



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
5<sup>th</sup> Floor, Amar Building  
Sir P M Road  
Mumbai - 400 001

Present

**Jyoti Kumar Pandey**  
**Chief General Manager**

Date: October 5, 2017  
CA No 4424 / 2017

In the matter of

**Marksans Pharma Ltd.**  
**11<sup>th</sup> Floor, "Grandeur", Opp. Gundecha Symphony**  
**Veera Desai Extension Road, Oshiwara**  
**Andheri (W), Mumbai - 400053**

**(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 May 29, 2017 (received in the Reserve Bank on May 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 contraventions sought to be compounded are (i) delay in filing Form ODI Part I and (ii) non-receipt of share certificates within the stipulated time period. The above amount to the contravention of Regulations 6(2)(vi) and 15(i) 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 are as under: The applicant was incorporated as Tasc Industries (India) Ltd. on April 16, 1992. Its name was subsequently changed to Tasc Pharmaceuticals Ltd. on November 22, 1995 and finally to Marksans Pharma Ltd. on October 10, 2005 (CIN: L24110MH1992PLC066364). The applicant is engaged in the business of research, manufacturing and marketing of generic pharmaceutical formulations in the global markets. A Wholly Owned Subsidiary (WOS) of the applicant company, namely, Marksans Pharma INC, was incorporated in USA on December 11, 2014.

The applicant company made the following Overseas Direct Investments in the WOS:

S.No.	Date of investment	Amount of investment (USD)	Amount of investment (INR)	Purpose of remittance
1	22.06.2015	24,000,000	1,52,51,40,000	Equity investment
2	24.09.2015	50,000	33,09,000	Equity investment
3	09.03.2016	1,350,000	9,09,86,625	Equity investment
	Total	25,400,000	1,61,94,35,625	

The Form ODI for the investments at Serial No. 2 and Serial No. 3 was filed with delay beyond the stipulated time period, only on October 5, 2016, thus contravening Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB.

The first investment, amounting to USD 24,00,000, was made by the applicant in its WOS on 22.06.2015, after the allotment of UIN on 28.01.2015. The share certificate for USD 12,549,750 was received on 30.06.2015, within the stipulated time period of 180 days. However, the share certificate for remaining USD 11,450,250 (Rs. 727634762/-) was received on 31.03.2016, with a delay beyond the stipulated time period of 180 days, thus contravening Regulation 15(i) of Notification No. FEMA 120/2004-RB.



3. In terms of Regulation 6 (2) (vi) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, an Indian party is permitted to make Overseas Direct Investment in certain cases, provided “The Indian Party submits Part I of Form ODI, duly completed, to the designated branch of an authorized dealer”.

Further, Regulation 15 (i) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time states that “An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months....”

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/2111/15.20.67/2017-18 dated September 08, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on September 28, 2017 during which Shri Jitendra Sharma, CFO, Marksans Pharma Ltd., represented the applicants. The representative 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. 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. It was observed that the applicant has contravened the provisions of Regulation 6(2)(vi) and 15(i) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is as follows:

(i) Regulations 6(2)(vi) – Amount of contravention – Rs. 9,42,95,625/- and period of contravention is one year approximately

(ii) Regulation 15(i) – Amount of contravention – Rs. 72,76,34,762/- and period of contravention is three and a half 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. 70,000/- (Rupees seventy thousand 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 contraventions committed by the applicant namely, Regulations 6(2)(vi) and 15(i) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 70,000/- (Rupees seventy thousand 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 fifth day of October, 2017

Sd/-

**Jyoti Kumar Pandey**  
**Chief General Manager**