

Date: 23.02.2024

To
The Hon'ble Chairperson
Securities and Exchange Board of India,
SEBI Bhavan BKC
Plot No.C4-A, 'G' Block,
Bandra-Kurla Complex,
Bandra (East),Mumbai - 400051, Maharashtra.

Madam,

Subject: False averments and concealments in Draft Red Herring Prospectus dated 10.02.2024 filed by Akums Drugs And Pharmaceuticals Limited Corporate Identity Number: U24239DL2004PLC125888

1. I was the promoter and Director of a company named Parabolic Drugs Limited ("PDL") whose shares were listed on the BSE Limited ("BSE") and the National Stock Exchange of India Limited ("NSE") [CHECK]. PDL was admitted to Corporate Insolvency Process vide order dated 23.8.2018 passed by the National Company Law Tribunal, Chandigarh ("NCLT") in Petition No. No. CP(IB) 102/Chd/CHD/2018 filed by M/s Weather Makers Pvt. Ltd. ("the Insolvency Petition")

A company named Akums Drugs and Pharmaceuticals Limited ("ADPL") filed a Resolution Plan in the Insolvency Petition; the same was approved by the NCLT vide order dated 12.1.2021. One of the terms of the Resolution Plan approved by the NCLT was that claims of creditors of PDL were to be satisfied by ADPL partly by payment in cash and by allotment of fully paid up equity shares equivalent to the value of the remaining debt. A copy of the Order dated 12.1.2021 passed by the NCLT is enclosed as **Annexure A**.

In accordance with the Resolution Plan, a copy of which is enclosed as **Annexure B**, ADPL acquired 100% of paid up equity capital of PDL and thereafter, changed the name of PDL to Akums Lifesciences Limited ("ALL"). ALL paid the sum of Rs. 101,00,00,000/- to the creditors and converted the balance debt of Rs.1426,42,96,788/- into 142,64,29,679 fully paid-up equity shares of Rs. 10 each, vide a [BOARD?] resolution dated 04.02.2021 and allotted to same to the creditors in proportion to the amounts due to them/their debt. However, ADPL and ALL failed to the necessary statutory filings in respect of the said allotment in Form PAS-3 and therefore, the creditors were not recognised as shareholders of ALL.

As a Director of PDL when it availed loans from the creditors, I was a personal guarantor to the loans availed by PDL and therefore, liable to the creditors. Since ALL failed to complete the allotment of shares to creditors for value of the balance debt, I could be liable for the same to the creditors of PDL/ALL and

therefore, aggrieved by the non-compliance of ADPL and ALL with the Resolution Plan, I filed an application bearing IA No. 322/2023 in CP(IB) 102/Chd/CHD/2018 before the NCLT bringing out the fact that the Resolution Plan had not been implemented by the Resolution Applicant ADPL and the acquired entity ALL. The said application was allowed vide Order dated 08.08.2023 by the NCLT and it was held that by circumventing the provisions, the Respondents therein (ADPL and the acquired entity Akums Lifesciences Limited) had not acted in provisions of Resolution Plan. The Resolution Applicant ADPL and the acquired entity Akums Lifesciences Limited were directed to implement the Resolution Plan within 60 days of the order dated 08.08.2023. A copy of the order of the NCLT is enclosed as **Annexure C.**

5. In the meanwhile, on 09-11-2022, ALL and Pure and Cure Healthcare Private Limited ("PCHL"), another subsidiary of ADPL filed a Scheme of Amalgamation CP(CAA) No. 81/CHD/2022 before the NCLT ("Amalgamation Petition"). Since the Resolution Plan was not implemented, the undersigned filed CA No. 51/2023 and CA No. 52/2023 in CP(CAA) No. 81/CHD/2022 (Amalgamation petition), seeking that the order of Amalgamation may be kept in abeyance till the Resolution Plan is fully implemented by the ALL and ADPL. In the course of proceedings before the NCLT in respect of the Amalgamation Petition, ALL filed an Affidavit dated 15.04.2023 (**Recorded in order dated 22.12.2023 at page 13 para 2.11**) undertaking that the Transferee Company (PCHL) shall abide by and comply with the directions / order that may be passed by NCLT in IA No. 322/2023.
6. The NCLT, vide order dated 24.08.2023 allowed the Amalgamation Petition but noted that the Order of Amalgamation shall be contingent to the compliance of Order dated 08.08.2023 passed in IA No. 322/2023. It was further ordered that the formal orders in Form CAA-7 be issued to ALL on filing of an Affidavit that the company has complied with the directions of the order dated 08.08.2023 in IA No. 322/2023. A copy of the NCLT's order dated 24.8.2023 is enclosed as **Annexure D.**
7. ALL filed an Affidavit dated 25.08.2023 stating that it has complied with the directions of the order dated 08.08.2023 in IA No. 322/2023 and on the basis of the said Affidavit, Form No. CAA-7 was issued by the Registrar of the NCLT and the same was used by the ALL and PCHL to give effect of Amalgamation before the Registrar of Companies ("ROC"), Chandigarh. However, in fact, ALL had failed to comply with the statutory requirements regarding allotment of equity shares to creditors for the balance debt and therefore, the Affidavit dated 25.8.2023 contained false statements and declarations. A copy of the Affidavit dated 25.8.2023 is enclosed as **Annexure E.**
8. Having come to know of this fraudulent act by ALL, I filed another application bearing CA No. 164/2023 in the Amalgamation Petition, *inter alia* seeking recall of Formal Order dated 25.08.2023 issued in Form CAA-7. My aforesaid application was allowed by the NCLT vide order dated 22.12.2023, wherein the NCLT held as follows:-

“CA No. 164/2023 has been filed by the applicant-erstwhile director against the Akums Lifesciences Limited (Transferor Company), Pure and Cure Healthcare Private Limited and Registrar of Companies under Rule 11 of NCLT Rules, 2016 seeking, inter alia, the recalling of formal order dated 25.08.2023 issued in Form CAA-7.

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20. *In the result, the CA No. 164/2023 is allowed and disposed of along with CA No. 181/2023”*

Thus, in effect, the Order approving merger / amalgamation of ALL and PCHL, stands recalled by the NCLT. A copy of the NCLT's order dated 22.12.2023 is enclosed as **Annexure F**. Furthermore, in view of the failure of ALL to comply with the Resolution Plan approved by the NCLT and with NCLT's order dated 8.8.2023 to allot shares to creditors for the balance debt, the resolution itself may be *non est* in law.

9. In its order dated 22.12.2023, the NCLT has held that the Resolution Plan filed by ADPL has not been implemented. Certain observations of the Hon'ble NCLT, Chandigarh in Order dated 22.12.2023 are very relevant to show the default on part of ADPL and its Material Subsidiaries, which are reproduced as under : -

“ ... 16. In view of the aforementioned discussions, we hold that the compliance of our order dated 08.08.2023 will entail among other things, the filing of required forms including PAS-3 with Registrar of Companies. The other terms in step 3 of Schedule 2 of the Resolution Plan, to allot the fully paid-up share by Akum Lifesciences Limited to the lender in proportionate to their unsustainable debts and issuance of physical share certificates needs to be complied with.

17. *We further hold that the affidavit dated 25.08.2023 filed by respondent No. 1 stating that due compliance has been made with a direction of our order dated 08.08.2023 in IA No. 322/2023 is based on a wrong interpretation of our order. In formal order in form CAA-7 dated 25.08.2023 issued by NCLT, Chandigarh the following direction was mentioned:*

“10. That the Transferee Company shall make the compliance of directions of the order dated 08.08.2023 of this Tribunal in IA No. 322/2023 of CP(IB) No. 102/Chd/Chd/2018 as extracted in the para 8.6 inline with the statement made in their affidavit dated 15.04.2023”

18. *The records indicate that subsequent to the order dated 25.08.2023 an affidavit filed by the Transferor Company/petitioner company in respect of compliance of the order dated 08.08.2023 passed by this Tribunal in IA No. 322/2023 in CP(IB) No. 102/Chd/Chd/2018 stating as under:*

“That it is submitted that in terms of paragraph 14 of the order dated 24.08.2023, petitioner company has duly complied with the directions of the order dated 08.08.2023 passed by this Tribunal in IA No. 322/2023 in CP(IB) No. 102/Chd/Chd/2018 titled as Vineet Gupta v. Monitoring Committee &Ors.”

19. After going through the records, we are of the considered view that the Respondent Company I.E., Akums Lifesciences Ltd. is yet to make compliance of our order dated 08.08.2023. The Respondent Company, therefore, is directed to comply with our order dated 08.08.2023, **which will entail, among other things, the filing of requisite forms including PAS-3 with the Registrar of Company and also allot the fully paid up share by Akum Lifesciences Ltd. to the lenders in proportionate to their debts, as laid down in the approved Resolution Plan, within 15 days of this order.**

....”

Evidently, till date, neither ADPL nor PDL/ALL have complied with the directions of the NCLT.

10. The consequence of non-implementation of Resolution Plan is provided under following provisions of the Insolvency and Bankruptcy Code, 2016 :-

“Section 33 Initiation of liquidation.

...

(3) Where the resolution plan approved by the Adjudicating Authority³[under section 31 or under sub-section (1) of section 54L,]is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

...

74. Punishment for contravention of moratorium or the resolution plan.

...

(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person **shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.**”

The Hon'ble NCLT, Delhi in **Edelweiss Asset Reconstruction Company Limited Vs BMW Financial Services I.A. No. 2767 of 2022 In C.P.(I.B.) No. 4301 of 2018**, Ordered for Initiation of Liquidation of the Corporate Debtor under Section 33(3) due to non-compliance of the Resolution Plan. Apart from this, the National Company Law Appellate Tribunal in **Company Appeal (AT)**

(Insolvency) No. 442 of 2019, Liberty House Group Pte Ltd. Vs. Mr. Dinkar T. Venkatasubramanian &Ors., has held that the non-implementation of the Resolution Plan constitutes an offence under Section 74 of the Insolvency Bankruptcy Code, 2016.

11. I have now come to know that ADPL has filed a Draft Red Herring Prospectus (“**DRHP**”) with SEBI for an Initial Public Offering and Offer for Sale on 10.2.2024. I wish to bring to your notice that in the DRHP, ADPL has not disclosed true and correct facts and has instead, concealed material facts with the intention of misleading SEBI and investors. In this regard, the following may be noted:-

- (a) **At page 44**, it is stated as follows:

“Our Company acquired Parabolic Drugs Limited (which owned the Plant) in January 2021, further to a resolution plan approved by the National Company Law Tribunal, Chandigarh, in accordance with the applicable provisions of the Insolvency and Bankruptcy Code, 2016. Post the acquisition, the name of Parabolic Drugs Limited was changed to ALL. ALL was merged with PCHL with effect from April 1, 2022.”

As mentioned above, due to the failure and refusal by PDL/ALL and ADPL to comply with the Resolution Plan and orders of the NCLT, the acquisition of PDL by ADPL is *non est* and invalid in law. Therefore, this statement is false and misleading.

- (b) **Page 173** - Our Company acquired Akums Lifesciences Limited (formerly Parabolics Drugs Limited) in 2021, and following a scheme of arrangement approved by the National Company Law Tribunal, New Delhi, on October 17, 2023, Akums Lifesciences Limited merged with PCHL with effect from April 1, 2022. ...”

As mentioned above, due to the failure and refusal by PDL/ALL and ADPL to comply with the Resolution Plan and orders of the NCLT, the acquisition of PDL by ADPL is *non est* and invalid in law. Furthermore, the formal order amalgamating ALL and PCHL issued by the NCLT has been recalled. Therefore, this statement is false and misleading.

- (c) ALL, ADPL and PCHL have not challenged the Orders dated 08.08.2023, 24.08.2023 and 22.12.2023 passed by the Hon’ble NCLT, Chandigarh and therefore, these orders have attained finality. Considering the false affidavit filed by ALL and the non-compliance with the Resolution Plan and further orders passed by the NCLT, the National Company Law Tribunal is empowered to pass an order under Section 33(3) and (4) of the Code ordering for the Liquidation of ALL. In case, the ALL is ordered to be liquidated, the entire position narrated by ADPL in its Draft Red Herring Prospectus is vitiated and the so

called merged entity PCHL will not be in the same position nor the financial position projected by ADPL will remain the same.

- (d) Now that the Amalgamation with PCHL has been nullified, in the event that ALL were to issue and allot equity share capital to the creditors in respect of the balance debt, the shareholding pattern of ALL will undergo a substantial change; this will lead to a substantial change in the statements and disclosures in the DRHP.
- (e) Furthermore, as a defaulter in complying with orders of the NCLT and being a party to filing false affidavits before the NCLT, ADPL should not be permitted to access the capital markets through an IPO or otherwise.

1.

In such a case, the approvals sought by ADPL on false presentation of facts and projection of its compliance and financial status, may kindly not be granted and appropriate enquiry may be marked against ADPL and its group for attempting such a fraudulent act before this Hon'ble Authority, by concealing most relevant Court Orders.

Thanking you,

Yours truly,



Vineet Gupta