BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO/SPV/119/2013]

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

M/s Dear Investment Private Limited (PAN: AABCD4873C)

In the matter of
Ms GHCL Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India **(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 (**SEBI Act**), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (**PFUTP Regulations**) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (**Takeover Regulations**).

2. The investigations revealed that GHCL made wrong disclosures to stock exchanges about the shareholding of its promoter entities including M/s Dear Investment Private Limited (**the Noticee**) for eight quarters from March 31, 2007 to December 31, 2008. The investigation revealed that during these 8 quarters, the promoter shareholding as disclosed by GHCL to the stock exchanges was more than the actual number of shares held by those promoter entities including Noticee as per the records of Registrar and Transfer Agent. The investigation revealed that the promoter entities including the Noticee had included shareholding of third parties with their shareholding which resulted in falsely inflated shareholding of promoter entities in GHCL in the quarterly disclosures to the stock exchanges. Thus, it was alleged that the Noticee acted in violation of regulations 3 (a), (b), (c) and (d), 4 (1) and 4 (2) (e) and (f) of the PFUTP Regulations read with section 12 A(a), (b) & (c) of SEBI Act and regulation 8 (2) of Takeover Regulations for the financial year ended March 31, 2008. Further, the Noticee along with other promoter entities had contributed to 2% or more change in shareholding that was triggered on April 27, 2007, October 5, 2007, December 20, 2007, January 15, 2008, February 15, 2008, April 7, 2008, May 2, 2008, May 16, 2008, May 29, 2008, June 10, 2008 and June 19, 2008 and the Noticee was required to make disclosure regarding the same to the stock exchanges within two days of such change along with aggregate shareholding after such acquisition or sale as per regulation 7(1A) of the Takeover Regulations. It was alleged that the Noticee has failed to disclose the same to GHCL and to the exchanges and has hence violated the provisions of regulations 7 (1A) of Takeover Regulations.

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 sections 15A (b) and 15 HA of SEBI Act, the alleged violations of the provisions of SEBI Act, PFUTP Regulations and Takeover Regulations.

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 it and penalty be not imposed under sections 15A(b) and 15 HA of SEBI Act, for the alleged violations specified in the SCN. In response to the SCN, the Noticee, vide letter dated December 27, 2011 sought one month time to furnish its reply. The request of the Noticee was partially accepted and time was granted till January 12, 2012 and the Noticee was also advised to appear for personal hearing on January 12, 2012. Vide letter dated January 09, 2012, Shri Niraj Singh, Advocate, sought certain documents on behalf of the Noticee. The advocate had also sought for 6 weeks time to file the reply and also that personal hearing to be fixed in Delhi. Subsequently, vide letter dated January 30, 2012, the Noticee was informed that no cognizance of the letter of the advocate could be taken in the absence of an authority letter from the Noticee. The documents sought by the Noticee were also furnished to the Noticee and it was also advised to appear for hearing on February 13, 2012 for personal hearing. In response to letter dated January

30, 2012, the Noticee, vide letter dated February 09, 2012 sought 8 weeks time to file the reply and also intimated that it prefers to file consent application for settling the proceedings. Accordingly, vide letter dated February 16, 2012, the Noticee filed the consent application with SEBI. As the Adjudication Proceedings were in progress, vide letter dated March 30, 2012, the Noticee was advised to appear for personal hearing on April 10, 2012. On April 10, 2010, the authorized representative of the Noticee appeared on behalf of the Noticee and sought an extension of 15 days to file the reply. Thereafter vide letter dated June 16, 2012, the Noticee submitted its reply to the SCN. Vide letter dated June 22, 2012, the Noticee was advised to appear for personal hearing on July 02, 2012 when the authorized representative of the Noticee appeared and made submissions. Subsequently, vide letter dated July 29, 2013, the Noticee informed that it prefers to withdraw the consent application filed with SEBI. Communication dated July 31, 2013 regarding the withdrawal of the consent application of the Noticee was received from SEBI also. Thereafter, vide letter dated July 30, 2013, the Noticee requested for 15 days time for filing its additional submissions. Vide letter dated August 21, 2012, the Noticee was advised to appear for a personal hearing on September 05, 2013 and was also advised to make additional submissions if any, on or before the date of hearing. Vide letters dated August 27, 2013, the Noticee made additional submissions. On September 05, 2013, the authorized representative of the Noticee appeared and made submissions on behalf of the Noticee.

5. The main submissions of the Noticee are as under:

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

ii)That as a result of distress sales by the Lenders/Brokers, the Noticee's shareholding in GHCL started declining and the Noticee had come to an understanding with certain investors who were willing to buy shares of GHCL from the market on its request with an understanding that the shares would be bought back at a later stage. Hence, those third parties were holding shares on behalf of the Noticee. The said shareholding of the Noticee was included in the shareholding of the promoter entities including the Noticee.

iii) That regarding the inclusion of third party holding along with the promoter holding, the Noticee had got legal opinions and on the basis of legal opinions only it requested GHCL to include the shares held by third parties as part of its holding.

iv) That there were no fluctuations in the price movements after the revised disclosure was made with the stock exchange.

CONSIDERATION OF ISSUES AND FINDINGS

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

a. Whether the Noticee had violated provisions of regulation 3 (a), (b), (c) & (d), 4(1) and 4(2) (e) & (f) of PFUTP Regulations read with Section 12A(a),(b) & (c) of SEBI Act?
b. Whether the Noticee had violated provisions of regulations 8 (2) and 7 (1A) of Takeover Regulations?

c. Does the violations, if any, attract monetary penalty under sections 15 A(b) and 15HA of SEBI Act?

d. 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 Section 12A(a),(b) & (c) of SEBI Act, regulation 3 (a), (b), (c) & (d) and 4(1) and 4(2) (e) & (f)of PFUTP Regulations and regulations 8 (2) and 7 (1A) of takeover Regulations which read as under:-

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;"

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)….

(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;

TAKEOVER REGULATIONS

7. Acquisition of 5 percent and more shares or voting rights of a company

(*1).....*

(1A)Any acquirer who has acquired shares or voting rights of a company under sub regulation (1) of regulation 11, shall disclose purchase or sale aggregating twp percent or more of the share capital of the target company to the target company, and the stock exchanges where the shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Continual Disclosures-

8.

(1).....

(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as

well as the record of the company for the purpose of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company

8. At the outset, I note that the Noticee has contended that complete investigation report was not made available to it. In this regard, I find that all the documents including the relevant extract of the investigation report on which SEBI had placed reliance was 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 including the Noticee 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. The promoter entities including the Noticee have submitted that the shareholding disclosed in quarterly disclosures comprised of shares actually held by them and shares held by some third parties on their behalf. The Noticee had submitted letters of those third parties to GHCL while

making the quarterly disclosures and had further stated that since the requisite forms under clause 35 of listing agreement did not have any place to disclose such arrangements, the shares held by these third parties were included under the names of the promoters. 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. The Noticee has submitted that they had pledged the shares of GHCL with certain lenders for raising money and as a result of default in repayment of the loans, the lenders started liquidating the shares pledged, and consequently their promoter shareholding started to decline. At that time they had come to an understanding with certain third parties who were willing to buy shares of GHCL from the market on the request of the promoters. Hence those third parties were holding shares on behalf of the promoter entities. The Noticee has also contended that it had included the holding of such third parties along with their holdings for the purpose of disclosures on the basis of supporting legal opinion.

11. 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% change 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.

12. 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. The Noticee has contended that there had been no separate place to specify the details of the shares held by the third parties on its behalf and in such circumstances, the shareholding held by the third parties has to be included in the shareholding of promoter entities. I find this is as an incorrect interpretation of the law and is against the spirit of the disclosures mandated under clause 35 as discussed earlier. Regarding this contention, I am of the view that it was never envisaged that any promoter entities would want to include third party holdings along with their own holdings. Further, I note that the disclosures under clause 35 of listing agreement have been included for a particular purpose. In the present case, the promoters' stake had reduced from about 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 including the Noticee 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. The fact that the promoter entities including the Noticee did not increase their own shareholding but continued to make irregular disclosures, shows their intention of misleading the market through wrong disclosures. Thus it is established that the Noticee along with other promoter entities had colluded with GHCL for reporting inflated promoter holding to the exchange and to the public. Hence, I find that the Noticee has violated the provisions of 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. Further, being promoter of GHCL, the Noticee should have made disclosure of the number and percentage of shares or voting rights held by it to GHCL. As discussed above, the Noticee had made wrong

disclosures regarding its shareholding to GHCL and hence the acts of the Noticee are in violation of regulation 8 (2) of Takeover Regulations.

13. Further, the Noticee along with the promoter entities had contributed to 2% more change in shareholding that was triggered on January 04, 2007, April 27, 2007, October 05, 2007, December 20, 2007, January 15, 2008, February 15, 2008, April 07, 2008, May 02, 2008, May 16, 2008, May 29, 2008 , June 10, 2008, June 19, 2008 and August 12, 2008. The Noticee was required to disclose the change aggregating two percent or more of the share capital of GHCL to GHCL and to exchanges within two days of such change along with the aggregate shareholding after such change. The Noticee has failed to report such a change of 2% or more in the shareholding on the above mentioned dates to GHCL and to the exchanges. Regarding this non-disclosure, the Noticee has contended that regulation 7(1A) is acquirer specific and not for the promoter group and the Noticee was not acting in concert. In this regard, I find that the requirement of the regulation is with respect to the total share capital of the company and not with respect to the shareholding of the Noticee. This inference would not change whether holding of third parties are included or not. The Noticee was part of the promoter group and hence, the contention of the Noticee is not acceptable. Therefore, I hold that the Noticee has violated the provisions of regulation 7 (IA) of Takeover Regulations.

14. I also note that the investigation has revealed that a news item was published on June 11, 2008 stating that M/s Al Rustomani Group, Dubai-UAE (**ARG)** was considering an equity investment of 25 % of GHCL at a cost of up to US $ 200 million. It was further revealed that ARG had issued a letter of “Expression of Interest” (EOI) dated

June 09, 2008 in this regard signed by Mr. Kewal Thapar, Group Head-Corporate Development - ARG. It was alleged that this news items resulted in a spurt in the price of GHCL and the that the Noticee was one of the largest sellers on net basis on both NSE and BSE on June 12, 2008 and the Noticee had benefited from the resulting increase in the price that occurred due to leaking of the news about the EOI dated June 10, 2008 to the media. Regarding the allegation, the Noticee has contended that the said sales on June 12, 2008 was done by the brokers with whom it had entrusted shares in lieu of margin and the Noticee had no control over the said sales. The Noticee has contended that such sales by brokers have happened on multiple dates and the hence the said sales have no nexus between with the publication of the news. I have perused the documents with regard to the said allegation and the contention of the Noticee. I note that ARG had subsequently submitted that the letter was issued without authority. Although such a letter was issued and there were news articles about ARG's interest in investment in GHCL shares, there is inadequate evidence to prove that the letter was issued at the instance of promoters of GHCL. Further, the spurt happened when the information became public. In view of the same, I give benefit of doubt to the Noticee regarding the said allegation violation of regulation 4(2) (e) of PFUTP Regulations. .

15. 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…".*

16. 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 and regulation 7(1A) and 8(2) of Takeover Regulations by the Noticee, make them liable for penalty under sections 15A (b) and 15HA of SEBI Act, 1992 which read as follows:

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder;-

(a).....

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therfor in the regulations, he shall be liable to a penalty of one lakh rupee for each day during which such failure continues or one crore rupees, whichever is less.

Penalty for fraudulent and unfair trade practices.

15HA. *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.*

17. While determining the quantum of penalty under sections 15A (b) and 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."

18. 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 Noticee's share holding had come down from nearly 40% to 18% of the paid up capital. This fall in shareholding could have indicated reduced control of the Noticee in GHCL and could have huge impact on the price of the scrip. However, the Noticee deliberately continued to file inflated shareholding details thereby misleading the investing public. The actions of the Noticee has severely impaired the integrity of the disclosure system put in place by the regulator. Hence the said actions warrant the imposition of a serious penalty. Considering the fact that disclosures were filed incorrectly for 8 quarters, the violation by the Noticee can be considered as a repetitive.

19. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee, Dear Investment Private Limited. 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 ` 2,00,000/- (Rupees Two Lakh only) in terms of Section 15A (b) for violation of regulation 7(1A) and 8 (2) of Takeover Regulations and ` 5,00,000/- (Rupees Five Lakh only) in terms of section 15HA of the SEBI Act for violation of regulations 3 (a), (b), (c) & (d), 4(1) and 4(2)(f) of PFUTP Regulations read with Section 12A(a),(b) & (c) of SEBI Act on Noticee. In my view, this total penalty amounting to ` 7,00,000/- (Rupees Seven Lakh only) will be commensurate with the violations committed by the Noticee.

20. 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.

21. 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**