



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
11th floor, Central Office Building  
Shahid Bhagat Singh Road  
Mumbai - 400 001

Present

**Shekhar Bhatnagar**  
**Chief General Manager**

Date: August 16, 2017  
CA No 4333 / 2017

In the matter of

**Emcure Pharmaceuticals Limited**  
**Emcure House, T-184, MIDC Bhosari**  
**Pune, Maharashtra - 411026**

**(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 22, 2017 (received in the Reserve Bank on March 24, 2017) 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 is procurement of foreign investment in terms of Employee Stock Options (ESOPs) granted to non-resident employees, without prior FIPB approval. The above amounts to the contravention of Paragraph 2(1) of Schedule I, read with Regulation 8(1)(c), of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations,



2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts are as under: The applicant is a resident unlisted company, incorporated on April 16, 1981 (CIN: U24231PN1981PLC024251). The applicant is engaged in the business of developing, manufacturing and marketing of allopathic pharmaceutical products. The applicant issued 1,65,000 ESOPs to be converted into maximum of 1,65,000 shares, to its 13 non-resident employees on October 1, 2013, as follows:

S.No.	Name of the employee	No. of options granted
1	Mr. Jeff Glazer	50000
2	Mr. Jason Malek	25000
3	Mr. Sanjay Sharma	5000
4	Mr. Pankaj Dave	10000
5	Mr. Bharat Patel	7500
6	Mr. Hiren Patel	10000
7	Mr. Ashish Patel	7500
8	Mr. Gitesh Gunderia	7500
9	Mr. Rohit Negi	5000
10	Mr. Jaideep Kapoor	10000
11	Mr. Kunal Khanna	7500
12	Mr. Ajit Srimal	15000
13	Mr. Dinesh Arora	5000
	Total	165000

The exercise price for the options is Rs. 885. FIPB, vide its letter F.No. 17(2014)/264(2013) – Amend, dated February 22, 2016, advised the applicant to approach the Reserve Bank of India for compounding the contravention committed by issuing the abovementioned ESOPs, as brownfield investment in pharmaceutical sector was under the approval route at the time of the issue of



ESOPs, thus requiring prior FIPB approval for their issuance. The above issuance of ESOPs without prior FIPB approval was thus in contravention of Paragraph 2(1) of Schedule 1, read with Regulation 8(1)(c), of Notification No. FEMA 20/2000-RB, as amended from time to time.

3. Paragraph 2(1) of Notification No. FEMA 20/2000-RB, as amended from time to time, and as then applicable, states that, "An Indian company not engaged in any activity/sector mentioned in Annex A to this Schedule, may issue shares or convertible debentures to a person resident outside India, subject to the limits prescribed in Annex B to this Schedule, in accordance with the Entry Routes specified therein and the provisions of Foreign Direct Investment Policy, as notified by the Ministry of Commerce and Industry, Government of India, from time to time:..."

Further Regulation 8(1)(c) states that, "Issue of "employees' stock option"/ sweat equity shares in a company where foreign investment is under the approval route shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India."

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/110/15.20.67/2017-18 dated July 6, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on July 12, 2017 during which Ms. Siddhi Ghatlia and Ms. Khusbu Jasani, represented the applicant. The representatives of the applicant submitted that out of the abovementioned employees, Mr. Rohit Negi, Mr. Kunal Khanna, Mr. Sanjay Sharma, Mr. Jaideep Kapoor, Mr. Jeff Glazer and Mr. Jason Malek have since ceased to be the employees of the company, and hence, 1,10,000 ESOPs granted to them cannot be exercised, and only 55000 ESOPs can be exercised, if at all. Further, 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. Further, the applicant, vide e-mail dated August 11, 2017 submitted that as on the date of their application for FIPB approval, i.e., November 30, 2015, two among the



abovementioned employees, i.e., Mr. Rohit Negi and Mr. Kunal Khanna had ceased to be the employees of the company. 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, and further e-mail clarifications received from the applicant.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Paragraph 2(1) of Schedule I, read with Regulation 8(1)(c), of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time. The amount of contravention is Rs. 14,60,25,000/- and the period of contravention is two years four months approximately.

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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs. 8,59,775/- (Rupees eight lakh fifty nine thousand seven hundred and seventy five only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, Paragraph 2(1) of Schedule I, read with Regulation 8(1)(c) of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time, on payment of a sum of Rs. 8,59,775/- (Rupees eight lakh fifty nine thousand seven hundred and seventy five 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 accordingly.

Dated this the sixteenth day of August, 2017

**Sd/-**

**(Shekhar Bhatnagar)**  
**Chief General Manager**