

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/JP/ 74/2017]

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

In respect of:-

Sumanth Kumar Reddy Mettu (PAN: ALQPM5070M)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') upon certain alerts and complaints, had carried out investigation for the period from January 01, 2013 to March 31, 2014 to find out the possible irregularities of price manipulation, insider trading etc. in the shares of Aurobindo Pharma Ltd. (hereinafter referred to as '**APL / the Company**'). The investigations *inter-alia* revealed that Mr. Sumanth Kumar Reddy Mettu (hereinafter referred to as '**the Noticee**') being a Promoter of the APL, had bought and sold shares of the APL on May 30, 2013 in violation of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had initiated adjudication proceedings and appointed undersigned as the Adjudicating Officer 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**') vide order dated August 17, 2015, to inquire into and adjudge under section 15 G of the SEBI

Act, the violations of regulation 3 (i) of the PIT Regulations (read with regulation 12 of the current PIT Regulations 2015) alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAO/RA/JP/29082/2015 dated October 14, 2015 (hereinafter referred to as “**SCN**”) was served upon the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against him under sections 15G of the SEBI Act for the aforesaid alleged violations of regulation 3 (i) of the PIT Regulations.
4. The observations made under the investigation and the allegations levelled against the Noticee in the SCN are briefly mentioned hereunder;
 - (a) *The Noticee being a Promoter of the Company / APL, had bought and sold shares of the APL on May 30, 2013 the details of which are given in a table below;*

Gross Buy Volume	Gross Sell Volume	Net Traded Volume	Gross Traded Volume	Gross Buy Value	Gross Sell Value
30,000 shares	10,000 shares	20,000 shares	40,000 shares	₹ 1,28,000/-	₹ 72,700/-

- (b) *The Noticee bought aforesaid shares just before announcement of the Quarterly Financial Results of the APL/Company for the Quarter ending March 2013. It was revealed that as per the Company’s code of conduct (as required under Clause 3.2 of the Schedule II read with regulation 12 of the PIT Regulations), the Company had declared the period from May 21, 2013 to May 31, 2013 as “Closure of Trading Window Period” and thereby the trading in shares of the Company/APL was closed for certain class of persons. As per PIT Regulations,*

the periodical financial results of the Company, until the same are declared, is considered as an unpublished price sensitive information.

(c) During the course of investigation (under e-mail of the Company dated January 06, 2016) it was revealed that the Noticee had become part of the promoters group of the Company/APL on August 12, 2010 pursuant to his marriage with the daughter of Mr. K. Nithyananda Reddy (the Promoter and the then Managing Director of the Company) and also the Noticee is a son of Mr. Madan Mohan Reddy (Non Promoter and Whole Time Director of the Company).

(d) It was alleged that the Noticee (being the promoters / connected person / insider of the APL) was in the possession of 'unpublished price sensitive information' about the periodical financial results Quarter ending March 2013 of the Company/APL and being in possession of such information, he had also traded during the "window closure period". Copies of certain e-mails exchanged during the course of investigation by the SEBI and the Company along with certain annexures / trading details etc. were provided to the Noticee as Annexure II.

5. In view of the above, it was alleged that the Noticee had traded in the shares of the Company/APL in violation of regulation 3 (i) of the PIT Regulations which reads as under;

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. No insider shall—

(i) either on his own 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;

6. In respect to the SCN, the Noticee submitted reply dated November 02, 2015 and desired a personal hearing in the matter. For the purpose of inquiry and as requested by the Noticee, an opportunity of hearing was provided to him on

November 30, 2015 vide hearing notice dated November 16, 2015. Vide said notice of hearing at para 3, the Noticee was specifically asked to produce at the time of hearing, the original proof of payment of ₹ 5 Lakh by him into the account of Prime Minister's National Relief Fund along with the order / decision of Company / APL directing him to make the said payment.

7. The hearing on November 30, 2015 was attended by the Noticee himself along with his authorized representatives namely – Mr. Satish Kumar Dinavahi and Mr. Paresh C. Budhdey of Chitale Law Associates. The Noticee and his authorized representatives reiterated the submissions as mentioned in reply dated November 02, 2015 and also desired to file additional reply, if any, on or before December 15, 2015.
8. During the course of hearing, it was informed to the Noticee that as per annexures filed by him along with his aforesaid reply, it appears that the amount of penalty of ₹ 5 Lakh payable to the Prime Minister's National Relief Fund (imposed by the APL upon the Noticee for the alleged irregularity) was *prima - facie* paid by the Company/APL instead of him. Also, no proof /order copy of imposing of penalty upon the Noticee by the APL has been submitted in the matter which was sought under the hearing notice dated November 16, 2015 at para 3. In respect of said query, the Noticee agreed to provide required proof/documents along with additional submissions by December 15, 2015 showing that he had only paid the penalty in favour of the Prime Minister's National Relief Fund. However, no additional submissions or any proof/documents has been received from the Noticee.
9. During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd.* held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue

/ matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

10. Consequent to the clarity brought into the Finance Act, 2017 and as no proof/documents have been received from the Noticee as sought from him during the hearing on November 30, 2015, therefore, vide a communique dated April 11, 2017, the Noticee was asked to provide by April 27, 2017 the proof that he had paid ₹ 5 Lakh to the Prime Minister's National Relief Fund instead of Company / APL along with proof / order of Company imposing said amount for breach of the same violation. Vide said communique, an opportunity of hearing was also provided to the Noticee on April 28, 2017.

11. Thereafter, the Noticee vide letter dated April 18, 2017 provided a copy of certificate issued by ICICI Bank Ltd. dated November 30, 2015 regarding payment of ₹ 5 Lakh by him to the Prime Minister's National Relief Fund and also provided order copy of Company dated September 20, 2014 imposing penalty for the breach of same violation as alleged in the SCN. Vide said letter, the Noticee also provided copy of his additional submission dated December 09, 2015 made consequent to hearing dated November 30, 2015 (acknowledged by Inward section of SEBI though not received by the office of undersigned). The Noticee also vide letter dated April 26, 2017 stated that his reply may be treated as reply dated 'December 09, 2015' which was inadvertently mentioned as December 09, 2017. The hearing on April 28, 2017 was attended by Shri Satish Kumar Dinavahi and he reiterated as stated in Noticee's reply dated November 02, 2015 and April 18, 2017 along with reply dated December 09, 2015.

12. In order to check the authenticity of said copy / certificate of ICICI Bank Ltd. dated November 30, 2015, vide communique dated May 02, 2017, ICICI Bank Ltd. at Hyderabad was advised to confirm as to whether the said Certificate has been issued/singed by its authorized signatory and the entire contents appeared therein are correct or not. In respect of aforesaid, the ICICI bank Ltd. vide its letter dated May 09, 2017 confirmed the issuance of said Certificate dated November 30, 2015 mentioning that the Demand Draft No. 28933 dated September 29, 2014 was issued from the account of Mr. Sumanth Kumar Reddy Mettu (Noticee) bearing A/c No. 007501522897 and the same has been authenticated by the Authorized signatory from its SR Nagar Branch, Hyderabad.
13. Since, the hearing / inquiry is concluded in the matter, therefore, the matter needs to be proceeded further on the basis of material available on records. The core submissions made by the Noticee towards the SCN vide his reply dated November 02, 2015, submissions made during the course of hearings, additional written submission dated December 09, 2015 along with letter dated April 18, 2017 etc. are produced below;

Reply of the Noticee

(i) I was named in the promoter group of AurobindoPharma Ltd. ("APL") w.e.f. 12th August, 2012. Though named in the promoter group of APL, I do not hold any executive or non-executive position in APL. However, two executive directors of APL namely Mr. K. Nithyananda Reddy and Mr. Madan Mohan Reddy are my father in law and my father respectively. I am named as a part of promoter group of APL, I am not connected to APL either as an employee or as director of APL.

(ii) I am presently working as a CEO of Pravesha Industries Pvt. Ltd. ("PIPL"), Hyderabad which engages in packaging business. I do not have any role and I am also not engaged in any activity of APL. I frequently engage in trading/ investment in shares/ securities of various companies/ indexes etc. I carry on

my trades in shares and securities through ICICI Securities Ltd. as my broker for the said trading/ investment activities.

(iii) While carrying on trading/ investment in shares/ securities I had bought 10,000 call options on APL shares on 26th April, 2013. The option premium paid by me was ₹5.80 per option and the said option was closed by me through a sale on 2nd May, 2013 for an option price ranging from ₹7.15 to ₹7.45 per option (relevant copies of contract attached as Exhibit A and Exhibit B hereto). Both these trades were on dates which were not during the closure of trading window in APL shares. I did not possess any unpublished price sensitive information of APL as is evident from the contract from 2nd May, 2013. I had also bought 500 call options on NIFTY.

(iv) Subsequently, on 30th May, 2013 I had bought 20,000 call options on APL shares for an option premium of ₹3.50 per option (relevant copy of contract attached as Exhibit C hereto) since the option was under water I lost the entire option premium paid.

(v) As mentioned above, I have never held any executive or non-executive position in APL. On 15th September 2014 the AVP-Legal and company secretary of APL informed me that SEBI had on verification found that I being a part of promoter group had bought 20,000 option contract of APL on 30th May, 2013 i.e. just before the declaration of Audited Financial Statement of APL. Being unaware of the Board Meeting for considering of Financial Account on 30th May, 2013, I, inadvertently bought 20,000 call options on APL shares for which I paid a premium of ₹ 3.50 per option. I have suffered a loss of ₹ 70,786.53 as the stock options purchased by me were underwater on the date of expiry of the said stock options.

(vi) On advice of the Company Secretary and based on his communication with SEBI, I had drawn a pay order in favour of Prime Minister's National Relief Fund

of ₹5,00,000/- (Rupees Five Lakhs only) as a penalty for the alleged violation in terms of the model code of conduct of APL for trading in derivatives during the closure of trading window. The pay order was received by the office of the Prime Minister on 1st November, 2014 (copies of email communication and pay order dated 29th September, 2014 along with the acknowledge from the Prime Minister Office is attached herein as Exhibit D, Exhibit E and Exhibit F). The Company Secretary vide e-mail dated 2nd January, 2015 further asked for my confirmation that I was not in possession of any unpublished price sensitive information at the time of the above mentioned transaction. I promptly vide my e-mail dated 6th January, 2015 confirmed that I did not possess any unpublished price sensitive information of APL at the time of transaction (copies attached as Exhibit G). I was not connected to any business of APL except being part of promoter group post marriage with Mrs. K. Spoorthi whose father Mr. K. Nithyananda Reddy is one of the promoters and the Vice Chairman of APL.

(vii) I further understand that the SEBI had taken the correspondence relating to the alleged breach of 20,000 option contract on record vide its letter dated 24th June, 2015 (copy attached herewith as Exhibit H) by advising APL to be careful in future and to take necessary care to ensure compliance of Security Laws.

(viii) I, therefore, humbly request your good self to drop the proposed proceeding and cancel the SCN in light of the following facts:

- (i) The transaction was undertaken by me inadvertently without being in possession of any unpublished price sensitive inside information;
- (ii) There was no malafide on my part and I was not aware of the proposed board meeting;
- (iii) No gain was made by me in the transaction, which in fact caused me a loss;
- (iv) Further, on the advice of APL, I have already paid penalty of ₹5,00,000/- as a contribution towards Prime Minister's National Relief Fund.

14. After taking into account the allegations, replies of the Noticee and evidences / material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF CASE ON MERIT AND FINDINGS

15. I have carefully perused the allegations, submissions of the Noticee and the evidences / material available on records. The total alleged trading in derivatives transactions by the Noticee on May 30, 2013 during the 'trading window closure period' (May 21, 2013 to May 31, 2013) just before the announcement of Quarterly Financial Results of the APL for the quarter ending March 2013, are not in dispute.
16. It remains undisputed that the Noticee is the son of Mr. Madan Mohan Reddy (who was the then Whole Time Director of the APL) and is the son-in-law of Mr. K. Nithyananda Reddy (who was the Promoter and the then Managing Director of the APL). Taking into account regulation 3(i), regulation 2(c)&2(h)(viii) of the PIT Regulations defining 'insider', 'connected person' and 'person deemed to be connected person' and regulation 2(i) of PIT Regulations read with section 6 of the Companies Act, 1956 [now section 2(77) of the new Companies Act, 2013 read with rule 4 of the Companies (specification of definition details) Rules, 2014], defining 'relative', it is clear that Noticee is deemed to be connected person and hence is 'insider' for the purpose of the PIT Regulations.
17. In order to examine the 'Unpublished Price Sensitive Information' (UPSI), I have taken note of regulation 2(ha) and 2(k) of the PIT Regulations and observed that UPSI mean 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. Bare perusal of aforesaid regulation 2 (ha) connotes that "periodical financial results of the company" is well covered within the definition of Price Sensitive Information and until such Price Sensitive Information is declared to public, the same remains as UPSI.
18. It is matter of fact that the Noticee had traded for 40,000 share option contract in derivatives of the APL (30,000 buy stock option and 10,000 sell stock option) on May 30, 2013 during the 'trading window closure period' (viz. May 21, 2013 to

May 31, 2013) just before announcement of Quarterly Financial Results for the Quarter ending March 2013 which is not warranted in terms of regulation 3(i) of the PIT Regulations.

19. However, it is important to note that the Noticee in his reply submitted that for the same irregularity, the APL had imposed upon him a penalty of ₹ 5 Lakh payable into the account of Prime Minister Relief Fund and he had paid the said amount of penalty. In support of aforesaid submissions, the Noticee has enclosed a copy of letter/order dated September 20, 2014 issued by the APL asking the Noticee to pay ₹ 5 Lakh in favour of 'Prime Minister's National Relief Fund' within 10 days for indulgence into derivatives transaction on May 30, 2013 in violation of code of conduct of APL. It was stated therein that APL shall thereafter forward the said penalty to Prime Minister's National Relief Fund. Vide said order, the Noticee was also cautioned to ensure strict compliance of code of conduct of the APL and to avoid such violations in future. The Noticee in his support has enclosed copy of a certificate issued by the ICICI Bank dated November 30, 2015 stating that Demand Draft No. 28933 of ₹ 5 Lakh in favour of Prime Minister's National Relief Fund has been issued from Noticee's Savings Bank Account No. 007501522897 (vide his cheque No. 657927) on September 29, 2014. As stated above, ICICI Bank Ltd. had vide letter dated May 09, 2017 had confirmed the issuance of such Certificate.
20. Further, I have perused a letter dated November 01, 2014 (Annexure E of the Noticee) issued from the Office of Prime Minister (attaching a receipt dated October 31, 2014) acknowledging the said amount of ₹ 5 Lakh in favour of Prime Minister's National Relief Fund. It is also noted from Annexure II of the SCN that the fact of imposition of penalty was communicated by the APL to SEBI vide e-mail dated September 20, 2014.
21. Here, it is relevant to mention that even if it is established that the aforesaid trading by the Noticee during the "*Closure of Trading Window Period*" was done

before the announcement of Quarterly Financial Results of the APL ending March 2013 which consequently attracts violation of regulation 3 (i) of the PIT Regulations, however, the important issue cannot be ignored that for the same violation, the initial regulator in such situation (viz. the Listed Company) has already taken suitable action against the Noticee by imposing penalty and cautioning Noticee to ensure strict compliance of its code of conduct and to avoid such violation in future. At this juncture, it is relevant to refer regulation 12 of the PIT Regulations regarding (Policy on Disclosures and Internal Procedure for Prevention of Insider Trading), which states as under –

*12. (1) All **listed companies** and organization associated with securities market including:*

(a)

(b)....

(c)....

(d)...

(e) ...

shall frame a code of internal procedure 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.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

*(3) All entities mentioned in sub-regulation (1), shall **adopt appropriate mechanisms and procedures to enforce the code specified under sub-regulation (1) and (2).***

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

22. From the aforesaid, it is clear that action can be taken by the Company and penalty can be imposed in case of breach of its code of conduct, which in fact, was so done by the APL. I have also noted that by virtue of regulation 12 (4) of the PIT Regulation, SEBI may also initiate proceeding for such violation, but, it would

be appropriate to mention that during the adjudication proceedings, it becomes important to examine the issue whether the action taken by the Company, are commensurate to the violation committed by the entity / Noticee or not. In case, it is considered that the action taken /penalty imposed by the Company are justifiable / commensurate to such breach, then, further imposing of penalty upon the entity/Noticee would not be appropriate and would tantamount of punishing twice for the same cause of action. However, if the action taken by the Company is not commensurate to the alleged violations, then, justifiable penalty can be imposed under the adjudication proceeding.

23. I have taken note from the available records that no proof is there showing any profit made by the Noticee by virtue of said transactions or any loss caused to investors; rather the Noticee submitted (Annexure C) that he suffered loss by such transactions. Further, no records are there to show that the breach are repetitive in nature and involvement in such stock option is not substantial or multiple. In view of the aforesaid and as it has been established that the Company had already imposed penalty of ₹ 5 Lakh upon the Noticee and also cautioned him to ensure strict compliance of code of conduct of the APL / to avoid such violations in future, therefore, I am of the view that aforesaid actions taken by the APL, are commensurate to the violation committed by the Noticee.

24. Also, I cannot lose sight from the fact that SEBI vide letter dated June 24, 2015 (Annexure H provided by the Noticee in his reply) addressed to Managing Director of the Company / APL *inter-alia* stated - "*The trading by your employee and promoter as mentioned above was not informed to SEBI. In this regard, you are advised to be careful in future and take necessary steps to ensure the compliance with the provisions of securities laws governing the securities market*". It goes without saying that certainly, the aforesaid action was taken by the Company in respect to the Noticee and vide e-mail dated September 20, 2014 & January 06, 2015, the Company had informed SEBI accordingly.

ORDER

25. Accordingly, taking into account aforesaid observations and keeping holistic approach after following the principles of equity, justice and good conscience, I am of the view that no penalty is warranted to be imposed upon the Noticee in the matter. The case / SCN is disposed off accordingly.

26. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: May 22, 2017

Place: Mumbai

(RACHNA ANAND)

**GENERAL MANAGER &
ADJUDICATING OFFICER**