BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO/SPV/115/2013]

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. Sanjay Dalmia (PAN: AADPD9438N)

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 investigation revealed that GHCL made wrong disclosures to stock exchanges about shareholding of its promoters/promoter entities for the eight quarters from March 31, 2007 to December 31, 2008. The investigation revealed that during the quarters in the year 2008, the promoter shareholding

as disclosed by GHCL to the stock exchanges was more than the actual number of shares held by the promoter entities as per the records of Registrar and Transfer Agent.

3. Shri Sanjay Dalmia, **(Noticee)** was the chairman and promoter director of GHCL during the relevant period. It was alleged that by falsely including other shareholders' holding in promoters' shareholding and thereby reporting inflated shareholding to the stock exchanges, the Noticee, as the Chairman and promoter director of GHCL, was responsible for the acts of the company and was also a beneficiary of such false disclosures. It was also alleged that the Noticee had falsely made claims to one Mr. Gautam Khaitan regarding GHCL's interest in raising funds and had induced Mr. Kewal Thapar, Group Head, Corporate Development, Al Rostamani Group, Dubai (ARG) to issue the letter of expression of interest and the said news was leaked to the media and the Noticee had taken advantage of the consequent increase in investors' interest in the scrip. It was thus alleged that the Noticee has violated the provisions of regulations 3 (a), (b), (c) & (d), 4 (1) and 4(2) (e), (f) and (r) of the PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. 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 15HA of SEBI Act, the alleged violations of the provisions of PFUTP Regulations and SEBI Act.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. 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. Vide letter dated January 04, 2012, the Noticee was given 2 weeks time to file his reply and was also given an opportunity of personal hearing on January 11, 2012. The Noticee vide his letter dated January 9, 2012 sought certain documents in order to file a reply to the SCN and also sought 2-3 weeks time to file reply. The Noticee did not appear for the hearing on January 11, 2012. The Noticee was sent relevant documents sought by him 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 he prefers to file consent application for settling the proceedings. Further, vide letter dated February 14, 2012, the Noticee submitted his consent application. The Noticee was granted another opportunity of personal hearing on April 10, 2012 vide Notice dated March 30, 2012. The representative of the Noticee appeared on April 10, 2012 for personal hearing and sought time till April 30, 2012 to file his reply to the SCN and requested for a personal after filing the reply. The Noticee vide letter dated May 07, 2012 submitted his reply to the SCN. Thereafter, 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 the authorized representative of the Noticee appeared and reiterated the submissions already made. A compilation of all the submissions was also made on behalf of the Noticee.

6. The main contentions of the Noticee are as under:

i) That he was the non-executive chairman of GHCL and was not holding any shares of GHCL and had also not traded in the shares of GHCL. He was not involved in the day to day management and affairs of GHCL

ii) That the promoter entities of GHCL had got letters from third parties regarding the holding of the said third parties for the inclusion of the holding of third parties.

iii) That GHCL had got legal opinions and on the basis of legal opinions from legal luminaries and on the basis of the legal opinions only GHCL decided to include the shareholding of third party entities

vi) That he denied all the allegations with respect to the letter of Expression of Interest.

v) That the alleged sale by the promoter entities were done by the lenders to whom the shares were pledged for raising money and also by brokers due to short fall in the margins.

CONSIDERATION OF ISSUES AND FINDINGS

7. 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) (e), (f) and (r) 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?

8. Before moving forward, it is pertinent to refer to the provisions of regulation 3 (a), (b), (c) & (d) and 4(1) and 4(2) (e),(f) and (r) of PFUTP Regulations and Section 12A(a),(b) & (c) of SEBI Act, which read as under:-

PFUTP Regulations

"3. Prohibition of certain dealings in securities

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 provisions of the Act or the rules or the regulations made thereunder;

(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 thereunder."

"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)…..

(b)…..

(c)…..

(d)…..

(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;

(g)…..

…..…..

…..…..…..

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

9. 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 note that 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 promoter entities had submitted letters of those third parties 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. Dealing with the contentions of the Noticee, I note that the Noticee has contended that he was the non-executive chairman of GHCL and was not holding any shares of GHCL and had also not traded in the shares of GHCL. He also contended that he was not involved in the day to day management and affairs of GHCL. It was also the contention of the Noticee that 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 its stand. GHCL sought another legal opinion and the opinion also agreed to the first 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 names 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.

12. The legal opinions submitted by the Noticees 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 contention of the Noticee that there had been no separate place to specify the details of the shares held by the third parties on their 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 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. 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 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.

13. As mentioned earlier, the Noticee was the chairman and promoter director of GHCL during the relevant time and was responsible for the acts of GHCL. I find that the Noticee, being the chairman and promoter director has not made any independent verification of the letters submitted to GHCL by the promoter entities regarding the inclusion of third party holding and believed what was represented by the promoter entities. The exercise of reporting inflated shareholding to public continued for 8 quarters without interruption. The Noticee accepted irregular disclosures from the promoter entities and was thus instrumental in portraying a wrong picture of the promoter shareholding in GHCL to the market. I find that being the chairman and promoter director of GHCL, the Noticee was a beneficiary of disclosures showing higher shareholding than the actual shareholding. 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.

14. I note that it was alleged in the SCN that the Noticee had falsely made claims to one Mr. Gautam Khaitan regarding GHCL's interest in raising funds and had induced Mr. Kewal Thapar, Group Head, Corporate Development, Al Rostamani Group, Dubai (ARG) to issue the letter of expression of interest and the said news was leaked to the media. It was also alleged that the Noticee had taken advantage of the consequent increase in investors interest in the scrip. I have perused the documents with regard to the said allegation and the contention of the Noticee. The Noticee while accepting that such a letter was received, has denied his involvement in the issuance of the same. I note that ARG also subsequently had 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 the Noticee or that the Noticee was instrumental in leaking the news to the media. Further, the spurt in the price happened when the information became public. In the absence of sufficient evidence in this regard, I give benefit of doubt to the Noticee regarding the charges of violation of regulation 4 (2) (e) and (r) 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 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."

17. 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."

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 promoters 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 promoters in GHCL 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. It is not possible that the Noticee being chairman of GHCL was not aware of the total holding of the promoters and promoter related entities of the GHCL. 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 GHCL colluding with promoter entities have severely impaired the integrity of the disclosure system put in place by the regulator. Such actions of GHCL warrant the imposition of a serious penalty on the Noticee who was the chairman and promoter director and was also a beneficiary of such wrong disclosures continuously for 8 quarters. Considering the fact that disclosures were filed incorrectly for various 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 the conclusion that this is a fir case for imposing monetary penalty on the Noticee, Shri

Sanjay Dalmia. I, in exercise of 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 ₹ 25,00,000/- (Rupees Twenty Five Lakh only) only) on the Noticee, in terms of section 15HA of the 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.

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**