	USD	11,65,750.00	09.09.2015	
9	22.10.2009	10,000.00	USD	4,68,800.00	09.09.2015	
10	05.01.2010	25,000.00	USD	11,54,688.00	09.09.2015	
11	12.01.2010	5,972.41	USD	2,72,402.00	09.09.2015	
12	18.01.2010	10,000.00	USD	4,56,900.00	09.09.2015	
13	27.01.2010	5,000.00	USD	2,32,200.00	09.09.2015	
14	02.02.2010	3,548.00	USD	1,63,598.00	09.09.2015	
15	18.02.2010	7,500.00	USD	3,49,050.00	09.09.2015	
16	18.02.2010	5,000.00	USD	2,32,700.00	09.09.2015	
17	26.02.2010	547.53	USD	25,488.00	09.09.2015	
18	26.02.2010	882.00	USD	41,057.00	09.09.2015	
19	05.03.2010	8,448.30	USD	3,84,567.00	09.09.2015	
20	05.03.2010	2,691.00	USD	1,37,190.00	09.09.2015	
21	09.03.2010	100.33	USD	4,592.00	09.09.2015	
22	15.03.2010	1,000.00	USD	45,800.00	09.09.2015	
23	15.03.2010	24,092.38	CAD	10,83,675.00	09.09.2015	
24	07.04.2010	2,691.00	USD	1,33,770.00	09.09.2015	Payment to third party vendors on
25	22.04.2010	6,255.43	USD	2,79,108.00	09.09.2015	



26	16.06.2010	324.78	USD	15,222.00	09.09.2015	behalf of JV
27	08.07.2010	8,264.23	USD	3,87,840.00	09.09.2015	
28	08.07.2010	5,540.49	USD	2,60,015.00	09.09.2015	
29	21.07.2010	126.91	USD	6,024.00	09.09.2015	
30	02.09.2010	2,625.86	USD	1,27,897.00	09.09.2015	
31	17.09.2010	70.00	USD	4,423.00	09.09.2015	
32	26.11.2010	210.00	USD	9,620.00	09.09.2015	
	<b>Total</b>	<b>USD</b> <b>10,61,798.27</b> <b>+</b> <b>CAD</b> <b>24,092.38</b>		<b>5,14,56,420</b>		

Out of the 32 remittances made by the applicant as above, 21 remittances amounting to USD 76,798.27 (INR 35,69,463/-) and 1 remittance amounting to CAD 24,092.38 (INR 10,83,675) were the payments made to the third party vendors on behalf of JV which were accounted as 'loan' in the books of the JV. Recognition of third party payments as loan in the books of the JV was not a permissible source of funding overseas investment as contained in provisions of Regulation 6(3) of FEMA 120/2004-RB. RBI vide letter FE.CO.DID.No.8437/19.59.243/2015-16 dated February 05, 2016 advised allotment of UIN to the applicant subject to any action that may be taken by Reserve Bank on the compounding application to be filed by the applicant.

Due to mounting losses the applicant dissolved the JV and wrote-off almost the entire stake on June 11, 2014 with the applicant having outstanding dues amounting to Rs.1.67 crore towards royalty and trade receivables due from the JV in contravention of Regulation 16(1)(iv) of FEMA 120/2004-RB. Further, the disinvestment from the JV was undertaken without submission of APRs in contravention of Regulation 16(1)(v) of FEMA 120/2004-RB. The applicant was advised of the contraventions committed vide letter FE.CO.OID/4528/19.59.243/2016-17 dated November 02, 2016. The UIN allotted to the JV was closed on March 23, 2017.

The applicant also delayed in filing the Annual Performance Reports in form APR with the RBI in respect of the overseas entity for the years ended March 31, 2009 to March 31, 2013 (i.e. 5 years) beyond the prescribed period in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB dated July 7, 2004.



3. During the course of its operations, IBPL committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 120/2004:-

3.1 Whereas in terms of Regulation 6(2)(vi) of 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 as per the details given in paragraph 2 above and made the remittances to its overseas JV without allotment of UIN thereby contravening the said FEMA Regulation. The amount of contravention was USD 1,061,798.27 + CAD 24,092.38 (INR 5,14,56,420/-) and the period of contravention ranges from 4 years 10 months to 7 years 06 months.

3.2 Whereas Regulation 6(3) of FEMA 120/2004 clearly stipulates various sources of funding overseas investment in a JV/WOS by an Indian party.

IBPL made investments in its overseas JV through funding by sources other than those permissible in terms of the provisions of Regulation 6(3) of FEMA 120/2004-RB as detailed in Paragraph 2 above thereby contravening the said FEMA Regulation. The amount of contravention was Rs.46,53,138/- and the period of contravention ranges from 6 years 03 months to 7 years.

3.3 Whereas in terms of Regulation 15(iii) of FEMA 120/2004 an applicant is required to 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, as prescribed by the Reserve Bank from time to time, 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.



The APRs for the years March 31, 2009 to March 31, 2013 (i.e. 5 years) were submitted to the RBI with delay beyond the prescribed period in contravention of the said FEMA Regulation.

3.4 Whereas in terms of Regulation 16(1)(iv) & 16(1)(v) of FEMA 120/2004, “An Indian Party may transfer, by way of sale to another Indian Party ....., or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the condition that the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS; Further, the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank.”

The applicant disinvested its entire stake in the JV on June 11, 2014 with the applicant having royalty and trade receivables outstanding from the JV and without submission of APRs in contravention of Regulations 16(1)(iv) and 16(1)(v) of FEMA 120/2004-RB as per the details given at paragraph 2 above. The amount of contravention was Rs.5,14,56,420/- approximately and the period of contravention was around 2 years 08 months.

4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA No.11239/15.20.67/2016-17 dated May 11, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri Sunil Bhaskaran, Managing Director, Shri Achyut Hullgol, General Manager-Finance, Shri Aditya Bhaskaran, Senior Manager from the applicant company along with Shri Rahul Manjrekar and Ms. Chatali Rao represented the applicant during the personal hearing held on May 24, 2017. The representatives of the applicant submitted that the contraventions on their part were unintentional and a lenient view may be taken. 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 FEMA provisions issued in terms of Regulations 6(2)(vi), 6(3), 15(iii), 16(1)(iv) and 16(1)(v) of Notification No. FEMA 120/2004-RB dated July 7, 2004 as detailed in paragraphs 2 and 3 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 contravention is to be compounded and I consider that payment of an amount of Rs.14,86,584/- (Rupees Fourteen Lacs Eighty Six Thousand Five Hundred and Eighty Four only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 6(2)(vi), 6(3), 15(iii), 16(1)(iv) and 16(1)(v) 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.14,86,584/- (Rupees Fourteen Lacs Eighty Six Thousand Five Hundred and Eighty Four only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5<sup>th</sup> 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 thirteenth day of June, 2017.

**Sd/-**

**(J.K.Pandey)**  
**Chief General Manager**