**WTM/AS/CFD/CFD-SEC-4/30959/2024-25**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

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**UNDER SECTION 15-I(3) READ WITH SECTION 19 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992**

**In respect of –**

| Name of the Entity | PAN |
|---|---|
| **Piramal Pharma Limited** | **AALCP0909M** |

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## BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an examination with respect to non-disclosure of certain material information by Piramal Enterprises Limited (hereinafter referred to as **"PEL"**). Pursuant to the said examination, it was observed that PEL had allegedly violated provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **"LODR Regulations"**) read with SEBI Circular CIR/CFD/CMD/10/2015 dated November 04, 2015 (hereinafter referred to as **"the Circular"**).

2. The aforesaid alleged violations pertained to non-disclosure of the following events/ incidents-

    a) Imposition of a penalty of ₹8.32 crores by the National Green Tribunal (hereinafter referred to as **"NGT"**) vide order dated November 13, 2019 ("**NGT Order**") on account of non-compliance with environmental norms pertaining to water pollution caused by the pharmaceutical unit of PEL. It was alleged that by not disclosing the said material event, PEL violated regulations 4(1)(d), 30(3) and 30(4) read with clause 8 of Para B of Part A of Schedule III of the LODR Regulations;

b) Shutting down of a plant situated at Digwal, Telangana in 2018-19 on account of water pollution by the pharmaceutical unit of PEL, vide an order of the Telangana State Pollution Control Board (hereinafter referred to as "**TSPCB**") dated November 29, 2018 ("**TSPCB Order**"). It was alleged that by not disclosing the aforesaid material event, PEL violated provisions of regulation 4(1)(d), 30(3) and 30(4) read with Clauses 2 and 8 of Para B of Part A of Schedule III of the LODR Regulations;

c) Further, by failing to disclose the imposition of the penalty by NGT and the shutting down of the plant by TSPCB on account of water pollution, PEL allegedly misrepresented facts in the Business Responsibility Reports (hereinafter referred to as **"BRR"**) that formed a part of the Annual Reports of the Company for Financial Year ("FY") 2018-19 and FY 2019-20 and violated the provisions of Regulation 34(2)(f) read with Regulation 4(1)(c) of the LODR Regulations and the principles with respect to BRR as mentioned in the Circular.

3. It was further observed during the course of examination that the Digwal Plant of PEL was transferred to the books of Piramal Pharma Limited (hereinafter referred to as **"Noticee/ PPL/ the Company"**), a subsidiary of PEL, in 2020. PPL was incorporated in March, 2020 and got listed on October 19, 2022. Further, by virtue of Composite Scheme of Arrangement (hereinafter referred to as **"the Scheme"**) executed between PPL and PEL, domestic pharmaceutical undertakings of PEL were demerged and were transferred to PPL. In terms of the said Scheme, legal proceedings pertaining to the demerged pharmaceutical business, capable of being instituted against PEL, could be continued against PPL.

4. In view of the aforesaid Scheme, adjudication proceedings were initiated against the Noticee/ PPL for non-disclosure of material events by PEL and a Show Cause Notice dated May 31, 2023 (hereinafter referred to **"AO SCN"**) was issued. After considering the submissions made by the Noticee, the Adjudicating Officer (hereinafter referred to as **"AO"**) passed the order dated August 31, 2023 (hereinafter referred to as **"AO**

**Order"**), exonerating the Noticee. The relevant excerpt of the AO Order is reproduced hereunder:

*"…**I. Whether Noticee has violated the provisions of LODR Regulations and circular thereunder?***

*11. From the reply of the Noticee and the material available on record, I note that the events of shutting down of Digwal plant by Telengana State Pollution Control Board and imposition of penalty of Rs. 8.32 Crore by the National Green Tribunal took place on November 29, 2018 and November 13, 2019, respectively. The said orders have been perused and it is noted that the said orders were passed against the company, Piramal Enterprises Ltd. The orders nowehere mentioned the name of the Noticee.*

*12. Further, from the record and on the basis of the submissions made by the Noticee it is observed that Noticee was incorporated on March 04, 2020 as a subsidiary of PEL to carry out the pharmaceutical business of the Piramal Group. However, by virtue of the Composite Scheme of Arrangement 2022, the pharmaceutical business was completely demerged from the company i.e. Piramal Enterprises Ltd. The Noticee was subsequently listed on the stock exchange on October 19, 2022.*

*13. It is alleged that the Noticee did not make disclosure of the material events i.e. shutting down of Digwal Plant by the TSPCB and imposition of penalty of Rs. 8.32 Crore by NGT. It was further alleged that the Noticee did not make disclosure of the aforesaid material events in its Business Responsibility Report.*

*14. Noticee in its reply has submitted that it could not have made disclosure in question as it did not exist at the relevant time. The TSPCB and NGT orders were issued prior to the incorporation of the Noticee and before it became a listed entity on October 19, 2022. Further, the Digwal plant was operational before the incorporation of the Noticee and the penalty owed to TSPCB had already been paid substantively by PEL and remainder was paid by the Noticee before it became the 'listed entity'. The Noticee further submitted that the obligation to*

*disclose a BRR applies only to top one thousand listed entities. Since the Noticee was incorporated on March 04, 2020 and listed on October 19, 2022, it cannot be alleged that the Noticee failed to file the correct Annual Reports or a Business Responsibility Report.*

15. *I have carefully examined the allegations levelled against the Noticee, the material available on record and reply of the Noticee. Admittedly, Noticee was not incorporated at the time of aforesaid material events let alone being listed. From the careful reading of provisions of LODR Regulations alleged to have been violated by the Noticee, is noted that any compliance required to be made under LODR Regulations, has to be made by the "listed entity". The Noticee not being a listed company at the time of event could not have made the disclosures under LODR Regulations. Considering the fact that at the relevant time, the pharmaceutical business vested with PEL. I am of the opinion that the responsibility to make disclosure with respect to the aforesaid events falls with PEL.*

16. *However, as per Clause 4 of Composite Scheme of Arrangement of 2022 with respect to the aforesaid demerger available on NSE, it is stated that, "All the liabilities relating to the Demerged Undertaking [pharma business of PEL], as on the Appointed Date [April 01, 2022] shall become the liabilities of the Resulting Company [PPL] by virtue of this Scheme".*

17. *Though, it is axiomatic as seen from the aforesaid clause of Composite Scheme of Arrangement, that the transferee company inherits the assets and liabilities of the transferor company, it is to be seen whether the Noticee could perform its duty of disclosures at the relevant time. The liability is passed on to the transferee company pursuant to the scheme of arrangement, however, as regards the liability for making the disclosure under the provision of the LODR in concerned, it is pertinent to note that the Noticee was not a listed company at the relevant time. It is observed that the Noticee which was listed on October 19, 2022, made*

*the disclosures of the aforesaid events to the stock exchange in July 2023. Therefore, considering the above factual situation, I tend to agree with the submissions of the Noticee that the Noticee cannot be held liable for the events which took place before its incorporation and being listed. Noticee while making the submissions, had relied on the order of Hon'ble SAT dated February 28, 2001, in the matter of SKDC Consultants Vs. SEBI (Appeal no. 27 of 2000) wherein Hon'ble SAT observed that:*

> *'It is not possible to assign the " failure" in complying with a statutory requirement to some one else who was not responsible for the same and make him suffer the penalty attendant to such failure. If there is any liability to pay penalty by way of punishment, that cannot be transferred to a successor as it remains the liability of the person who committed the offence. The liability is personal to the offender. Therefore, the adjudication order holding the Appellant in default for not complying with provisions of rule 4 (1) (b) and imposing monetary penalty on it for the said default cannot be sustained. The fact the assets and liabilities of SKDC have been taken over by the Appellant does not mean that it is responsible for the offence committed by SKDC and liable to suffer the penal consequences."*

*18.In the light of the aforesaid order of Hon'ble SAT, I tend to agree with the Noticee that no liability can be fastened on the Noticee at the relevant point in time…*"

5. I observe from the aforesaid excerpt that AO exonerated the Noticee after scrutinizing the Scheme and reaching the conclusion that "…*the Noticee cannot be held liable for the events which took place before its incorporation and being listed.*".

6. SEBI analyzed the aforesaid AO Order and came to the conclusion that the exoneration of the Noticee by AO, on account of Noticee being not liable for omissions of PEL, was erroneous and not in the interest of the securities market. Accordingly, SEBI issued a Show Cause Notice dated November 30, 2023 (hereinafter referred to

as **"SCN"**) to PPL advising it to show cause as to why the AO Order should not be examined under Section 15-I (3) of the SEBI Act, 1992 and why appropriate penalty should not be imposed on PPL under the provisions of Section 15A(b) of the SEBI Act, 1992 and Section 23A(a) of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA"**).

7. The Noticee was advised to file its written submissions within 21 days from the date of issuance of SCN. I note from the material available on record that pursuant to the issuance of the SCN, the Noticee requested for inspection of certain documents and inspection of the material/ documents relevant for the purpose of present proceedings was provided to the Noticee on January 19, 2024. Thereafter, the Noticee, vide email dated February 8, 2024, submitted its reply to the SCN. The reply of the Noticee is summarized as under:

   i. The Show Cause Notice was received through post only on December 04, 2023 which is beyond the period of three months, as stipulated in Section 15-I (3) of the SEBI Act and thus, the proceedings stand vitiated for being time barred;

   ii. The SCN was not issued under SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Penalty Rules"**) and therefore, rules and mode of service prescribed thereunder cannot apply in the present case. Accordingly, service of SCN vide email dated November 30, 2023 cannot be deemed to be a valid service;

   iii. Disclosure obligations under LODR Regulations do not extend to any entity other than a listed entity. Accordingly, any penalty for purported statutory violations for any time prior to the Noticee actually being listed cannot be levied on it;

   iv. The facts of the present case do not satisfy *prima facie* or otherwise, the conditions prescribed under Section 15-I(3) of the SEBI Act. The scope of Section 15-I(3) is very limited and the same may be invoked only if the order of the Adjudicating Officer is '*erroneous'* to the extent of it being '*not in the interest of the securities market'*;

v. Scope of Section 15-I(3) is not so wide so as to re-appreciate the entire matter on facts/ law. If SEBI is aggrieved by the AO Order dated August 31, 2023, it should have filed an appeal under Section 15T of the SEBI Act;

vi. The scope of Section 15-I(3) is akin to revisional jurisdiction and the same has been noted by SEBI itself in the matter of ***Goenka Diamond and Jewels Limited***[1] wherein it was observed that "…*In my view, the object of section 15-I(3) is in effect revision of the orders passed by AO which are erroneous to the extent that they are not in the interest of securities market…*";

vii. Section 263 of the Income Tax Act, 1961 provides for a similar provision as that of Section 15-I (3) of the SEBI Act and it is a settled position that the power under Section 263 of the IT Act cannot be exercised merely because the Commissioner of Income Tax does not agree with the conclusion arrived at by the officer. In this regard, reliance is placed on the following decisions:

   a) ***CIT Vs. Arvind Jewelers***[2]***;***
   b) ***CIT Vs. Y.V. Subramnium***[3]***;***
   c) ***PCIT Vs. Brahma Centre Development (P) Ltd.***[4]***;***
   d) ***Agasthiya Granite P. Ltd. Vs. ACIT***[5]***;***
   e) ***PCIT Vs. Karan Polymers Pvt. Ltd***[6]***;***
   f) ***Commissioner of Income Tax Vs. Green World Corporation***[7]***.***

viii. Section 15-I(3) uses the words '*enhancing the quantum*'. In the present matter, the AO has exonerated the Noticee and thus, SEBI cannot, in the garb of Section 15-I(3), impose a penalty upon the Noticee. The question of enhancing the penalty does not arise in cases where the entity has been exonerated and there is no penalty altogether;

[1] WTM Order dated April 23, 2019
[2] [2002] 124 Taxman 615 (Gujarat)
[3] 2021 SCC OnLine Mad 695
[4] 2021 SCC OnLine Del 5696
[5] 2018 SCC OnLine Mad 13740
[6] Order dated February 27, 2023 in ITAT 4/2023
[7] (2009) 7 SCC 69

ix. The word '*enhanced*' means 'made greater; increased' and thus, the pre-requisite is that there has to be a penalty. However, in the present matter, the AO has exonerated the Noticee and has not imposed any penalty. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Food Corporation of India Vs CST***[8] wherein it was observed that "*…It is clear that the power under Section 38(5) is to confirm, reduce, enhance or annul a penalty. It can apply only if a penalty has already been imposed by the assessing authority…*". Similarly, the Hon'ble Madras High Court in the matter of ***State of Tamil Nadu Vs Jakthi Veliyeetakam***[9] has also observed that for the word 'enhance' to apply, there must be something to be increased;

x. SEBI has failed to provide any material to substantiate that the AO Order was 'not in the interest of securities market'. SEBI has reproduced the language of Section 15-I(3) without explaining which part of the order is erroneous and against the interest of the securities market. Under the Negotiable Instruments Act, 1881, the courts have held that the complaint cannot be mere re-production of statutory provision. In this regard, reliance is placed on the following decisions:

**a)** ***K.K. Ahuja Vs. V.K. Vora***[10]***;***

**b)** ***Taher Alimohohamad Poonawala Vs Quizar Shaikh Nomanbhoy***[11]***;***

xi. It is well settled that a show cause notice which does not contain any reasons is bad in law and in violations of principles of natural justice. In this regard, reliance is placed on the following decisions;

**a)** ***Gorkha Security Services Vs. Government (NCT of Delhi)***[12]***;***

**b)** ***Surender Kumar Jain Vs. Principal Commissioner, Delhi North Zone & Anr***[13]***;***

[8] (1998) 2 SCC 363
[9] Order dated February 04, 1977 in Tax Case No. 92 of 1997 (Revision No. 17 of 1977)
[10] (2009) 10 SCC 48
[11] 1994 SCC OnLine Bom 299
[12] (2014) 9 SCC 105
[13] W.P. (C) 17700/2022

**c) *M/s Frequent Logistics Services Private Limited Vs. Commissioner Goods and Service Tax Department and Others*[14]**

xii. The internal / file noting of the present proceedings under Section 15-I(3) have no indication/ evidence to illustrate that the AO Order was not in the interest of securities market.

xiii. AO Order is not erroneous and is based on the decision of Hon'ble SAT in the matter of ***SKDC Consultants Vs. SEBI*** (hereinafter referred to as **"SKDC Order"**). Statutory obligation to make disclosures is not transferrable. The AO Order is not erroneous as the AO has, after application of mind, come to the conclusion that the obligation in the instant case was to make disclosure under the statute and the same was non-transferrable. Accordingly, the said obligation could not have been performed by the Noticee.

xiv. The AO has relied upon the SKDC Order wherein SKDC Consultants Limited had taken over the ongoing running business of a proprietary concern (with effect from April 01, 1998) with all assets and liabilities of the proprietary concern. The violation was committed by the proprietary concern in December 1995 and SKDC Consultants was incorporated in 1998. In this context, it was held that penal liability arising from the alleged violations committed by the proprietary concern, prior to incorporation of SKDC, cannot be fastened upon SKDC Consultants.

xv. The Company/ PPL was not a listed entity before October 19, 2022 and expecting the Company to make the disclosure for events which took prior to this date would be otiose.

xvi. SEBI, vide order dated July 4, 2023, (***Prudent Comder Private Limited in the matter of NSEL***) has essentially held that statutory obligations do not pass onto the resultant company and statutory obligations cannot be treated as assets or liabilities.

xvii. Materiality of an event is to be determined by keeping the whole of the then company's operations, performance, revenues, and other factors in mind.

[14] W.P. (C) 11311/2023

xviii. In the case of ***Malabar Industrial Co. Limited Vs. CIT***[15], the Hon'ble Supreme Court has observed that *"…the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the assessing officer…*", or "…*where two views are possible and the Income Tax Officer has taken one view with which the Commissions does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue…*".

xix. The Hon'ble Bombay High Court in the case of ***Commissioner of Income Tax Vs. Gabriel India Limited***[16] has observed that "…*an order cannot be termed as erroneous unless it is not in accordance with law. If any Income Tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately…"*

xx. The concerned department of SEBI has a) tried to distinguish the SKDC Order by stating that it is not applicable as it does not deal with the clauses applicable in the present matter; and b) the AO Order may set a precedent and SEBI may not be able to initiate action against any entity in case the demerged company dissolves itself pursuant to demerger. The said argument is perverse because none of the entities involved has been dissolved and PEL is still in existence. Further, SEBI anticipating potential difficulties in initiating proceedings in future cases cannot justify the exercise of review power.

xxi. The AO Order cannot be considered to be contrary to the interest of the securities market for the following reasons:

a) Alleged non-disclosure took place many years back and the violation, if any, is highly technical and not of continuing or recurring nature;

b) In the Examination Report, SEBI has noted that the events alleged to have not been disclosed had no impact as such on the price. Stand of National Stock Exchange of India Limited (hereinafter referred to as **"NSE"**), as

[15] [2000] 1SCR 744
[16] [1993] 203 ITR 108 (Bom)

noted from the SEBI Examination Report, is also that such events were not material;

c) No loss was caused to the investors;

d) PPL, in its Information Memorandum in September 2022, disclosed the penalty of ₹9.32 crore imposed on the demerged entity on account of alleged non-compliances of the demerged undertaking's Digwal Plant at Telangana;

e) The Noticee disclosed the payment of penalty imposed by the NGT Order in its BRR as part of its Annual Report filed on July 6, 2023;

f) The Noticee had also disclosed the receipt of AO SCN, in its letter of offer, issued for the purposes of rights issue dated July 27, 2023.

xxii. It is not necessary to impose penalty under each and every case initiated under Section 15-I(3) and the said power is discretionary in nature. In the present matter, the AO has not even examined the matter on merits, i.e., whether the events in question warranted any disclosure;

xxiii. Imposition of penalty will leave a blot on the Noticee and its compliance/ management merely on account of some legal fiction of continuance/ transfer of liability. The Noticee has made all the requisite disclosures and thus its conduct cannot be considered to be blameworthy in any manner.

xxiv. The power to impose penalty includes the power to impose no penalty. In ***Piramal Enterprise Limited Vs. SEBI***[17], Hon'ble SAT has observed that "…*The imposition of penalty, even though meagre will leave an indelible mark and leave a blot on their spotless image…"* and in view of the same, no penalty, howsoever small/ meagre ought to be imposed in the present matter;

xxv. There are review matters where the Whole Time Members have not imposed any penalty and disposed of the SCNs issued under Section 15-I(3). Illustratively, these cases are:

a) ***Oxyzo Financial Services Private Limited***[18]***;***

[17] 2019 SCC OnLine SAT 134

[18] WTM Order No WTM/MPB/DDHS/145/2020 dated November 20, 2020

b) ***Goenka Diamonds Limited[19];*** and

c) ***Goenka Diamonds and Jewels Limited[20]***

xxvi. Regulations 30(3) and 30(4) of the LODR Regulations embody the requirement of '*materiality of events/ information*' for any disclosure of an event or information to be considered violative and the SCNs issued to the Noticee or the Examination Report are silent on assessment or determination of such materiality threshold;

xxvii. PPL was not in existence at the time when alleged material events took place and thus, their effect, if any, cannot be tested on the materiality threshold of PPL/ Company. Further, brief closure of Digwal factory could not have affected the operation of the unincorporated company/ PPL;

xxviii. The impact of the TSPCB Order, directing closure of the Digwal unit, for a short period and the order for imposition of penalty was not '*material*' as per the Materiality Policy of PEL and therefore, it was not necessary for PEL to disclose the said events. Accordingly, there was no liability of disclosure upon PEL which can be said to have transferred to PPL, by virtue of composite scheme of arrangement. In any case, statutory liability cannot be transferred in absence of an express provision of law;

xxix. Regulation 4(1)(c) and 4(1)(d) of the LODR Regulations apply only to a '*listed entity*' and by any deeming fiction or any interpretation of the terms of scheme of arrangement, an unlisted company cannot become as listed for the purposes of disclosures. The Company/ PPL could not have made the requisite disclosures as it did not exist at the relevant time. It cannot be expected from the Company to make disclosures of events that transpired in 2019, in BRR of 2023. However, the same was disclosed by PPL in the BRR, without prejudice, basis abundant caution;

xxx. The allegation that the Company has violated Regulation 34(2)(f) of the LODR Regulations read with the SEBI Circular dated November 4, 2015 is not tenable. The said provision imposes an obligation on the top one thousand listed entities

[19] WTM Order No SEBI/WTM/MPB/EFD/41/2019 dated April 18, 2019
[20] WTM Order No SEBI/WTM/MPB/EFD/42/2019 dated April 23, 2019

to include business responsibility report in their Annual Reports. Since the said obligation is only applicable upon listed entities and PPL got listed only in October 2022, it cannot be alleged that the Company/ PPL failed to file the correct Annual Report or the Business Responsibility Report;

xxxi. Penalty for violation of LODR Regulations cannot be imposed under Section 15A of the SEBI Act and may be imposed under Section 15HB of the SEBI Act. There is no reference to Section 15HB in the present SCN or the AO SCN issued earlier;

xxxii. Material/ documents relevant for the purpose of present proceedings have not been provided to the Noticee. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the matter of ***T. Takano and Anr. Vs. SEBI***[21] and ***Reliance Industries Limited Vs. SEBI***[22];

8. Pursuant to the receipt of the aforesaid reply, the Noticee was provided with an opportunity of hearing, vide email dated June 6, 2024. The Noticee through its authorized representatives, namely, Senior Counsel Mr. Pesi Modi, Advocates Mr. Sumit Agrawal, Mr. Rushin Kapadia, Mr. Kavish Garach, and Ms. Anushka Fuke appeared in person and reiterated the submissions made vide email dated February 6, 2024. Pursuant to the conclusion of the hearing, the Noticee, as requested, was granted 21 days' time to file post-hearing submissions in the matter. The post-hearing submissions of the Noticee submitted vide email dated July 12, 2024 are summarized as under:

a) AO has failed to consider the critical issue that there was no violation of LODR Regulations by PEL in the first place and thus, the need to impose a penalty does not arise. Closure of Digwal unit for a brief period of 44 days and imposition of ₹8.31 crore was not '*material*' as per PEL's materiality policy and therefore, it did not require any disclosure;

[21] SCC OnLine SC 210
[22] (2022) 10 SCC 181

b) The disclosure by a listed entity has to be made in accordance with the materiality policy framed by the listed entity in accordance with regulation 30(3) and regulation 30(4) of the LODR Regulations. It is undisputed that PEL complied with the said requirement and there is no allegation that the Materiality Policy of PEL was deficient. The imposition of monetary penalty was not material for PEL in terms of the internal Material Policy framed;

c) Closure of Digwal unit for a short period was not material for PEL. It was only one of several factories of PEL at the relevant time. The said closure caused no actual loss at all as PEL had sufficient buffer stock to meet its commitments and there was no shortfall. Thus, there was no '*opportunity cost*'. No business or contracts were defaulted or not accepted because of the said closure;

d) Financials of PEL for the FY 2016-17, 2017-18, 2018-19 prove that revenue from Digwal unit and consolidated revenue of PEL both increased;

e) As per regulation 97 of LODR Regulations, it is the responsibility of the Stock Exchanges to monitor compliance by listed companies. Accordingly, SEBI had sought comments of NSE as regards compliance by PEL *qua* the allegations of non-disclosure and it was stated by NSE, vide email dated January 02, 2023, that the alleged events were not material as per LODR Regulations and PEL's materiality policy. NSE has also stated that there was no major price fluctuation observed around these events;

f) As regards the allegation of making incorrect disclosures in BRR for the FY 2018-19 and 2019-20, PEL had constantly maintained that it had not caused any emissions/ waste beyond permissible limits. PEL had contested the said proceedings all the way to Hon'ble Supreme Court and thus, it would have been untenable to make contrary disclosures in the BRR. Further there has never been any finding by any tribunal/ court that the emission/ waste generated by PEL was not within the permissible limits and therefore, there was no misrepresentation in the BRR. Further, after the Hon'ble Supreme Court passed the final order on July 17, 2022, PPL, out of abundant caution made appropriate disclosures in BRR/ Business Responsibility and Sustainability Report for FY 2022-23;

g) In view of the aforesaid submissions, since no violation is made out against PEL or PPL, there is no question of imposing any penalty at all on the Noticee;

h) The facts of the present case do not have any market wide impact. Rather, if SEBI holds that a transferor company can get rid of and pass on the penal liability for violations to third party, a more dangerous precedent with far reaching damage will be caused as delinquents might use the same to transfer the penal liability to a third party and go scot-free;

9. I have perused the AO Order, the SCN issued to the Noticee under Section 15-I(3) of the SEBI Act, the oral submissions made during the course of hearing, the written submissions submitted in response to the SCN and other material available on record. Before delving into the issues at hand, on merits, I deem it fit to address the preliminary issues raised by the Noticee. For convenience, the preliminary issues raised by the Noticee are summarized hereunder:

a) The SCN is time barred;

b) LODR Regulations cast statutory obligations only on listed entities;

c) Invocation of Section 15-I(3) is misconceived, untenable and illegal;

d) Section 15-I(3) is not applicable since the provision only provides for enhancement of the penalty.

10. The Noticee has firstly contended that the SCN is time barred as it was received by the Noticee, through post, on December 4, 2023, i.e., after expiry of the period of three months provided under Section 15-I(3) of the SEBI Act. The Noticee has further submitted that since the SCN was not issued under the Penalty Rules, the service of the SCN, vide email dated November 30, 2023, cannot be regarded as a valid mode of service. In this regard, I note that the present proceedings have been initiated under Section 15-I(3) of the SEBI Act to reconsider the AO Order/ AO Proceedings which were governed by the Penalty Rules. The said proceedings have been initiated to examine the need of imposition of penalty, if any, pursuant to scrutinizing the correctness of the AO Order. In this regard, I note that the Penalty Rules were made

by the Central Government "*…for the purpose of imposing penalty under Chapter VI-A*…" and the AO proceedings were accordingly initiated to impose a penalty on the Noticee in terms of Chapter VI-A of the SEBI Act. Additionally, the Penalty Rules only lay down the procedural standards for service of notices/ orders in relation to proceedings under Chapter VI-A of the SEBI Act and therefore, placing reliance on the Penalty Rules cannot be said to be prejudicial to the interests of the Noticee.

11. Without prejudice to the above, the purpose of serving a show cause notice to a party is to enable it to defend itself effectively. Principles of Natural Justice require that the party be effectively served with the show cause notice. In the present matter, the digitally signed SCN was duly served on the Noticee, within the specified timeline of three months, vide digitally signed email dated November 30, 2023 and via speed post acknowledgement due on December 04, 2023. It is not the case of the Noticee that the SCN served through email on November 30, 2023 was not received by the Noticee. The Noticee has also not shown any prejudice which has been caused to it on account of the SCN having been delivered by electronic means. Accordingly, I am of the view that the service of SCN was made on the Noticee within the time frame provided under Section 15-I(3) of the SEBI Act. Thus, the argument of the Noticee that the SCN is time-barred is merely technical and is not tenable.

12. The second preliminary contention raised by the Noticee is with regard to application of the LODR Regulations on unlisted entities. The Noticee has submitted that the disclosure obligations under LODR Regulations do not extend to unlisted entities and therefore, any penalty for purported statutory violations for any time prior to the Noticee actually being listed cannot be levied upon it. In my opinion, however, the present proceedings do not seek an answer from the Noticee as to why the relevant disclosures were not made by the Noticee itself at the relevant time. Rather, the present proceedings have been initiated to crystalize the liability, if any, emanating from the alleged disclosure violations committed by PEL, out of which, the Pharma Division was carved out and is being currently handled by the Noticee in terms of the Scheme. The Noticee has not disputed the content of the Scheme and it is not the

case of the Noticee that the Scheme does not transfer the liabilities of acts/ omissions of PEL to PPL. At this juncture, I deem it fit to refer to the relevant text of the Scheme which is as under:

*"12. LEGAL PROCEEDINGS*

*12.1. Upon the coming into effect of this Scheme, subject to the provisions of Clause 12.2 in relation to Tax Proceedings,* ***if any suit, appeal, legal, or other proceeding of whatever nature, whether criminal or civil*** *(including before any statutory or quasi-judicial authority or tribunal), under Applicable Law,* ***by or against the Demerged Company in relation to the Demerged Undertaking is pending on the Effective Date or is instituted any time thereafter, and if such proceeding is capable of being continued by or against the Resulting Company under Applicable Law, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings shall be continued, prosecuted and enforced by or against the Resulting Company****, as the case may be, after the Effective Date, in the same manner and to the same extent as it would have been continued, prosecuted and enforced by or against the Demerged Company in relation to the Demerged Undertakings, which forms part of the Demerged Company, as if this Scheme had not been made."*

*(Emphasis supplied)*

13. In view of the above, I note that on account of pharma arm of PEL having been hived off to PPL, alongwith all the liabilities incurred due to acts/ omissions of PEL, the liabilities/ penalties for the same have also devolved on PPL. At this juncture, I deem it fit to refer to the decision of the Hon'ble Supreme Court, in the matter of ***Saraswati Industrial Syndicate Vs. C.I.T***[23] wherein the following was observed by the Hon'ble Court:

*"…the true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies*

[23] 1991 AIR 70

*amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. However, their respective rights of liabilities are determined under scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective."*

Additionally, reliance is also placed on the decision of the Hon'ble Supreme Court in the matter of ***Principal Commissioner of Income Tax (Central)–2 Vs. Mahagun Realtors (P) Ltd.***[24] (hereinafter referred to as **"Mahagun Realtors"**) wherein the Apex Court observed as under:

"…*Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall*."

It is noted from the above that the effect and character of the amalgamation (in this case, de-merger) depends on the terms of the scheme. In the present matter, I am of the opinion that the Scheme spells out clearly that the pharma arm of PEL shall be hived off to PPL and PPL shall be liable for any legal proceedings. Further, as noted by the Hon'ble Court in the *Mahagun Realtors* case, the quest of the system is to locate the existing successor/ representatives with respect to a cause of action and/ or a subsequent adjudication in that regard. PPL, in the present matter, by virtue of the Scheme can be held liable for the cause of action. Accordingly, the Noticee's submissions that an obligation to make disclosures under LODR Regulations cannot be placed upon PPL is misplaced and thus, rejected.

14. The Noticee has also argued that Section 15-I(3) is not applicable as the provision only provides for enhancement of penalty. I note that such narrow interpretation of text of Section 15-I(3) cannot be adopted and is not legally tenable. In this regard I place

[24] Judgment dated April 5, 2022

reliance on the decision of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"Hon'ble SAT"**) in the matter of ***Samco Securities Ltd. Vs. SEBI***[25]. The Hon'ble SAT in the said matter, while analyzing Section 23-I(3) of Securities Contracts (Regulation) Act, 1956, which is analogous to Section 15-I(3) of SEBI Act, held as under:

> *"…11. It was urged that the provision of Section 23I of the SCR Act can only be invoked when a lesser penalty is to be enhanced. It was contended that, in the instant case, a finding has been given that no violation has been committed by the appellant and, therefore, no penalty could be imposed. It was, thus, contended that in the absence of any penalty being imposed, the question of enhancement of the penalty does not arise and consequently Section 23I of the SCR Act could not be invoked. In our view, this interpretation made by the appellant is patently erroneous. Section 23I of the SCR Act empowers SEBI to call for and examine the record of any proceedings and if it considers that the order is erroneous, it can issue a notice. The word 'erroneous' would include an order where the authority has found that there was no violation of the SEBI laws**. On this principle, if the authority has not imposed any penalty and if the order is found to be erroneous, it can be reexamined and can be opened under Section 23I of the SCR Act and an appropriate order of penalty, if any, could be passed if found to have violated the SEBI's laws**. **The submission that Section 23I of the SCR Act could only be used to enhance the penalty where a lesser penalty was imposed is erroneous**. In this regard, in **Bhavani Mills Ltd. vs. State of Tamil Nadu [(1991) SCC online Madras 730**], it was held that the word 'enhance' is wide enough to enhance the penalty from zero to something…" **(emphasis supplied)***

[25] Appeal no. 493 of 2021, Decided on March 30, 2022

15. Accordingly, in light of the aforesaid decision of Hon'ble SAT, the submission of the Noticee that Section 15-I(3) cannot be invoked where no penalty has been imposed upon an entity, is rejected.

16. Lastly, the Noticee has contended that invocation of Section 15-I(3) is misconceived, untenable and illegal as the conditions stipulated therein have not been met. The Noticee has argued that the AO Order was neither erroneous nor against the interest of the securities market. In this regard, I have perused the material available on record including the AO Order and the SCN issued under Section 15-I(3). I observe that AO did not examine the matter on its merits and exonerated the Noticee by concluding that liability cannot be fastened upon PPL for the acts committed by PEL. The said observation/ decision of the AO was examined by SEBI and proceedings under Section 15-I(3) were initiated to reconsider the said AO Order. In this regard, following are the two elements which must be satisfied in order to invoke Section 15-I(3):

    a. Order must be *erroneous;*
    b. Order must not be in the interest of securities market.

17. In the present matter, the AO, without going into the merits of the matter, examined the Scheme and came to the conclusion that the liability for the acts committed by PEL could not be fastened upon PPL. As regards the liability for making disclosures under the LODR Regulations, the AO has noted that since PPL was not a listed company at the relevant time, it cannot be held liable for events that took place before its incorporation and being listed. In this regard, it is not in dispute that in terms of the Scheme, any suit, appeal, legal or other proceedings, pending or instituted subsequently may be continued against PPL. As noted above, the present proceedings have been initiated to crystallized the liability, if any, emanating from the alleged disclosure violations committed by PEL and not to seek an answer from the Noticee as to why the said disclosures were not made. Accordingly, the AO, by holding that liabilities of the transferor company cannot devolve upon the transferee company, has erred in interpreting the Scheme and thus, the AO Order is erroneous to that

extent. The AO has also placed reliance on the *SKDC Order (supra)* to state that liability cannot be fastened on PPL for the events which took place prior to PPL getting listed. I note that the *SKDC* case is distinguishable on facts since, in the said matter, both the entities involved were not companies or body corporates. Prior to acquisition by SKDC Consultants, SKDC was a sole proprietary concern of one Ms. Padma Sreedharan, which was subsequently acquired by SKDC Consultants. Further, as noted by the Hon'ble SAT, "…*The agreement between the Appellant and SKDC provides* ***only for transferring the ongoing business with all the assets and liabilities*** *of SKDC to the Appellant*…". In the present matter, the Scheme of arrangement involving PEL and PPL, not only provides for transfer of assets and liabilities but also keeps the door open for initiation and/ or continuation of legal proceedings against PPL. Accordingly, reliance cannot be placed on the decision of Hon'ble SAT in SKDC matter for the purpose of determination of liability of the Noticee in the present case.

18. Further, accepting the approach/ interpretation of the AO Order may not be in the best interest of the securities market for the reason that if such an interpretation were to be adopted, it may set a wrong precedent for the entities in the securities market. Accepting the said approach, i.e., not holding the resultant / transferee company liable for the acts of transferor company, despite the presence of express provisions in the scheme of merger/ demerger/ amalgamation approved by the National Company Law Tribunal (hereinafter referred to as **"NCLT"**) would lead to an anomalous situation where the provisions of a scheme duly sanctioned by NCLT / other authority are not given effect, and the resultant company (despite inheriting all the assets and liabilities) escapes the rigors of law citing that the original violation was committed by the transferor company. To reiterate, in the present matter, the Scheme, as approved by NCLT, contains specific provisions as regards devolvement of liabilities upon PPL. In view of the same, I am convinced that the order of AO containing the above approach was erroneous to the extent that it was not in the interest of the securities market.

19. In consideration of the foregoing, I find that both the elements of Section 15-I(3) are met in the present case and it is fit for invocation of Section 15-I(3).

**CONSIDERATION OF ISSUES**

20. Having dealt with the preliminary contentions of the Noticee, I deem it fit to proceed with the matter on its merits. On perusal of the AO SCN, AO Order, SCN, submissions made by the Noticee before me (oral and written), following issues arise for my consideration:
    a. Whether the Noticee is liable for violation of regulations 4(1)(c), 4(1)(d), 30(3), 30(4) and 34(2)(f) read with Clauses 2 and 8 of Para B of Part A of Schedule III of the LODR Regulations read with the SEBI Circular dated November 04, 2015;
    b. Quantum of penalty to be imposed upon PPL, if any.

21. Before addressing the issues framed above, I deem it appropriate to refer to the applicable provisions which are as under:

    **"*LODR Regulations***

    ***Principles governing disclosures and obligations.***

    *4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:*

    *…*

    *(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.*

    *(d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.*

    ***Disclosure of events or information.***

    *30.…*

*(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).*

*(4)(i) The listed entity shall consider the following criteria for determination of materiality of events/ information:*

*(a)the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or*

*(b)the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;*

*(c)In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.*

*(ii) The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website.*

***Annual Report.***

*34….*

*(2) The annual report shall contain the following:*

*…*

*(f) for the top one thousand listed entities based on market capitalization, a business responsibility report describing the initiatives taken by the listed entity from an environmental, social and governance perspective, in the format as specified by the Board from time to time…*

***SCHEDULE III***

***PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES***

...

***B. Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30):***

…

*2. Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/ division (entirety or piecemeal)* (emphasis supplied).

…

*8. Litigation(s) / dispute(s) / regulatory action(s) with impact."*

22. As regards the issue at Para 20(a), I note from the material available on record that the essence of the allegations levelled in the present matter is that certain '*material*' events took place when PEL was in charge of the pharma arm and it failed to disclose the said '*material*' events in terms of regulation 30(4) of the LODR Regulations. At the cost of reiteration, the alleged '*material*' events which were not disclosed by PEL are as under:
    a. Imposition of penalty of ₹8.32 crores by NGT, vide order dated November 13, 2019; and
    b. Closure of Digwal Unit pursuant to order of TSPCB dated November 29, 2018.

23. Regulation 30(4)(i) of LODR Regulations stipulates the criteria which shall be considered by the listed entity while determining the materiality of an event. In addition to the above, in terms of regulation 30(4)(ii), the listed entities are also required to frame an internal policy for determination of materiality, based on the criteria specified in regulation 30(4)(i). Regulation 30(4)(ii) reads as under:

*"(ii) The listed entity shall frame a policy for determination of materiality,* ***based on criteria specified in this sub-regulation****, duly approved by its board of directors, which shall be disclosed on its website."*

24. On a conjoint reading of the aforesaid provisions, I observe that while regulation 30(4)(i) lists down broader criteria for determination of materiality of an event/ information, regulation 30(4)(ii) mandates that the listed entities frame an internal policy on the basis of the criteria specified in regulation 30(4)(i). Therefore, any policy framed by a listed entity under regulation 30(4)(ii) would inevitably be guided by the criteria specified in regulation 30(4)(i).

25. I have perused the material available on record, including the submissions of the Noticee as regards the '*materiality*' of the events. As noted above, for the events to be considered as '*material*', either the omission of such event/ information should have resulted in discontinuity or alteration of event/ information already available publicly or, the omission of event/ information should have likely resulted in significant market reaction, if made public at a later date.

26. In the present matter, the SCN issued to the Noticee has levelled a generic allegation that failure to disclose the alleged '*material*' events had resulted in violation of regulation 30(3), 30(4) read with clauses 2 and 8 of Para B of Part A of Schedule III of the LODR Regulations. I observe that the SCN has not, in as many terms, specified as to how the said events led to the violation of either a) broad criteria provided in regulation 30(4)(i), or b) materiality policy framed by PEL in terms of regulation 30(4)(ii).

27. Without prejudice to the above, as regards 30(4)(i)(a), the SCN or other material on record has not established as to what was the event/ information already available in public which would have discontinued if the disclosures were made by PEL. Similarly, the material available on record, including the SCN issued to the Noticee, does not discuss any material to substantiate that the omission on the part of PEL would have resulted in significant market reaction if made public at a later stage.

28. It is noted from the submissions of the Noticee that the information about the said events was in-fact included in the Business Responsibility Report of PPL for the year 2023. The alleged '*material*' events were subsequently made public by PPL and such disclosure did not cause any significant market reaction and I am therefore of the view that PEL was not under an obligation to disclose the said events, in terms of regulation 30(4)(i). Additionally, comments were sought from NSE as regards the requirement of disclosure on the part of PEL and it is noted from the response of NSE that on the basis of PEL's confirmations and the available financial figures, the events were not material and therefore, the requirement of mandatory disclosure did not arise.

29. In addition to the above, during the course of hearing, the Noticee was advised to submit documentary evidence as regards the impact of imposition of monetary penalty and the closure of the Digwal Unit, which it submitted vide letter dated July 12, 2024. On perusal of the material submitted by the Noticee, I note that the revenue for the Digwal Unit for the financial years 2016-17, 2017-18, and 2018-19 had constantly increased and there was no loss/ reduction in the FY 2018-19 on account of closure or otherwise. The Noticee has submitted that the brief closure of unit (for a period of 44 days) was immaterial since there was sufficient buffer stock of manufactured goods to meet its commitments. Additionally, NSE in its comments has also stated that no major price fluctuation was observed around these events in the scrip of PEL.

30. In view of the above, I find that the brief closure of Digwal unit or imposition of monetary penalty, in terms of the NGT Order, did not require any disclosure in terms of regulation 30(4)(i) of the LODR Regulations.

31. Apart from the requirements stipulated under regulation 30(4)(i), it is a matter of record that PEL had framed a policy for determination of materiality in terms of regulation 30(4)(ii). I note from the SEBI Examination Report that as per the materiality policy of PEL, any event / information which was likely to impact the consolidated revenue to the extent of 10% or more or impact the consolidated Profit Before Tax to the extent

of 25% or more was considered to be material. The materiality thresholds for the relevant period were as under:

| Parameter | FY 2018-2019 (₹ in crore) | Materiality Thresholds as per PEL's policy (₹ in crore) |
|---|---|---|
| Consolidated Revenue | 13,528.14 | 1352.81 |
| Consolidated Profit Before Tax | 2,011.87 | 502.97 |

32. The penalty imposed by the NGT Order was around ₹8 crores and therefore was not material as per the materiality policy of PEL. It may also be noted at this juncture that it has not been alleged that the Materiality Policy of PEL was defective or deficient in any aspect. Accordingly, the events in question were not material and PEL was not under an obligation to disclose the events to stock exchanges.

33. In addition to the aforesaid allegations, it has also been alleged that the Noticee, by failing to disclose the imposition of penalty by NGT and shutdown of the plant by TSPCB, on account of water pollution, has misrepresented facts in the BRR for the FY 2018-19 and 2019-20. In this context, I note that the SCN issued to the Noticee, *inter alia*, alleges that "*…the Company, by failing to disclose the imposition of the penalty by NGT and the shutting down of the plant by TSPCB on account of water pollution, misrepresented facts in the Business Responsibility Reports…*". While the SCN raises allegations of water pollution, it does not substantiate the same with cogent material. Further, a conjoint reading of the material available on record, including the Examination Report, does not specifically bring out the details establishing the fact that waste/ emission generated by the Noticee was in violation of the limits specified by SPCB/ CPCB. I find that that there is a lack of sufficient evidence to establish the allegation of misrepresentation of facts in the BRR.

34. Considering the above discussion, since no violation has been established on part of PEL, the question of devolvement of any liability on the Noticee does not arise. Consequently, the question pertaining to determination of quantum of penalty also does not require any further deliberation.

35. In view of the above, I, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992, hereby dispose of the SCN dated November 30, 2023 issued to the Noticee, in terms of Section 15-I(3) of the SEBI Act, without imposition of any monetary penalty.

36. A copy of this order shall be served on the Noticee and upon all recognized Stock Exchanges and Depositories for their record.

**Sd/-**

**Place: Mumbai**
**Date: November 8, 2024**

**AMARJEET SINGH**
**WHOLE TIME MEMBER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**