

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/AO/BJD/VS/242/2018-19**

**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:

Amrish Kumar Chourasia,
Compliance Officer,
Plethico Pharmaceuticals Ltd.
A.B Road, Manglia, District Indore,
Madhya Pradesh- 453771

In the matter of Plethico Pharmaceuticals Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted Investigation into dealings in the scrip of Plethico Pharmaceuticals Ltd. (hereinafter referred to as 'PPL') to ascertain for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'), the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') and various rules and regulations made thereunder; particularly the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations, 1992' and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') for the period February 22, 2013 to March 8, 2013 (hereinafter referred to as the 'Investigation Period' / 'IP' / 'relevant period').
2. Based on the investigation report, it was observed that Promoter-Director of company Shashikant Patel and Chirag Patel dealt in the scrip in off-market. The details of all such off-market transactions are as follows:

| (A) | (B) | (C) | (D) |
|---|-----------------------------------|--|---|
| Name Of Transferor (Total Number of shares transferred) | Name of Transferee (PAN) | Date and Qty of shares received in off-market by entity at (B) | Date and Qty of Return of shares by entity at (B) to Shashikant Patel |
| Shashikant Patel (1,00,000 shares) | Anup Kumar Garg (AHNPG8628G) | 07/09/2012 1,00,000 | 31/12/2012 50,000 |
| | | | 01/01/2013 50,000 |
| Shashikant Patel (3,00,000 shares) | Deepak Raj Sharma (AIKPS0542H) | 27/08/2012 2,00,000 | 27/09/2012 50,000 |
| | | 06/09/2012 1,00,000 | 01/01/2013 92,000 |
| | | | 02/01/2013 8,000 |
| | | | 08/02/2013 50,000 |
| | | | 11/02/2013 50,000 |
| | | | 08/03/2013 20,000 |
| | | | 14/03/2013 30,000 |
| | | | |
| Shashikant Patel (3,50,000 shares) | Hemant Sarvaiya (AACPS1549J) | 28/08/2012 1,00,000 | 27/09/2012 2,00,000 |
| | | 07/09/2012 1,00,000 | 31/12/2012 50,000 |
| | | 19/10/2012 1,50,000 | 26/03/2013 1,00,000 |
| Shashikant Patel (5,23,000 shares) | Myon Pharma Ltd. (AABCM4749G) | 10/10/2012 2,00,000 | 23/03/2013 2,73,000 |
| | | 07/11/2012 23,000 | |
| | | 02/01/2013 2,40,000 | |
| | | 07/02/2013 10,000 | |
| | | <u>13/02/2013</u> <u>50,000</u> | |
| Chirag Patel (30,000 shares) | | 07/02/2013 30,000 | |
| Shashikant Patel (5,00,000 shares) | Rajesh Joshi (AFIPJ3863R) | 10/08/2012 5,00,000 | 04/09/2012 3,00,000 |
| | | | 25/09/2012 1,40,000 |

| (A) | (B) | (C) | (D) |
|---|-----------------------------|--|---|
| Name Of Transferor (Total Number of shares transferred) | Name of Transferee (PAN) | Date and Qty of shares received in off-market by entity at (B) | Date and Qty of Return of shares by entity at (B) to Shashikant Patel |
| | | | 26/09/2012 60,000 |

3. In view of the above, it was observed that the aforesaid entities were required to take pre-clearance from company for their dealings in the scrip for aforesaid transactions mentioned at Column C and D as per the code of internal procedure and conduct framed by company. However, from the reply of company dated February 26, 2014 and February 01, 2016 it was observed that the said entities Mr. Shashikant and Mr. Chirag did not take any pre-clearance from company for their aforesaid dealings in securities. With respect to the said transactions, it is alleged that Mr. Amrish Kumar Chourasia being compliance officer (hereinafter referred to as 'Noticee') failed to implement and supervise the code of conduct of company, thereby violated provisions of clause 1.2 of code of conduct specified under Part-A of Schedule-I read with Regulations 12(1) of PIT regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri S V Krishnamohan was appointed as the adjudicating officer vide order dated July 28, 2016 under Section 19 read with section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire and adjudge under the provisions of 15 HB of the SEBI Act, 1992 for the alleged violations by the Noticee as mentioned above. Further, consequent to the inter-departmental transfer and postings, the undersigned has been appointed the AO, vide order dated May 18, 2017 to inquire and adjudge in the instant matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice dated December 13, 2017 bearing number EAD/BJD/MAS/31448/2017 (hereinafter referred to as 'SCN') was *inter alia* issued to the Noticee with respect to the aforesaid allegations against him. However, no reply was received from the Noticee. In view of the same and based on the material available on

record, vide notice dated July 23, 2018, the Noticee was once again advised to submit reply to the SCN and were given an opportunity of hearing on August 10, 2018, August 21, 2018 and on September 24, 2018. In response, the Noticee-3 submitted his reply dated September 20, 2018 which has been dealt in the later part of this order.

CONSIDERATION OF ISSUES AND FINDINGS

6. After perusal of the material available on record, I have the following issues for consideration viz.

- I. Whether the Noticee violated provisions of clause 1.2 of code of conduct specified under Part-A of Schedule-I read with Regulations 12(1) of PIT regulations, 1992?
- II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Sections 15 HB of the SEBI Act, 1992?
- III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

7. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, I record my findings hereunder.

ISSUE I: Whether the Noticee violated provisions of clause 1.2 of code of conduct specified under Part-A of Schedule-I read with Regulations 12(1) of PIT regulations, 1992??

8. I note the following provisions of PIT Regulations, 1992 and SAST Regulations, 2011:

PIT Regulations, 1992

Code of internal procedures and conduct for listed companies and other entities.

12. (1) All listed companies and organisations associated with securities markets including:

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation: For the purpose of this Schedule, the term 'designated employee' shall include:—

(i) officers comprising the top three tiers of the company management

(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

9. It was observed that Mr. Shashikant and Mr. Chirag, who were among Promoters and Directors of company dealt in the scrip in off-market. It is noted that Mr. Shashikant transferred/received shares in off market to/from five entities namely Anup Kumar Garg, Deepak Raj Sharma, Hemant Sarvaiya, Myon Pharma Ltd and Rajesh Joshi and further transferred shares in off-market to Myon Pharma Ltd. The details of all such off-market transactions are as follows:

| (A) | (B) | (C) | (D) |
|---|-----------------------------------|--|---|
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| | | <u>13/02/2013</u> <u>50,000</u> | |
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| Shashikant Patel (5,00,000 shares) | Rajesh Joshi (AFIPJ3863R) | 10/08/2012 5,00,000 | 04/09/2012 3,00,000 |
| | | | 25/09/2012 1,40,000 |
| | | | 26/09/2012 60,000 |

10. I note that since Mr. Shashikant and Mr. Chirag patel were part of the promoters and directors of PPL, they were required to take pre-clearance from company for their dealings in the scrip for aforesaid transactions mentioned at Column C and D as per the code of internal procedure and conduct framed by company. However, I note from the reply of

company dated February 26, 2014 and February 01, 2016 that the said employees did not take any pre-clearance from company for their aforesaid dealings in securities. In this regard, it is the allegation against the Noticee that he being the compliance officer failed to implement and supervise the code of conduct of company.

11. I have perused the material available on record along with the reply of the Noticee. It is the allegation against the Noticee that he failed to implement and supervise the code of conduct of company. In this regard, I note that vide his submission dated September 20, 2018, the Noticee has submitted that the Company followed Model Code of Conduct for prevention of Insider Trading which was as near thereto the Model Code of Conduct specified in the Part-A of the Schedule-I of the SEBI (PIT) Regulations, 1992 and appropriate mechanism and procedure were in place to enforce the said codes. It is the submission of the Noticee that as per the applicable codes all the directors, officers and designated employees of the Company were expected to adhere to regulations and the said applicable codes. Further, the Noticee has submitted that though the responsibility for implementation of code was casted on the compliance officer but only under the supervision of the Board of Directors of the Company and that the duty of a company secretary was to act in accordance with the supervision, control and directions of the Board of Directors of the Company and on the basis of information and instruction received from them. It is the submission of the Noticee that he was not having authority to do anything in the company on its own except with the authority of the board and he had the access to the information only which is placed at the board meeting.
12. In this regard, it is the further submission of the Noticee that it is the duty of the designated employees including the executive directors and their dependants to take pre-clearance from the Company before dealing in the scrip as per the applicable code of internal procedure and conduct. It has been further contended that the Noticee could not be made liable for all such acts, deeds, things, information which was not brought to his notice for which the designated employees were duty bound to do. The Noticee has also submitted that the legal position of the compliances under various laws including insider trading norms was made aware by him to the designated employees as well as board of Directors of the company from time to time.

13. While I peruse the aforesaid submission of the Noticee along with the material available on record, I note that it is not the allegation that no model code of conduct was in place. I note that a model code of conduct was in place in the company and that as per Para 10 of "code of internal procedure and conduct" framed by PPL read with clause 3.3-1 of code of conduct specified under Schedule-I of Part A read with Regulation 12(1) of SEBI (PIT) Regulations, 1992, all directors/officers/designated employees of the company and their dependents who intend to deal in the securities of the company above a minimum threshold limit of ₹ 5 lacs in value or 25,000 shares or 1% of total shareholding or voting right, whichever is lower should pre clear the transactions as per the pre-dealing procedure. However, as noted at para 9 above, certain 2 employees of PPL have dealt in the scrip where the volume of their trades exceeded 25000 shares and as noted from the reply of company dated February 26, 2014 and February 01, 2016, the said 2 designated employees did not obtain preclearance from the Company. Further, from the record I note that the said employees that have been alleged to have dealt in the scrip without obtaining preclearance are the Chairman and Managing director of the Company and Whole-time Director and CEO of the company. Giving regard to the submission of the Noticee, I note that the compliance officer, though the responsibility for implementation of code was casted on him but he could act only under the supervision of the Board of Directors of the Company. In this regard, I note that the employees involved in the instant dealing without preclearance are the Chairman and Managing director of the Company and Whole-time Director and CEO of the company, who are significantly at higher position above the company secretary in the company hierarchy, I agree with the submission of the Noticee. I am of the opinion that the knowledge about the dealing carried out by the board of directors without the preclearance cannot be expected to be in the purview of the Noticee unless the same has been specifically conveyed to him. However, in view of the fact that the preclearance was not obtained even from the company, I find merit in the the submission of the Noticee that the information was not even provided to him at the board meetings.
14. Further I note that it is not the allegation that the Noticee had failed to close the trading window or that upon breach of provisions of the code of conduct by the employees, the Noticee failed to take necessary actions / cautionary steps against them. It is also not the allegation that aforesaid Mr. Shashikant and Mr. Chirag had applied for permission / pre clearance to the Compliance Officer but they failed to look into. It is also not the allegation

that they had not brought into the knowledge of directors / officers / designated employees the required code of conduct or requirement of pre clearance or restriction of opposite transactions. Also, no specific fact or allegation describing as to how there was failure of supervision / monitor of the code of conduct or any lack of due diligence has been revealed on records against the Noticee.

15. Further, I am of the opinion that it is difficult for the Compliance officer to know about any independent trading done by a director / promoter which are not intimated to the Compliance officer / Company at all. As observed at pre paras that Mr. Shashikant and Mr. Chirag had not made disclosure to the Company regarding their trading during the said period. It is also not the case that breach made by the aforesaid Directors was of such a nature which would have ipso facto come to the knowledge of Compliance Officer in ordinary course of business. In view of the all the above, I am inclined to provide a benefit of doubt to the Noticee and accordingly I answer the instant issue in the negative.

ISSUE II. Whether the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act?

16. In view of the conclusion arrived at para above, the instant issue does not deserve consideration.

ISSUE III. If so, what quantum of monetary penalty should be imposed on the Noticee?

17. Since the Noticee is not liable for monetary penalty in the instant matter, this issue deserves no consideration.

ORDER

18. In view of my findings noted in the preceding paragraphs, I hereby dispose of the Adjudication Proceedings initiated against Amrish Kumar Chourasia vide Show Cause Notice dated December 13, 2017.

19. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of this order is being sent to Amrish Kumar Chourasia and also to the Securities and Exchange Board of India, Mumbai.

MUMBAI
SEPTEMBER 28, 2018

B J DILIP
ADJUDICATING OFFICER