

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
ADJUDICATION ORDER NO. EAD-7/BD/NR/2019-20/7361**

**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) RULES, 1995**

In respect of  
**Anil Agarwal**  
**(PAN: ACZPA2425Q)**  
**A-20, 3<sup>rd</sup> Floor**  
**Friends Colony East**  
**New Delhi – 110065.**

In the matter of Polar Pharma India Ltd.,

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation in the scrip of Polar Pharma India Ltd., (hereinafter referred to as "**PPIL**" / "**Company**") to ascertain any price or volume manipulation by certain entities in violation of SEBI Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 during the period July 4, 2005 to September 13, 2005 (hereinafter referred to as "**investigation period**").
2. During the investigation, it was inter-alia observed by SEBI that Chairman & Managing Director of PPIL viz., Anil Agarwal {*hereinafter referred to as the "**Noticee**"*} was holding 8,27,325 shares, as on June 12, 2005. It was observed that during the period June 13, 2005 and July 6, 2005, there was change in his shareholding in the scrip of PPIL, which triggered disclosure requirements under Regulation 13 (4) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as SEBI (PIT) Regulations*). The investigation revealed that the Noticee pursuant to change in his shareholding had made delayed disclosures to the Company and thus it was alleged that the Noticee had violated the provisions of Regulation 13 (4) of SEBI (PIT)

Regulations, 1992 read with Regulation 12 (2) of SEBI (PIT) Regulations, 2015.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticee and appointed Shri Nagendraa Parakh as the Adjudicating Officer vide Order dated February 6, 2017 under Section 19 of SEBI Act read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as "SEBI Adjudication Rules"*) to inquire into and adjudge under Section 15A(b) of SEBI Act for the alleged violation of the provisions of SEBI (PIT) Regulations by the Noticee. Pursuant to internal restructuring, the undersigned has been appointed as Adjudicating Officer vide Order dated June 27, 2017.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

4. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD-7/BJD/NJMR/8651/2019 dated April 3, 2019 was issued to the Noticee, under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against him in terms of Rule 4 of the SEBI Adjudication Rules and penalty be not imposed under section 15 A (b) of SEBI Act, 1992 for the violation alleged to have been committed by him. I note from the records that the SCN sent to the Noticee's erstwhile address at Kolkata & New Delhi returned undelivered. Therefore, in terms of Rule 7 (b) of SEBI Adjudication Rules, the SCN was sent through digitally signed email to the Email ID of the Noticee on June 18, 2019, which bounced. Further, the SCN could not be either delivered by hand or affixed at the Noticee's address at Kolkata. The SCN was also published on SEBI website under the head Enforcement → Unserved Notices / Summons. Since, the SCN could not either be delivered by way of Post/Email/Affixture, in terms of Rule 7 (d) of SEBI Adjudication Rules, a notice was published on January 15, 2020 in Hindustan Times (Delhi edition), Dainik Jagran (Delhi edition), Telegraph (Kolkata edition) and Anand Bazar Patrika (Bengali) (Kolkata edition) newspapers, requiring the Noticee to

furnish his reply within 14 days from the date of publication of the Notice, besides being providing with an opportunity of personal hearing on January 30, 2020.

5. In response to the notice published in Dainik Jagran newspaper, the Noticee vide email dated January 28, 2020 submitted that since the matter is 15 years old, he is not acquainted with the details of the shares bought and sold during the investigation period. The Noticee requested to furnish full set of SCN along with the annexures to enable him to submit his reply, besides seeking adjournment of personal hearing scheduled on January 30, 2020. As desired by the Noticee, soft copy of the SCN along with the annexures were mailed to the Noticee's email id on January 28, 2020 with a direction to furnish his reply and avail the opportunity of personal hearing on January 30, 2020. The Noticee vide email dated January 29, 2020 sought for inspection of documents, extension of time to furnish his reply and thereafter to attend the personal hearing. Vide email dated February 3, 2020 the Noticee was informed to carry out inspection of documents not later than February 12, 2020 and to furnish his reply by February 21, 2020. I note from the records that the Noticee carried out inspection of documents through his Authorized Representative on February 13, 2020. The Noticee vide letter dated February 16, 2020 submitted his reply to the charges alleged in the SCN.
6. Pursuant to receipt of the reply from the Noticee, vide email dated March 2, 2020, the Noticee was provided with an opportunity of personal hearing on March 12, 2020. The Noticee vide Email dated March 11, 2020 authorized Mr. Amit Shah and CS Parinati Jain (hereinafter referred to as Authorized Representatives) to appear on his behalf, before me, which was taken on record. The Authorized Representatives reiterated the submissions made by the Noticee vide his letter dated February 16, 2020. Further, the Authorized Representatives undertake to make additional submissions by March 16, 2020. The Noticee vide email dated March 17, 2020 filed additional submissions. The replies submitted by the Noticee vide letter dated February 16, 2020 and March 17, 2020 are summarized hereunder:

- (a) *The SCN is issued in the year 2019 i.e. after 14 years of my probable date of acquisition. It is a well-known fact that human memory has a short shelf life. I am not able to recollect the facts that existed 14 years ago; I don't even remember whether I had acquired shares in the company or not. Initiation of proceedings by AO after such a long gap is a quite unreasonable step.*
- (b) *The facts that existed 14 years ago do not hold true as of today. The company in which I had probably acquired shares has gone into liquidation and all the records of the company are with the Official Liquidator. Hence, I am not in a possession to gain access to the same to defend myself in the matter.*
- (c) *In the view of such inordinate delay in issuing SCN, the Noticee places reliance on the Hon'ble SAT Order in the matter of Ashok Shival Rupani and Naresh Shival Rupani vs Securities Exchange Board of India (Appeal no 417 of 2018 dated 22nd August, 2019).*
- (d) *The SCN is self-contradictory and not in tune with Annexure B of SCN, which is tabulated and summarized below:*

<b>*As per SCN – Point 5(a) on Page 2</b>		<b>**As per Annexure B of SCN</b>	
13 June 2005	17 June 2005	19 August 2005	22 August 2005
16 June 2005	22 June 2005	19 August 2005	22 August 2005
6 July 2005	12 July 2005	29 September 2005	1 October 2005

*\*According to the SCN my dates of acquisition are 13th June, 2005, 16th June, 2005 and 6th July, 2005. Accordingly, due dates for disclosure as per SCN are 17th June, 2005, 22nd June, 2005 and 12th July, 2005. Note: Neither SCN nor inspection has provided any evidence to support the source of these dates.*

*\*\*As per Annexure B to the same SCN, dates of probable acquisition are 19th August, 2005 and 29th September, 2005. Accordingly, revised due dates for disclosure should have been 22nd August, 2005 and 1st October, 2005.*

- (e) *As there is no evidence of date of acquisition mentioned by SEBI in SCN, I had requested for the same in inspection; and the same is not provided. The basis of alleging me for delayed disclosure is my date of acquisition which itself is not supported by any evidence. As there is a dispute regarding the facts regarding dates mentioned in SCN the burden of proof lies on SEBI to prove the contentions in the SCN. However, in the name of inspection, my authorized representative was only provided with photo copy of the Annexure B to the SCN. The copy provided was neither original not a certified true copy. No other documents that I had requested for vide letter dated 30th January, 2020 were provided. In such case, it is logical to conclude that SEBI does not have any evidence to support the dates of acquisitions in the SCN. On the contradictory, the disclosure filed with stock exchanges (Annexure B to the SCN) are a blatant evidence of*

*dates of probable acquisition. Since the matter is too old and no records are available; in the circumstance I am using the evidence provided to me by SCN vide its annexure to prove my innocence. Also, since SEBI lacks evidence to prove its stand, my statement along with supporting evidence overrides the incorrect and baseless claims made in SCN.*

- (f) *Now, it will be safe to conclude that SEBI lacks evidence; and as is clear from above, I now submit the revised and correct dates of probable acquisition and disclosure:*

<i>Revised date of acquisition</i>	<i>Revised due date of disclosure</i>	<i>Actual date of disclosure</i>
<i>19 August 2005</i>	<i>22 August 2005</i>	<i>*22 August 2005</i>
<i>29 September 2005</i>	<i>1 October 2005</i>	<i>1 October 2005</i>

*\*As per SEBI, disclosure was made on 26th August, 2005. I am enclosing duly marked Annexure B to SCN received from SEBI showing that I have made disclosure to company on 22nd August, 2005 i.e. well within time. In turn, the company had filed disclosure vide their letters dated 26th August, 2005 and 4th October, 2005 with the stock exchange.*

- (g) *To the best of my memory, I can recall that in the year 2005, there was a practice to file all the compliances to the stock exchanges through fax and subsequently hard copy may have been sent via post/courier. It is quite possible that disclosures for my probable acquisitions may have been timely filed through fax by me and/or the company on 22nd August, 2005 and 1st October, 2005 itself.*
- (h) *The SEBI has power and source to receive this evidence from the stock exchange; if the same is still available with stock exchange after 14 years. I should suffer due to loss of evidence due to passage of time. Also, as regards the letters of company dated 26th August, 2005 and 4th October, 2005, the compliance from my and/or company's side was completed on the day I/the company posted/couriered the letters i.e. on 26th August, 2005 and 4th October, 2005 respectively. The time taken by the courier/post agencies to deliver the letters to the stock exchanges is beyond our purview and I should not be penalized for the same. Though it is my contention that I and/or the company have filed timely disclosures through fax, the minor delay, if any, is negligible (4 and 3 working days respectively) and has not caused any harm to the investors in any way.*
- (i) *Not acknowledging any delay in filing disclosure, reliance is placed in the matter of Multi Commodity Exchange of India Limited (Adjudication Order No. EAD/PM-AB/AO/27/2018-19) wherein SEBI held that, "...the disclosures were made by the Noticee on February 18, 2013 while he was required to make the disclosures as per Reg. 13(5) on February 13, 2013. Thus, there is delay of 3 working days in making the disclosure. In the given facts and circumstances, it appears that the delay in disclosure was inadvertent and has not caused any harm to investors. Thus, the said delay doesn't warrant any imposition of penalty on the Noticee."*

- (j) *In absence of evidence against me, I should be set free of the allegations against me in the SCN. I request SEBI to consider my senior citizenship and severe medical condition on record and dispose the matter speedily. As evident from all the records, disclosures for acquisitions made by me, if any, were filed well within legal timelines.*

## **CONSIDERATION OF ISSUES**

7. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee is that he had made delayed disclosures under the relevant provisions of SEBI (PIT) Regulations, 1992.

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

- I. Whether the Noticee has violated the provisions of Regulation 13 (4) of SEBI (PIT) Regulations, 1992 read with Regulation 12 (2) of SEBI (PIT) Regulations, 2015?*
- II. Does the violation, if any, attract monetary penalty under Section 15A (b), of SEBI Act.?*
- III. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

**ISSUE-I: Whether the Noticee has violated the provisions of Regulation 13 (4) of SEBI (PIT) Regulations, 1992 read with Regulation 12 (2) of SEBI (PIT) Regulations, 2015?**

8. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations 1992 & 2015, alleged to have been violated by the Noticee, which reads as under:

### **Regulation 13 (4) of SEBI (PIT) Regulations, 1992**

*“Any person who is a director or officer of a listed company, shall disclose to the company 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 from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower”.*

## **Regulation 12 (2) of SEBI (PIT) Regulations, 2015**

*(1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

*(2) Notwithstanding such repeal,—*

*(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*

*(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

9. I note that the Noticee was Chairman and Managing Director of PPIL during the period of investigation and held 8,27,325 shares in the scrip of PPIL as on June 13, 2005, which was 6.91% of the total share capital of the company. The change in shareholding of the Noticee during the period June 13, 2005 and July 6, 2005, which triggered disclosure requirements under SEBI (PIT) Regulations are furnished hereunder.

Date	No of shares held pre-Acquisition/ disposal	% of share capital held – pre-Acquisition/ disposal	No of shares Acquired/ (disposed-off)	No of shares Acquired/( disposed-off) as a % of paid up capital	Value of transaction ( `lacs)	Cumulative since last disclosure (no. of shares or value in lakhs or % change)	No of shares held - post Acquisition / disposal	% of share capital held - post Acquisition / disposal	Mode of acquisition	Disclosure by Acquirer under Regulation 13(4) of SEBI (PIT) Regulations	Date by which disclosure were required to be made
13.06.2005	8,27,325	6.91	25,000	0.21	5.0	25,000 or 5 lacs	8,52,325	7.12	Off market	22.08.2005	17.06.2005
14.06.2005	852,325	7.12	20,250	0.17	4.6	20, 250 or 4.6 lacs	872,575	7.29	Off market	22.08.2005	-
16.06.2005	8,72,575	7.29	15,000	0.13	3.0	35,250 or 7.6 lacs	8,87,575	7.41	Off market	22.08.2005	22.06.2005
17.06.2005	887,575	7.41	15,250	0.13	3.0	15,250 or 3 lacs	902,825	7.54	Off market	22.08.2005	-
06.07.2005	9,02,825	7.54	1,23,715	1.01	23.51	1,23,715 or 23.51 lacs	10,26,540	8.37	Off market	01.10.2005	12.07.2005

10. I note from the above table that the transactions carried out by the Noticee on June 13, 2005, June 16, 2005 and July 6, 2005 were either more than 25,000 shares or exceeded ₹ 5 lakhs in value (*cumulative since last disclosures*), which triggered disclosure requirements under Regulation 13 (4) of SEBI (PIT) Regulations, 1992. I note from the above table that for the transaction carried out by the Noticee on June 13, 2005, the Noticee made disclosure on August 22, 2005, instead of making the disclosure by June 17, 2015. Likewise, for the transaction carried out by the Noticee on June 16, 2005, the disclosure was made by the Noticee on August 22, 2005, instead of making it by June 22, 2005. For the transaction carried out by the Noticee on July 6, 2005, the Noticee had made the disclosure on October 1, 2005, instead of making it by July 12, 2005. In terms of Regulation 13 (4), the Noticee being a Director of the Company is required to disclose any change in his shareholding above 25,000 shares or exceeding ₹ 5 lakhs in value, to the Company within 2 days of the transaction. However, it is observed from the above table that on the three occasions, the Noticee is alleged to have made delayed disclosures. The Noticee contended that he had made the requisite disclosures to the Company within the prescribed timelines in accordance with the provisions of Regulation 13 (4) of SEBI (PIT) Regulations, 1992.

11. I note from the SCN that there was no documentary proof of delayed disclosures made by the Noticee was found to have been made available to the Noticee. In this connection, I note from the aforesaid table that from June 13, 2005 to June 17, 2005, the Noticee sold 75,500 shares for which the Noticee had filed Form D as per Regulation 13 (4) of SEBI (PIT) Regulations stating the date of sale of shares as August 19, 2005 and date of intimation to the Company as August 22, 2005. Further, the Noticee on July 6, 2005 acquired 1,23,715 shares for which the Noticee had filed Form D as per Regulation 13 (4) of SEBI (PIT) Regulations stating the date of acquisition of shares as September 29, 2005 and date of intimation to the Company as October 1, 2005. I note that in all the aforesaid transactions, the date of disclosure by the Noticee was August 22, 2005 and October 1, 2005, which has not been disputed by the Noticee. However, there is no documentary



proof to establish that the Noticee had sold/acquired the shares during the period June 13, 2005 and July 6, 2005. In view of lack of evidence of sale/acquisition of shares to allege delayed disclosure by the Noticee, I take into consideration the documentary proof of disclosures made by the Noticee to the Company, which was made available to the Noticee along with the SCN. Accordingly, I am inclined to take into cognizance the date of sale of 75,500 shares as August 19, 2005 and acquisition of 1, 23,715 shares as September 29, 2005, for which the Noticee had made disclosures on August 22, 2005 and October 1, 2005 respectively, which was well within the timelines prescribed under Regulation 13 (4) of SEBI (PIT) Regulations, 1992. In view of the above, since the Noticee had made the disclosures of change in his shareholding which was exceeding 25,000 shares or ₹ 5 lakhs in value within the prescribed timelines, the alleged violation of Regulation 13 (4) of SEBI (PIT) Regulations, 1992 does not stand established against the Noticee.

12. Further, considering that the alleged violation against the Noticee does not stand established, I note that Issues II and III do not require any consideration.

### **ORDER**

13. Accordingly, taking into account the aforesaid findings and in exercise of powers conferred upon me under Section 15I of SEBI Act read with Rule 5 of the SEBI Adjudication Rules, the Adjudication proceedings initiated against the Noticee i.e., Anil Agarwal vide SCN dated April 3, 2019 stands disposed of without any penalty.

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

**Date: March 30, 2020**

**B J DILIP**

**Place: Mumbai**

**ADJUDICATING OFFICER**