BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO/SPV/117/2013]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Mr. Bhuwneshwar Mishra

(PAN: AIWPM9469M)

In the matter of

M/s GHCL Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation into the trading in the scrip of M/s GHCL Ltd. (**"GHCL/company"**) for examining possible violations of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (**"PFUTP Regulations"**).

2. The investigations revealed that the promoter entities of GHCL and the top officials colluded to disclose inflated shareholding to the

exchanges. It has subsequently been accepted by GHCL that the quarterly disclosures regarding the promoter holding were incorrect for 8 quarters between March, 2007 to December, 2008. It was revealed that Shri Bhuwneshwar Mishra, company secretary, GHCL **(Noticee)** had colluded with the promoter entities of GHCL to mislead shareholders and investor of GHCL by disclosing inflated shareholding on the basis of false claims of arrangement by promoter entities with third parties. The collusion between the Noticee and the promoter entities led to incorrect quarterly disclosures and thus it was alleged that the Noticee acted in violation of Regulations 3 (a), (b), (c) and (d), 4 (1) and 4 (2) (f) of the PFUTP Regulations read with section 12 A(a), (b) & (c) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated August 2, 2011 under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (**Rules**) to inquire into and adjudge under section 15 HA of SEBI Act, the alleged violations of the provisions of PFUTP Regulations and SEBI Act.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice dated December 12, 2011 (**SCN**) was issued to the Noticee under Rule 4 of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under section 15 HA of the SEBI Act for the alleged violations specified in the said SCN. The Noticee vide letter dated December 26, 2011 sought time of 4 -5 weeks to file the reply. The Noticee was given 2 weeks to file his reply and was given an opportunity of personal hearing on January 11, 2012. The Noticee

vide his letter dated January 6, 2012 sought certain documents in order to file a reply to the SCN. The Noticee was sent relevant documents vide Notice dated January 30, 2012 and was granted another opportunity of personal hearing on February 14, 2012. The Noticee vide letter dated February 9, 2012 sought an extension of eight weeks to file his reply. The Noticee also intimated that it prefers to file consent application for settling the proceedings. Further, the Noticee vide letter dated February 14, 2012 submitted that he wishes to avail the consent proceedings. The Noticee was granted another opportunity of personal hearing on April 13, 2012 at SEBI, Mumbai vide Notice dated April 2, 2012. The Noticee appeared on April 10, 2012 for personal hearing at New Delhi and sought time to file his reply to the SCN. The Noticee vide letter dated April 30, 2012 submitted his reply to the SCN. The Noticee vide letter dated July 30, 2013 withdrew his application under consent proceedings. SEBI also intimated the undersigned about the termination of consent proceedings vide communication dated July 31, 2013. Subsequently, vide letter dated July, 31, 2013 the Noticee sought time of 15 days to make additional submissions. Vide letter dated August 21, 2013 the Noticee was advised to appear for hearing at SEBI NRO on September 05, 2013 when Noticee appeared and made reiterated the submissions already made. He also submitted a compilation of all the submissions made.

5. The Noticee's main submissions in respect of the charges in the SCN are given as under :

- That complete investigation report and the complete set of documents sought by it had not been made available to it.

- GHCL had taken legal opinion regarding the inclusion of third party holdings with along with the holding of the promoter entities. The promoter entities also had furnished a legal opinion confirming their stand. GHCL sought another legal opinion and the opinion also agreed to the first legal opinion. The disclosures were based on legal opinions from eminent jurists.
- The disclosures were made by GHCL on the basis of written requests of the promoter entities. The promoter entities gave details of all the third parties holding shares on their behalf. Additionally when GHCL tried to verify the disclosures, the promoter entities submitted letter and certificates from third parties confirming that they were holding shares on behalf of GHCL promoter entities.

CONSIDERATION OF ISSUES AND FINDINGS

6. The issues that arise for consideration in the present case are :

   a. Whether the Noticee had violated regulation 3 (a), (b), (c) & (d), 4(1) and 4(2)(f) of PFUTP Regulations read with Section 12A(a),(b) & (c) of SEBI Act?

   b. Does the violation, if any, attract monetary penalty under section 15HA of SEBI Act?

   c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

7. Before moving forward, it is pertinent to refer to the provisions of regulation 3 (a), (b), (c) & (d) and 4(1) and 4(2)(f)of PFUTP

Regulations and Section 12A(a),(b) & (c) of SEBI Act, which read as under:-

PFUTP REGULATIONS, 2003

"3. <u>Prohibition of certain dealings in securities</u>

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(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;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

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)….

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(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;

SEBI Act

"12A. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

No person shall directly or indirectly-

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(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 recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"

8. At the outset, the Noticee has contended that complete investigation report was not made available to him. In this regard, I find that all the documents including the relevant extract of the investigation report on which SEBI had placed reliance were furnished to the Noticee and hence I find that there is no prejudice caused to the Noticee by non-furnishing of investigation report.

9. Moving on to the merits of the matter, upon perusal of the documents available on record, I find that in the 8 quarters between March, 2007 and December, 2008, the disclosures made by GHCL under clause 35 of the listing agreement regarding the shareholding of its promoters were allegedly incorrect. In these quarterly disclosures, GHCL, while making the quarterly disclosures under clause 35 of the listing agreement, under the category of shares held by promoters reported a higher shareholding than actually held by the promoters in their name. The variance between the shares held by promoters in their name and the shareholding disclosed in the quarterly disclosures kept on increasing in every subsequent quarter. The difference between the reported and actual shareholding was the highest during quarter ended September 30, 2008 at 2.23 crore shares which comprised of 22.28% of the total paid up capital of GHCL. I also note the shareholding disclosed in quarterly disclosures comprised of shares actually held by the promoter entities and shares held by some third parties on their

behalf. The letters of those third parties were submitted to GHCL while making the quarterly disclosures. I also note that during the course of investigation when SEBI tried to verify the arrangement between the third parties and those promoter entities, most of the third parties denied existence of any such arrangement with promoters of GHCL. The details of discrepancies of shareholding patterns submitted by GHCL to the exchanges is enclosed as **Annexure-I.**

10. With regard to the issue of inclusion third party holding with the holding of the promoter entities, I note that even in a hypothetical situation where there might be circumstances when a third party may hold shares on behalf of the promoter entities, such shareholding and consequent inclusion in the promoter shareholding while making disclosure has to be done after due consideration of the quantity of shares held by these third parties and the time period of such holding. As stated earlier, in the present case, the shares held by the third parties were sometimes more than twice the actual shareholding of the promoter entities and that position was the same continuously for 8 quarters which is highly irregular. The shareholding of the promoters held in their name fell from a high of 2,49,16,588 shares in quarter ending March, 2007 to a low of 16,99,722 shares in quarter ending September, 2008 which amounts to a diminution of 93% of their holdings. However, there was a meager 20% in the disclosures made available to the public through the stock exchanges. The shares held by third parties increased to a massive 2,22,89,911 shares during this period. Such share holding patterns are inexplicable and show a deep rooted problem which should have been brought out in public domain.

11. The Noticee has contended that GHCL had taken legal opinion regarding the inclusion of third party holdings along with the holding of promoter entities. The promoter entities also had furnished a legal opinion confirming its stand. GHCL had sought a second opinion in this regard which also confirmed the first opinion. The legal opinions submitted by the Noticee have been perused and examined by the undersigned. I note that all the legal opinions have stated that the shareholding of third parties could be included in the shareholding of the promoter entities. The legal opinions might have been a reasonable interpretation as described in the hypothetical scenario stated above. However, in the present case, the scenario is completely different and the third parties have apparently been holding huge quantity of shares amounting to 60% or more of promoter holding for a period of over two years. If the promoters were in such a deplorable state of affairs that majority of their holding and consequently the control on GHCL was dependant on such third parties, this fact should have been disclosed to public so that the current and prospective investors could have taken an informed decision. The very purpose of making these quarterly disclosures is to transparently disclose to the public about the stake held by promoters (showing their commitment and faith towards the company) and to facilitate them in making informed decisions. I note that the disclosures under clause 35 of listing agreement have been included for a particular purpose. In the present case, the promoters had lowered their stake from nearly 40% to 18%. Even in the disclosures made, the third parties held more shares than the promoters which were not apparent from the disclosures. Neither GHCL nor the promoter entities of GHCL had ever disclosed the name of those in any of its disclosures. Ideally, the names of those third parties should have

been disclosed, so that the market and public would know the name and shareholding of those third parties.

12. The Noticee was the compliance officer and company secretary of GHCL during the relevant time. He was responsible for various statutory compliances including disclosure under Clause 35 of Listing agreement. As discussed earlier, GHCL had, continuously for 8 quarters, been reporting inflated shareholding of its promoters to the public through stock exchanges. The Noticee who was Company Secretary of GHCL had colluded with the promoter entities of GHCL to mislead shareholders and investors of GHCL by disclosing inflated shareholding on the basis of false claims of arrangements with third parties. Thus, it is established that the Noticee has violated Regulations 3 (a), (b), (c) & (d) and 4(1) and 4(2)(f)of PFUTP Regulations and Section 12A(a),(b) & (c) of SEBI Act.

13. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

14. Thus, the violation of regulation 3 (a), (b), (c) & (d) 4(1), and 4(2)(f) of PFUTP Regulations read with Section 12A(a),(b) & (c) of SEBI Act by the Noticee, make him liable for penalty under section 15HA of SEBI Act, 1992 which reads as follows:

"15HA. Penalty for fraudulent and unfair trade practices.

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

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

*"**15J - Factors to be taken into account by the adjudicating officer***

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) The amount of loss caused to an investor or group of investors as a result of the default;

(c) The repetitive nature of the default."

16. In the instant matter it is not possible to quantify the gains made by the Noticee or the loss caused to investors as a result of the incorrect disclosures made by GHCL. The periodic disclosures under Clause 35 of listing agreement serve a very important purpose of informing the market and the investors about the

shareholding and names of the promoters and significant shareholders. The shareholding and names of promoters and significant shareholders form a very important criterion for the public to make their investment decisions. In the present case, the promoters share holding had come down from nearly 40% to 18% of the paid up capital. This fall in shareholding could have indicated reduced commitment of the promoters to the company and could have huge impact on the price of the scrip. However, GHCL and the Noticee chose to accept the unreasonable requests of the promoter entities and portrayed a wrong picture. The Noticee might have acted on legal advice, but it would have been appropriate if he would have attempted to make a full and fair disclosure. The actions of the Noticee have seriously impaired the disclosure system put in place by the regulator. Hence, such actions warrant imposition of a serious penalty. Considering the fact that disclosures were filed incorrectly for various quarters, the violation by the Noticee can be considered as a repetitive. The Noticee was responsible for all compliances of GHCL.

17. After taking into consideration all the facts and circumstances of the case, I come to the conclusion that this is a fit case for imposing penalty on the aforesaid Noticee, Shri Bhuwneshwar Mishra. I, in exercise of the powers conferred upon me under section 15-I(2) of the SEBI Act read with Rule (5) of the Rules hereby impose a penalty of ₹ 10,00,000/- (Rupees Ten Lakh only) on the Noticee in terms of section 15HA of SEBI Act, for the violation of regulation 3 (a), (b), (c) & (d), 4(1) and 4(2)(f) of PFUTP Regulations read with Section 12A(a),(b) & (c) of SEBI Act. In my view, this penalty will be commensurate with the violations committed by it.

18. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Division Chief, Investigation Department, ID-9, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

19. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **October 25, 2013** **Piyoosh Gupta**
Place: **Mumbai** **Adjudicating Officer**