

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/BJD/MG/2020-21/9243]**

---

**UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956  
READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE  
FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATION  
OFFICER) RULES, 2005**

In respect of

**Polar Pharma India Limited**

In the matter of Polar Pharma India Limited

---

**FACTS OF THE CASE IN BRIEF:**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation in the scrip of Polar Pharma India Limited (hereinafter referred to as '**Noticee/ PPIL/ Company**'), which is listed on Bombay Stock Exchange (herein after referred to as '**BSE**') to ascertain any price or volume manipulation by certain entities, during the period July 4, 2005 to September 13, 2005 (hereinafter referred to as '**investigation period**'). SEBI observed that there are variations, in net profit/net loss after tax/ exceptional or extraordinary items between the unaudited quarterly and the results amended pursuant to limited review for the same period, in excess of 10% and Rs. 10 lakh. As per provisions of Listing agreement, the Noticee was required to submit to the stock exchange an explanation of the reasons for variations, while submitting the limited review report, however, it was observed that the Noticee failed to submit any such explanation. Further, In terms of Clause 36 of

the Listing Agreement, listed company has to intimate to stock exchanges immediately of event which will have a bearing on the performance / operations of the company as well as price sensitive information. However, it is observed that the Noticee has made delayed disclosures to the Exchange with respect to one such event which is in-principle approval of one time settlement of its debt from Stressed Asset Stabilization Fund (hereinafter referred to as '**SASF**') of IDBI Bank Limited (hereinafter referred to as '**IDBI**'). Therefore, SEBI initiated adjudication proceedings against the Noticee.

### **APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI, vide Communique dated February 13, 2019, appointed the undersigned as Adjudicating Officer under Sub-Section (1) of Section 23I of SCRA read with Rule 3 of the SCRA (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**AO Rules**') to inquire into and adjudge the Noticee under the provisions of Section 23A and 23E of SCRA.

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

3. A show-cause notice (hereinafter referred to as '**SCN**') dated August 14, 2020, was issued to the Noticee under rule 4 of the AO Rules to show-cause as to why an inquiry should not be initiated against it and penalty not be imposed upon the Noticee under the provisions of Section 23A and 23E of SCRA for the violations alleged to have been committed by the Noticee. The Noticee was given 15 days of time to make their submissions in respect of the allegations made in the SCN.
4. The following violations were alleged in the SCN, to have been committed by the Noticee:
  - a. *The Shareholding pattern of the company for the quarter ended on March 2005 to quarter ended March 2006 is as tabulated below:-*

**Table – 1:**

As at Particulars	31-Mar-05		30-Jun-05		30-Sep-05		31-Dec-05		31-Mar-06	
	No. of shares	% share holding								
Promoter holding	5,782,938	48.31	5,785,515	48.33	5,940,070	48.41	6,028,540	49.13	5,962,155	48.59
Institutional Investor (including FII)	36,150	0.3	36,150	0.3	324,550	2.64	324,550	2.64	323,550	2.64
Pvt., Corporate Bodies	2,067,954	17.28	2,115,661	17.67	2,563,464	20.89	2,473,994	20.16	2,487,999	20.28
Indian public	2,770,340	23.14	2,720,155	22.72	2,124,723	17.32	2,250,433	18.34	2,305,813	18.79
NRI/OCB	1,313,347	10.97	1,313,248	10.97	1,317,922	10.74	1,193,212	9.72	1,191,212	9.71
<b>Total</b>	<b>11,970,729</b>	<b>100</b>	<b>11,970,729</b>	<b>100</b>	<b>12,270,729</b>	<b>100</b>	<b>12,270,729</b>	<b>100</b>	<b>12,270,729</b>	<b>100</b>

- b. The increase in the number of shares during the investigation period was due to the allotment of shares by PPIL. PPIL proposed allotment of shares to Stressed Asset Stabilization Fund (SASF) of IDBI. The allotment of shares was result of one time settlement (OTS) done with SASF against the loan of around Rs. 3769 lacs payable by PPIL as on March 31, 2005.
- c. As per the filing by PPIL with BSE, the financial performance of PPIL during relevant period is tabulated below: -

**Table – 2:**

[Value in Rs. million]

Description	Unaudited Quarterly Results					Audited Yearly Results	
	March 05	June 05	Sep. 05	Dec. 05	March 06	2004-05	2005-06
<b>Total Income</b>	224.95	64.76	313.69	143.50	182.82	360.89	487.01
<b>Expenditure</b>	(202.98)	(57.62)	(81.11)	(125.63)	(267.42)	(320.72)	(528.11)
<b>Net Profit</b>	(18.36)	(7.94)	144.88	1.91	(70.63)	(53.60)	64.83
<b>Equity Capital</b>	119.71	119.71	122.71	122.71	122.71	119.71	122.71
<b>EPS</b>	(1.53)	(0.66)	12.1	0.62	(23.02)	(4.48)	(12.19)

- d. It is noted from the unaudited quarterly results for quarter ended Sept. 2005, that PPIL had reported a net profit of Rs. 144.88 million after being in losses for many previous quarters. The increase in profit was on account of other income of Rs.218.61 million on account of waiver received against extinguishment of interest and debt liabilities up to March 31, 2005 pursuant to the settlement granted by SASF. The investigation revealed that the Statutory Auditor of the company gave qualifications

of accounts on this issue as well as others. The details of the auditor qualifications are given in the Annexure-II. In terms of clause 41(IV)(a)(i) of listing agreement where there is a variation in net profit/net loss after tax/ exceptional or extraordinary items between the unaudited quarterly or year to date financial results and the results amended pursuant to limited review for the same period is in excess of 10% or Rs.10 lakhs, (whichever is higher) the company is required to submit to the stock exchange an explanation of the reasons for variations, while submitting the limited review report. The explanation of variations so submitted is also required to be approved by the Board of Directors. However, it is observed from the communique of BSE that PPIL had not submitted to the stock exchange an explanation of the reasons for variations in terms of Clause 41(IV)(a)(i) of the Listing Agreement. A perusal of minutes of Board meeting of PPIL dated October 26, 2005 and January 28, 2006 (relevant for the period) shows that the explanation of variations were not discussed in the Board meeting. Therefore, it is alleged that PPIL failed to comply with Clause 41(IV)(a)(i) of the Listing Agreement and resultant violated Section 21 of SCRA.

- e. All corporate announcements by PPIL during investigation period and impact of same on share price of PPIL has been mentioned at Annexure II-A. It is noted that PPIL did not inform BSE of letter dated July 04, 2005 of in-principle approval of one time settlement of its debt from SASF. The final approval letter from SASF dated July 28, 2005 was also not disclosed to public. Instead, the reference of final approval was included in note appended with unaudited results for quarter ended June 2005 (Annexure II-B). The corporate announcement in this regard was made on
- August 04, 2005 (after market closing) to BSE informing about Board meeting of PPIL for allotment of shares to SASF on July 29, 2005, and
  - Subsequent update on August 12, 2005 about the letter dated July 28, 2005 received from SASF.
- f. In terms of Clause 36 of the Listing Agreement, listed company has to intimate to stock exchanges immediately of event which will have a bearing on the performance/operations of the company as well as price sensitive information. However, it is alleged that PPIL failed to abide by the provisions of Clause 36 of Listing Agreement by making delayed disclosures. Therefore, it is alleged that the Company had violated the provisions of Clause 36 of Listing Agreement and resultant violated Section 21 of SCRA.

5. The SCN was sent to the Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**'). However, the SCN returned undelivered. Further, it was observed from the Website of Ministry of Corporate Affairs that the Noticee is under liquidation and the Noticee falls under the jurisdiction of Registrar of Companies, Cuttack (hereinafter referred to as '**ROC**'). In view of the same, the Noticee and the Official Liquidator linked with Hon'ble High Court of Cuttack (hereinafter referred to as '**OL**') were served a copy of SCN along with annexure vide digitally signed email dated September 11, 2020, at their email addresses mktpolar@polarinc.com and ol.cuttack@mca.gov.in, respectively. The Noticee and the OL was advised to file reply to the SCN latest by September 22, 2020, and were also granted an opportunity of hearing before the undersigned on September 23, 2020. However, there was no response to said e-mail.
  
6. In view of the above, I am compelled to proceed in the matter against the Noticee *ex parte* on the basis of material available on record. I am of the view that principles of natural justice have been adequately complied with and the matter is required to be decided *ex-parte*.

### **Consideration of Issues, Evidence and Findings**

7. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are:
  - (a) Whether the Noticee has violated Clauses 36 and 41(IV)(a)(i) of the Listing Agreement read with Section 21 of SCRA?
  - (b) Does the violation, if any, attract monetary penalty under Section 23A and Section 23E of SCRA?
  - (c) If so, what should be the quantum of monetary penalty?

8. As stated earlier, the Noticee was under liquidation which was observed from the records on MCA Website. The instant Adjudication Proceedings against the Noticee were initiated vide order dated February 01, 2019 and therefore, I am of the view that before proceeding in the matter on its merit, it would be in the fitness of things to first decide whether Adjudication proceedings can be continued against the Noticee which was under liquidation. It may be noted that the Insolvency and Bankruptcy Code ("IBC") was enacted in 2016 and any proceeding relating to insolvency is governed by IBC after the enactment. In order to ascertain the applicable law (IBC/ Companies Act) in relation to Noticee's insolvency, the date of initiation of liquidation against the Noticee will be relevant.
  
9. It is observed from the website of Hon'ble Orissa High Court that a company petition no. 24 of 2014 was filed for liquidation of the Noticee. This clearly indicates that the proceedings for liquidation were initiated in 2014 i.e. much prior to the enactment of IBC. Thus, it can be inferred that the liquidation of the Noticee was governed by the Companies Act and not IBC. Further, an order was passed on September 8, 2017 directing the OL to sell the assets of the Noticee based on which the OL had issued a sale notice dated October 3, 2017. Further, it is observed from the website of Hon'ble Orissa High Court that the aforesaid liquidation case has been disposed in January, 2020. Thus, the entire liquidation proceedings of the Noticee were before the Hon'ble Orissa High Court indicating jurisdiction under the Companies Act since under the IBC the proceeding would have been conducted in the Hon'ble National Company Law Tribunal.
  
10. It can thus be seen that the liquidation proceedings against the Noticee were conducted under the Companies Act, 1956 and Companies Act, 2013. Hence, in order to examine the maintainability of the present Adjudication proceedings against the Noticee, it will be appropriate to refer to Section 446 of the Companies Act, 1956, (corresponding to Section 279 of Companies Act, 2013) which reads as under:-

**“Section 446 of Companies Act, 1956**

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

11. According to Black’s Law Dictionary, Sixth Edition, the term ‘Legal Proceedings’ includes “all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of remedy.” Further, the term ‘Proceedings’ means, “any action, hearing, investigation, inquest or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given.”

12. In the “Guide to the Companies Act” by A Ramaiya, (17th Edition Reprint 2010, page 4929 & 4930), it is stated that the object of winding up of a company by the court is to facilitate the protection and realization of its assets with a view to ensure an equitable distribution thereof among those entitled and to prevent the administration from being embarrassed by a general scramble among creditors and others. Consequently, once the court has taken the assets of a company under its control or has passed an order for its being wound up, it will not be proper to allow proceedings to be started or continued against the company.

*“Section 446 is wide in its terms and is not restricted to any category of suits or any class of plaintiffs. It is wide enough to cover all suits and other legal proceedings who-ever may be plaintiff.” {Murgan Oil Industries (P.) Ltd. Re, (1970) 40 Com. Cases 77, 82 (Mad)}*

13. While examining the issue of maintainability of the legal proceedings initiated after the date of order of winding up/ appointment of official liquidator, the Hon’ble High

Court Chandigarh, in the case of Deutsche Bank v. S.P. Kala {(1990) 67 Com. Cases} held as under:-

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

14. In the light of the above, I am of the considered view that the present Adjudication proceedings against the Noticee which is under liquidation cannot be initiated and continued without the leave of the Court as it falls under the term “other legal proceedings” used in Section 446 of Companies Act, 1956. Further, I note that there is no material on record to suggest that leave of the Court has been taken at the time of initiation of the instant proceedings. As stated earlier, it can also be seen from records available on the website of Hon’ble Orissa High Court that the company petition against the Noticee has also been disposed off in January, 2020. Thus, it can be reasonably inferred that the liquidation proceedings against the Noticee have been concluded.

## **ORDER**

15. In view of my findings noted in the preceding paragraphs, I am of the view that the Adjudication proceedings initiated against the Noticee vide SCN dated August 14, 2020 are not maintainable and therefore disposed of accordingly.
16. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Polar Pharma India Limited and also to the Securities and Exchange Board of India.

**Place: Mumbai**

**Date: September 28, 2020**

**B J Dilip**

**ADJUDICATING OFFICER**