

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/AO/BJD/ 218 /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:

Shashikant Patel,
18-C, Swati, 1st floor,
Sarojini Road, North Avenue,
Santacruz West, Mumbai- 400054.

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 Mr. Shashikant Patel (hereinafter referred to as 'Noticee'), Promoter and director of PPL failed to make disclosures to company and exchanges with respect to 19 off-market transactions and made delayed disclosure for two invocations of pledge as required u/r 13(4) and 13(4A) r/w Reg. 13(5) of SEBI (PIT) Regulations, 1992. It was observed that he failed to make disclosures to company for transactions at Sl. No. 1 and 2 in the table below and made delayed disclosure to company for transactions at Sl. No. 3 and 4 and he also made delayed disclosure to exchanges for the transactions at S. No. 1 to 4 in the table below and therefore it was

alleged that he violated provisions of Regulation 31(2) r/w Reg. 31(3) of SEBI (SAST) Regulations, 2011.

Sl.	Date of Trans.	No. of shares	Type of Trans.	Disclosure made to		Remarks
				Co.	Stock Exch.	
1	24/09/2012	5,00,000	Invocation of Pledged shares(**)	No disclosure	October 08, 2012	Share invoked by Myon Pharma Ltd
2	15/03/2013	1,09,800	Release of pledged shares	No disclosure	April 01, 2013	Share released by Prabhudas Liladhar Fin. Ser.
3	30/03/2013	3,84,300	Release of pledged shares	April 08, 2013	April 17, 2013	Share released by Mangal Keshav Capital Ltd.
4	09/04/2013	350	Release of pledged shares	August 23, 2013	August 23, 2013	Share released by Associated Capsules Pvt. Ltd.

3. It was observed that Promoter-Director of company, the Noticee dealt in the scrip in off-market. Noticee 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. 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
			01/01/2013 92,000
		06/09/2012 1,00,000	02/01/2013 8,000
			08/02/2013 50,000
			11/02/2013 50,000
			08/03/2013 20,000

(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
			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>	
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

4. In view of the above, it was observed that the Noticee was 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 Noticee did not take any pre-clearance from company for his aforesaid dealings in securities and therefore it was alleged that the Noticee violated the provisions of 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.
5. It was further observed that Noticee being Director and Promoter of company (and an insider) transferred 50,000 shares in off-market to Myon Pharma Ltd on February 13, 2013 i.e. when in possession of UPSI. Therefore, it was alleged that Noticee violated the

provisions of Regulation 3(i) of PIT Regulations, 1992 by dealing in securities when in possession of unpublished price sensitive information.

APPOINTMENT OF ADJUDICATING OFFICER

6. 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 sections 15A(b), 15G and 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

7. A Show Cause Notice dated December 13, 2017 bearing number EAD/BJD/MAS/31448/2017 (hereinafter referred to as ‘SCN’) was issued to the Noticee with respect to the aforesaid allegations against him. In response to the same, Mr. Atul Vinay Singh for AVS Legal, stating that they are the legal representatives of the Noticee vide their letter dated December 29, 2017 submitted that their client is in the process of compiling the necessary data/ documents and sought an extension of 4 weeks time to reply to the SCN. However, it is noted that no reply to the SCN was received in the matter even after more than 6 months from the date of said reply. 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 was given an opportunity of hearing on August 10, 2018. In response to the same, the Noticee vide his reply dated August 09, 2018, on behalf of PPL as well, stated that PPL is under liquidation and that Hon’ble High Court of Madhya Pradesh (Indore bench) vide its Order dated April 07, 2015 has appointed liquidator for the company. Vide the said reply, the order of appointment of liquidator was also submitted and was also submitted that the liquidator has already taken the physical possession of the assets and offices of the Company. Further, the Noticee submitted that he is not in control and custody of the necessary documentation for evidencing true and

correct facts concerning the allegation levelled in the SCN as the liquidator has already taken the physical possession of the assets and offices of the Company.

8. Further, after considering the above interim submission of the Noticee and also observing that there has been an inordinate delay of more than 6 months in submitting the reply by the Noticee, the Noticee was further given one final opportunity of hearing on August 21, 2018 with an advise to submit their final reply. Vide the said Notice, it was brought to the Notice of the Noticee, the aforesaid delay and was communicated that no further opportunity of hearing would be granted in the matter. In reply, the Noticee vide his letter dated August 20, 2018 sought for further adjournment of the hearing and sought additional time to submit his reply. Further, no appearance was made for the hearing on behalf of the Noticee on the date of hearing. Further, vide notice dated August 27, 2018, the Noticee was further provided with an opportunity to file reply and an opportunity of hearing was granted on September 24, 2018.
9. In the instant case, I note that the Noticee has failed to appear for hearing on two opportunities that have been granted to him. In view of the aforesaid facts and circumstances, I am of the opinion that sufficient opportunity have been given to the Noticee to reply and the Noticee has failed to avail the same. Therefore, I am proceeding further with the instant matter based on the material on record.

CONSIDERATION OF ISSUES AND FINDINGS

10. After perusal of the material available on record, I have the following issues for consideration viz.
 - I. Whether the Noticee violated provisions of Regulation 13(4) and 13(4A) r/w Reg. 13(5) of SEBI (PIT) Regulations, 1992 and provisions of Regulation 31(2) r/w Reg. 31(3) of SEBI (SAST) Regulations, 2011?
 - II. Whether the Noticee violated the provisions of 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?

- III. Whether the Noticee violated the provisions of Regulation 3(i) of PIT Regulations, 1992 by dealing in securities when in possession of unpublished price sensitive information?
- IV. Do the violations, if any, on the part of the Noticee attract monetary penalty under Sections 15A(b), 15G and 15 HB of the SEBI Act, 1992?
- V. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

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

ISSUE I: Whether the Noticee violated provisions of Regulation 13(4) and 13(4A) r/w Reg. 13(5) of SEBI (PIT) Regulations, 1992 and provisions of Regulation 31(2) r/w Reg. 31(3) of SEBI (SAST) Regulations, 2011?

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

PIT Regulations, 1992

Initial Disclosure

13. (1)...

...

(4) Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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.

(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.

SAST Regulations, 2011

Disclosures of encumbered shares

31(1).....

(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares 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 creation or invocation or release of encumbrance, as the case may be to,—

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

13. It is noted from the record that the Noticee entered into following 19 off-market transactions (where change in his shareholding exceeded either 25,000 shares or Rs. 5 lacs in value whichever was lower) :

S N	Date of Transaction	No. of shares	Type of Transaction	Remarks
1	04/09/2012	3,00,000	Off-market Credit	Received shares from Rajesh Joshi
2	06/09/2012	1,00,000	Off-market Debit	Transferred shares to Deepak Raj Sharma
3	07/09/2012	2,00,000	Off-market Debit	Transferred shares to Anup Garg and Hemant Sarvaiya
4	25/09/2012	1,40,000	Off-market Credit	Received shares from Rajesh Joshi
5	26/09/2012	60,000	Off-market Credit	Received shares from Rajesh Joshi
6	27/09/2012	2,50,000	Off-market Credit	Received shares from Hemant Sarvaiya and Deepak Raj Sharma
7	10/10/2012	2,00,000	Off-market Debit	Transferred shares to Myon Pharma Ltd
8	19/10/2012	1,50,000	Off-market Debit	Transferred shares to Hemant Sarvaiya
9	07/11/2012	23,000	Off-market Debit	Transferred shares to Myon Pharma Ltd
10	31/12/2012	1,00,000	Off-market Credit	Received shares from Anup Garg and Hemant Sarvaiya
11	01/01/2013	1,42,000	Off-market Credit	Received shares from Anup Garg and Deepak raj Sharma
12	02/01/2013	2,40,000	Off-market Debit	Transferred shares to Myon Pharma Ltd
13	07/02/2013	10,000	Off-market Debit	Transferred shares to Myon Pharma Ltd
14	11/02/2013	50,000	Off-market Credit	Received shares from Deepak raj Sharma
15	13/02/2013	50,000	Off-market Debit	Transferred shares to Myon Pharma Ltd
16	08/03/2013	20,000	Off-market Credit	Received shares from Deepak raj Sharma
17	14/03/2013	30,000	Off-market Credit	Received shares from Deepak raj Sharma

S N	Date of Transaction	No. of shares	Type of Transaction	Remarks
18	23/03/2013	2,73,000	Off market Credit	Received shares from Myon Pharma Ltd
19	26/03/2013	1,00,000	Off market Credit	Received shares from Hemant Sarvaiya

14. It is observed from above table that except for transactions at Sr. No. 9, 13 and 16, there was a change in excess of 25,000 shares in the shareholding of Noticee. Further, for transactions at Sr. No. 9, 13 and 16 the transaction value was Rs. 59,82,300 (calculated at NSE closing price of Rs. 260.10), Rs. 35,26,500 (calculated at NSE closing price of Rs. 352.65) and Rs. 25,70,000 ((calculated at NSE closing price of Rs.128.50) respectively i.e. a change in shareholding which exceeded Rs. 5 lacs in value. Therefore, the aforesaid transactions required him to make disclosure to company and exchange within two working days as per Regulation 13(4) and 13(4A) r/w 13(5) of SEBI (PIT) Regulations, 1992

15. Further, it was observed that shares pledged by Noticee were invoked during the period which required him to make disclosure to company and exchange within two days. In this regard, the details of the disclosures were sought from PPL and from the exchanges. It was observed from the reply of PPL dated February 01, 2016 that there was a delay in submitting the disclosure to it by Noticee as mentioned in the table given below. Further BSE and NSE vide their emails submitted the details of the disclosures with respect to the Noticee, whereby it has been observed that the Noticee failed to make disclosures to stock exchanges within the prescribed time i.e two working days from the date of invocation of pledges:

S N	Date of Trans.	No. of shares	Type of Trans.	Disclosure made to		Remarks
				Co.	Stock Exch.	
1	25/08/2012	76,175	Pledge Invocation	31/08/2012	05/09/2012 (BSE) 06/09/2012 (NSE)	Share invoked by Gateway Leasing Pvt Ltd
2	27/08/2012	4,43,000	Pledge Invocation	31/08/2012	05/09/2012 (BSE) 06/09/2012	Share invoked by ACG Associated

S N	Date of Trans.	No. of shares	Type of Trans.	Disclosure made to		Remarks
				Co.	Stock Exch.	
					(NSE)	Capsules Pvt. Ltd.

16. Further I note that PPL vide its letter dated February 01, 2016 submitted the details stated that the Noticee had never sold or transferred any of the shares held by them which could constitute sale of shares or voting rights of the company. It was inter alia contended by PPL that the aforesaid off market transfers were not in the nature of sale but only as parking the shares under an irrevocable trust. In this regard, I am of the opinion that the said statement of PPL warrants consideration only if the same is supported by material evidence. However, no material evidence to demonstrate such arrangement as claimed by PPL is brought on record by it even to consider going into the merits of the submission primarily. However, from the material available on record, I note from the transaction statements submitted by NSDL and CDSL that the transactions as mentioned above which have triggered disclosure requirement are recorded as the debit and credit transaction in the transaction statements. In view of the above, I am not inclined to consider the aforesaid submission of PPL. Further, I note that, from the said reply of PPL dated February 01, 2016, it is evidently forthcoming that PPL did not receive any disclosures from the Noticee. Further, I also note from the record that no evidence with respect to disclosure made to the exchanges by Noticee for the transactions as mentioned above with respect to the instant issue is on record. From the above considered along with the material available on record, I am inclined to conclude that no disclosure was made to the Exchanges for the transaction mentioned above by the Noticee. Therefore, I conclude that the Noticee being the promoter and director of PPL has violated the provisions of Regulation 13(4) and 13(4A) r/w Reg. 13(5) of SEBI (PIT) Regulations, 1992.

17. Further, it is observed that shares pledged by Noticee were invoked during the period which required him to make disclosure to company and exchange within two days. In this regard, the details of the disclosures were sought from PPL and from the exchanges. It was observed from the reply of PPL dated February 01, 2016 that there was a delay in submitting the disclosure to it by Noticee as mentioned in the table given below. Further BSE and NSE vide their emails i.e email dated January 28, 2016 by NSE and email dated

February 02, 2016 by BSE, submitted the details of the disclosures with respect to the Noticee, whereby it has been observed that the Noticee failed to make disclosures to stock exchanges within the prescribed time i.e two working days from the date of invocation of pledges as noted in the table below:

S N	Date of Trans.	No. of shares	Type of Trans.	Disclosure made to		Remarks
				Co.	Stock Exch.	
1	24/09/2012	5,00,000	Invocation of Pledged shares	No disclosure	October 08, 2012	Share invoked by Myon Pharma Ltd
2	15/03/2013	1,09,800	Release of pledged shares	No disclosure	April 01, 2013	Share released by Prabhudas Liladhar Fin. Ser.
3	30/03/2013	3,84,300	Release of pledged shares	April 08, 2013	April 17, 2013	Share released by Mangal Keshav Capital Ltd.
4	09/04/2013	350	Release of pledged shares	August 23, 2013	August 23, 2013	Share released by Associated Capsules Pvt. Ltd.

18. On perusal of the documents available on record in light of my observations already made at para 16 above (with respect to contention raised by PPL vide its letter dated February 01, 2016) and email communications from the exchanges i.e email dated January 28, 2016 by NSE and email dated February 02, 2016 by BSE, I conclude that Noticee, Promoter and director of company failed to make disclosures to company for transactions at S. No. 1 and 2 and made delayed disclosure to company for transactions at S. No. 3 and 4 above. Further he made delayed disclosure to exchanges for the transactions at S. No. 1 to 4. Therefore, I am inclined to conclude that the Noticee being the promoter and director of PPL has violated the provisions of Regulation 31(2) read with 31(3) of the SAST Regulations, 2011.

ISSUE II. Whether the Noticee violated the provisions of 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?

19. It is noted 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.

20. It was observed that Promoter-Director of company, the Noticee dealt in the scrip in off-market. It is noted that Noticee 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)
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
			01/01/2013 92,000
		06/09/2012 1,00,000	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	

(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
		<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
			26/09/2012 60,000

21. I note that since Noticee was one of the promoters and directors of PPL, he was 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 Noticee did not take any pre-clearance from company for their aforesaid dealings in securities. Therefore I conclude that Noticee violated the provisions of 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

ISSUE III. Whether the Noticee violated the provisions of Regulation 3(i) of PIT Regulations, 1992 by dealing in securities when in possession of unpublished price sensitive information?

22. With respect to the instant issue, I refer to the chronology of events leading to the official announcement of results for period ending on December 31, 2012 to the market as provided by company vide its letters dated February 26, 2014 and February 01, 2016 which is as follows:

Sr. No.	Nature of events	Time	Date	Persons Involved
1	Passing the accounting entries and finalization of accounts		12/02/2013	Girish Khokle – AGM (Accounts)

Sr. No.	Nature of events	Time	Date	Persons Involved
2	Finalization of accounts		12/02/2013	Shashikant Patel – CMD Chirag Patel – CEO & WTD Gauravi Parikh – ED
3	Audit of financials and submission of same to Audit Committee for its review	05:00 PM	28/02/2013	N P Gandhi & Co – Auditors
4	Audit committee meeting	05:00 PM	28/02/2013	Hitesh Thakar - Audit Committee Member Pramod Shrivastava – Audit Committee Member Amrish Chourasia – Secretary to Audit Committee
5	Meeting of Board of directors discussing financial results for the year ending December 2012	05:00 PM	01/03/2013	BoD

23. I further note that Price sensitive Information has been defined in Regulation 2(ha) of SEBI (PIT) Regulations, 1992 which reads as under:

Reg. 2(ha) “price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—the following shall be deemed to be price sensitive information:—

(i) Periodical financial results of the company;

24. I am of the view that the corporate announcement related to financial results for the period ending December 2012 made by the company was a PSI.

25. In this regard, I further note from the chronology of events tabulated above that Girish Khokle – AGM (Accounts), Shashikant Patel – CMD, Chirag Patel – CEO & WTD and Gauravi Parikh – ED knew about the expected Loss at the time of passing the entries and finalization of accounts i.e. February 12, 2013. Therefore, the UPSI came into existence on February 12, 2013.

26. Further I note that the Company informed BSE on March 01, 2013 at 19:03 hrs about the Financial Results of the company for the period ended December 31, 2012. Therefore the PSI became public on March 01, 2013 at 19:03hrs. In view of the above, I note that Period of UPSI is February 12, 2013 to March 01, 2013 at 19:03hrs. Further, it is also noted that the trading window was closed from February 26, 2013 till March 02, 2013.

27. Further I note that the term "Insider" is defined under SEBI (PIT) Regulations, 1992 vide Regulation 2(e) of SEBI (PIT) regulations whereby "Insider" means any person who,

(i) "is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information.

Further, in terms of Regulation 2(c) of SEBI (PIT) Regulations, 1992, "connected person" means any person who-

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or

(ii) occupies the position as an office or an employee of the company or holds a position involving a professional or business relationship between himself and the company (whether temporary or permanent) and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

28. It was observed that Mr. Girish Khokle, AGM Accounts and directors of company were involved in the finalization of financial results for the year ending December 2012. Therefore, as per Regulations mentioned above, I note that the Noticee among others was an insider in possession of UPSI regarding financial results of company which were to be discussed in the Board Meeting held on March 01, 2013.

29. Further, it is observed that Noticee being the Director and Promoter of company (and an insider as mentioned above) transferred 50,000 shares in off-market to Myon Pharma Ltd on February 13, 2013 i.e. when in possession of UPSI. I note that the said transaction amounted to dealing in the securities by the Noticee. In this regard, I note the provisions of Regulation 3(i) of SEBI (PIT) Regulations, 1992 which states that no insider shall, Either

on his behalf or on behalf of any other person deal in securities of a company listed on any stock exchange [when in possession of] any unpublished price sensitive information.

30. . Having noted as above, I further note that in the matter of Mr. Harish K Vaid Vs. SEBI, the Hon'ble SAT vide Order dated October 03, 2012 has held as follows:

"The purpose of insider trading regulations is to prohibit trading by which an insider gets advantage by virtue of his access to price sensitive information. The quantum of trading done or the profits earned become immaterial. The case of the appellant, who is a Company Secretary and a designated employee of the company, has to be viewed differently as compared to case of a person who is neither an employee of the company nor involved in its day to day affairs. When trading is done during the existence of UPSI, the presumption is that it is on the basis of UPSI."

31. In view of the above, I conclude that Noticee violated the provisions of Regulation 3(i) of SEBI (PIT) regulations, 1992 by dealing in securities when in possession of unpublished price sensitive information.

ISSUE IV. Do the violations, if any, on the part of the Noticee attract monetary penalty under Sections 15A(b), 15G and 15 HB of the SEBI Act, 1992?

32. The next issue for consideration is whether the failure on the part of the Noticee as aforesaid attracts monetary penalty under section 15A(b), 15G and 15HB of SEBI Act. In this regard, I primarily note that the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) has held that: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*

33. As regards the conclusions arrived at paras 16 and 18 above, I further note that the observations made by Hon'ble SAT in the case of Coimbatore Flavors & Fragrances Ltd. V. SEBI (Appeal No. 209 of 2014) whereby it was stated, *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly;*

investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same." In view of all the above, I conclude that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act.

34. As regards the conclusions arrived with respect to Issue II and Issue III, I find it pertinent to note the following observation made by the Hon'ble Supreme Court in the matter of N Narayanan Vs. Adjudicating Officer, SEBI in Civil Appeal Nos., 4112-4113 of 2013 (Order dated April 26, 2013):

"SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and „market security" is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors individual and collective, against opportunistic behaviour of Directors and Insiders of the listed companies so as to safeguard market's integrity"

35. In view of the above, I am convinced that the facts and circumstances also warrant a monetary penalty under section 15HB and 15G of the SEBI Act as well against the Noticee.

36. The provisions of Section 15A(b), 15HB and 15G of the SEBI Act are reproduced hereunder:

Penalty for failure to furnish information, return, etc.

Section 15A of SEBI Act– 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees

Penalty for contravention where no separate penalty has been provided –

Section 15HB of SEBI Act - “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.”

Penalty for insider trading.

15G of SEBI Act. If any insider who,— (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished pricesensitive information; or (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

ISSUE V: If so, What quantum of monetary penalty should be imposed on the Noticee?

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

SEBI Act

Factors to be taken into account by the adjudicating officer

15J. 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 a group of investors as a result of the default ;*
- c) *the repetitive nature of the default*

38. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the said Noticee's failures. From the documents available on record, it is noted that no prior default is on record.

ORDER

39. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, I hereby impose a cumulative penalty of ₹ 1,50,000/- (Rupees one Lakh Fifty Thousand only) on the Noticee under Section 15A (b) of the SEBI Act, 1992 for the violation of provisions of Regulation 13(4) and 13(4A) r/w Reg. 13(5) of SEBI (PIT) Regulations, 1992 and provisions of Regulation 31(2) r/w Reg. 31(3) of SEBI (SAST) Regulations, 2011, and under Section 15HB of the SEBI Act, 1992 for the violation of provisions of 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 and a penalty of ₹ 2,00,000 (Rupees Two Lakh only) on the Noticee under Section 15G of the SEBI Act, 1992 for the violation of Regulation 3(i) of PIT Regulations, 1992 by dealing in securities when in possession of unpublished price sensitive information which is appropriate in the facts and circumstances of the case.
40. The aforesaid entity shall remit / pay the said amount of penalty within 45 days of receipt of this order either through e-payment facility into the Bank Account, the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

or by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai.

41. The aforesaid entity above shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI Mumbai :

1. Case Name :	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7.Payment is made for:	Penalty

42. 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 the entity at his address and also to the Securities and Exchange Board of India, Mumbai.

Place: MUMBAI
Date: SEPTEMBER 25, 2018

B J DILIP
ADJUDICATING OFFICER