

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

**Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India
Act, 1992**

**In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and
Unfair Trade Practices Relating to Securities Market) Regulations, 2003**

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN
1.	Celestial Biolabs Ltd.	AABCC4698Q	L72200TG1997PLC028374
2.	Dr. Aditya Narayan Singh	AITPS2152A	01756827
3.	Ms. Padma Singh	BIQPS8097A	01448915

In the matter of Celestial Biolabs Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) passed an order dated October 5, 2018 in the matter of Celestial Biolabs Limited (hereinafter referred to as ‘**CBL / company / Noticee No. 1**’). In the said Order, it was held that the company has employed deceptive devices by projecting inflated sales in Bio-IT and had adopted dubious and inconsistent practices in drawing up accounts for manipulating the financial results of the company to present a rosy picture to its shareholders and to the public at large. Company though a legal entity, cannot act by itself and would not have been able to draw up this elaborate scheme without its Directors and statutory auditor being part of the manipulative and deceptive device.

Dr. A.N. Singh (hereinafter referred to as '**Noticee No. 2**'), Mrs. Padma Singh (hereinafter referred to as '**Noticee No. 3**') and M/s Lakshmi Purna & Associates by playing their respective roles in this elaborate scheme, adopted a fraudulent device and artifice to defraud the genuine shareholders of the company by first falsely portraying sales transactions with pharma companies in Bio-IT services and then by treating the purported bad debts under the heading Product Development Expenditure. It was held that the aforesaid actions of the Noticees have led to the violation Section 12A (b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Regulation 3(c) and Regulations 4(1) and 4(2),(a),(e),(f),(k), and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). Further, it was held that CBL, Dr. A.N. Singh and Ms. Padma Singh have also violated provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '**LODR Regulations**') by disclosing fake sales figures in the Annual Reports of the company for the financial years 2010-11 and 2011-12.

2. During the course of the proceedings, it was noted that the charge of violation of provisions of LODR Regulations against the company and the charge of violation of provisions of SEBI Act and PFUTP Regulations against Dr. A.N. Singh and Ms. Padma Singh were inadvertently left out. In view of the same, the order dated October 5, 2018 made the following observation with respect to the aforesaid violations:

"66. I find that in the SCN dated January 05, 2018, the charge of violation of provisions of LODR Regulations against the company was inadvertently left out. In view of the same, this order will take effect as final order against the company with respect to the findings under LODR Regulations on the expiry of 30 days from the date of service of this order, unless the company, within such period of 30 days from the date of service of this order files its objections. Till that time the directions against the company will operate as interim directions. If no objections are filed, the findings under LODR

Regulations qua the company in this order will come into effect. If objections are filed, then the directions passed herein against the company shall be made applicable subject to the determination on the objections. Till the determination of the objections, the directions against the company will operate as interim directions.

67. Similarly, I note that in the SCN dated January 05, 2018, the charge of violation of provisions of SEBI Act and PFUTP Regulations against Dr. A.N. Singh and Ms. Padma Singh were inadvertently left out. In view of the same, this order will take effect as final order against the Dr. A.N. Singh and Ms. Padma Singh with respect to the findings under SEBI Act and PFUTP Regulations on the expiry of 30 days from the date of service of this order, unless Dr. A.N. Singh and Ms. Padma Singh, within such period of 30 days from the date of service of this order file their objections. Till that time the directions against Dr. A.N. Singh and Ms. Padma Singh will operate as interim directions. If no objections are filed, the findings under SEBI Act and PFUTP Regulations qua Dr. A.N. Singh and Ms. Padma Singh in this order will come into effect. If objections are filed, then the directions passed herein against Dr. A.N. Singh and Ms. Padma Singh shall be made applicable subject to the determination on the objections. Till the determination of the objections, the directions against the Dr. A.N. Singh and Ms. Padma Singh will operate as interim directions.”

3. Pursuant to the aforesaid order, the authorised representative of the Noticees, M/s Finsec Law Advisors (hereinafter referred to as ‘AR’) vide its letter dated October 24, 2018 requested for inspection of records in the extant matter and further requested to extend the period of filing objections by 30 days from the date of inspection. Vide an email dated October 29, 2018, Noticees were granted an opportunity of inspection on November 1, 2018. However, the Noticees vide their email dated October 30, 2018, requested to adjourn the inspection to any date after November 12, 2018 due to upcoming Diwali festival. Noticees were granted another opportunity of inspection on November 13, 2018. On the day of scheduled inspection, Ms. Deepika Goyal conducted the inspection on behalf of the Noticees and photocopy of

documents as requested by her, was also provided to her.

4. Subsequent to inspection, Noticees vide their letter dated December 11, 2018 requested extension of time till December 31, 2018 to submit their reply as it was taking time to process the data and to retrieve relevant data/information. Noticees request was acceded to and Noticees were granted time till December 31, 2018 to submit their reply. However, Noticees again vide their letter dated December 27, 2018 requested for further extension of time by one month on account of hospitalization of Noticee No. 1. Noticees were informed vide an email dated January 8, 2019 that their request for extension of time by one more month was considered by the Competent Authority and they were advised to submit their reply by January 15, 2019.

REPLY

5. Noticees vide their letter dated January 15, 2019 *inter alia* made the following submissions:
 - 5.1. In around 2009-10, the Company decided to expand its activities in the field of clinical data testing. Primarily, under this data is collected from a variety of medical research projects, such as, the clinical and pharmaceutical trials. In this regard, certain letters were sent by the Company to Central Drug Research Institute (Lucknow), Indigene Pharmaceuticals Private Limited (Hyderabad), Centre for Bioinformatics (University of Hyderabad), Bioinformatics Centre (Indian Institute of Science), Dr. Reddy's Laboratories Limited, etc. informing them about the development of a new tool to predict toxicity in drug molecules. Some of these letters are annexed with the reply.
 - 5.2. In fact, in December 2008, the company had hired two employees specifically for its clinical data testing activities. These were: Mr. Krishna Mohan, appointed as 'Clinical Technology Officer, Clinical Research' and Mr. G. Sudhakar Reddy, appointed as 'Senior Manager, Finance, Bioinformatic Services and Clinical

Research Financial Activities' (hereinafter collectively referred to as '**Employees**'). The letter of engagement elaborating upon the terms and conditions for which the Employees were hired by the company are attached with the reply. It is clear from the said letters that the scope of services of appointment of Mr. Krishna Mohan majorly included clinical trial process, clinical data management process, report preparation. Further, he was required to report to the Senior Manager, Finance (Bioinformatics and Clinical Research Services), i.e. Mr. G. Sudhakar Reddy during the relevant period of time.

5.3. Following the market practice, the Employees were required to meet the research and product development teams of leading pharmaceutical companies who were involved in research and manufacturing of various drugs. The Employees would explain their services to such companies and provide the clinical data testing and management services. Being an industry, which is considered slow on account of the time taken to reach to successful results (normally, such clinical data testing and analysis is a long process extending up to two to four years), the pharmaceutical companies are reluctant to execute formal agreements until they reach to conclusive results. Even in the absence of any formal agreements with these companies, the Employees used to personally visit the laboratories of the pharmaceutical companies and work on the development of new drugs. CBL is a well-known name for its work in pharmaceutical sector primarily because of the quality leadership and high-level operational efficiencies and also because of the recognition received by it from DSIR for its skills and bio-domain knowledge in drug development and clinical research process. Post rendering of their services, the Employees would request the relevant department of the Company to raise the invoices. Some of these invoices are attached with the reply. As is clear from the invoices, the description of services included - Clinical Data Testing by using Virtual Screening of Drug Data base for treatment of malaria, TB, schizophrenia, to find out Diabetic

Antagonist molecules, etc.

- 5.4. It is pertinent to state that Noticee No. 2 has been the sole whole-time director of the Company and looks after the day-to-day business and operations of the Company, due to his expertise in the field. Therefore, during his absence, the Company's affairs were not actively managed by anyone. Hence, even though the Company's operational activities were going on, however the monitoring mechanism became weak.
- 5.5. Due to his deteriorating health conditions and ongoing medical treatments, Noticee No.1 could not pay full attention to the Company. He would visit the Company's premises on a monthly / bi-monthly basis to take a stock of the functioning of the Company. Details of the development in the Company's clinical data testing business were being provided by the Employees, as this business involved provision of door-to-door services at the premises of the relevant pharmaceutical company (service recipient). The Employees showed the copies of the invoices raised by the Company in favour of various pharmaceutical companies to whom the clinical data testing services were being provided.
- 5.6. In about March 2012, upon resumption of active services by Noticee No.2, post his recovery from renal failure, the officials of the Company informed him that the pharmaceutical companies to whom they had provided their clinical data testing services have refused to honour their payment requests and that the amount due thereof may not be received. It is important to state here that once the Company initiated an investigation in this matter, with effect from November 2012, the Employees had resigned and ceased to be a part of the Company. Therefore, not much information could be gathered from them as to reasons for such non-payment. Noticee No. 2 also sought information from the pharmaceutical companies on whom the invoices were raised. He was informed that although the Employees had visited their premises, however the fees charged by the Company was never agreed by them in their discussions with the

Employees. Moreover, the clinical data testing work requires 2 to 4 years for a visible output and since the Employees had left mid-way therefore, no conclusive results could be achieved. Post November 2012, when Noticee No. 2 tried to contact the Employees and understand such issues, the Employees were evasive and non-cooperative. Left with no other option, the management of the Company decided to write-off the amounts due to the Company from such pharmaceutical companies.

5.7. The Company had never faced such a situation wherein its debtors would refuse repayment of debts and therefore, they were not sure as to how to account such bad debts in their books of accounts. Therefore, they consulted their then statutory auditors, M/s. Lakshmi Purana & Associates. M/s. Lakshmi Purana & Associates advised the Company that it had a registration certificate from DSIR which is provided under Section 35(2AB) of the Income tax Act, 1961 whereby the Company can claim deduction on expenditure incurred on in-house research and development. Therefore, M/s. Lakshmi Purana & Associates recommended that with regard to the amount due towards clinical data testing business, being a part of the Company's research activities, the said amount should be booked under the head -'Research & Development' expenditure. The Noticees were told that this accounting treatment was in accordance with AS-26, which formed a part of accounting standards which were required to be followed by the Company.

5.8. Having least knowledge about accounts and M/s. Lakshmi Purana & Associates being an expert, the Company decided to abide by the accounting advice provided and instructed the finance department to go ahead with what was being advised and write-off 10% of the expenditure every year. As on the date of this Reply, 100% of the outstanding amount has been written-off.

5.9. It is submitted that the entries made by the Company in its books of accounts do not constitute 'misstatement of accounts', as these entries were based on the

invoices generated by the Company towards the clinical data testing and analysis services provided by the Employees to various pharmaceutical companies and the information provided by the Employees to the management in this regard. Had there been any act of misstatement of information in the books of CBL, the Noticees would have generated some illegal gains or avoided losses. Neither did the share price of CBL increase substantially post publishing of the financial results containing revenue earned by the Company from the clinical data testing business (i.e. 2010-11 and 2011-12), nor did the Noticees purchase / sell the shares of CBL during the Relevant Period

5.10. It is submitted that it is a well-established position of law that in case a decision is made relying upon the advice provided by an expert, then no liability should come upon the former. In the matter of *Ashok Bhatia v. Registrar of Companies, Delhi & Haryana*, the High Court of Delhi has held that situations where directors have taken reasonable care by obtaining an expert's view and there was no intentional violation of law, then such persons should be excused. Accordingly, it is submitted that since the accounting treatment was done on the basis of advice received from M/s. Lakshmi Purana & Associates, therefore, the Noticees should not be held liable for acting in a *bona fide* manner on such expert advice and for any negligent act / incompetency of M/s. Lakshmi Purana & Associates, and that the Noticees acts cannot be termed as 'dubious practises' undertaken to draw their accounts.

5.11. It is submitted that the entries with respect to income due to be received from the pharmaceutical companies, as made in the books of account was done on the basis of statements made by the Employees. Due to the nature of services, the Company could not verify the details of the services provided by the Employees to these pharmaceutical companies. Therefore, the management was compelled to rely on the statement made by the Employees and accordingly raised the invoices. Further, since revenues from clinical data testing only flows

after a period of 2 to 4 years, the Company had reasonably expected that the invoices would be eventually paid once the results are produced. In March 2012, when the Noticees came to know that the service recipients will not honour their repayment obligations, they acted on the accounting advice received from M/s. Lakshmi Purana & Associates. It is submitted that both at the time of making entries with regard to the said amount as revenue of the Company and when the said outstanding receivables were transferred to the 'product development expenditure' head, there were no unusual changes in the price of the equity shares of CBL. Moreover, during the said period, the Noticees have neither made any purchase nor sale of their shareholding in CBL. Thus, no illegal gains were made by the Noticees, directly or indirectly; nor were any losses avoided on account of the alleged 'deceptive device'. In such circumstance, it is clear that the acts of irregularity in accounting entries were *bona fide* actions and a consequence of reliance placed by the Noticees on expert advice received from M/s. Lakshmi Purana & Associates, and were not deliberate acts undertaken to defraud or misrepresent investors or any other concerned party.

5.12. Noticees understand that the pharmaceutical companies to whom the services were provided have denied the same to SEBI. However, as stated earlier, when the Noticees contacted these companies, while accepting that the Employees had visited their premises, they denied the monies owed to CBL. We believe that on account of the incomplete services rendered by the Employees, as they had resigned from the Company in November 2012, the services remained incomplete and hence, these companies denied the monies owed by them to CBL.

5.13. The actions of Noticee No.2 and Noticee No.3 does not amount to market manipulation or market abuse, as one of the most important element of market abuse is absent from the present matter, i.e. the alleged abusers (the Company and its directors) did not give out any such information which they believed to

be 'wrong'.

- 5.14. Noticees acts do not amount to violation of disclosure related principles. This is because, the Noticees have acted on the information provided to them by their Employees, the invoices raised in favour of the pharmaceutical companies and thereafter, on the advice received from M/s. Lakshmi Purana & Associates. In such circumstance, wherein the Company has presented its financial statements under a *bona fide* belief and accordingly made disclosures to its shareholders, it cannot be held liable for violation of provisions of the LODR Regulations.
- 5.15. It is submitted that a company is an artificial person, incapable of taking its own decisions. The actions of the company are undertaken and its decisions are made through its representatives, such as, directors and officers, known as key managerial personnel. SEBI has frequently (*United Spirits Limited* and *Pyramid Saimira Theatre Limited*) held that when the wrong in a company is committed by its directors or KMPs, then the actual wrongdoer should be held liable and the company and its shareholders should not bear the consequences of the wrongful acts committed by such person.
- 5.16. It is submitted that any such prohibition on the Company will have an adverse impact on the functioning of the Company and has directly hindered the day-to-day business of the Company. This will directly affect the interest of the public shareholders of the Company (amounting to more than 70% of total shareholding and 1,66,97,387 total number of shares), as the consequences of the alleged wrongful act of the management will be borne by the public shareholders of the Company.
- 5.17. It is further submitted that while determining the liability on account of the alleged wrongful act, it is very important to differentiate between the role of a company and its directors / officers in the alleged wrongful act. This is because,

in a public company and more specifically in a listed entity, rights of a number of shareholders are at stake and any adverse order against the company will directly affect the interest of its shareholders.

5.18. In around 2017-18, the Company initiated an expansion plan with state of art manufacturing and research & development facilities in the industrial biotechnology park part of Genome valley near Hyderabad. However, since the issuance of the present Notice, the last leg of this expansion plan has come to a halt. Moreover, a substantial capital has been already infused in the Biotech Park. For further funds required for completion of the project, the management has already discussed the terms of investments with the investors and the deals are in their near-final stage. However, due to the restrictions imposed on the Company, the investors are reluctant to engage with the Company, thus, restraining it from undertaking its activities. Finally, all this is affecting the shareholders of the Company as any enhancement in Company's revenue is directly proportional to the value of shares of the Company. In accordance with above, it is submitted that SEBI may lift the restriction imposed on the Company and permit the Company to carry out its business in usual manner.

5.19. It is submitted that it will be essential for Noticee No.2 and Noticee No.3 to subscribe to further issuances of the equity shares of the Company for executing the ongoing expansion plans of the Company. Further, Noticee No. 2 and Noticee No.3 may also be required to pledge or otherwise encumber their existing shareholding in CBL for the purposes of raising funds for the Company. Such activities cannot be undertaken without providing them an access to the securities market and to their broking accounts by de-freezing the account. Therefore, it is submitted that it is utmost essential for Noticee No.2 and Noticee No.3 that SEBI lift the sanctions imposed on the Noticees as issued against them under the Notice.

5.20. It is submitted that Noticee No.2 is considered as the face of the Company

due to his association with the Company since 1999 and his expertise in the field. He takes care of the day-to-day business and operations of the Company. While Noticee No.2 manages the core business, having an experience of more than 3 (three) decades in this business, Noticee No.3 takes care of the corporate social responsibility side of the Company and actively participates in social welfare programs aiming at curbing malnutrition among children. Besides, Noticee No.2 and Noticee No.3, other directors do not participate actively in the day-to-day business of the Company. Moreover, the amount of knowledge and experience that Noticee No.2 possesses in this business is rare and irreplaceable and is required for the growth of the business. It is thus submitted that most of the investors and service providers who have agreed to assist the Company in the Biotech park project have done so only on basis of Noticee No.2's reputation and experience in the field, and their confidence in his abilities to make this project successful. It is therefore, submitted that the presence of Noticee No.2 and Noticee No.3 in the Company is indispensable and their disassociation from the Company can cause damage to the operations and management of the Company.

HEARING

6. Vide an email dated January 29, 2019, Noticees were granted an opportunity of hearing on February 26, 2019. In response to the email, the AR vide its letter dated February 21, 2019, requested to adjourn the scheduled hearing on account of sudden personal exigencies of the counsel to any date post March 11, 2019. The AR's request was considered and the Noticees were granted an opportunity of hearing on April 11, 2019.
7. On the day of scheduled hearing, Noticee No. 2 appeared in person for the hearing along with Mr. Amit Singh, Mr. Anil Choudhary and Ms. Depika Goyal and made *inter alia*, the following oral submissions:
 - 7.1. Noticee No. 2 stated that during the period July, 2009 to June, 2010, he was

undergoing dialysis. In between the treatment, he used to go to the office. Further During the period July, 2010 to August, 2010, he underwent surgery and was in isolation in the house for 6 months. He used to see official papers at home

7.2. The ARs submitted as follows:

7.2.1. Company had hired two employees specifically for clinical data testing activities. Since the said 2 employs left mid-way, no conclusive results could be achieved.

7.2.2. When the pharmaceutical companies refused to honour their payment requests, the company after consulting their statutory auditor, decided to write off the amounts due to the company from such pharmaceuticals companies.

7.2.3. The statutory auditor, recommended that with regard to the amount due towards clinical data testing business, being part of company's research activities, the said amount should be booked under, 'Research & Development' expenditure. The company decided to abide the accounting advice given by the expert.

7.2.4. There is no concerted manipulation done by the Noticees or any fraudulent motive is involved. It was a bona fide mistake. There is no consequent benefit derived by the Noticees.

7.2.5. For the violation of LODR Regulations, company should not be made liable.

7.2.6. Any directions against the Noticees will grossly affect the shareholders of the company and will also affect the company's ongoing business expansion activity (Biotechnology Park).

FINDINGS & CONSIDERATIONS

8. I have considered the material available on record including Order dated October 5, 2018 and the written and oral submissions of the Noticees. It is stated at the

inception of the consideration of the material available on the record, that SEBI has already passed an order after considering the replies of the Noticees. The scope of the present proceedings is as stated in the order dated October 5, 2018. In the SCN dated January 05, 2018, the allegation of law that the facts alleged therein constituted violation of LODR Regulations against the company and violation of SEBI Act and PFUTP Regulations against Noticees No. 2 and 3 were inadvertently absent. On considering the reply and other materials on record, the order dated October 5, 2018 which held that factual violations made against the Noticees No. 1-3 were established. However, cognizant of the omissions in the SCN, the order dated October 5, 2018 made the legal findings on the violations of LODR Regulations against the company and violation of SEBI Act and PFUTP Regulations against Noticees No. 2 and 3 contingent on the representation/hearing on the legal findings. Therefore, the factual determinations made in the October 5, 2018 stand as res judicata and the same is legally not tenable to be re-opened in another proceeding like this. In view of the present scope, I proceed to examine in view of the representation of the Noticees, whether the factual determinations against the Noticees constitute violations of provisions of LODR Regulations by the company and violations of provisions of SEBI Act and PFUTP Regulations by Noticees No. 2 and 3. In the present scope of the proceedings, following issues arise for consideration:

- (i) *Whether the acts and omissions determined in order dated October 5, 2018 constitute violation of SEBI Act read with PFUTP Regulations by Dr. A.N. Singh and Ms. Padma Singh?*
- (ii) *Whether the acts and omissions determined in order dated October 5, 2018 constitute violation of provisions of LODR Regulations by CBL?*
- (iii) *In the context of issues no. (i) and (ii), what directions, if any should be issued against the Noticees?*

Issue No. 1 - *Whether the acts and omissions determined in order dated October 5, 2018 constitute violation of SEBI Act read with PFUTP Regulations by Dr. A.N. Singh*

and Ms. Padma Singh?

9. I note that it has already been held in the order dated October 5, 2018 that for the sale of clinical data management services by the company to pharmaceutical companies, the sales figure of Bio-IT in that regard were overstated by Rs. 677 lakh in 2010-11 and Rs. 395 lakh in 2011-12. Consequently the debtors and profits of the company were also overstated. It was further concluded that CBL has misstated its accounts, adopted dubious and inconsistent practices in drawing up accounts and has employed devices to defraud investors by first claiming that pharmaceutical companies have bought their services, then claimed that they have defaulted in their obligations and finally reclassifying the purported bad debts under Product Development Expenditure.
10. Noticees have submitted that the entries made by the company in its books of accounts do not constitute 'misstatement of accounts', as these entries were based on the invoices generated by the company towards the clinical data testing and analysis services provided by the Employees to various pharmaceutical companies and the information provided by the Employees to the management. In this regard, it has already been held in the earlier order dated October 5, 2018 that the Noticees have failed to provide any evidence whatsoever to demonstrate that there was any kind of commercial transaction between CBL and various pharmaceutical companies. In the absence of the same, it is held that the invoices for Bio-IT sales made to pharmaceutical companies are not genuine and are for non-existent transactions. Thus, if the books of accounts of the company are prepared on the basis of non-existent transactions, it leads to the conclusion that the books of accounts of the company were misstated as determined earlier.
11. During the course of the current proceedings, Noticees No. 2 and 3 have submitted that CBL had employed specifically two employees for its clinical data testing activities. These employees used to personally visit the laboratories of the pharmaceutical companies and work on the development of new drugs. Further,

once the company initiated an investigation in this matter, with effect from November 2012, the Employees had resigned and ceased to be a part of the company. Therefore, not much information could be gathered from them as to reasons for such non-payment. The said submissions are made in furtherance of their case that the services were in fact rendered by the company. For reasons stated elaborately in the order dated October 5, 2018, it has already been determined that the Noticees have failed to submit any material whatsoever to evidence that the services were rendered. A mere submission that their Employees “visited” the pharmaceutical companies can in no way be considered as a valid basis to recognize income in the books of accounts. Thus, the invoices were for Bio IT sales made to pharmaceutical companies are not genuine and are for non-existent transactions. Therefore such submissions cannot be entertained at this stage for the re-opening the findings on the factum of Bio IT sales made to pharmaceutical companies.

12. I, therefore now proceed to consider whether the Noticees No. 2 and 3 have played any role by their acts or omissions in the misstatement of company’s accounts for the financial years 2010-2011 and 2011-2012. In this context, the submissions of the Noticees on whether the acts / omissions determined constitute violation of the SEBI Act and PFUTP Regulations assumes importance.
13. Before proceeding further, it will be appropriate to refer to the relevant provisions of SEBI Act and PFUTP Regulations, which read as under:

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 12A: No person shall directly or indirectly:

...

(b) employ any device, scheme or artifice to defraud in connection with issue or

dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

PFUTP Regulations

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

...

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:--

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

...

(e) any act or omission amounting to manipulation of the price of a security;

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

...

(k) an advertisement that is misleading or that contains information in a

distorted manner and which may influence the decision of the investors;

...

(r) planting false or misleading news which may induce sale or purchase of securities;

14. Further, fraud has been defined under Regulation 2 (1) (c) of PFUTP Regulations which reads as under:-

“fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include--

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent;

(7) deceptive behavior by a person depriving another of informed consent or full participation;

(8) a false statement made without reasonable ground for believing it to be true;

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they

did not rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly;

15. Two Hon’ble Judges of Hon’ble Supreme Court of India, in their separate but concurring judgments in the matter of *SEBI vs. Kanaiyalal Baldev Bhai Patel* (2018) 13 SCC 753 dealt with the definition of “fraud” as given under Regulation 2(1) (c) of PFUTP Regulations, 2003 and held as under:

Per Hon’ble Justice N. V. Ramanna - “...26. There is no dispute as to the fact that fraud is jurisprudentially very difficult to define or cloth it with particular ingredients. A generalized meaning may be difficult to be attributed, as human ingenuity would invent ways to bypass such behaviour. It is to be noted that fraud is extensively used in various regulatory framework which mandates me to take notice of the conceptual and definitional problem it brings along. Fraud is among the most serious, costly, stigmatizing, and punitive forms of liability imposed in modern corporations and financial markets. Usually, the antifraud provisions of the security laws are not coextensive with common-law doctrines of fraud as common-law fraud doctrines are too restrictive to deal with the complexities involved in the security market, which is also portrayed by the changes brought in through the 2003 regulation to the 1995 regulation.

27. On a comparative analysis of the definition of "fraud" as existing in the 1995 regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of "fraud" under the FUTP regulation, 1995 adopts the definition of "fraud" from the Indian Contract Act, 1872 whereas the subsequent definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of "fraud" as present under the Indian Contract Act. It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation. 28. The definition of 'fraud' under

clause (c) of regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of the term “fraud”...

Per Hon'ble Justice Ranjan Gogoi – “...5. If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities.

6. The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word “induce”... (Emphasis supplied)

16. The examination of the definition of fraud under the FUTP Regulations envisages fraud by way of “act”, “expression” or by “omission”. The said definition also includes an element of such omission to have an “effect of inducement” on another person for dealing in securities. Therefore, an omission which has an effect of inducing another person for dealing in securities, is placed equally on the same footing as a fraud by virtue of an “act”. Further, the said definition of fraud under Regulation 2(1) (c) of PFUTP Regulations includes a representation made in a reckless and careless manner whether the representation be true or false. The definition makes it clear that such omissions would be considered as fraudulent. Regulation 3 (c) of PFUTP Regulations prohibits employment of any device, scheme or artifice for fraud. The

construction of a device for fraud can be either through “acts” or “omissions” or through “acts” and “omissions”. Regulatory sweep of preventing fraud is clear that it does not leave schemes or artifices of fraud constructed by omissions alone. It is a major category of fraud, when the participants of fraud either deliberately or recklessly and carelessly omit to do a thing or series of things, to have an “effect of inducement” on another person for dealing in securities. In some cases the omissions can also result into another separate category of representation. In a scenario, where false financial figures are placed before the entities who are obligated to exercise due diligence to satisfy themselves that there are reasonable grounds to believe that such statements are true, before the financial results are disclosed to the public, the omissions itself falls within the category of fraud, if the omission is either deliberate or reckless. One may omit to do the due diligence either he is aware the statements are false or he does not believe it to be true or he is so reckless and careless whether it be true or false. Such omissions including reckless and careless omissions results in false representation of financial results being disclosed to the public. Regulation 2(1) (c) (5) in fact specifically makes such reckless representation as a category of fraud.

17. The misrepresentation of financials have been already established in the order dated October 5, 2018. Therefore, what needs to be determined at this stage is the role of the Noticees No. 2 and 3 in the misrepresentation of financials of the company. I consider that submissions of the Noticees No. 2 and 3 from the perspective whether the Noticees No. 2 and 3 have played any role in the misrepresentation of financials.

17.1. Noticees No. 2 and 3 have submitted that the company had hired two employees specifically for its clinical data testing activities. These were: Mr. Krishna Mohan, appointed as 'Clinical Technology Officer, Clinical Research' and Mr. G. Sudhakar Reddy, appointed as 'Senior Manager, Finance, Bioinformatic Services and Clinical Research Financial Activities'. In this regard, it is noted that the Noticees have submitted letters of appointment of the aforesaid Employees.

However, the said letters do not bear the signature of the Employees. Further, Noticees No. 2 and 3 have not submitted any other documentary evidence viz, salary slip, employee identity card, official emails / correspondences etc. to show that the Mr. Krishna Mohan and Mr. G. Sudhakar Reddy were employed by CBL for the purpose claimed by the said Noticees. Therefore, there is no sufficient material to show that those employees were appointed for the claimed purpose. Since the Noticees have proceeded on the basis that the appointment of these two officers and their role would have impact on the existence of liability or the extent of liability of the Directors, I proceed to examine the submissions of the Noticees No. 2 and 3 on the assumption that Mr. Krishna Mohan and Mr. G. Sudhakar Reddy were employed by CBL and if appointed for the claimed purpose whether the same would have impacted the liability of the directors.

17.2. It is noted from the unsigned appointment letter of Mr. Krishna Mohan that he was to coordinate with Senior Manager Finance (Bioinformatics and Clinical Research Services) and not report to him. Noticee No. 2 has submitted that he would visit company's premises on a monthly / bi-monthly basis to take stock of the functioning of the company wherein he used to meet the Employees. Considering the Noticee No. 2 used to meet the Employees who used to show him the invoices raised by the company in favour of a large number of well-known pharmaceutical companies, he had the opportunity to enquire about the progress made in the clinical data testing services. Moreover, the following aspects / particulars should have raised red flags for the management:

17.2.1. Absence of any written agreement / written contract;

17.2.2. Lack of any kind of purchase order, correspondence, emails or letters from the pharmaceutical companies;

17.2.3. Non realisation of even small billed amount over a long period of almost 24 months;

Thus, pinning the entire responsibility on the Employees is incorrect as Noticee No. 2 being the Managing Director of the company had during his periodic meetings with the Employees, had the occasion to exercise the substantial power of management vested in him but he failed to exercise by not making any meaningful enquiry in the progress made in the field of clinical data testing services. This kind of omission being made by the senior most executive of the company who is entrusted with the responsibility for execution of company's policies, amounts to gross negligence.

17.3. Noticees have submitted that due to deteriorating health conditions of Noticee No. 2, the company affairs were not actively managed and the monitoring mechanism became weak. In this regard, it is noted that it is no defence to say that a listed company was running its operations without adequate monitoring mechanism. Company / Board of the company / Noticees No. 2 and 3 being part of the Board and being controlling Promoters, in the absence of Noticee No. 2 should have appointed alternative officials to manage the company. Noticees No. 2 and 3 were the controlling Promoters and Board members of the company and in the interest of shareholders they should have appointed someone to fill the gap left by Noticee No. 2. In my opinion, not taking steps to appoint some competent person to run the affairs of the company, is also an act of gross negligence committed by the Noticees No. 2 and 3.

17.4. Even if it is assumed that invoices were raised in favour of pharmaceutical companies, it is observed that the invoices were continuously being raised for two financial years and the same were without fail, being not honoured by the pharmaceutical companies but still CBL, purportedly continued to provide them with clinical data testing services. It has also not been demonstrated by the Noticees on the basis of any documentary evidence whatsoever as to how they used to communicate the raising of invoices to the pharmaceutical companies and the basis of billing (on the basis of progress report / milestones achieved /

contractual terms / verbal agreement). Furthermore, Noticees have not submitted any correspondence with the pharmaceutical companies to show that they had sent any reminder to the pharmaceutical companies for the payment raised or any kind of dispute was raised with them for the non-payment of dues. Such non-payment of dues for long duration is a point for enquiry by the Noticees No. 2 and 3 to further look into the matter. Had they raised such enquiry, Noticees No. 2 and 3 would have come to know the real state of affairs. The omission on the part of the Noticees No. 2 and 3 shows that, at first point of time, they were grossly negligent and omitted to do their duty where the due diligence required them to “act”.

- 17.5. Noticees have submitted that since the Employees have resigned, not much information could be gathered from them for the non-payment. As observed earlier, the Employees used to show the invoices raised by the company to Noticee No. 2 on a monthly/bi-monthly basis. Thus, Noticee No. 2 had the occasion / opportunity to make a meaningful / substantial enquiry for the status of the realization of the said invoices and progress of work. However, Noticee No. 2 failed to exercise his supervisory role and consequently Noticee No. 2 has failed to perform his duty diligently and was grossly negligent in performing his duties. Similarly, considering the company had not appointed anyone to fill the gap left by Noticee No. 2, Noticee No. 3 being the Director of the company also failed to make any enquiry for the non-realisation of bills and also failed to oversee whether the Employees are following company's stated procedure for effectuating transactions with third parties / clients viz., entering into any kind of written / oral agreement, correspondence with them for the basis of fee or for work related queries etc. Thus, she has failed to perform her duty diligently and was grossly negligent in performing her duties. Being a public listed company, it is the responsibility of the management to steer the company towards its avowed objectives but in the current matter, Noticees No. 2 and 3

abdicated their responsibility of managing and supervising the work of their Employees in the field of clinical data testing which shows that the Noticees No. 2 and 3 have performed their duty passively and superficially. As discussed in preceding paragraphs, if in the absence of Noticee No. 2, there was no one to manage/ supervise the work of Employees, then the company / Board of the company / Noticees No. 2 and 3 being part of the Board and being controlling Promoters, should have appointed a competent person to fill the gap / void left by Noticee No. 2.

18. Noticees have further stated that being an industry, which is considered slow on account of the time taken to reach to successful results (normally, such clinical data testing and analysis is a long process extending up to two to four years), the pharmaceutical companies are reluctant to execute formal agreements until they reach conclusive results. Further, since the Employees had left mid-way therefore, no conclusive results could be achieved. In this regard, it is noted that even if it is accepted that none of the pharmaceutical companies had executed formal agreements, the Noticees have not submitted any email exchange / correspondences with the said pharmaceutical companies to demonstrate that CBL was in some kind of commercial transaction with them. It is difficult to comprehend that CBL was providing clinical data services to several pharmaceutical companies over a period of two financial years but there is no paper trail for the services offered by CBL. The absence of any such e-mails or communication whatsoever, presented a red flag for the Noticees No. 2 and 3 to further enquire.

19. It has also been submitted by the Noticees that when Noticee No. 2 sought information from the pharmaceutical companies on whom the invoices were raised, he was informed that although the Employees had visited their premises, the fees charged by the company was never agreed by them in their discussions with the Employees. In this regard, as discussed in earlier paragraphs, a mere “visit” does not connote that there was some commercial transaction undertaken between the

parties. Noticees No. 2 and 3 have not submitted any documentary evidence to show that the visit by the Employees fructified into commercial transaction between the pharmaceutical companies and CBL. It is also noted that Noticees have neither submitted any documentary evidence to show that Noticee No. 2 has approached the pharmaceutical companies nor any proof that the pharmaceutical companies have made the aforesaid submission to Noticee No. 2. Therefore, the said submission of approaching the pharmaceutical company does not stand. In view of the absence of the proof on this score, the fact remains that there was omission to make enquiry with the pharmaceutical companies. Had they raised such enquiry, the Noticees would have come to know the real state of affairs.

20. The invoices submitted by the Noticees are not acceptable in light of the confirmations received by not one but all the 8 pharmaceutical companies (approached by SEBI at the time of investigation) that they have not entered into any transactions in financial year 2010-11 or thereafter with CBL and the fact that the Noticees did not send any progress report to the pharmaceutical companies or it did not raise any dispute with the pharmaceutical companies over a period of two financial years on non-payment of dues or any reminder sent to the pharmaceutical companies or proof of dispatch of invoices whether by email or post. The aforesaid instances presented opportunities to the Noticees No. 2 and 3 to make enquiries into the affairs of clinical data testing. However, they omitted to make any enquiry which shows that they were grossly negligent and committed the act of omission where the due diligence required them to “act”.

21. The letters submitted by the Noticees written to various pharmaceutical companies and research institutions pertain to financial periods of 2008-2009 and 2009-2010. The said period is not in question in the extant matter which is financial years 2010-2011 and 2011-2012. It is also noted from the contents of the said letters that CBL was looking for an opportunity to demonstrate its software which it has already developed and was not in the process of developing. The letters are more in the

nature of marketing its product rather than evidencing entering into agreement for providing clinical data management services.

22. Further, the Employees were appointed in December, 2008 and had left the company in November, 2012. The company had decided to expand its activities in the field of clinical data testing around 2009-2010 and has stopped clinical data services from the year 2012 onwards. Thus, during the period of clinical data services, the Employees were with the company for 2-3 years. If the Employees had left the company, the body of work, if any, could have been taken forward by the company to its logical end by other employees and revenue could have been claimed from the “purported clients”. The fact that there was no such body of work which the company could submit, should have raised a red flag all along the way.
23. The basis on which the invoices were raised also presented another red flag for the Noticees. If the fees charged by the company was never agreed by the pharmaceutical companies, it raises a red flag to enquire on the basis of which CBL was raising invoices.
24. Therefore, I find that there were many circumstances which acted as red flags for the Noticees No. 2 and 3 to raise questions and had they made any enquiry, the Noticees would have come to know the real state of affairs. Consequently, the true state of financial statements. The omission on the part of the Noticees No. 2 and 3, on multiples occasions, shows that they were grossly negligent and committed acts of omission where due diligence required them to make an enquiry.
25. On facts, it has already been held that the company has projected inflated sales in Bio-IT and had adopted dubious and inconsistent practices in drawing up accounts for manipulating the financial results of the company to present a rosy picture to its shareholders and to the public at large. Company though a legal entity, cannot act by itself. Dr. A.N. Singh being the Managing Director and Ms. Padma Singh being the Director overlooked the following red flags not with respect to one pharmaceutical

company but with respect to at least 8 pharmaceutical companies (identified by SEBI at the time of investigation):

- 25.1. Absence of written agreement;
- 25.2. Lack of any kind of correspondence, emails, letters or purchase order from the pharmaceutical companies;
- 25.3. Non-existent timesheets approved by its clients for the time billed to them;
- 25.4. Absence of progress report or milestones achieved by the Employees;
- 25.5. Lack of inquiry on the basis of billing and communication of the invoice to the clients;
- 25.6. No communication / follow up with the clients requesting them to release the payment due to CBL for almost two financial years;
- 25.7. No disputes raised with the pharmaceutical companies over non-payment of dues.

26. The aforesaid instances / aspects would have raised a suspicion to anyone who examines the affairs of the company. However, Dr. A.N. Singh and Ms. Padma Singh chose to turn a blind eye to the red flags. Thus, they have failed to exercise their power on behalf of the company with utmost care, skill and diligence which has resulted in not only the shareholders but also the public being misled about the sales performance of the company in Bio-IT, consequently its debtors and profit figures were also overstated and overall state of the company's affairs, which undoubtedly amounts to gross negligence amounting to fraud for the purposes of the SEBI Act and PFUTP Regulations.

27. It is noted from the records that the only enquiry and discussion that the Noticees No. 2 and 3 made was with respect to the treatment of unpaid dues. It has been held that the amounts were in fact not due. However, for a moment assuming that there

were unpaid dues, the question arises how the same should be treated in the accounting entries. Following has already been held in the earlier order dated October 5, 2018:

“It is observed that as per the prevalent accounting practice, if it becomes certain that the company is not going to receive amounts from its debtors then the amount should be provisioned / written off fully rather than reclassifying the amount under the head Product Development Expenditure. CBL had made such a provision for doubtful debts for Rs 39 lakh for the year 2011-12 for its sales in formulations. Therefore, the action of the company to include the amount of debtors not received under Product Development Expenditure is also not in line with the prevalent accounting practice.” Thus, the treatment of unpaid dues of clinical data services was not in line with the company’s own treatment of other unpaid dues in other sectors / fields.

28. Noticees have submitted that the books of accounts of the company were made on the basis of information provided by the Employees. It is observed that books of accounts of the company is a very important document of the company which reflects the financial health of the company on which not only the shareholders of the company place their reliance but also public at large relies on the said document. Therefore, utmost care has to be taken while preparing the books of accounts and if it is prepared solely on the basis of information provided by the Employees without verifying its veracity, it shows that the management was grossly negligent in preparing the books of accounts by not following minimum standards of diligence and care.
29. Noticees have further submitted that had there been any act of misstatement of information in the books of CBL, the Noticees would have generated some illegal gains or avoided losses. Neither did the share price of CBL increase substantially post publishing of the financial results containing revenue earned by the company from the clinical data testing business (i.e. 2010-11 and 2011-12), nor did the Noticees purchase / sell the shares of CBL during the relevant period. Perusal of the definition

of fraud under regulation 2 (1) (c) of PFUTP Regulations, it is noted that generating illegal gains or avoiding losses, is not the criteria to determine whether there has been any act of misstatement of information by the company. What has to be determine under the provisions of PFUTP Regulations is that whether the publication of misstatement of information has an effect of inducing sale or purchase of securities or has influenced the decision of the investors. The actual inducement is not the requirement under the securities fraud unlike the common law fraud or fraud defined under the Indian Contract Act, 1972. Therefore, the said submissions are not tenable under law. In support of my observations, I rely on the order of Hon'ble Supreme Court of India in the matter of *SEBI vs. Kanaiyalal Baldev Bhai Patel (2018) 13 SCC 753*. The relevant provisions of the said order has been quoted in the preceding paragraphs.

30. Moreover, if it were not for the fake sales amounting to Rs. 677 lakh in 2010-11 and Rs. 395 lakh in 2011-12, the profit of the company would have dropped significantly which could have had a significant negative impact on the price of the scrip of the company.
31. Noticees have submitted that it is a well-established position of law that in case a decision is made relying upon the advice provided by an expert, then no liability should come upon the former. The submission of the Noticees is not valid in the extant proceedings because of the following position of law enunciated by the Hon'ble Supreme Court of India in the matter of *N Narayanan vs. Adjudicating Officer, SEBI* decided on April 26, 2013:

"32. Responsibility is cast on the Directors to prepare the annual records and reports and those accounts should reflect 'a true and fair view'. The overriding obligation of the Directors is to approve the accounts only if they are satisfied that they give true and fair view of the profits or loss for the relevant period and the correct financial position of the company.

33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

32. Further, the submission of the Noticees is also not valid in the extant proceedings because of the following reasons;

32.1. It has been held in preceding paragraphs and in the Order dated October 5, 2018 that invoices were raised for non-existent transactions and Noticees No. 2 and 3 have failed to perform their duty diligently and with basic care. Thus, the management of the company by their own omissions, did not provide true, adequate and correct information to the expert. Therefore, the said act of the Noticees prohibits them from taking the defence that they relied upon the advice of the expert as they themselves are liable for improper conduct in the matter at hand.

32.2. As determined in the Order dated October 5, 2018, in the absence of any written agreement from any of the pharmaceutical companies coupled with the fact that the company was claiming that the pharmaceutical companies are defaulting in paying its dues, the same should have raised red flags for the auditor. However, the facts in the matter, as held in the order dated October 5, 2018, indicate that the auditor neither resorted to any independent verification nor the auditor verified the information from the other parties' i.e. pharmaceutical companies.

- 32.3. The expert did not follow minimum standards of diligence and care expected from it before giving its advice as held in the order dated October 5, 2018.
- 32.4. It has already been held in the earlier order dated October 5, 2018 that failure on the part of the expert to exercise care and caution while certifying the Annual Accounts of CBL was an act of gross negligence.
33. In view of the aforesaid, I find that the submission of the Noticees No. 2 and 3 that they relied solely on the advice by the auditor, is not tenable.
34. It has been submitted by the Noticees No. 2 and 3 that they did not give out any such information which they believed to be 'wrong'. The Noticees have not been able to demonstrate with any evidence the basis of their belief except for the fact that they relied upon the information provided by the Employees. No satisfactory documentary evidence either by CBL or from the pharmaceutical companies have been brought on record to show that there was reasonable basis to believe in the information provided by the Employees. Noticee No. 2 being the expert and the Managing Director and Noticee No. 3 being the controlling Promoter and Director of the company had the necessary tools at their disposal to verify the veracity of the information provided by the Employees. The Noticees No. 2 and 3 failed to exercise their managerial and supervisory functions and cannot take shelter under the name of their Employees. During the relevant period, Noticee No. 2 used to take periodical updates, monthly / bimonthly from the Employees regarding clinical data services. He not only signed the Annual Reports for the years 2010-11 and 2011-12 but was present at the Board of Directors meeting held on February 03, 2012. All the aforesaid circumstances leads to the conclusion that Dr. A.N. Singh had numerous opportunity to supervise and make a meaningful enquiry into the affairs of the company during the period 2010-12. However, he omitted to perform his duties as a Managing Director of the company with utmost care, skill and diligence. He being the senior most executive of the company is responsible in formulating and

implementing the company policies and strategies towards the profitable growth and operation of the company. But in the extant matter, Noticee No. 2 placed blind reliance on the Employees and omitted to take diligent steps and care in running the affairs of the company especially with respect to clinical data testing services.

35. Noticee No. 3 was also on the Board of Directors of the company as a Director. Thus, Ms. Padma Singh being the part of the management of the company was involved in the affairs of the company during the period 2010-12 and had the overriding obligation of the Directors to disclose to the public only if they are satisfied that they give true and fair view of the profits or loss for the relevant period and the correct financial position of the company. However, Ms. Padma Singh as a Director failed to exercise reasonable skill and care, more so when the Managing Director of the company was running the affairs of the company intermittently and the company / Board of the company / controlling Promoters had not appointed anyone to fill the gap when Noticee No. 2 was not available. She should have exercised her independent judgment while supervising the Employees and should have taken steps to ensure that the Employees are working as per the internal requirements of the company while dealing with third parties / clients. However, she failed to exercise her duty with care and skill and was grossly negligent in discharging her functions as the Director of the company by virtue of which she failed to satisfy that the disclosed financial statements give true and fair view of the financials of the company.

36. As noted from the Apex Court order in the matter of *N Narayanan vs. Adjudicating Officer, SEBI*, it is the responsibility of the Directors to prepare the Annual Report so that they reflect “*a true and fair view*”. In the extant matter, Dr. A.N. Singh and Ms. Padma Singh being the Directors of the company have failed in their duty to exercise due care and diligence and because of their omission to do their duty, the same resulted in fabrication of sales figures in Bio-IT pertaining to clinical data testing and making of false disclosures, which undoubtedly amounts to gross negligence

amounting to fraud on the public at large. Therefore, it is held that that Dr. A.N. Singh and Ms. Padma Singh are liable for misstatement of accounts.

37. Upon considering all facts and circumstances in totality, I find that omissions to make enquiry while the red flags were present consistently, led to the false financial figures being disclosed to the investors. The Noticees, who are obligated to exercise due diligence and satisfy themselves that there are reasonable grounds to believe that statements made by the Employees are true, before the financial results are disclosed to the public, by virtue of their reckless omissions failed to exercise due diligence in respect of the existence of reasonable grounds to believe that such statements were true. Thus, their serious omissions amounts to fraud.
38. Such acts of serious irregularities threaten the market integrity and orderly development of the market and calls for regulatory intervention to protect the interest of investors. I therefore, find that Dr. A.N. Singh and Ms. Padma Singh by virtue of their omissions have violated Section 12A (b) of SEBI Act and Regulation 3(c) and Regulations 4(1) and 4(2),(a),(e),(f),(k), and (r) of the PFUTP Regulations.
39. Over here, I would like to point out that the Directors of a company are persons appointed to manage and direct the affairs of the company. They are expected to diligently perform their duties with skill and care in administering the affairs of the company and the same includes something more than officiating as figure-heads. It is not to say that the Directors are expected to exhibit a greater degree of skill and care than may reasonably be expected of persons with their knowledge and experience. The duty of care, skill and diligence requires Directors to devote the requisite time and attention to affairs of the company, pursue issues that may arise through “red flags” and take decisions that do not expose the company to unnecessary risks. Each individual Director owes a duty to the company to inform himself / herself of the affairs of the company and along with the other Directors present on the Board, has to supervise it. Such failure of duty of care, skill and

diligence especially when financial results are disclosed to the public, amounts to not mere breach of duty but qualify as omissions, as there is specific mandate on the Directors not to make such omissions which results in reckless and careless representation of financial results to the public. It is therefore, a breach of duty for a Director to allow himself to be guided exclusively by the information provided by the employees of the company and as such the same is nothing but relinquishment / abrogation of his / her duty which in the given scenario of publication of financial results turns out not only as breach of duty but as fraud by omission.

Issue No. 2 - *Whether the acts and omissions determined in order dated October 5, 2018 constitute violation of provisions of LODR Regulations by CBL?*

The provisions of LODR regulations alleged to have been violated by CBL are reproduced below:

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:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(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.

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

...

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

...

(j) Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

40. Noticee submitted that its acts do not amount to violation of disclosure related principles. This is because, the Noticees have acted on the information provided to them by their Employees, the invoices raised in favour of the pharmaceutical companies and thereafter, on the advice received from M/s. Lakshmi Purana & Associates. In such circumstance, wherein the company has presented its financial statements under a *bona fide* belief and accordingly made disclosures to its shareholders, it cannot be held liable for violation of provisions of the LODR Regulations.

41. It has already been held in the order dated October 5, 2018 and in preceding paragraphs that the Noticees could not have placed blind reliance on the information of its Employees without verifying its authenticity independently. Further, it is also

held that the invoices were raised for non-existent transactions and the Noticees No. 2 and 3 could not have placed reliance placed on the advice of the statutory auditor. Therefore, the circumstances that Noticees are placing reliance on are creation of their own acts and omissions as Dr. A.N. Singh and Ms. Padma Singh were grossly negligent in performing their duties as the Directors of the company. Thus, reliance cannot be placed by them on the said circumstances.

42. Moreover, the above statutory provisions deal with the timely and accurate disclosure of financial statements prepared as per the applicable accounting standard to the stock exchange so as to enable investors to assess and track the performance of a listed company. Thus, the only requirement under the aforesaid provisions of LODR Regulations is that the disclosure should be made in time and should be accurate. What is extraneous to the said provisions is the belief of the Noticee on the accuracy of the information. Therefore, the submission of the Noticee is untenable.

43. Here, I would like to quote the order of Hon'ble Securities Appellate Tribunal in the matter of *Mr. Ankur Chaturvedi Vs. SEBI* decided on August 04, 2015, wherein the Tribunal observed as follows:

"...the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. ..."

44. It has been held in the final order dated October 5, 2018 that the company has shown fake sales amounting to Rs. 677 lakh in 2010-11 and Rs. 395 lakh in 2011-12 and the same was disclosed in its Annual Reports. The said order further finds other categories of misstatement of the financials and failure of following the Accounting standards. By virtue of mis-representation in the financials, the company failed to refrain from misrepresentation and ensure that the information provided to the recognized stock exchange(s) and investors is not misleading. It is also noted that

since the correct information was not given to the public due to incorrect statement of financials, the company also has failed to provide adequate and timely information to the recognized stock exchange(s) and investors. In view of the misrepresentation of the financials, the company has failed to ensure that disseminations made under provisions of LODR Regulations are adequate and accurate. By not disclosing the true state of affairs of the financials, the company has failed to provide sufficient information to enable investors to assess the current status of a listed entity.

45. Therefore, it is held that the CBL has violated Regulations 4(1)(a), (b), (c), (d), (e), (g) and (j) of LODR Regulations.

46. In view of the findings arrived at preceding paragraphs, it is held that Dr. A.N. Singh and Ms. Padma Singh have violated provisions of Section 12A (b) of SEBI Act and Regulations 3 (c), 4(1), (2)(a), (e), (f), (k) and (r) of PFUTP Regulations and CBL has violated provisions of Regulations 4(1)(a), (b), (c), (d), (e), (g) and (j) of LODR Regulations.

Issue No. 3- *In the context of issues no. (i) and (ii), what directions, if any should be issued against the Noticees?*

47. The Noticees have submitted that the company has initiated an expansion plan. However, due to the restrictions imposed on the company, the investors are reluctant to engage with the company, thus, restraining it from undertaking its activities. Further, this is also affecting the shareholders of the company as any enhancement in company's revenue is directly proportional to the value of shares of the company. Moreover, it will be essential for Noticees No. 2 and 3 to subscribe to further issuances of the equity shares of the company for executing the ongoing expansion plans of the company. In this regard, I note that due to the omissions of the Noticees No. 2 and 3 to perform their duty as a Director diligently which resulted in company overstating its sales figure and making wrong disclosures, the interest of

the shareholders should not be affected due to halting of expansion plan of the company being executed at Genome Valley, Hyderabad.

48. However, it is by now well settled that financial results do form the basis for the investing public to take informed decisions. Any false information or false accounts depicting a distorted picture of financial health of the company is indeed a very serious wrong and has a direct impact on the securities market and the investors. A basic premise on which the foundation of securities market is laid upon, is that the persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities.
49. Further, in view of the findings of this order that the Noticees have committed the fraud by virtue of omissions which are grossly negligent in nature, the same needs to be viewed differently from a fraud which is carried out by deliberate omissions, especially when quantifying the period of debarment for such violations. Accordingly period of debarment has been determined in the operative portion of the directions/order.
50. Considering the request of the Noticees and the finding arrived at in this order that the Noticees No. 2 and 3 by their omissions have misled the investing public and as submitted by the company by way of brochure/information memorandum that there is an on-going new project / expansion plans whose further progress will be seriously hampered, I find that in facts and circumstances of the case, it would be appropriate to permit CBL to raise money and its Directors i.e., Noticees No. 2 and 3 to subscribe to equity or debt capital of CBL for the purpose of investment in the on-going project being executed at Genome Valley, Hyderabad by way of preferential allotment from qualified institutional investors /alternative investment funds, as these entities as sophisticated investors due to their knowledge and experience can better assess whether their investments are required to be made in the Noticee

company. Further, the Noticee company has to make full disclosure of all the orders passed against it and its Directors in its information memorandum / brochure.

ORDER

51. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11 (4) (b) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby issue following directions:

- a) CBL shall not buy, sell or otherwise deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period of 5 years from the date of this order. However, CBL is permitted to raise the money for the on-going project / expansion plans at Genome Valley, Hyderabad covered in the brochure/Information memorandum submitted to SEBI by way of preferential allotment to Qualified Institutional Buyers / Alternative Investment Funds as defined under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 / Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 as amended from time to time. It is clarified that CBL is prohibited to raise the money from any other investors in any other manner. CBL shall file a report of such raising of money from Qualified Institutional Buyers / Alternative Investment Funds to the Stock Exchanges where the shares of CBL are listed. For the calculation of five years period, the period of debarment already undergone by CBL from the date of earlier order dated October 5, 2018 shall be deducted from the five years period.
- b) Dr. A.N. Singh and Ms. Padma Singh shall not buy, sell or otherwise deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period of 5 years from the date of this order. However for the on-going project / expansion plans at Genome Valley, Hyderabad, Dr. A.N. Singh and Ms. Padma Singh are permitted to subscribe to equity or debt capital

of CBL along with Qualified Institutional Buyers / Alternative Investment Funds, for the above said project. For the calculation of five years period, the period of debarment already undergone by Dr. A.N. Singh and Ms. Padma Singh from the date of earlier order dated October 5, 2018 shall be deducted from the five years period.

- c) Further, Dr. A.N. Singh and Ms. Padma Singh are also restrained from associating themselves with any listed public company other than CBL or any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 5 years from the date of this order. For the calculation of five years period, the period restraint already undergone by Dr. A.N. Singh and Ms. Padma Singh from the date of earlier order dated October 5, 2018 shall be deducted from the five years period.

52. It may be noted that in light of the directions issued in this order, the directions issued against CBL and Dr. A.N. Singh and Ms. Padma Singh in the earlier order dated October 5, 2018 as modified herein shall be applicable.

53. A copy of this order shall be served upon all the Noticees, Stock Exchanges and Depositories for necessary action and compliance with the above directions.

54. This order is without prejudice to any other actions that SEBI may take in accordance with securities laws.

DATE: July 10, 2019

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA