

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO/SPV/71/2012]

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

In respect of

Mr. Senthil Kumar U.P.

[PAN: AOWPS5581G]

In the matter of

M/s Orchid Chemicals and Pharmaceuticals Limited

Background of the case

1. Following a news article titled "Ranbaxy to sell balance 13.02% stake in Orchid Chem" published in DNA Money on September 18, 2010, Securities and Exchange Board of India (**SEBI**) conducted investigation into the trading in the shares of M/s Orchid Chemicals and Pharmaceuticals Limited (**Orchid/company**). During the said investigation, the trading activity of all the designated employees of the company was also analyzed for any violation of company's code of conduct for prevention of insider trading which was in effect at that time. The investigation revealed that Mr. Senthilkumar (**Noticee**) who was

the Senior Vice President, Betalactams (Process) & designated employee of the company had allegedly traded in the stock futures of the company.

2. In view of the findings of the investigation as given above, SEBI, vide Order dated August 06, 2012 appointed the undersigned as Adjudicating Officer (**AO**) under Section 15-I of the SEBI Act, 1992 (**SEBI Act**) read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (**Adjudication Rules**) to inquire into and adjudge under Section 15HB of the SEBI Act, the alleged violation of the provisions of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (**PIT Regulations**).

Show Cause Notice, Reply & Personal hearing

3. Show Cause Notice dated October 05, 2012 (**SCN**) was issued to the Noticee in terms of the provision of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against him in respect of the violations alleged to have been committed by him. The SCN alleged that the Noticee, who was the Senior Vice President, Betalactams (Process) & designated employee of the company had allegedly traded in the stock futures of the company. The details of trades and the relevant contract notes were furnished to the Noticee along with the SCN. The Noticee has not responded to the SCN even though the SCN has been duly delivered to him. The Noticee was, vide Notice dated November 07, 2012 advised to appear before the AO for personal hearing. The Noticee appeared for personal hearing on November 19, 2012 and made submissions as under:

“I am a senior research professional and do not understand the transactions in shares. I had inadvertently entered into such transactions. I was not aware about the law that being a designated employee of the company, I was prohibited from entering into the purchase and sale of shares of orchid with in a period of 6 months or entering into derivative transactions in the shares of orchid.”

Consideration of Issues, Evidence and Findings

4. I have carefully perused the documents available on record and the submissions of the Noticee. The issues that arise for consideration in the present case are:
 - a. Whether the Noticee has violated the provisions of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT Regulations?.
 - b. Does the violation, if any, on the part of the Noticee attract penalty under section 15HB of SEBI Act?
 - c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?
5. The relevant provisions of the PIT Regulations are as follows:

PIT Regulations, 1992.

Regulation 12 - Code of internal procedures and conduct for listed companies and other entities

Schedule I - Part A, Clause 4.2- *All directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction, i.e., sell or buy any number of shares during the next six months following the prior transaction. All directors/officers/designated employees shall also not take positions in derivative transactions in the shares of the company at any time.*

6. I find that the Noticee was a designated employee of the company during the relevant time. I further find that the Noticee was regularly taking positions in derivative segment while dealing in the shares of the company. The following table shows the details of trading done by the Noticee.

Date	No. of shares bought	No. of shares sold
23.06.2010	18000	
09.07.2010		18000
23.07.2010	10000	
30.07.2010	10000	
10.08.2010	4000	4000
19.08.2010		20000
30.08.2010	20000	
06.09.2010		10000
08.09.2010	2000	10000
16.09.2010	2000	2000
17.09.2010		2000
15.10.2010	10000	10000
29.11.2010	6000	
30.11.2010		6000
08.12.2010	6000	
09.12.2010		6000
03.03.2011	16000	
04.03.2011		8000
07.03.2011		4000
11.03.2011		4000

7. The above table shows that the Noticee was regularly taking positions in the derivative segment in the shares of the company and has thereby violated the provisions of PIT Regulations. I note that as per Clause IX - (Trading Restrictions) of the Code of Conduct for Prevention of Insider Trading adopted by the

company, the Noticee is not permitted from taking positions in derivative transactions in the shares of the company at any time.

8. The Noticee has contended that he was not aware of restrictions on designated employees from transacting in derivatives on shares of the company or from doing opposite transactions within 6 months. The Noticee should be aware of the restrictions imposed on him by his employer which are in line with the Code of conduct stipulated by PIT Regulations. The excuse of ignorance of the provisions is not acceptable. Further, it is also observed that the Noticee did numerous transactions in derivatives on Orchid shares over a long period of time which indicates that the Noticee was deliberately violating the restrictions.
9. In view of the foregoing discussions, I find that the Noticee has violated the provisions of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT regulations. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** held that *"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."*
10. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15HB of the SEBI Act which reads thus:
15HB.Penalty for contravention where no separate penalty has been provided.-
"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees"

11. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under S.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.”*

12. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. It is observed that the Noticee has repeatedly traded in derivatives on shares of Orchid chemicals & Pharmaceuticals Ltd. I am of the considered opinion that directors/ officers/ designated employees are senior functionaries in company who should be aware of the requisite legal provisions and follow the same scrupulously.

ORDER

13. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee. I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty of ₹. 1,00,000/- Rupees One Lac only) on the Noticee, Senthil Kumar U. P. in terms of Section 15HB of the SEBI Act for violation of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

14. The penalty shall be paid by way of a duly crossed demand draft drawn in favour of "SEBI- Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to General Manager, Investigation Department (IVD-ID6), Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.
15. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India. The matter is disposed of accordingly.

DATE: November 29, 2012
PLACE: Mumbai

PIYOOSH GUPTA
ADJUDICATING OFFICER