

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/AO/BJD/VS/252/2018-19

**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:

Chirag 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. Chirag Patel (hereinafter referred to as 'Noticee'), Promoter and Whole Time director of PPL transferred 30,000 shares of the company to Myon Pharma Ltd. through an off-market transaction on February 07, 2013. This resulted in his shareholding being reduced by 30,000, which 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 PIT Regulations, 1992. The details of the said transaction is as follows:

S N	Date of Transaction	No. of shares	Type of Transaction	Remarks
1	07/02/2013	30,000	Off-market Debit	Transferred shares to Myon Pharma Ltd

3. It is alleged that the Noticee failed to make disclosures to company and exchanges for the aforesaid off-market transaction as required u/r 13(4) and 13(4A) r/w Reg. 13(5) of PIT Regulations, 1992.
4. Further, it was observed that the Noticee pledged his 500 shares which were later on released by pledgees. This required disclosures to company and exchanges within seven working days u/r 31(2) r/w 31(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as 'SAST Regulations, 2011'). However, it is alleged the Noticee failed to make disclosure to company and made delayed disclosure to exchange for said transaction. The details of same as observed during investigation are as follows:

S N	Date of Trans.	No. of shares	Type of Trans.	Disclosure made to		Remarks
				Co. (***)	Stock Exch.	
1	09/11/2012	500	Pledge Closure	No disclosure	Dec. 03, 2012	Share released by IDBI Trustee

5. In view of above, the Noticee being the promoter and Director of company is alleged to have violated provisions of Regulation 31(2) r/w 31(3) of SEBI (SAST) Regulations, 2011.
6. It was observed that Promoter-Director of company, the Noticee dealt in the scrip in off-market the details of which is mentioned at para 2 above. In view of the same, it was observed that the Noticee was required to take pre-clearance from company for their dealings in the scrip for aforesaid transaction as per the code of internal procedure and conduct framed by the 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.

APPOINTMENT OF ADJUDICATING OFFICER

7. 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) 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

8. 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. However, no reply was received from the Noticee with respect to the allegations levelled against him vide the aforesaid SCN.
9. Further, the Noticee was given one final opportunity of hearing on August 21, 2018 with an advice to submit their final reply. Vide the said Notice, it was brought to the Notice of the Noticee, the delay in replying and was communicated that no further opportunity of hearing would be granted in the matter. In reply, Mr. Shashikant Patel, father of the Noticee

vide his letter dated August 20, 2018 stated that the Noticee was keeping in very poor health and had been admitted to the ICU at Nanavati Hospital in an unresponsive state over the course of last week then and continued to remain in intensive care and sought for final extension of time on humanitarian grounds. In view of the same, an extension of time was granted vide Notice dated August 27, 2018 whereby the Noticee was *inter alia* granted time to submit reply till September 24, 2018 and an opportunity of hearing was granted on September 24, 2018. However, Noticee or his authorised representatives failed to appear for the hearing on the said date. Further, vide letter dated September 25, 2018, AVS Legal submitted on behalf of the Noticee that “*Mr. Chirag Patel...has suffered a serious neurological disorder and continues to remain in a vegetative state since then*” and submitted a copy of the medical certificate issued by Nanavati Hospital stating the case history of the Noticee. In view of the same, additional time was sought on behalf of the Noticee.

10. Considering the above, the Noticee was granted further time to reply or appear for the hearing personally or through his representatives on October 19, 2018. Further, the hearing was adjourned to October 22, 2018 vide email dated October 15, 2018. However, no reply was received on behalf of the Noticee and no appearance was made on behalf of the Noticee on the date of hearing.
11. In the instant case, I note that the Noticee has been granted time of more than 10 months to reply to the SCN. However, no reply with respect to the allegation has been made by the Noticee. Further, after 7 months of the service of the SCN, the critical health status of the Noticee was communicated. In view of the same, adjournments were granted to the Noticee in the matter as noted above. However, on the final opportunity of hearing that was granted on October 22, 2018, no representation has been made before me on behalf of the Noticee and no communication has been made subsequent to the granting of the extension to reply till October 22, 2018.
12. In the said facts and circumstances, I take into consideration of the provisions of Rule 4(7) of Adjudication Rules which states, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, he may proceed with the inquiry in the absence of such person after recording the reasons for doing so. Therefore I am proceeding with the matter on the basis of material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

13. 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 Regulation 13(5) of PIT Regulations, 1992 and provisions of Regulation 31(2) r/w Regulation 31(3) of 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 PIT Regulations, 1992?
- III. Do the violations, if any, on the part of the Noticee attract monetary penalty under Sections 15A(b) and 15 HB of the SEBI Act, 1992?
- IV. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

14. 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 Regulation 13(5) of PIT Regulations, 1992 and provisions of Regulation 31(2) r/w Reg. 31(3) of SAST Regulations, 2011?

15. 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.*

16. It is noted from the record that the Noticee being the Promoter and Whole Time director of PPL transferred 30,000 shares of the company to Myon Pharma Ltd. through an off-market transaction on February 07, 2013. This resulted in his shareholding being reduced by 30,000 and since the said change exceeded the limit of 25,000 shares, it triggered the disclosure requirement under Regulation 13(4) and 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 and the aforesaid transaction required him to make disclosure to company and exchange within two working days as per the said Regulations.

17. 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 the Noticee had not submitted the disclosure to it. Further NSE vide its email dated January 28, 2016 *inter alia*

stated, “*..There is no disclosure received from its Promoter-director namely Chirag patel in the scrip during the period September 01, 2012 to June 30, 2013.*” Further, I note that BSE vide its email dated January 27, 2016 *inter alia* attached the corporate announcements and disclosures received from PPL and its promoter directors for the period from September 01, 2012 to June 30, 2013. Therefore, I note that, no disclosure was made by the Noticee to the Company and the exchanges with respect to the alleged transactions dated February 07, 2013 mentioned at para 16 above.

18. Further I also note that PPL vide its letter dated February 01, 2016 stated that the Noticee had never sold or transferred any of the shares held by him which could constitute sale of shares or voting rights of the company. It was *inter alia* contended by PPL that the aforesaid off market transfer dated February 07, 2013 was 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.

19. Further, it was observed that the Noticee pledged his 500 shares which were later on released by pledgees on November 09, 2011. Since the Noticee was one of the promoters of PPL, the said transaction required disclosures to be made by the Noticee to the company

and exchanges within seven working days under regulation 31(2) read with 31(3) of SAST Regulations, 2011.

20. 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 no disclosure made 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	09/11/2012	500	Pledge Closure	No disclosure	Dec. 03, 2012	Share released by IDBI Trustee

21. On perusal of the documents available on record in light of my observations already made at para 18 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 emails dated January 27, 2016 and February 02, 2016 by BSE, I conclude that Noticee, Promoter and director of company failed to make disclosures to company for transaction dated November 09, 2012. Further he made delayed disclosure to exchanges for the transactions as mentioned above. 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 PIT Regulations, 1992?

22. 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.

23. It was observed that Promoter-Director of company, the Noticee dealt in the scrip in off-market. It is noted that the Noticee transferred shares in off-market to Myon Pharma Ltd as mentioned hereunder:

24. 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)
Name Of Transferor (Total Number of shares transferred)	Name of Transferee	Date and Qty of shares received in off-market by entity at (B)
Chirag Patel (30,000 shares)	Myon Pharma Ltd.	07/02/2013 30,000

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

26. The next issue for consideration is whether the failure on the part of the Noticee as aforesaid attracts monetary penalty under section 15A(b) 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..."

27. As regards the conclusions arrived at paras 18 and 21 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.

28. Further, in the facts and circumstances of the case, as regards the conclusions arrived with respect to Issue II, I am convinced that the failure of the Noticee to take pre-clearance also warrant a monetary penalty under section 15HB of the SEBI Act.

29. The provisions of Section 15A(b) and 15HB 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."*

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

30. 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*

31. 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

32. 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 ₹ 1,00,000/- (Rupees one Lakh 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, which is appropriate in the facts and circumstances of the case.

33. 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.

34. 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

35. 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 Mr. Chirag Patel at his address and also to the Securities and Exchange Board of India, Mumbai.

Place: MUMBAI
Date: OCTOBER 23, 2018

B J DILIP
ADJUDICATING OFFICER