

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/DSR/VVK/251/2014]**

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,
1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND
IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.**

In respect of
GLAXO GROUP LIMITED [PAN: AAACG1317M]

In the matter of
Glaxo Smithkline Pharmaceuticals Limited.

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the draft letter of offer filed by Glaxo Smithkline Pharmaceuticals Limited (hereinafter referred to as "**GSKPL**") along with Glaxo Smithkline plc.(hereinafter referred to as "**GSP**") and Glaxo Group Limited (hereinafter referred to as "**Noticee**"), a part of the promoter group, to acquire 24.33% of the voting share capital of GSKPL, a company listed on The Bombay Stock Exchange Limited ("**BSE**") and the National Stock Exchange of India Limited ("**NSE**").
2. Upon examination it was, *inter alia*, observed that the Noticee had failed to make necessary disclosures, within the specified time period, of its aggregate shareholding to the Stock Exchanges and the target company i.e. GSKPL under regulation 8(1) and 8(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations,1997 (herein after referred to as the "**Takeover Regulations, 1997**") for the year 2007 and also under regulation 30(1) and -

30(2) read with regulation 30(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the "**Takeover Regulations, 2011**") for the year 2012 and 2013. However, the noticee made the disclosures with a delay thereby violated the aforesaid provisions of law. The details of delayed disclosures made by the noticee are given as below :-

Regulation	Due date for compliance	Actual date of compliance	Delay
8(1)	30.04.2007	30.05.2007	30 days
8(2)	30.04.2007	30.05.2007	30 days
30(1)	10.04.2012	17.05.2012	37 days
30(2)	10.04.2012	17.05.2012	37 days
30(1)	09.04.2013	21.05.2013	42 days
30(2)	09.04.2013	21.05.2013	42 days

Appointment of Adjudicating Officer

- SEBI has, therefore, initiated Adjudication proceedings and I have been appointed as the Adjudicating Officer vide order dated April 21, 2014 under Section 15 I of the Securities and Exchange Board of India Act,1992 ("**SEBI Act, 1992** ") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the said "**Rules**") to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992 the alleged violation of the aforesaid provisions of law by the Noticee.

Show Cause Notice, Reply and Personal Hearing

- A Show Cause Notice dated July 10, 2014 (hereinafter referred to as "**SCN**") was, *inter alia*, issued to the Noticee under Rule 4(1) of the said Rules to show cause as to why an inquiry should not be held and penalty should not be imposed under Section 15A(b) of the SEBI Act,1992 for the alleged violation of

the said provisions of law. The noticee submitted its reply vide letter dated 19th August, 2014.

5. Thereafter, in the interest of natural justice and in order to conduct inquiry in terms of Rule 4(3) of the said Rules, the noticee was granted an opportunity of personal hearing on 22nd September, 2014. However, the noticee vide its response dated the 3rd September, 2014 sought extension of time which was acceded to by adjourning the hearing to September 22, 2014. The Authorized Representative M/s. AZB & Partners, Advocates and Solicitors appeared on behalf of the noticee on 22nd September, 2014 and reiterated the submissions made vide their reply dated 19th August, 2014.

Consideration of Issues, Evidence and Findings

6. I have carefully perused the charges leveled against the Noticee in the SCN and the reply of the noticee, the oral submissions and the documents available on record. In the instant case, the following issues arise for consideration and determination :-

a. Whether the Noticee has violated the provisions of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for the year 2007 and the provisions of Regulation 30(1), 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011 for the year 2012 and 2013.

b. Whether the Noticee is liable for monetary penalty prescribed under Section 15A(b) of the SEBI Act, 1992 for the aforesaid violations.

c. If so, what should be the quantum of monetary penalty for such violations that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

7. Before proceeding further, it is pertinent to refer to the relevant provisions of the Takeover Regulations of 1997 and 2011, which read as under :-

Takeovers Regulations,1997 :

" Continual disclosures

8. (1) Every person, including a person mentioned in Regulation 6 who holds more than fifteen percent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.

(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company."

Takeovers Regulations,2011 :

" Continual disclosures.

30(1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the target company at its registered office. "

Findings:

8. It was alleged in the SCN that the Noticee who was a part of the promoter group was under an obligation to disclose the aggregate shareholdings to the stock exchanges i.e. BSE and NSE and to GSKPL for the year 2007 on 30th April, 2007 under regulation 8(1) and 8(2) of the Takeovers Regulations, 1997. However, the said disclosures were admittedly made by the Noticee only on 30th May, 2007, i.e. with an aggregate delay of 60 days i.e. 30 days delay under regulation 8(1) and another 30 days delay under regulation 8(2) of the Takeovers Regulations, 1997.
9. Further, it has been alleged in the SCN that the Noticee was also under an obligation to disclose the aggregate shareholdings to the stock exchanges i.e. BSE and NSE and to GSKPL for the year 2012 on 10th April, 2012 and for the year 2013 on 9th April, 2013 under regulation 30(1), 30(2) read with regulation 30(3) of the Takeovers Regulations, 2011. However, the said disclosures were made by the Noticee only on 17th May, 2012 and 21st May, 2013 for the year 2012 and 2013 respectively as mentioned in the table below i.e. with an -

aggregate delay of 158 days. As regards the said Regulations, the noticee was under an obligation to file disclosures pertaining to its shareholding to the company as well as the stock exchanges within 7 working days from the end of each financial year.

Regulation	Due date for compliance	Actual date of compliance	Delay
30(1)	10.04.2012	17.05.2012	37 days
30(2)	10.04.2012	17.05.2012	37 days
30(1)	09.04.2013	21.05.2013	42 days
30(2)	09.04.2013	21.05.2013	42 days

10. I find that the noticee in its reply has admitted the delay made in the filing of disclosures relating to their shareholding in GSKPL under the respective Takeover Regulations, 1997 and 2011 and submitted that the delayed disclosures were inadvertent and unintentional. I note that the noticee submitted that there was absolutely no change in their shareholding in GSKPL during the years to which the delayed filings relate and further submitted that the delays were completely unintentional and there was no intent to conceal any information and that the public shareholders were not in any manner misled. I further note that the noticee in its said reply has submitted no gain or unfair advantage whatsoever was made by them due to the delayed disclosures and that no loss whatsoever has been caused to the investors / public shareholders due to the delayed disclosures.

11. Thus, I find that the noticee has admittedly failed to comply with regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for the year 2007 and regulation 30(1), 30(2) read with regulation 30(3) of the Takeover Regulations, 2011 for the year 2012 and 2013. Therefore, the Noticee is liable for monetary penalty under section 15A(b) of SEBI Act, 1992 which reads as under :

15A. Penalty for failure to furnish information, return, etc. - If any person, who is required under this Act or any rules or regulations made thereunder, -

(a)

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

12. The disclosures made by the Noticee under Regulations 8(1) and 8(2) of the Takeovers Regulations, 1997 and under Regulations 30(1) and 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011 are made public only through Stock Exchange and the Company. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of vital information. The disclosures made by companies listed on the stock exchanges are the means to attain such end and, therefore, the dissemination of complete information is required. However, the Noticee in this case has neglected the duty of making timely disclosures in compliance with Regulations 8(1) and 8(2) of the Takeovers Regulations, 1997 and Regulations 30(1), 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011.

The Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Hybrid Financial Services Limited v. SEBI** (Appeal No.119 of 2014 and Order dated June 12, 2014) has, *inter alia*, observed as follows:

" even if, there was no change in the shareholdings it was obligatory on the part of the appellant to make disclosures in each of the financial years..... "

The Hon'ble SAT in the matter of **Komal Nahata Vs. SEBI** (Order dated January 27, 2014) has observed that :

“ Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”

In Appeal No. 66 of 2003 - **Milan Mahendra Securities Pvt. Ltd. Vs SEBI** – the Hon'ble SAT has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”*

At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of **SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)**, wherein, the court, *inter alia*, held: *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.”*

13. While imposing monetary penalty, it is important to consider the factors stipulated in Section 15J of SEBI Act, 1992 which reads as under :

“15J - Factors to be taken into account by the adjudicating officer:

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.”

14.I observe from the material available on record that any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. It is observed that the violation as regards Regulation 8(1) and 8(2) of the Takeover Regulations,1997 by the noticee for the year 2007 are not repetitive in nature and violation under Regulations 30(1), 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011 by the Noticee for the year 2012 and 2013 are repetitive in nature.

ORDER

15.In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I(2) of the SEBI Act, 1992 read with Rule 5 of the said Rules, I hereby impose a monetary penalty of ₹5,00,000/- (Rupees five lakh only) on the Noticee viz. Glaxo Group Limited under Section 15A(b) of the SEBI Act, 1992 for violation of regulation 8(1) and 8(2) of the Takeover Regulations,1997.

16.I further impose a monetary penalty of ₹ 20,00,000/- (Rupees twenty lakh) for violation of regulation 30(1), 30(2) read with regulation 30(3) of the Takeovers Regulations, 2011 on the Noticee viz. Glaxo Group Limited under Section 15A(b) of the SEBI Act, 1992.

In my view, the aforesaid monetary penalties are commensurate with the defaults committed by the Noticee.

17. The above penalty amount shall be paid by the Noticee by Demand Draft drawn in favour of “ SEBI – Penalties Remittable to Government of India” and payable at Mumbai within 45 (forty five) days of receipt of this order. The said Demand Draft shall be forwarded to the Division Chief, Corporate Finance Department - Division of Corporate Restructuring, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, ‘G’ Block, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051.

18. In terms of Rule 6 of the said Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: October 14, 2014

Place: Mumbai

**D. SURA REDDY
ADJUDICATING OFFICER**