



In the

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

Present

Kamlesh Sharma
Assistant General Manager

Date: July 13, 2017
C.A. 4328/2017

In the matter of

ZIM Laboratories Limited
Registered Office: Sadoday Gyan (Ground Floor), Opp. NADT, Nelson Square
Chindwara Road, Nagpur – 440 013

(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 March 09, 2017 (received in the Reserve Bank of India on the same day) 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) remittance made *in cash* for setting up an overseas entity; (ii) delay in reporting of remittance made to set up the overseas entity in the prescribed form to the Reserve Bank of India (RBI); and (iii) delay in submission of Annual Performance Reports (APRs) in respect of the overseas entity - in contravention of the provisions of Regulations 6(3); 6(2)(vi) and 15(iii) 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).



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

2.1 The applicant was initially incorporated as ZIM Laboratories Private Limited in 1984 under the Companies Act, 1956. Subsequent to a change of name in 1993, the applicant is a public limited company now with its present name as “ZIM Laboratories Limited” (CIN: U99999MH1984PLC032172), having its registered office at the abovementioned address in Nagpur, Maharashtra. The applicant is engaged in the business of manufacturing, distribution and marketing of pharmaceuticals in allopathic category.

2.2 In 2014, the applicant company decided to set up a subsidiary in United Arab Emirates (UAE) to expand its operations. For this purpose, one of the Directors of the applicant company who was on a business visit to UAE, used a part of his travel allowance (in USD currency notes - purchased by the applicant company in India) for making a payment of UAE Dirhams (AED) 25,000.00 towards initial rental charges for E-office (Invoice No. IN0050166 dated June 09, 2014) in Hamriyah Free Zone Authority (HFZA) under the Government of Sharjah. This payment was made for incorporating “Zim Laboratories FZE” (Cust. ID: Z0114, License No. – 12512) as a wholly owned subsidiary (WOS) in Sharjah, UAE of the applicant company with E-Office No. E-38F-14, P.O. Box: 49814 at HFZA, Sharjah, UAE.

2.3 The share certificate for allotment of 25 shares (valued at AED 1000 each) of the abovementioned WOS to the applicant company was issued on the day the payment was made in cash i.e. on June 9, 2014. However, the applicant company submitted Form ODI Part I through its Authorised Dealer (AD) to the RBI only on April 27, 2016. In the light of more details about the transaction obtained through the AD, delays and certain other contraventions were observed. However, after the online reporting by the AD, the WOS was allotted the Unique Identification Number (UIN: BYWAZ20170174) on February 7, 2017, subject to compounding of the contraventions observed.

2.4 The Annual Performance Reports (APRs) for the year 2014-15 and 2015-16 were submitted by the applicant company on March 8, 2017 and



March 9, 2017 respectively, beyond the prescribed period under Regulation 15(iii) of Notification No. FEMA 120/2004-RB dated July 7, 2004.

3. The following are the observed contraventions:

3.1 Whereas in terms of Regulation 6(3) of FEMA 120/2004, the overseas direct investment by the Indian Party may be funded, among other modes, by drawal of foreign exchange from an AD subject to the relevant provisions of FEMA 120/2004 and other applicable Regulations under FEMA, 1999; the applicant company made a payment of AED 25,000.00 (equivalent of USD 6807 approximately - @ USD 1 = AED 3.6725 as per the 'peg' in effect from 1997) directly in cash (instead of routing the payment through an AD to be designated for the purpose) for setting up and acquiring equity ownership in the overseas WOS. While the amount of foreign exchange carried abroad by one of the directors of the applicant company for a business trip was within the permissible limit in this case, direct payment by cash in foreign exchange is not a permissible mode of remittance for making remittance overseas direct investment (ODI). In view of the relatively small amount involved in the first (and till date the only) ODI transaction by the applicant and other bona fide of the case - including the fact that the foreign exchange was acquired by the applicant company in India through banking channels, the contravention has been found eligible to be admitted for compounding.

3.2 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 Form ODI Part I, duly completed, to the designated AD branch within the prescribed time period of 30 days, the applicant submitted the said Form to the designated AD only on April 27, 2016. In view of delays and other contraventions, the allotment of the Unique Identification Number (UIN: BYWAZ20170174) on February 7, 2017 was subject to compounding of the contraventions observed.

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 AD, 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 APRs for 2014-15 and 2015-16 (i.e. 2 years) were submitted to the RBI with delay beyond the prescribed period.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA No.11909/15.20.67/2016-17 dated May 30, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri Piyush Nikhade (Assistant Company Secretary and Compliance Officer) and Shri Seemant Srivastav (Senior Manager, Finance) represented the applicant company during the personal hearing held on June 15, 2017. The representatives of the applicant submitted that the contraventions on the part of the applicant company were unintentional and arose out of lack of knowledge about the legal requirements associated with the transaction which the applicant entered into with an intention of expanding its business abroad. The representatives of the applicant company also requested for a lenient view on the contraventions, in view of the fact that the promoters approached the transaction only from a technical background and could not understand the 'legal complexities' of the matter. The application for compounding was 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 representatives of the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant contravened the following Regulations of Notification No. FEMA 120/2004-RB dated July 7, 2004:

i) Regulation 6(3) - The amount of contravention in INR, as declared by the applicant is ₹ 4,03,000.00 approximately and the period of contravention is taken as 2 years and 9 months – from the date of such cash payment to the date of submission of compounding application.



ii) Regulation 6(2)(vi) - The amount of contravention is ₹ 4,03,000.00 approximately and the period of contravention is being taken as 2 years and 9 months – from the date of remittance to the date of submission of compounding application.

iii) Regulation 15(iii) - The APRs for 2014-15 and 2015-16 (i.e. 2 years) were submitted to the RBI with delay beyond the prescribed period.

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 ₹ 85,168.00 (₹ Eighty Five Thousand One Hundred Sixty Eight only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 6(3), 6(2)(vi) 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 ₹ 85,168.00 (₹ Eighty Five Thousand One Hundred Sixty Eight 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 thirteenth day of July, 2017

Sd/-

(Kamlesh Sharma)
Assistant General Manager

