

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/BJD/VS/114 /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 AND UNDER SECTION 23-I OF
SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF
SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND
IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005**

**In respect of:
Plethico Pharmaceuticals Ltd.**

A.B Road, Manglia, District Indore,
Madhya Pradesh- 453771

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 'Noticee'/'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 inter alia observed that PPL made wrong disclosure w.r.t. number of promoters for quarters ending September 2012 to June 2013 and failed to disclose shareholding pattern for quarters ending June 2015, Sep. 2015 and Dec 2015 to exchanges and thereby violated provisions of clause 35 of listing agreement r/w section 21 of SCRA.

3. It was further observed that Noticee violated provisions of Regulation 13(6) of SEBI (PIT) Regulations, 1992 with respect to two instances mentioned below by not making disclosure to exchanges within two working days:

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

4. Further, it was also observed that Noticee had failed to ensure and enforce the compliance of code of conduct of company, thereby violated clause 1.2 of code of conduct specified under Part-A of Schedule-I read with Regulations 12(1) & 12(3) of PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

5. 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 “AO Rules, 1995”) and Section 19 read with section 23-I of the Securities Contract Regulation Act 1957 (hereinafter referred to as “SCRA”) and Rule 3 of SCR (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as “SCRA AO Rules”), inter alia, to inquire and adjudge under Sections 23A(a) and 23E of the SCRA 1956 and the provisions of sections 15A(b) and Section 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

6. A Show Cause Notice dated December 13, 2017 bearing number EAD/BJD/MAS/31448/2017 (hereinafter referred to as 'SCN') was issued to the Noticees with respect to the aforesaid allegations against the each of the Noticees. In response to the same, Mr. Atul Vinay Singh for AVS Legal, the legal representatives of the Noticee vide their letter dated December 29, 2017 submitted that their clients are 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 6months 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, Shashikant Patel (ex- whole time director) of the Noticee, vide his reply dated August 09, 2018, on behalf of Noticee 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.

CONSIDERATION OF ISSUES AND FINDINGS

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

- I. Whether Noticee made wrong disclosure w.r.t. number of promoters for quarters ending September 2012 to June 2013 and failed to disclose shareholding pattern for quarters ending June 2015, Sep. 2015 and Dec 2015 to exchanges and thereby violated provisions of clause 35 of listing agreement r/w section 21 of SCRA?
- II. Whether the Noticee violated provisions of Regulation 13(6) of SEBI (PIT) Regulations, 1992?
- III. Whether the Noticee violated clause 1.2 of code of conduct specified under Part-A of Schedule-I read with Regulations 12(1) & 12(3) of PIT Regulations, 1992?
- IV. Do the violations, if any, on the part of the Noticees attract monetary penalty under Sections 23A(a) and 23E of the SCRA 1956 and the provisions of sections 15A(b) and Section 15 HB?

V. If so, what quantum of monetary penalty should be imposed on the Noticees?

FINDINGS

8. In the facts and circumstance of the case, I am of the view that before proceeding in the matter on its merit, it would be in the fitness of the thing to first decide the preliminary issue as to whether the Adjudication proceedings initiated by SEBI against the Noticee are maintainable.
9. In order to examine the maintainability of the present Adjudication proceedings against Noticee, it will be appropriate to refer to Section 446 of the Companies Act, 1956, (corresponding to Section 279 of Companies Act, 2013) which reads as under:-

Section 446 of Companies Act, 1956

“When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.”

Section 279 of Companies Act, 2013

“(1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.”

10. According to Black’s Law Dictionary, Sixth Edition, the term ‘Legal Proceedings’ includes “all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of remedy.” Further, the term

‘Proceedings’ means, “any action, hearing, investigation, inquest or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given.”

11. In the “Guide to the Companies Act” by A Ramaiya, (17th Edition Reprint 2010, page 4929 & 4930), it is stated that the object of winding up of a company by the court is to facilitate the protection and realization of its assets with a view to ensure an equitable distribution thereof among those entitled and to prevent the administration from being embarrassed by a general scramble among creditors and others. Consequently, once the court has taken the assets of a company under its control or has passed an order for its being wound up, it will not be proper to allow proceedings to be started or continued against the company. “Section 446 is wide in its terms and is not restricted to any category of suits or any class of plaintiffs. It is wide enough to cover all suits and other legal proceedings who-ever may be plaintiff.” **{Murgan Oil Industries (P.) Ltd. Re, (1970) 40 Com. Cases 77, 82 (Mad) }.**

12. While examining the issue of maintainability of the legal proceedings initiated after the date of order of winding up/ appointment of Official Liquidator, the Hon’ble High Court of Bombay, in the case of **Deutsche Bank v. S.P. Kala {(1990) 67 Com. Cases}** held as under:-

“Section 446 of the Companies Act provides that, when a winding up order is made or the official liquidator is appointed as provisional liquidator, no suit or legal proceedings should be commenced or if pending on the date of the winding-up order, shall be proceeded with, against the company, except with the leave of the court and subject to such terms as may be imposed. Sub-section (2) further lays down that the court which is winding-up the company shall, notwithstanding anything contained in any other law in force, have jurisdiction to entertain or dispose of, inter alia, any suit or proceeding by or against the company, whether such suit or proceeding has been instituted or is instituted. A careful examination of these provisions of law makes it clear that once a winding-up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any suit or proceeding by or against the company is vested in the company court without any kind of restriction..... The expression “any suit or

proceeding by or against the company" is wide enough to bring within its sweep any kind of suits."

13. I note that Adjudication proceedings against the Noticee commenced on December 13, 2017, whereas, the liquidator has been appointed by Hon'ble High Court of Madhya Pradesh (Indore Bench) vide Order dated April 07, 2015 with respect to the winding up proceedings against the Noticee. Further, the documents made available by Mr. Shashikant A Patil whereby it is noted that an Order in the winding up proceeding against the Noticee in the COMP No. 35/2013 was made by the Hon'ble High Court of Madhya Pradesh on June 19, 2018 and the matter has been ordered to be listed further on August 20, 2018. Therefore, it is observed that the winding up proceedings have been continued to be supervised by the High Court. In this regard, I also note that Central Government vide its notification dated 7th December 2016, issued the Companies (Removal of Difficulties) Fourth Order, 2016 amending Section 434 of the 2013 Act, which, inter alia, provided that *In the Companies Act, 2013, in Section 434, in sub-section (1), in clause (c), after the proviso, the following provisos shall be inserted, namely:-*

"Provided further that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:

Provided further that – (i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts; shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959"

14. In view of the above, I am of the opinion that the instant proceedings against the Noticee, which is under liquidation, fall under the term "other legal proceedings" used in Section 446 of Companies Act, 1956 which cannot be continued without the leave of the Court as mentioned thereunder. In this regard, I further note that there is no material on record to suggest that leave of the Court has been taken. Even if to consider the instant proceedings not to have fallen under the term "other legal proceedings" as mentioned above, I note that, in terms of Rule 4(3) the AO Rules, 1995, if an opinion is formed that an inquiry should be held in any adjudicating proceedings, the AO has to provide an opportunity of hearing to

the Noticee. In this regard while Rule 4(7) of the AO Rules, 1995 provides for proceeding *ex parte* i.e. conducting inquiry based on the material available on record, however the same can be attracted only if the Noticee fails, neglects or refuses to appear as required under Rule 4(3) of the AO Rules, 1995. In the instant proceedings, while the liquidator has already been appointed on April 07, 2015 and the physical possession of the assets and office of the Noticee has already been taken over, I am of the opinion that, in such facts and circumstances, it is difficult to provide the opportunity of hearing/present its case to the Noticee so as to conduct the inquiry in terms of Rule 4 of AO Rules also considering the fact when the leave of the court as per Section 446 of Companies Act, 1956 read with section 279 of the Companies Act, 2013 is not taken. I am furthermore of the opinion that it is not in the interest of justice to proceed with determining the guilt or innocence of the Noticee without ensuring fair compliance with the principle of natural justice.

15. In view of all the above, I am of the considered view that the instant adjudication proceedings against the Noticee do not merit consideration in the absence of leave of the Court being taken to initiate the instant adjudication proceedings.

ORDER

16. In view of my findings noted in the preceding paragraphs, I am of the view that the Adjudication proceedings initiated against the Noticee vide Show Cause Notice dated December 13, 2018 is not maintainable and therefore disposed of accordingly.
17. In terms of rule 6 of the AO Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

MUMBAI
AUGUST 13, 2018

B J DILIP
ADJUDICATING OFFICER