

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD-2/DSR/PU/128 /2014]**

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**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

**Ayush Kabra  
[PAN: AXBPK9633R]**

In the matter of

**Kabra Drugs Limited**

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**Background**

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') carried out an investigation into the alleged irregularity in the scrip of Kabra Drugs Limited (herein after referred to as 'KDL'). Upon examination it was, inter alia, observed that Ayush Kabra (herein after referred to as 'the Noticee') is a Promoter of KDL and had failed to disclose the change in shareholding to the stock exchange, as required under Regulation 13 (4A) read with Regulation 13 (5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as the 'PIT Regulations').

## **Appointment of Adjudicating Officer**

2. I have been appointed as the Adjudicating Officer (AO), vide order dated November 20, 2013 under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire into and adjudge under 15A(b) of the SEBI Act, the alleged violation of the provisions of law by the Noticee.

## **Show Cause Notice, Reply and Personal Hearing**

3. A show cause notice dated January 03, 2014 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on the Noticee under Section 15 A(b) of the SEBI Act, for the alleged violation of the provisions of law. The Noticee submitted a reply to the SCN vide letter dated January 15, 2014.
4. An opportunity of personal hearing was granted to the Noticee on March 21, 2014 vide letter dated March 05, 2014. The Noticee sought an adjournment vide e-mail dated March 20, 2014 and another opportunity of personal hearing was granted to the Noticee on April 11, 2014 vide e-mail dated March 20, 2014. The authorized representative Shri Manish Maheswari, appeared on behalf of the Noticee on the said date. He reiterated the written submissions in addition to seeking one week's time to file additional submissions and he submitted the same vide e-mail dated April 17, 2014.

## **Consideration of Issues, Evidence and Findings**

5. I have carefully perused the charges made against the Noticee as mentioned in the SCN, written submissions and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:
  - a) **Whether the Noticee has failed to comply with Regulation 13 (4A) read with Regulation 13 (5) of the PIT Regulations?**
  - b) **Whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act?**
  - c) **If so, what should be the quantum of monetary penalty?**
6. It has been alleged in the SCN that, the Noticee, being a Promoter at KDL had failed to disclose the change in shareholdings on the basis of the reference dated September 11, 2013 received from the Bombay Stock Exchange (BSE), as required under Regulation 13 (4A) read with 13 (5) of the PIT Regulations.
7. It is observed that KDL is listed on BSE as well as the Madhya Pradesh Stock Exchange (MSE) and the Noticee is a promoter at KDL. The Noticee was holding 2,16 700 shares (4.96%) and 1,16,700 shares (2.66%) of KDL, as observed from the shareholding patterns filed by KDL for the quarters ending December 31, 2012 and March 31, 2013 respectively. The Noticee sold 1,00,000 shares (2.28%) of KDL on February 25, 2013 and since the change in shareholding exceeded 25,000 shares, the Noticee was obligated to make disclosure to both the stock exchanges and the company as required under Regulation 13 (4A) read with 13 (5) of the PIT Regulations.
8. Now, I would like to refer to the relevant provisions of the PIT Regulations, which read as under:

### **PIT Regulations**

#### **13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure**

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*"(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

*(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*

*(a) the receipts of intimation of allotment of shares, or*

*(b) the acquisition or sale of shares or voting rights, as the case may be."*

9. The Noticee has submitted a letter dated February 25, 2013 (addressed by KDL to BSE) along with the reply dated January 15, 2014. Vide the said reply, the Noticee also enclosed copies of documents viz. Form D under Regulation 13 (4), 13 (4A) and 13 (6) of the PIT Regulations along with disclosures made under Regulation 29 (2) of SEBI (Substantial Acquisition of Shares and takeovers) Regulations, 2011, the Form D under Regulation 13 (4), 13 (4A) and 13 (6) of the PIT Regulations submitted to MPSE with acknowledgement and also the courier receipt no. 112199 (on which " Bombay Stock " is mentioned) from the courier company 'Real Express Services'. Further, vide e- mail dated April 17, 2014 the Noticee has submitted a letter dated April 15, 2014, from the courier company, wherein, it has been stated that the envelop which was booked vide courier receipt no. 112199 dated February 26, 2013 was delivered to BSE by it.

**10.** I have perused all the documents submitted by the Noticee. The Form D under Regulation 13 (4), 13 (4A) and 13 (6) of the PIT Regulations submitted to MPSE with acknowledgement and letter dated February 25, 2013, from KDL addressed to BSE, submitting the required documents viz. Form D under Regulation 13 (4), 13 (4A) and 13 (6) of the PIT Regulations along with disclosures made under Regulation 29 (2) of SEBI (Substantial Acquisition of Shares and takeovers) Regulations, 2011, are sufficient proof that the Noticee has submitted the disclosures to MPSE and KDL, respectively. However, I find that a courier receipt no. 112199 and the letter dated April 15, 2014, from the courier company, stating that the envelop booked vide courier receipt no. 112199 dated February 26, 2013 was delivered to BSE by it, are merely a proof of dispatch of the disclosure and does not amount to a proof of delivery to BSE. The onus of proving the delivery to BSE lies with the Noticee. I also note that BSE, vide its letter dated September 11, 2013 submitted that it did not receive the disclosure made by the Noticee.

**11.** I note that the Hon'ble Securities Appellate Tribunal, in *Alka India Ltd. Vs. SEBI* (Order dated June 10, 2009) inter alia, observed as follows: *"A copy of the courier receipt has been placed on record to substantiate its stand. We have perused this receipt. In the column meant for the name of the receiver, the of Stock Exchange, Mumbai has been written. The Bombay Stock Exchange has categorically denied having received any information from the appellant. In view of the denial made by the Bombay Stock Exchange, the onus is upon the appellant to establish that the letter making the necessary disclosures allegedly sent by courier was actually received by the Bombay Stock Exchange. No such evidence has been placed on record. Even, if we were to accept the courier receipt, it is only evidence of the fact that some letter was sent to Bombay Stock Exchange but there is no proof forthcoming of its actual receipt by the Stock Exchange. Moreover, what was that letter and whether it contained the disclosures are facts which*

*also need to be established. The appellant failed to discharge this onus..... In view of this matter, no fault can be found with the impugned order."*

- 12.** In view of the above and based on the documents available on record, I find that the allegation of failure to make disclosure to BSE stands established inasmuch as the Noticee has not produced any acknowledgement (in support of delivery of the said disclosure to BSE) and also in view of the denial of receipt of any such disclosure by BSE. Therefore, I conclude that the Noticee has violated the provisions of Regulation 13 (4A) read with 13 (5) of the PIT Regulations and thus liable for monetary penalty under Section 15 A (b) of the SEBI Act, 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,-***

*.....*

*(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;*

- 13.** While imposing monetary penalty, it is important to consider the factors stipulated in Section 15J of SEBI Act, 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.** The disclosure made under Regulation 13 (4A) read with 13 (5) of the PIT Regulations, by a promoter is made public only through Stock Exchange. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. The disclosures made by companies listed on the stock exchanges are the means to attain such end. Therefore, dissemination of complete information, on all the stock exchanges where the securities are listed, is a mandatory requirement. I note that the Noticee has made disclosures to MPSE and also to KDL, but failed to make disclosures to BSE. I observe that, from the material available on record, 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 and the violation is not 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 read with Rule 5 of the said Rules, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh Only ) on the Noticee viz. Ayush Kabra under Section 15 A (b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.

**16.** The above penalty amount shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to The Division Chief, Integrated Surveillance Department - ISD, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

**Date: May 30, 2014**

**Place: Mumbai**

**D. SURA REDDY  
ADJUDICATING OFFICER**