



In the

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

Present

A.O. Basheer
General Manager

Date: July 7, 2017
CA No 4290/2017

In the matter of

Sartorius Stedim India Private Limited
No. 69/2 & 69/3, Kunigal Road, Jakkasandra, Nelamangala
Bangalore 562 123, Karnataka

(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 January 21, 2017 (received in the Reserve Bank of India on January 31, 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 relates to outstanding payment liability towards its supplier beyond specified period without taking the approval of the Reserve Bank of India (RBI), which is in contravention of Regulation 3 of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 3/2000-RB).



2. The relevant facts of the case are as follows: The applicant company was incorporated as Sterile Filtration Fermentation & Separation Technologies Private Limited on October 24, 1991 under the Companies Act, 1956 (CIN U74210KA1991PTC012445). Subsequently its name was changed to Sartorius Stedim India Private Limited (SSIPL) on October 22, 2007. It is engaged in the business of manufacturing pharmaceuticals and laboratory equipments. SSIPL is a part of Sartorius Group, Germany. Its overseas fellow subsidiary viz, Sartorius Stedim Biotech GmbH, Germany had raised invoices on SSIPL amounting to USD 128,295 for reimbursement of expenses towards freight, hotel/meeting and validation incurred during the period September 05, 2007 to December 08, 2011. The details of the invoices were as under:-

| SL No. | Invoice No. | Inv. Date | Currency | Amount USD | Purpose |
|--------|-------------|---------------------|----------|-----------------|---------------------|
| 1 | 3430199949 | 29-09-2009 | USD | 12,123.00 | Validation Expenses |
| 2 | 3430199946 | 29-09-2009 | USD | 18,184.50 | |
| 3 | 3430288091 | 07-09-2010 | USD | 6,771.77 | |
| 4 | 3430301656 | 25-10-2010 | USD | 6,386.44 | |
| 5 | 3430302757 | 28-10-2010 | USD | 4,525.20 | |
| 6 | 3430310247 | 24-11-2010 | USD | 6,445.06 | |
| 7 | 3430380913 | 26-07-2011 | USD | 4,520.44 | |
| 8 | 3430381697 | 28-07-2011 | USD | 9,084.90 | |
| 9 | 3430414585 | 29-11-2011 | USD | 3,913.29 | |
| 10 | 3430414572 | 29-11-2011 | USD | 4,243.08 | |
| 11 | 3430414574 | 29-11-2011 | USD | 4,229.29 | |
| 12 | 3430417275 | 08-12-2011 | USD | 29,538.00 | |
| | | Sub-total(A) | | 1,09,965 | |
| 1 | 3436007663 | 26-01-2010 | USD | 678.21 | Freight Charges |
| 2 | 3436007983 | 16-03-2010 | USD | 228.11 | |
| 3 | 3436008108 | 07-04-2010 | USD | 382.18 | |
| 4 | 3436008839 | 16-07-2010 | USD | 182.00 | |



| | | | | | |
|---|------------|-----------------------|------------|-----------------|-----------------------------------|
| 5 | 3436008838 | 16-07-2010 | USD | 166.22 | |
| 6 | 3436009084 | 19-08-2010 | USD | 574.00 | |
| 7 | 3436009083 | 19-08-2010 | USD | 231.00 | |
| 8 | 3436009127 | 27-08-2010 | USD | 784.00 | |
| | | Sub-total(B) | | 3,226 | |
| 1 | 3436000776 | 05-09-2007 | USD | 282.20 | Re-imburement of Hotel Expenses |
| 2 | 3436003473 | 14-07-2008 | USD | 4,187.27 | Re-imburement of Meeting Expenses |
| 3 | 4320000335 | 21-06-2011 | USD | 9,500.00 | Re-imburement of Hotel Expenses |
| 4 | 4320000351 | 22-06-2011 | USD | 1,134.91 | Re-imburement of Meeting Expenses |
| | | Sub-total(C) | | 15,104 | |
| | | Total | USD | 1,28,295 | |

SSIPL did not make payment of the above invoices amounting to USD 128,295 (Rs.87,25,851/-) approximately due to misplacement of invoices, no demand from the parent and insufficiency of funds which remained outstanding beyond period of 3 years. RBI vide letter FE.BG.EPD/2802/16.03.001/2016-17 dated December 22, 2016 advised the AD bank namely, Deutsche Bank AG to grant approval from FEMA angle to the applicant to remit entire amount of USD 128,295 to its overseas fellow subsidiary subject to bonafides of the transaction to the satisfaction of the AD Bank and subject to applicant applying for compounding to RBI for delayed payment of invoices within 45 days from the date of receipt of the letter. Accordingly, SSIPL made the payment towards the outstanding invoices to its overseas fellow subsidiary amounting to USD 128,295 on December 29, 2016.

3. Whereas Regulation 3 of Notification No. FEMA 3/2000-RB states that "Save as otherwise provided in the Act, Rules or Regulations made there under, no person resident in India shall borrow or lend in foreign exchange from or to a person resident in or outside India:

Provided that the Reserve Bank may, for sufficient reasons, permit a person to borrow or lend in foreign exchange from or to a person resident outside India".



The above delay in making payment of invoices beyond three years without RBI approval was in contravention of Regulation 3 of Notification No. FEMA 3/2000-RB dated 3rd May 2000.

4. The applicant was given an opportunity for personal hearing vide our letter No. FED.CO.CEFA No.11232/15.20.67/2016-17 dated May 11, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing on June 12, 2017 during which Shri K. Muralidharan, Manager-Finance & Accounts represented the applicant. During the personal hearing, the representative of the applicant admitted the contraventions committed by them for which they have sought compounding and submitted that the lapse was not intentional and requested that a lenient view may be taken. 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 Regulation 3 of Notification No. FEMA 3/2000-RB dated 3rd May 2000. The amount of contravention is USD 128,295 approximately (Rs.87,25,851/-) and the period of contravention ranges two years to four years three 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. 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.1,05,803/- (Rupees One lakh five thousand eight hundred and three only) will meet the ends of justice.



7. Accordingly, I compound the admitted contraventions namely, the contravention of Regulation 3 of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 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.1,05,803/- (Rupees One lakh five thousand eight hundred and three 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 seventh day of July, 2017

Sd/-

(A O Basheer)
General Manager