BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO/SPV/114/2013]

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

In respect of

M/s GHCL Limited (PAN: AAACG5609C)

In the matter of

M/s GHCL Limited.

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**) for examining possible violations of the provisions of Securities and Exchange Board of India Act, 1992 ("**SEBI Act**"), Securities Contracts (Regulation) Act, 1956 **(SCRA)** and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (**PFUTP Regulations**) and Listing agreement.

2. The investigations revealed that M/s GHCL Limited (**the Noticee**) made wrong disclosures to stock exchanges about shareholding of its promoter during the eight quarters from March 31, 2007 to December 31, 2008. In each of the aforementioned quarters, shareholding of 10 of the promoter entities, as disclosed by GHCL to the stock exchanges was more than the actual number of shares held by the respective promoters/promoter entities as per RTA records. It has subsequently been accepted by the Noticee that the quarterly disclosures regarding the promoter holding were incorrect for 8 quarters between March, 2007 to December, 2008. The investigation further revealed that the Noticee had claimed that it reported higher promoter holding than the actual, based on request by promoter entities to include the shares held by third parties as promoter shareholding. It was thus alleged that the Noticee had misled the investors my making false reporting of the promoters' shareholding and thereby violated the provisions of section 21 of SCRA read with clause 35 of Listing Agreement and regulations 3 (a), (b), (c) & (d), 4 (1) and 4(2) (f) of the PFUTP Regulations read with Section 12A (a), (b) and (c) of the 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 **(SEBI Adjudication Rules)** and Rule 3 of Securities Contract (Regulation) (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) **(SCRA Adjudication Rules)** to inquire into and adjudge under section 15HA of SEBI Act and sections 23A and 23E of the SCRA, the alleged violations of the provisions of SCRA, SEBI Act and PFUTP Regulations and Listing Agreement.

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 sections 23A and 23E of SCRA and section 15HA 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 6, 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. Vide letter dated February 14, 2012, the Noticee submitted consent application for settling the proceedings. 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. Subsequently vide letter dated April 10, 2013, the Noticee requested to grant personal hearing. Vide letter dated April 12, 2013, the Noticee was given opportunity personal hearing on April 16, 2013 and on April 16, 2013, the authorized representative of the Noticee appeared and made submissions. The Noticee, vide letter dated April 22, 2013 submitted his reply to the SCN. Thereafter, the Noticee vide letter dated July 30, 2013 withdrew the 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.

5. The main contentions 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 some of the promoter entities intimated it that the promoter entities had a mutual understanding with some third parties to hold shares of GHCL on behalf of the promoter entities and requested the company to consider the shares of third parties as the shareholding of the promoter entities.

iii) That the Noticee had got favorable legal opinions regarding the inclusion of the holding of third parties with the holding of the promoter entities.

iv) 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 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. Whether the Noticee has violated the provisions of section 21 of SCRA read with clause 35 of the Listing agreement?

c. Do the violations if any, attract monetary penalty under section 15HA of SEBI Act and sections 23A and 23E of SCRA?

d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in sections 15J of SEBI Act and section 23J of the SCRA?

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, Section 12A(a),(b) & (c) of SEBI Act and section 21 of SCRA 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) .....

(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;"

SCRA :

Conditions for listing

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

8. 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 the Noticee under clause 35 of the listing agreement regarding the shareholding of its promoters were allegedly incorrect. In these quarterly disclosures, the Noticee, 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 Noticee has submitted that the shareholding disclosed in quarterly disclosures comprised of shares actually held by the promoter entities and shares held by some third parties on behalf of the promoter entities. Those promoter entities had submitted letters of those third parties to the Noticee while making the quarterly disclosures and had further stated 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 Noticee. 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.**

9. Dealing with the contentions of the Noticee, I note that the Noticee has contended that the inclusion of the third party holding with the promoter holding was purely on the request of the promoter entities who had furnished letters from those promoter entities. The Noticee has also contended it had got legal opinions which advised the Noticee in favour of including the third party holding along with the holding of the promoters. In this regard, 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. I am of the opinion those legal opinions might have been a reasonable interpretation in case such inclusion of the shareholding by third parties were for a temporary period and was insignificant to the total shareholding held by the promoter entities. In the present case, the scenario is completely different and the third parties have been holding the shares for a period of two years. I note that such an inclusion of third party holding with the promoter holding is highly irregular and not a normal scenario. Even though for argument sake, it is accepted that there might be circumstances when a third party holds shares on behalf of the promoter entities, such a shareholding and consequent inclusion in the promoter shareholding while making disclosure has to be purely on temporary basis and should not become a matter of practice. It is quiet disturbing that the shareholding fell from 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 from 50,11,229 shares to a massive 2,22,89,911 during this period. Such share holding patterns are inexplicable

and show a deep rooted problem which should have been brought out in the public domain.

10. I find that the periodic disclosures under Clause 35 of the listing agreement serve a very important purpose of informing the market and the investors about the shareholding i.e. 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 had lowered their stake from nearly 40% to 18%. The third parties held more shares than the promoters in most of the times. The Noticee had never disclosed the name of those third parties 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 promoters had tried to cover up the shortfall in holding by stating that third parties were holding those shares on their behalf and the Noticee colluded with the promoters for same. The Noticee by accepted unreasonable requests from the promoter entities for portraying a wrong picture of the promoter shareholding in the company to the market. 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 read with section 12A(a),(b) & (c) of SEBI Act and Section 21 of SCRA read with clause 35 of the Listing agreement. Therefore, I find that the Noticee has violated the provisions of 3 (a), (b), (c) & (d) and 4(1) and 4(2)(f)of PFUTP Regulations read with section 12A(a),(b) & (c) of SEBI Act and Section 21 of SCRA read with clause 35 of the Listing agreement

11. 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…".

12. Thus, the violation of regulation 3 (a), (b), (c) & (d) 4(1), 4(2)(f) of PFUTP Regulations read with section 12A(a),(b) & (c) of SEBI Act and section 21 of SCRA and Clause 35 of the Listing Agreement by the Noticee, make it liable for penalty under section 15HA of SEBI Act, sections 23A and 23E of SCRA which read as under:

SEBI Act

"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."

SCRA

23A - "Penalty for failure to furnish information, return, etc: *Any person, who is required under this Act or any rules made thereunder-*

(a) to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or bye laws of the recognized stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure.

(b) to maintain books of account or records, as per the listing agreement or conditions or bye laws of a recognized stock exchange, fails to maintain the same, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

23E - "Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds: *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

13. While determining the quantum of penalty under section 15HA, 23 A&E, it is important to consider the factors stipulated in section 15J of SEBI Act and 23J of SCRA 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."

23J -Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under S.23-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."*

14. 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 the Noticee 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 have severely impaired the integrity of the disclosure system put in place by the regulator. Hence its 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.

15. 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, M/s GHCL 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 and under section 23-I of SCRA, hereby impose a penalty of ₹ 50,00,000/- (Rupees Fifty Lakh only) on the Noticee in terms of section 15HA of SEBI Act and section 23A and 23E of SCRA 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, section 21 of SCRA and Clause 35 of the Listing

agreement. In my view, this penalty will be commensurate with the violations committed by it.

16. 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.

17. 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**