

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

[ADJUDICATION ORDER NO. PG/AO/SPV/ 120/2013]

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**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**

**K Raghavendra Rao**

[PAN: AAAPR4013J]

**In the matter of**  
**M/s Orchid Chemicals and Pharmaceuticals Limited**

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**Background of the case**

1. Securities and Exchange Board of India (SEBI) as part of its routine verification on various disclosures, observed that Shri Raghavendra Rao (**Noticee**), promoter and managing director of M/s Orchid Chemicals and Pharmaceuticals Limited (**company**) had pledged certain shares of the company and pledge on certain shares was subsequently released. It was further observed that the shareholding of the Noticee had been changed subsequent to certain off-market transactions. Thus, it was alleged that the Noticee had not made requisite disclosures under Regulation 31(1) & (2) read with 31(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**SAST Regulations**) and Regulation 13(4) & (4A) read with 13(5) SEBI (Prohibition of Insider Trading) Regulations, 1992 (**PIT Regulations**).

## **Appointment of Adjudication Officer**

2. In view of the above findings, SEBI, vide Order dated March 13, 2013 appointed the undersigned as Adjudicating Officer (**AO**) under Section 15 I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (**Adjudication Rules**) to inquire into and adjudge under Section 15A (b) of the SEBI Act, the alleged violation of provisions of SAST Regulations and PIT Regulations by the Noticee.

## **Show Cause Notice, Reply & Personal hearing**

3. Show Cause Notice dated May 17, 2013 (**SCN**) was issued to the Noticee in terms of the provisions 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. The SCN alleged that the Noticee had not filed the necessary disclosures as required under the provisions of SAST Regulations and PIT Regulations.
4. In response to the SCN, the Noticee, vide letter dated June 05, 2013 submitted reply. Subsequently the Noticee was, vide letter dated June 11, 2013, advised to appear before the AO for personal hearing scheduled on June 19, 2013 when Shri B Ramana Kumar, Advocate appeared and made submissions on behalf of the Noticee. As requested by the Noticee, time was granted till July 15, 2013 for submitting additional information. Vide letter dated July 10, 2013 the Noticee submitted additional information.
5. The salient submissions of the Noticee are as under:
  - That 1,20,000 shares were pledged with J M Financial on 11.12.2012 and the said transaction was intimated to stock exchanges on 21.12.2012 and there was a delay of 3 days and the same may be condoned.

- That the transaction of 1,60,000 shares was not an off-market transaction but a transfer from the Noticee's own DP account to another DP account.
- That on 27.12.2012 the pledge on 5 lakh shares were released by IFCI Limited and the same was intimated to stock exchanges on 04.01.2013.
- That a transfer of 4 lakh shares was made to Destimoeny Financial Services Private Limited (**Destimoney**) for the purpose of availing loan and hence such a transaction will not have the effect of off-market transfer and has the effect of an ordinary pledge. The said transaction was happened on 31.12.2012 and the same has been reported to the exchanges on 04.01.2013.

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

6. I have carefully perused the documents available on record and written submissions made by the Noticee. The issues that arise for consideration in the present case are:
  - a. Whether the Noticee has violated provisions of regulations 31 (1) & (2) read with 31(3) of SEBI SAST Regulations?
  - b. Whether the Noticee has violated the provisions of regulation 13(4) & (4A) read with 13(5) of PIT Regulations?
  - c. Do the violations if any, on the part of the Noticee to attract penalty under section 15A (b) of SEBI Act?
  - d. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?
7. The relevant provisions of the SAST Regulations and PIT Regulations are as follows:

### ***SAST Regulations***

***Regulation 31. Disclosure of encumbered shares.***

- (1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.*
- (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.*

***PIT Regulations***

***Regulation 13- Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies- Initial disclosure***

- (1).....*
- (2).....*

***Continual Disclosure***

- (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 the shareholding or voting rights, if there has been a change in such holdings of such person and his dependants (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 25,0000 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) and (4) shall be made within two working days of :*

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

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

8. I note that the Noticee was a promoter and managing director of the company and had pledged certain shares of the company. The pledge on certain shares was subsequently got released also. The Noticee had done certain off-market transactions which resulted in change in his shareholding in the company. The details of the creation/release of pledge of shares and also the details of the off-market transactions are as under:

Date	Pledged Shares	Free Shares	Total Holding	As a % of Share Capital	Details of Pledge/release
10.12.2012	6240000	685173	6925173	9.83	
11.12.2012	6360000	565173	6925173	9.83	(pledged shares increased by 1,20,000 shares)
21.12.2012	6360000	405173	6765173	9.60	(transfer of 1,60,000 shares in Offmarket)
27.12.2012	5860000	905173	6765173	9.60	(Release of 5,00,000 shares)
31.12.2012	5860000	405173	6265173	8.89	(Transfer of 5,00,000 shares in Offmarket)

As shown in the table above, the Noticee had created a pledge 1,20,000 shares on 11.12.2012 and release of pledge of 5,00,000 shares had taken place on 27.12.2012. it was alleged in the SCN that the Noticee had not made

disclosures to the exchange regarding the creation /release of pledge within 7 working days of the said creation or release as required under regulations 31 (1) & (2) read with 31(3) of SEBI SAST Regulations . Further, on account of the off-market transactions as shown in the table above, the Noticee's shareholding in the company had changed by more than 25,000 shares and in this regard, it was alleged in the SCN that the disclosures as required under regulation 13(4) & (4A) read with 13(5) of PIT Regulations were not made by the Noticee.

9. In response to the allegations made in the SCN, the Noticee has contended that 1,20,000 shares were pledged with J M Financial on 11.12.2012 and the said transaction was intimated to stock exchanges on 21.12.2012 and there was a delay of 3 days and the same may be condoned. Regarding release of pledge on shares, the Noticee has contended that on 27.12.2012 the pledge on 5 lakh shares were released by IFCI Limited and the same was duly intimated to stock exchanges on 04.01.2013. With respect to the off-market transaction of 1,60,000 shares, the Noticee has contended that the same was not an off-market transaction but was only a transfer from the Noticee's one DP account to its another DP account. Regarding the off-market transaction of 5 lakh shares on 31.12.2012, the Noticee has contended that transfer of 4 lakh shares was made to Sarsen Securities Private Limited upon availing a loan by the Noticee and hence such a transaction will not have the effect of off-market transfer and has the effect of an ordinary pledge. The said transaction happened on 31.12.2012 and the same has been reported to the exchanges on 04.01.2013. The balance 1 lakh shares were lying with Destimoney.
10. On perusal of the documents available on record and the contentions of the Noticee, I find that regarding the creation of pledge of 1,20,000 shares on 11.12.2012, the Noticee had made disclosure on 21.12.2012. The Noticee has also requested to condone the delay of 3 days. The release of pledge of 5 lakh shares on 27.12.2012 was reported on 4.01.2013. In view of the above, I

find that the Noticee has made necessary disclosures with respect to creation/release of pledge. In view of the same I take a lenient view with regard to the delay in reporting with respect to the creation of pledge on 11.12.2012. Hence, I exonerate the Noticee of charges of SAST Regulations.

11. I find that the off-market transaction 1,60,000 shares has not constituted any change in shareholding in the company as the same was only a transfer from his one DP account to another DP account hence the same was not required to be reported. Regarding the transfer of 5,00,00 shares on 31.12.2012, I find that the shares were transferred from his account to Destimoney for the purpose of creation of pledge. It has been submitted that out these, 4 lakh shares were pledged with Sarsen Securities Private Limited and balance 1 lakh was lying with Destimoney on behalf of the Noticee (copy of letter from Destimoney submitted). I also find that the Noticee has made requisite disclosures for creation of pledge of 4 lakh shares on 04.01.2013 which is within the due date. In view of the above, I find that the charge of violation of the provisions of regulation 13(4) & (4A) read with 13(5) of PIT Regulations is not clearly made out. Hence, I exonerate the Noticee of the charges of regulation 13(4) & (4A) read with 13(5) of PIT Regulations.

## **Order**

12. In view of the foregoing, the alleged violation of the provisions of SAST Regulations and PIT Regulations by the Noticee as specified in the SCN does not stand established and the matter is, accordingly, disposed off.
13. In terms of rule 6 of the Rules, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

**Date: October 25, 2013**  
**Place: Mumbai**

**Piyoosh Gupta**  
**Adjudicating Officer**