



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
6, Sansad Marg  
New Delhi-110001

Present

**Sh.T.K.Singh**  
**General Manager**

Date: September 13, 2017  
C.A.NDL 250/2017

In the matter of

Mallinckrodt Pharmaceuticals India Private Limited.  
Unit No. 216, Second Floor, Square One, C-2, District Centre, Saket,  
New Delhi 110017

**(Applicant)**

In exercise of the powers under Section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations/ Rules/ Notifications/ Orders made thereunder, I pass the following order.

**Order**

The applicant has filed a compounding application dated June 29, 2017 (received in Reserve Bank of India on July 12, 2017) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are those of (i) delay in reporting of inflow of funds received from a person resident outside India for allotment of shares in terms of Paragraph 9(1)(A) of Schedule 1 to 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 3rd May, 2000 as amended from time to time (hereinafter referred to as FEMA 20/2000- RB) and (ii) delay in issue of shares without RBI approval beyond the prescribed period of 180 days in terms of Paragraph 8 of Schedule 1 to FEMA 20/2000-RB.



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

- a) The applicant company was incorporated under the Companies Act, 1956 on November 27, 2012 and allotted registration No. U24100DL2012FTC245338 by Registrar of Companies. The company is engaged in the business of sales, marketing, liaising and other business support services to group companies in relation to distribution of pharmaceutical and imaging products by independent distributors in India.
- b) The company had received a foreign inward remittances amounting to Rs. 54,99,964/- on September 23, 2013 for issue of equity shares and reported the same on September 22, 2015 with a delay of 1 year 10 months and 29 days beyond the prescribed period in contravention of Paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000. Whereas in terms of Paragraph 9 (1) (A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures or warrants in accordance with these Regulations should report to Reserve Bank of India, receipt of amount of consideration towards share subscription not later than 30 days from the date of receipt of the said amount.
- c) The company had received foreign inward remittance amounting to Rs.54,99,964/- on September 23, 2013 and issued shares on October 24, 2014, without Reserve Bank's approval, with a delay of 7 months and 2 days beyond prescribed period of 180 days in contravention of para 8 of Schedule 1 to FEMA Notification No 20 /2000-RB dated May 3, 2000. Whereas, in terms of Paragraph 8 of Schedule 1 to FEMA notification No 20/2000-RB, equity instruments should be issued within 180 days of the receipt of the inward remittance. In case the equity instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor through normal banking channels or by credit to his NRE/FCNR (B) account, as the case may be. Provided further that the Reserve Bank, may on an application made to it and for sufficient reasons permit an Indian Company to issue shares/ refund the amount of consideration received towards issue of security, if such amount of



consideration is outstanding beyond a period of 180 days from the date of receipt.

Thus, there are contraventions of Paragraph 9(1) A and 8 of Schedule 1 to FEMA Notification No 20 /2000-RB dated May 3, 2000.

3. The applicant was given an opportunity for personal hearing for further submission in person and/or by producing documents, if any, in support of the application. Sh. Shekhar Chopra, Consultant of the company appeared for the personal hearing on September 11, 2017 on behalf of the company. The representative of the applicant company admitted the contraventions committed by them for which they have sought compounding. He stated that due to certain internal administrative and management issues, the company was unable to complete the allotment of shares within stipulated time period and also was unable to intimate the foreign inward remittance within stipulated time period. He further stated that there has been no malafide intention by the company and a lack of knowledge of regulations led to these contraventions and requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as submissions made in this context by the applicant during the personal hearing.

4. 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 following FEMA provisions:

- (a) Paragraph 9 (1) (A) of Schedule 1 to FEMA 20/2000-RB due to delay in reporting the inflow of funds from a person resident outside India. The contravention relates to an amount of Rs.54,99,964/- and the duration of contravention is of 1 year 10 months and 29 days , beyond the prescribed period of 30 days.
- (b) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB due to delay in allotment of equity shares. The contravention relates to an amount of Rs.54,99,964/- and duration of contravention is 7 months and 2 days beyond the prescribed period of 180 days.



5. 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. 81,565/- (Rupees Eighty one thousand five hundred and sixty five only)** will meet the ends of justice.

6. Accordingly, I compound the admitted contraventions, namely, the contraventions of Paragraph 9 (1)(A) and Paragraph 8 of Schedule 1 to FEMA 20/2000- RB by the applicant on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of Rs.81,565/- (Rupees Eighty one thousand five hundred and sixty five only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi – 110001, by a demand draft drawn in favour of the “Reserve Bank of India” and payable at New Delhi 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 13th day of September, 2017.

Sd/-

**(T.K.Singh)**  
**General Manager**