

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO/SPV/69/2012]

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

In respect of

Mr. Madhusudhan Rao Bidurukontham

[PAN: ABXPB9680K]

In the matter of

M/s Orchid Chemicals and Pharmaceuticals Limited

Background of the case

1. Following a news article titled "Ranbaxy to sell balance 13.02% stake in Orchid Chem" published in DNA Money on September 18, 2010, Securities and Exchange Board of India ("**SEBI**") conducted investigation into the trading in the shares of M/s Orchid Chemicals and Pharmaceuticals Limited (**Orchid/company**). During the said investigation, the trading activity of all the designated employees of the company was also analyzed for any violation of company's code of conduct for prevention of insider trading which was in effect at that time. The investigation revealed that Mr. Madhusudhan Rao Bidurukontha

(**Noticee**) who was the Chief Operating Officer - Global Generics & a designated employee of the company had allegedly traded in the stock futures of the company and also entered into opposite transactions i.e. buy or sell of shares of the company during the next six months following the prior transaction.

2. In view of the findings of the investigation as given above, SEBI, vide Order dated August 06, 2012 appointed the undersigned as Adjudicating Officer ("**AO**") under Section 15-I of the SEBI Act, 1992 ("**SEBI Act**") read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ("**Adjudication Rules**") to inquire into and adjudge under Section 15HB of the SEBI Act, the alleged violation of the provisions of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("**PIT Regulations**").

Show Cause Notice, Reply & Personal hearing

3. Show Cause Notice dated October 05, 2012 (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 by him. The SCN alleged that the Noticee, who was the Chief Operating Officer - Global Generics & a designated employee of the company had allegedly traded in the stock futures of the company and also entered into opposite transactions i.e. buy or sell of shares during the next six months following the prior transaction. The details of trades on NSE and BSE, summary table of buy and sell trades, details of trades in futures and the relevant contract notes were furnished to the Noticee along with the SCN. In response to the SCN, the

Noticee had, vide e-mail dated October 17, 2012, sought 4 weeks time for filing reply. The Noticee was informed vide letter dated October 25, 2012 that the request for extension of time has been partially acceded to and the reply, if any, should reach the AO on or before November 05, 2012. The Noticee vide e-mail dated November 05, 2012 has submitted the reply. Subsequently the Noticee was, vide Notice dated November 07, 2012 advised to appear before the AO for personal hearing on November 19, 2012. At the request of Noticee, the hearing date was postponed to November 20, 2012. The Noticee's representative appeared for personal hearing and made submissions.

4. The salient submissions of the Noticee in response to the SCN, made vide e-mail dated November 05, 2012 are as under:

- He still holds shares of the company and has not made money buying or selling shares
- He has not gained from the said transactions
- The transactions in the derivatives were done only once and that was more out of curiosity to know the operation of the said segment.
- With regard to his transactions through ICICI Securities, the Noticee submitted as under :

"However, the purchased shares [of Orchid as well as other Companies] were deposited as 'shares as margin' for margin money to trade nifty futures and other shares. While the intention was to hold Orchid shares for the long term, to pay in short fall of derivatives [nifty futures], shares deposited as 'shares as margin' have been sold. I have no control on which shares will be sold once the shares have been deposited as shares as margin. The ICICI securities will make decision based on the highest value available and sell, when there is no money available in the

account. The sell details reiterating this point is enclosed as Annexure 1 to this letter.

The system automatically sells shares when there is a short fall and that's how the Orchid shares have been sold. I had no intention to buy and sell shares at the same time and no intention of speculation. While buying happened for long term investment, I had no control over selling as explained above."

Extracts from Annexure 1 of his reply are under:

8500968010	28-Oct-2010	<i>"To meet your pay-in shortfall in the Derivatives segment, a spot sell order for 50 shares of ORCCHE which were deposited under SHARES AS MARGIN was placed in your account on 28-October-10.You can check the details of the same in the Order Book. For clarification also refer to FAQs on SHARES AS MARGIN."</i>
8500968010	21-Oct-2010	<i>"To meet your pay-in shortfall in the Derivatives segment, a spot sell order for 42 shares of ORCCHE which were deposited under SHARES AS MARGIN was placed in your account on 21-October-10.You can check the details of the same in the Order Book. For clarification also refer to FAQs on SHARES AS MARGIN."</i>
8500968010	20-Oct-2010	<i>"To meet your pay-in shortfall in the Derivatives segment, a spot sell order for 121 shares of ORCCHE which were deposited under SHARES AS MARGIN was placed in your account on 20-October-10.You can check the details of the same in the Order Book. For clarification also refer to FAQs on SHARES AS MARGIN."</i>

During the hearing conducted on November 20, 2012, the Noticee's representative submitted as under :

"Although Noticee is a designated employee and was provided with a code of conduct, the Noticee did not understand the implication of the code and was under the mistaken impression that any sale automatically done by ICICI Securities based on the highest value available was an involuntary action and would not amount to an opposite transactions and would not attract the provisions of insider trading code of conduct. All these investments was made out of the salary income with no mala fide intentions."

Consideration of Issues, Evidence and Findings

5. I have carefully perused the documents available on record, written and oral submissions made by the Noticee. The issues that arise for consideration in the present case are:
 - a. Whether the Noticee has violated the provisions of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT Regulations?.
 - b. Does the violation, if any, on the part of the Noticee attract penalty under section 15HB of SEBI Act?
 - c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

6. The relevant provisions of the PIT Regulations are as follows:

PIT Regulations, 1992.

Regulation 12 - Code of internal procedures and conduct for listed companies and other entities

Schedule I - Part A, Clause 4.2- *All directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction, i.e., sell or buy any number of shares during the next six months following the prior transaction. All directors/officers/designated employees shall also not take positions in derivative transactions in the shares of the company at any time.*

I find that the Noticee was a designated employee of the company during the relevant time. I further find that the Noticee was trading in the shares of the company on NSE and BSE. The following buy and sell trades were done by the Noticee on NSE and certain sell trades were done on BSE.

Transactions on NSE

Date	No. of shares bought	No.of shares sold
09.07.2010	500	
12.07.2010	100	0
03.08.2010	23	0
13.08.2010	0	633
20.08.2010	45	0
01.09.2010	0	90
01.10.2010	375	0
04.10.2010	375	0
08.11.2010	600	0
19.11.2010	105	0
22.11.2010	303	0
06.12.2010	3	0
14.12.2010	300	0
21.12.2010	68	0
09.02.2011	145	0

Sell transactions done on BSE

Date	No. of shares bought	No.of shares sold
18.10.2010	0	18
20.10.2010	0	121
21.10.2010	0	42
28.10.2010	0	50
04.11.2010	0	519
15.12.2010	0	53
21.12.2010	0	31
22.12.2010	0	9

24.12.2010	0	59
05.01.2011	0	33
06.01.2011	0	38
11.01.2011	0	38

7. I observe that most of the trades were opposite transactions i.e. buy or sell of shares during the next six months following the prior transaction.

The above table shows that the Noticee has entered into buy and sell transactions in the shares of the company on NSE during the period from 09.07.2010 to 09.02.2011. He purchased 623 shares of the company during 09.07.2010 to 03.08.2010 and sold 633 shares on 13.08.2010 which are opposite transactions within the six months period. Thereafter, he purchased 45 shares on 20.08.2010 and sold 90 shares on 01.09.2010. During the period from 01.10.2010 to 09.02.2011, he purchased 2274 shares of the company. On BSE, during the period from 18.10.2010 to 11.01.2011, he sold 1011 shares. Most of these sales and purchases on NSE and BSE are opposite transactions, i.e., sell or buy of shares during the next six months following the prior transaction.

The Noticee has contended that the shares of Orchid (and of other corporate entities) purchased by him were deposited with his broker (ICICI Securities) as 'shares as margin' for margin money to trade Nifty futures and other shares and that when there was shortfall in margin, his broker automatically sold his shares to meet the shortfall. On perusal of the copies of communication submitted by the Noticee, it does appear that the said shares were sold by the broker and that such sale did not result from an instruction from the Noticee.

I am however, not agreeable with the contention of the Noticee that he had no control with regard to sale of Orchid shares which resulted in opposite transactions. The broker can only exercise control over those shares which were deposited by the Noticee. The Noticee has by choice offered those shares as margin. Having offered the shares to the broker on his own, the Noticee cannot claim that the transactions done in such shares were out of his control. The Noticee, at the time of offering shares was fully aware and had the knowledge that the broker can sell his shares in the event of margin shortfall. Being a designated employee of the company it is the responsibility of the Noticee to ensure that the transactions on behalf of him in the shares of the company do not result in opposite transactions in violation of the code of conduct prescribed in the PIT Regulations. I note that as per Clause IX - (Trading Restrictions) of the Code of Conduct for Prevention of Insider Trading adopted by the company also the Noticee is prohibited from entering into opposite transactions of buy or sell of shares of company during the next six months following the prior transaction. Hence, in my view, the Noticee should have taken abundant caution while depositing shares towards margin requirements. By such sale transactions, I find that the Noticee has indirectly violated the provisions of PIT Regulations.

An analysis of the Noticee's trade details reveals that only a portion of his sales pertain to those done by his broker ICICI Securities to meet margin shortfall. A large number of his trades, especially those at NSE, were actually done by the Noticee himself. Thus, I hold that Noticee has violated the provisions of Clause IX - (Trading Restrictions) of the Code of Conduct for Prevention of Insider Trading adopted by the company and thereby Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT Regulations.

I also find that the Noticee has done transactions in the stock futures of the company. On 20.09.2010 and 23.09.2010 the Noticee has purchased and sold stock futures for 2000 shares of the company. The contention of the Noticee that he traded in stock futures of the company out of curiosity to know how that segment was operated is unreasonable. However, in view of the fact that he did only 2 transactions and squared off the position on the same day, I am taking a lenient view in this regard.

8. In view of the foregoing discussions, I find that the Noticee has violated the provisions of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT regulations. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."*
9. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15HB of the SEBI Act which reads thus:
15HB. Penalty for contravention where no separate penalty has been provided.-

"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"
10. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under S.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 group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

11. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the Investors. The Noticee has submitted that he only made losses in the above transactions. It is observed that the Noticee has repeatedly done opposite transactions i.e. buy or sell of shares during the next six months following the prior transaction in shares of Orchid Chemicals & Pharmaceuticals Ltd.
12. I am of the considered opinion that directors/ officers/ designated employees are senior functionaries in company who are reasonably expected to be aware of major developments in the company. Thus, for orderly conduct of securities market, it is of utmost importance that such persons should not be doing buy & sell transactions in the shares of that company at short intervals but should have a long term view. This is also necessary to ensure a sense of fairplay amongst the ordinary investors.

ORDER

13. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee. I, in exercise of the powers conferred upon me under section 15- I (2) of the

SEBI Act, impose a penalty of ₹ 1,00,000/- (Rupees One Lac only) on the Noticee, Madhusudhan Rao Bidurukontham in terms of Section 15HB of the SEBI Act for violation of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

14. The penalty shall be paid by way of a duly crossed demand draft drawn in favour of "SEBI- Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to the General Manager, Investigation Department (IVD-ID6), Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.
15. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India. The matter is disposed of accordingly.

DATE: November 29, 2012
PLACE: Mumbai

PIYOOSH GUPTA
ADJUDICATING OFFICER