BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. RA/JP/ 215 - 221 /2017]

UNDER SECTION 23-I OF SECURITIES CONTRCATS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRCATS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005 AND UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:-

1. Plethico Pharmaceuticals Ltd. (PAN: AABCP3063G)
2. Mr. Shashikant Patel (PAN: AFVPP0343K)
3. Mr. Chirag Patel (PAN: ADHPP4699Q)
4. Ms. Gauravi Parikh (PAN: AKPPP7466E)
5. Mr. Ashok Mishra (PAN: ANMPM1597R)
6. Mr. Amrish Kumar Chourasia (PAN: AGPPC8258H)
7. Ms. Khushboo Kothari (PAN: BCLPK7176F)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') upon receipt of complaint from Economic Offence Wing (**EOW)** in respect of default of Plethico Pharmaceuticals Ltd. in redeeming the Foreign Currency Convertible Bonds (**'FCCBs'/'bonds'**) and failure in disclosing the FCCB default to the BSE Ltd (**BSE**) and National Stock Exchange of India Ltd. (**NSE**), had carried out investigation for the period October 23, 2012 i.e. the date of default in redemption of FCCBs (**Investigation Period**) to find out the possible violations.

2. Investigation *prima facie* revealed the commission of violation of Clause 21 and 36 of the Listing Agreement read with section 21 of Securities Contracts

(Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') clauses 2.1 & 7 (ii) of the Code of Corporate Disclosure Practices for prevention of insider trading under Schedule II read with regulation 12(2), regulation 13 (3) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**) and regulation 29 (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations**") by (1) Plethico Pharmaceuticals Ltd. - a Listed Company, (2) Mr. Shashikant Patel - Chairman and Managing Director of the Company, (3) Mr. Chirag Patel- Whole Time Director of the Company, (4) Ms. Gauravi Parikh- Executive Director of the Company, (5) Mr. Ashok Mishra- Compliance Officer of the Company, (6) Mr. Amrish Kumar Chourasia - Compliance Officer of the Company and (7) Ms. Khushboo Kothari - Compliance Officer of the Company (hereinafter referred to as **'the Noticee No. 1 to 7'** respectively or all may be referred to as "**the Noticees**" collectively.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI had initiated adjudication proceedings and appointed undersigned as the Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and section 23 I of the SCRA read with rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **'Adjudication Rules'**) vide order dated May 08, 2015 to inquire into and adjudge under section 15A(b) of the SEBI Act and section 23 A (a) of the SCRA the aforesaid violations alleged to have been committed by the Noticees. Proceeding of appointment of undersigned as Adjudicating Officer was communicated vide communiqué dated January 29, 2016.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated March 09, 2016 bearing Reference No. E&AO/RA/JP/ 7004, 7006, 7008, 7010, 7011, 7018 and 7021 of 2016 (hereinafter referred to as **"SCN"**) was served upon the respective Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under section 23 A (a) of the SCRA and section 15A (b) of the SEBI Act for the alleged violation of Clause 21 and 36 of the Listing Agreement read with section 21 of SCRA, Clauses 2.1, 3.2 and 7 (ii) of the Code of Corporate Disclosure Practices for prevention of insider trading under Schedule II read with regulation 12(2) and regulation 13 (3) of the PIT Regulations and regulation 29 (2) of the SAST Regulations.

5. The brief of allegations levelled against the Noticees are mentioned below.

(a) *That the Noticee No. 1 / Company had raised US $75 million (approximately ₹ 330 crores) by constituting a trust deed dated October 22, 2007 through an issue of 0% FCCB managed by Elara Capital Plc and redeemable after 5 years or more on October 23, 2012. The bonds have been issued in denomination of US $ 1,00,000 each with no interest rate and redeemable at a premium of 45.93%, however in case of default in payment, an interest at the rate of 9% p.a. shall be payable from the date of maturity till the actual date of payment.*

(b) The audited balance sheet of company as on December 31, 2007 had shown FCCB under the head unsecured loan amounting to ₹ 297.075 crores. However, no provision was made in that year for premium on outstanding FCCB and foreign exchange fluctuations. In quarterly unaudited results for the quarter ending March 2008, Company announced that "FCCB of Zero Coupon amounting to USD 75 million floated by the company has been considered as non-monetary liability as the company reasonably expects that these bonds would be converted into equity shares instead of redeeming them for cash at the end of the period of the bond. In view of this, no provision has been done for the interest on the outstanding FCCB. However in the audited financial statements of the company for the year ending December 2008 a figure of ₹102.59 crores was shown as premium payable on redemption of FCCB and Foreign currency fluctuations on outstanding FCCB.

(c) The FCCBs issued by the Company / Noticee No. 1 were due for redemption on October 23, 2012 ('maturity date') at a premium of 45.96%, however the Company had failed to redeem the same. Vide e-mails dated February 05,

2014 and February 06, 2014, BSE and NSE respectively were asked to provide the details of disclosures relating to FCCB made by the Company / Noticee No. 1 during the period January 01, 2007 to December 31, 2013. The said information was also asked from the Company/ Noticee No.1 vide letter dated February 07, 2014. The replies of both the BSE Stock Exchanges and Noticee No. 1 / Company were enclosed with SCN as Annexure IV, V and VI respectively and following observations were made from the said replies.

i. *The Noticee No. 1 / Company raised the money by issue of offer document dated October 18, 2007. However, after appointing book runner on October 16, 2007 till decision to amend the terms of FCCBs, no disclosures were made to the Stock Exchanges by the Company/Noticee No.1 regarding the raising of money through FCCBs.*

ii. *On June 03, 2011, the Company accorded their consent to Board of Directors (BoDs) to amend the terms of FCCB (2007) as well to extinguish the FCCBs by way of repurchase/buy back/redemption; but after June 03, 2011, no disclosure were made by the Company for any arrangement of amending the terms of FCCB (2007). Also, the Company had failed to redeem the FCCBs on due date, of which no prior announcement was made at Exchange (s) platform.*

iii. *On scrutiny of quarterly results of September 2013, it was observed that the Company was showing an unrealized exchange loss of ₹ 2411.25 lacs on account of restatement of outstanding FCCBs, and declared that the FCCB amount has been disputed by the Company and there are legal proceeding pending in courts in this behalf. However no separate disclosure for this was made to the Stock Exchange by the Company regarding court proceedings.*

iv. *The Company did not make any disclosure regarding approval taken from Reserve Bank of India (RBI) on January 24, 2013 and January 15, 2014 for elongation of redemption of FCCBs.*

(d) Aforesaid information at serial no. (i) to (iv) were price sensitive information in term of regulation 2 (ha) of the PIT Regulations and the Company was mandated to make disclosures for such price sensitive information in compliance with Clause 21 and Clause 36 of Listing Agreement read with section 21 of SCRA and clause 2.1 and clause 7 (ii) of Code of Corporate Disclosure Practices for prevention of insider trading provided in Schedule II read with regulation 12(2) of the PIT Regulations.

(e) It was alleged that beside the Company / Noticee No. 1, the Noticee No. 2-7 (being the Chairman and Managing Director, Whole time director, Executive director, and Compliance officers of the Noticee No. 1) were also responsible for

the aforesaid failure at serial no. (i) to (iv) at the relevant point of time. The details of directors / compliance officers etc. of the Noticee No. 1 / Company along with failure on their part during relevant period, is shown as under;

S. No.	***Particulars of irregularities***	***Directors and compliance officers***
1	*Non disclosures by the Company regarding raising of money through FCCBs (October 22, 2007).*	*Shashikant Patel – Chairman and Managing Director* *Chirag Patel – Whole Time Director* *Gauravi Parikh – Executive Director* *Ashok Mishra – Compliance officer*
2	*Company had failed to redeem the FCCBs on due date i.e. October 23, 2012 of which no prior announcement was made at Exchange platform.*	*Shashikant Patel – Chairman and Managing Director* *Chirag Patel – Whole Time Director* *Gauravi Parikh – Executive Director* *Amrish Kumar Chourasia-Compliance officer*
3	*No separate disclosure was made by the Company regarding court proceedings initiated on August 27, 2013.*	*Shashikant Patel – Chairman and Managing Director* *Chirag Patel – Whole Time Director* *Gauravi Parikh – Executive Director* *Amrish Kumar Chourasia – Compliance officer* *Khushboo Kothari - Compliance officer (w.e.f. Sep 27, 2013)*
4	*No disclosure were made regarding approval taken from RBI on January 24, 2013 and January 15, 2014 for elongation of redemption of FCCBs*	

(f) In view of above failure in making disclosures / failure in redemption of FCCBs, it was alleged that the Noticees had violated the provisions of Clause 21 and Clause 36 of Listing Agreement read with section 21 of SCRA and clause 2.1 and clause 7 (ii) of Code of Corporate Disclosure Practices for prevention of insider trading provided in Schedule II read with regulation 12(2) of the PIT Regulations.

(g) It was also alleged that for the aforesaid failure, the Noticee No. 5-7 (being the Compliance Officers at the relevant point of time) have also violated clause 3.2 of Code of Corporate Disclosure Practices for prevention of insider trading provided in Schedule II of the PIT Regulations 1992.

(h) The aforesaid provisions of laws are produced as under;

Section 21 of SCRA:

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

PIT Regulations:

SCHEDULE II -under Regulation 12 (2)

Code of Corporate Disclosure Practices for Prevention of Insider Trading:

Clause 2.1: Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

Clause 3.1: Listed companies shall designate a senior official (such as compliance officer) to oversee corporate disclosure.
Clause 3.2: This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.

Clause 7 (ii): Corporates shall ensure that disclosure to stock exchanges is made promptly.

Listing Agreement

Clause 21 of listing agreement:

The Company will fix and notify exchange at least twenty-one days in advance of the date on and from which interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds will be payable and will issue simultaneously the interest warrants and cheques for redemption money or redeemable shares or debentures and bonds, which shall be payable at par at such centers as may be agreed to between NSE and the Issuer and which shall be collected at par, with collection charges, if any, being borne by the Issuer, in any bank in the country at centers other than the centers agreed to between NSE and the Issuer, so as to reach the holders of shares, debentures or bonds on or before the date fixed for interest on debentures or bonds or redemption money, as the case may be.

Clause 36 of listing agreement:

Apart from complying with all specific requirements as above, the Company will keep the Exchanges informed of events, such as strikes, lock outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company Issuer and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events which will have bearing on the performance / operations of the company as well as price sensitive information. The material events may be events such as:

(5) Litigation /dispute with a material impact - The Company will promptly after the event inform the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials.

(7)Any other information having bearing on the operation/performance of the company as well as price sensitive information which includes but not restricted to;

(i) Issue of any class of securities.
(vi)Any action which will result in alteration in the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company
(vii)Information regarding opening, closing of status of ADR, GDR or any other class of securities to be issued abroad.

The above information should be made public immediately.

(i) *Investigation revealed that there was a change of 17,03,000 shares in Promoter shareholding during the quarter ending March 2013 as the pledged shares of promoter Shahshikant Patel (the Noticee No. 2) were invoked on two days viz. 16,00,000 shares on March 01, 2013 and 1,03,000 shares on March 13, 2013 by the Sicom Ltd. (a public financial institution) which amounted to 4.73% of the total shareholding of the Company/Notice No.1. It was revealed that the Noticee No. 2 had made the disclosure to the Company/Noticee No.1 and to the Stock Exchange(s) for both the invocations under regulation 13(4) & 13(4A) of PIT Regulations and under regulation 31(2) of SAST Regulations. However, allegedly, the Noticee No. 2 had failed to make required disclosure under regulation 13(3) of PIT Regulations and regulation 29(2) of the SAST Regulations regarding change exceeding 2% in the total shareholding of the Company due to aforesaid invocation of pledge on March 01, 2013 for 16,00,000 shares.*

(j) *In view of above failure in making the required disclosures, it was alleged that the Noticee No. 2 had violated regulation 13(3) of PIT Regulations and regulation 29(2) of the SAST Regulations. The aforesaid provisions of laws are produced as under;*

PIT Regulations

13 (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

13 (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

13 (5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

<u>SAST Regulations</u>

Disclosure of acquisition and disposal.
29 (2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

(k) It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticees liable for monetary penalty under section 15 A (b) of the SEBI Act and under section 23 A (a) of the SCRA.

6. In respect to the SCN, following replies /communications have been received from the Noticees which is shown in the table below:

<table>
<tr><th>Noticee(s)</th><th>Date of Reply / Communications</th></tr>
<tr><td>Plethico Pharmaceuticals Ltd. (Noticee No. 1)</td><td rowspan="4">i. Vide letter dated March 21, 2016 requested for additional 3 weeks time to file reply.

ii. Reply dated May 10, 2016 of Noticee 1 has also been relied for them by Noticee No. 1-4 vide letter dated June 27, 2017 of their Attorney / Authorized Representative.</td></tr>
<tr><td>Mr. Shashikant Patel
(Noticee No. 2)</td></tr>
<tr><td>Mr. Chirag Patel
(Noticee No. 3)</td></tr>
<tr><td>Ms. Gauravi Parikh
(Noticee No. 4)</td></tr>
<tr><td>Mr. Ashok Mishra
(Noticee No. 5)</td><td>Reply dated March 17, 2016</td></tr>
<tr><td>Mr. Amrish Kumar Chourasia
(Noticee No. 6)</td><td>i. Reply dated March 23, 2016

ii. Reply dated April 13, 2016</td></tr>
<tr><td>Ms. Khushboo Kothari
(Noticee No. 7)</td><td>Reply dated March 30, 2016</td></tr>
</table>

7. The Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd*. held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was

differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

8. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticees on July 04, 2017 vide a notice of hearing dated June 12, 2017. The said notice of hearing was delivered to the Noticee(s) through digitally signed e-mail (duly delivered) / Speed Post Acknowledgement Due (SPAD).

9. In case of Noticee No. 5, the said hearing notice was sent to him at the same address on which the SCN was delivered which in fact was shown in his reply, however, said hearing notice was returned undelivered by the postal department.

10. In respect to said notice of hearing, Noticee No. 1-4 through their Attorney/Authorized Representative had requested for an adjournment of said hearing. The Noticee No. 6 vide an e-mail dated July 01, 2017 *inter-alia* stated that apart from his reply dated April 13, 2016, he has nothing additional to submit in the matter. On the scheduled date of hearing viz. July 04, 2017, no one from the Noticee(s) appeared for hearing.

11. As the Noticee No. 1-4 sought adjournment of scheduled hearing, therefore, another opportunity of hearing was provided to the Noticee (s) on August 08, 2017 vide hearing notice dated July 14, 2017. The said notice of hearing was delivered to all the Noticee except Noticee No. 5 as the same was returned

undelivered by the postal department as unclaimed despite four attempts. No other address or e-mail ID is available on records regarding Noticee No. 5. I am of the view that detailed reply has been filed by the Noticee No. 5 and therefore, matter can be proceeded on the basis of his said reply.

12. The hearing on August 08, 2017 was attended by the Authorized representatives for Noticee No. 1-4, 6-7 and by Noticee No. 6 (in person). During the course of hearing, they reiterated as mentioned in the reply of Noticee No. 1-4 dated May 10, 2016 read with reply dated June 27, 2017, reply of Noticee No. 6 dated March 23, 2016 and April 13, 2016 and reply of Noticee No. 7 dated March 30, 2016. During the course of hearing, they had undertaken to submit within 2 weeks the point wise written argument / additional submissions with supporting documents as well as the authentic proof of acknowledgement by the Stock Exchanges regarding disclosures made.

13. Thereafter, a letter dated September 04, 2017 was received from Attorney / Authorized Representative requesting for additional time of 10 days to file the additional written submissions. However, despite lapse of more time, no such written argument / additional submissions with supporting documents have been received. Therefore, vide an e-mail dated October 16, 2017 the said Attorney / Authorized Representative was asked to file written argument / additional submissions and it was indicated clearly that if no such written argument / additional submissions with supporting documents etc. are received by 24th of October 2017, then, the matter would be decided further on the basis of material available on records. However, no additional reply/ written argument is received till date.

14. Therefore, the detailed replies already made by the Noticees is being taken into account. The core submissions towards the SCN as made by the Noticees under their aforesaid replies are mentioned below;

<u>Reply of Noticee No. 1-4</u>

i. We deny that violation of any of the provisions. It is a matter of fact that neither undue advantage has been caused to any of the persons mentioned in SCN neither any prejudice been caused to the shareholders in any manner whatsoever.

ii. Mr. Sanjeev Dadlani (the Complainant) had made complaint with malafide with sole purpose to pressurize the company/its management and in turn to extract undue gains. It is very pertinent to kindly take note that the Complainant was not the original subscriber to the instruments issued by the Company and as a matter of fact he has acquired the same after the alleged default and that too at discounted price of around 57%. It is quite clear that no prudent investor would invest in such circumstances.

iii. The Company and its management through its bondafide intentions has through series of actions endeavored in relation to repayment/conversion and restructuring of FCCBs, including but not limited to:-

a) The Company had appointed DLA Piper Singapore Pte. Ltd. as international counsel on the issuance of FCCBs and related restructuring of existing debt vide engagement letter dated April 11, 2011. The said engagement letter is annexed as "Annexure 1".

b) The Company had approached FIPB for allowing FDI to the extent of ` 500 crores is annexed as "Annexure 2".

c) Ministry of Finance, Department of Economic Affairs granted its approval for foreign collaboration is annexed as "Annexure 3".

d) The Company had appointed M/s. Clifford Chance - CC Asia Limited, Singapore as sole international legal counsel in relation to proposed exchange offer of existing FCCBs. The said engagement letter is annexed as "Annexure 4".

e) The Company had appointed M/s. J Sagar & Associates, Advocates and Solicitors, Mumbai for execution of various documents and conducting due diligence in relation to restructuring of existing FCCBs. The said engagement letter is annexed as "Annexure 5".

f) The Company had appointed J. P. Morgan and Elara Capital Pie, for exchange and restructuring of the FCCBs. The said engagement letter is annexed as "Annexure 6 & 7 respectively".

g) The Company had executed Solicitation Agency Agreement with Elara Capital Pic for invitation of the FCCB holders and modifying the terms and conditions of the existing FCCBs. The said Agreement is annexed as "Annexure 8".

h) The Company had issued notice of the meeting for Bondholders fixing the meeting of the Bondholders on November 26, 2012 for proposing and approval of the restructuring of the FCCBs.

i) "Plethico Pharmaceuticals Limited FCCB Liability Management Program" offering detailed restructuring proposal to the Bondholders at the meeting of the Bondholders is annexed as "Annexure 9".

j) Communication from the Bondholder Mr. Peter Berny, requiring the Company to adjourn the meeting of Bondholders to January 21, 2013 is annexed as "Annexure 10."

k) The adjourned meeting dated January 21, 2013, was dissolved as there was no business to transact. Communication to that effect is annexed as "Annexure 11"

l) The Company has approached nationalized banks for raising External Commercial Borrowings (ECB) for repayments of FCCBs. Details of ECBs sanctioned to the Company are as follows:
Sanction Letters accepted by the management of the Company from Bank of India, New York Branch, Bank of Baroda, London Branch, UCO Bank, Hong Kong Branch, UCO Bank, Singapore Branch and Indian Bank, Colombo Branch are annexed as "Annexure 12,13,14,15 and 16 respectively".

iv. The Company had approached Reserve Bank of India (RBI) vide its letter dated for elongation of maturity of the FCCBs." and accordingly RBI granted its approval the copy of the approval is annexed in "Annexure 17, 18, 19 and 20 respectively".

v. It is pertinent to note that the reasons because of which the Company was not able to redeem/convert FCCBs include -

a. *The share price of the Company was ` 246 on October 2012, as against the conversion price of ` 484 as per the Offering Circular.*

b. As majority of the business of the Company vests in countries such as French West Africa, CIS countries, South East Asia, GCC Countries etc and there was very major fluctuations (more than 30 %) in the currencies of these countries viz the dollar which was one of the factors for increase in the trade receivables and thereby hampering the liquidity of the Company. Also due to false and negative propaganda by Mr. Peter Baney one of the FCCB holder the reputation of the Company was impacted because of which raising of funds became difficult. The FCCB Bondholders rejected the proposal of the Company for restructure the outstanding Bonds by exchange of new bonds even though the new bonds were offered having with shorter maturity and coupon repayment periodically. In addition to the aforesaid, the Trustee of the FCCB Bondholders was unable to provide details of the beneficial owners of the FCCBs, inspite of repeated reminders. The Company has made disclosure of all information related to the issuance of FCCBs and which include:-

a. Notice for holding of AGM / EOGM seeking approval for issuing FCCBs, Attached as "Annexure 21"

b. Intimating BSE and NSE of the outcome of the AGM / EOGM held for the purpose of approving issue of FCCBs. A copy is attached as "Annexure 22".

c. In principle approval of BSE and NSE dated May 29, 2007 and August 9, 2007 respectively for listing of shares that may be allotted on conversion of FCCBs. A copy is attached as "Annexure 23".

d. Corporate Announcement dated October 25, 2007 announcing successful pricing of the FCCBs and its major terms and conditions. A copy of the said corporate announcement is enclosed as "Annexure 24".

vi. The Company has also made all disclosures of Board of Directors meeting held on May 11, 2011 for approving and conveying the Extra Ordinary General Meeting of the Shareholders. The said are given in "Annexure 25".

vii. The Company has made all required disclosures alongwith quarterly and annual results for December 31, 2012 relating to maturity of the FCCBs on October 23, 2012 and that the Company is in the process of seeking approval for restructuring of said FCCBs from the Bondholders and concerned authorities. RBI has approved elongation of maturity period in respect of said FCCBs upto 23rd April, 2013. A copy of the said results is attached "Annexure 26 collectively."

viii. As stated above, in the major events relating to FCCBs, the Company was actively negotiating with the Bond holders for restructuring of the Bonds from September 2012 till April 2013. The Company also filed a Defamation suit for USD 250 Million against one of the FCCB Bondholder viz; Peter Berny in the District Court of Indore for spoiling image of the Company in international market, including Bloomberg. A copy of the said Suit for Breach of Trust and Defamation Suit is attached as "Annexure 27 collectively".

ix. Since, the negotiation with FCCB Bondholders was not successful, the FCCB Bondholders filed winding up petition before the Indore High Court on 17th May, 2013 is annexed as "Annexure 28".

x. Further, the Company has made entire disclosures of the developments in relation to addressing the FCCB issue by the Company. The Company has made disclosures along with the quarterly results for quarter ending September 2013, December 2013, March 14, June 2014, September, 2014 and March, 2015 is annexed as "Annexure 29 collectively"

xi. The Company had applied to RBI, through its Authorised Dealer, for elongation of the maturity of the FCCB Bonds on October 22, 2012, since the negotiations were underway with the Bondholders and the Company expected that it will be able to reach on some understanding for restructuring of the said FCCB bonds. Approval of the RBI of the elongation of the maturity of FCCBs bonds was subject to the approval and consent of the Bondholders. The Company received the communication, conditionally approving the elongation of the maturity of FCCB bonds on January 24, 2013.The Company had made disclosure of the same alongwith the results for the quarter and financial year ended March 31, 2013 and June 30, 2013 is annexed as "Annexure 30".

xii. Further, since the Company was not able to address the FCCBs in the period during which conditional approval was received, the Company had again applied for extension on April 18, 2013. Disclosure regarding the same has been made along with the results declared for the quarter ended June, 2013. RBI had granted its approval on January 15, 2014, subject to the approval and consent of the Bondholders. A copy of the said letter is attached herewith as "Annexure 17, 18, 19, and 20". Hence, the Company has kept the Stock Exchanges informed of the developments as and when it has happened.

xiii. The Company and its management further would emphasis upon the fact that it has regularly and periodically disclosed and complied with all the information which were price sensitive in nature and the Stock Exchanges and Stakeholders were updated on the same of all the material events. The Company has made several requests to the Trustees of the FCCBs i.e. Citibank London for furnishing the list of Bondholders to the Company, however, the same was not provided. The Company further requested the Indore High Court to direct the Citibank London to furnish the list of the FCCB Bondholders to the Company, however, Citibank admitted its inability before the Indore High Court to furnish the list of the Bondholders. In the aforesaid situation, the Company is helpless and cannot determine investors in the FCCBs.

xiv. The compliance of Clause 21 of the Listing Agreement requiring simultaneous issue of interest warrants and cheques for redemption money of the FCCB bonds payable at par at such centers as may be agreed to between the Exchange and the Company to reach the holders of the Bonds on or before the date fixed for interest on debentures or bonds or redemption money, is also not possible as the FCCB holders are Non Residents and Foreign Nationals, which requires approval of RBI, withdrawal of the foreign exchange and making remittance of the same.

xv. As explained in detail hereinabove the Company has disclosed all material events and developments relating to FCCBs as and when they have occurred. Further, the Company has also kept the exchanges regularly informed of all material events and information relating to litigation initiated by and against the Company relating to FCCBs to the stock exchange.

xvi. It is humbly submitted that disclosure requirement under Regulation 13 (1) and 13 (2) of PIT Regulation are applicable to "any person". Disclosure requirements under Regulation 13 (4) of the PIT Regulations are specifically applicable to the "Directors and Officers of a listed company". Sicom Limited (a public financial institution) had invoked 16,00,000 Shares and 1,03,000 shares on 01.03.2013 and 13.03.2013 which were pledged by Shashikant Patel to Sicom Limited. Mr. Shashikant Patel is the Chairman and the Managing Director of the Company. Intimation to the Company by Mr. Shashikant Patel of the invocation of shares by SICOM was in his capacity as the Chairman and the Managing Director and hence the disclosure made by the Company to BSE and NSE is covered under Regulation 13(4) of the PIT Regulations. Hence, the disclosure relating to the invocation of said was made in Form No D, covered under Regulation 13 (4) of the PT Regulations. A copy of the disclosure made by Mr. Shashikant Patel to the Company and disclosure made by the Company to BSE and NSE in Form No D relating to invocation of shares by SICOM of the shares held by him are attached as "Annexure 31 and 32". In view of the above the Company and the Directors and Officers of the Company has complied with the Regulations 13(4) of PIT Regulations and Regulations 29(2) of the SAST Regulations. Hence, the

Company and or its Officers, including Compliance Officers could not be held responsible for any non-compliance.

xvii. The Company and its management is law abiding and there is no past record of any violation of law and in view of the facts communicated to you and they have not violated any provisions of law voluntary or with malafide intention. We further mostly humbly urge you to not to proceed further with the proceedings and an opportunity of being heard be given to us in person. We further most honestly assure you of all our cooperation as law abiding person in this process.

<u>Reply of Noticee No. 5</u>

i. That at the very outset all the adverse contention taken/allegations made in the SCN are denied in toto. It will not be unreasonable to submit before your Honour that this SCN is apparently based on wrong presumption of facts & Law & has been issued without cogent basis or reason and totally dehorse well settled principles of Law.

ii. That I was under employment with Plethico as "Company Secretary" from 11.02.2008 to 27.01.2010. Necessary intimation towards my appointment was duly filed with the BSE and NSE. Similarly requisite filings was also done with the Registrar of Companies, Madhya Pradesh and Chattisgarh towards my appointment as well as cessation from the post of Company Secretary of Plethico. It is pertinent to inform your goodself that undersigned was neither involved in any financial activity pertaining to issuance of FFCBs and its redemption. Considering the above submission the allegation pertaining to violation of SEBI (Prohibition of Insider Trading) Regulations, 1992 and the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1992 are null and void, as there was no cause of action pertaining to FCCB Issue or any apprehension of any default during my tenure of service i.e. 11.02.2008 to 27.01.2010. (copy of my relieving letter of Plethico Pharmaceuticals Limited is enclosed as Annexure A).

iii. Undersigned has no proximity with the complaint filed by Economic Offence Wing (EOW) to SEBI in the light of Compliant filed by Mr. Sanjeev Dadlani against Plethico for default in redeeming the FCCBs on the ground that being Company Secretary of Plethico undersigned was not involved in any financial transactions of the Company. As per the terms of appointment, I was in charge for ensuring Secretarial and Listing Agreement compliances during my service period from 11.02.2008 to 27.01.2010. (copy of my appointment letter of Plethico Pharmaceuticals Limited containing Job Responsibilities is enclosed as Annexure -B).

iv. The irregularities / violations alleged to be committed by me are baseless as after appointment of book runner on 16.10.2007 there were no events pertaining to FCCBs during my tenure of appointment as Company Secretary. Plethico had raised money through FCCBs in October, 2007 and at that time I was a whole-time Dy. Company Secretary of Parenteral Drugs (India) Limited, a listed company having its Registered Office at A.B. Road, Navlakha Crossing, Indore (M.P.) from 15.06.2007 to 08.02.2008 (a copy of appointment letter and relieving letter of Parenteral Drugs (India) Limited is enclosed as Annexure-C).

v. During my tenure in Plethico, in addition to routine secretarial activities an Extra-Ordinary General Meeting was held on 31st March, 2009 in compliance with the provisions of the applicable provisions of the Companies Act, 1956 for transacting the following business :
   (i) The issuance of equity shares and/or FCCB and/or GDR and/or other securities convertible into equity shares and/or such other equity linked instruments to an extent of US$ 40 Million Indian Rupee Equivalent.
   (ii) Authority to the Board of Directors to borrow in excess of paid-up capital and free reserve to an extent of ` 1200 Crores.

vi. The outcome of the said Extra-Ordinary General Meeting was duly informed to the Stock Exchanges and necessary filings were made with the concerned Registrar of Companies as well. I would like to further inform you that subsequent to said approval of members, the Board of Directors, Chief Financial Officer and Chief Operating Officer of Plethico Pharmaceuticals Limited have not taken any decision for issuance of any securities including FCCBs, GDR and/or such other equity linked instruments to an extent of US$ 40 Million Indian Rupee Equivalent. Further there was no variation in the terms of existing FCCBs (which were issued by the Plethico in 2007) during my tenure of appointment. Hence the need for disclosure to the Stock Exchanges did not arise and also there were no price sensitive information available with me pertaining to FCCBs, which mandated disclosure to the Stock Exchanges.

vii. The copies of filings and disclosure made by me during my period of employment in compliance with Clause 36 of the Listing Agreement are duly available at the website of the BSE Limited and the National Stock Exchange of India Limited. During my tenure of service i.e. 11.02.2008 to 27.01.2010 there were no litigation /dispute having material impact to the best of my knowledge and belief.

viii. The Chief Financial Officer, Chief Operating - Officer, the Internal Auditors and Statutory Auditors of the relevant period may be considered appropriate in relation to this enquiry in the matter of FCCB issue or any other financial or accounting irregularity in connection with FCCBs issued by Plethico.

<u>Reply of Noticee No. 6</u>

i. That I was under employment with Plethico Pharmaceuticals Limited ("Plethico") as "Company Secretary" from 27.01.2010 to 27.09.2013 ('my tenure or period of employment') and duly discharged my duties as per my appointment terms and conditions as Company Secretary and Compliance Officer of Plethico.

During my tenure in Plethico, in addition to routine secretarial activities an Extra-Ordinary General Meeting (EGM) was held on 3rd June, 2011 in compliance with the provisions of the applicable provisions of the Companies Act, 1956 for transacting the following business. Evaluating the options of managing the liabilities of the Company through various initiatives such as (i) amending the terms and conditions of the outstanding Foreign Currency Convertible Bonds issued on October 2007 (the "FCCBs) , including but not limited to tenor, interest rate, yield to maturity; (ii) extinguishing the FCCBs in compliance with applicable regulations, including but not limited to repurchase, redemption or buyback of the FCCBs, wholly or in part in one or more tranches; or (iii) restructuring/exchange of FCCBs in compliance with applicable regulations.

ii. The proceedings of the said Extra-Ordinary General Meeting were duly intimated to the Stock Exchanges and necessary filings were also made with the concerned Registrar of Companies as well. That given to my understanding, Plethico was facing some liquidity crunch due to which the Board of Directors and Key Officials of Finance Department of the Company were evaluating various proposals for infusing the money for timely redemption of FCCBs which were issued in 2007.

iii. That I was appointed in the Company for ensuring Secretarial compliances including Listing Agreement compliances. I would like to inform you that during my tenure there were no reportable instances pertaining to FCCBs which mandated necessary disclosure/intimation to Stock Exchanges pursuant to Clause 36 of the Listing Agreement. To supplement this I would also bring into your kind information that the Board of Directors were giving their best however were not able to take any material decision for any arrangement of amending the terms of said FCCB (2007) and variation in the terms and conditions / redemption of FCCBs during my tenure.

iv. Hence, the need for disclosure to the Stock Exchanges did not arise and also there were no price sensitive information available with me pertaining to FCCBs including any prior information of any default in redemption of said FCCBs, which mandated disclosure to the Stock Exchanges. There were no events pertaining to FCCB (2007) issue during my tenure of appointment as Company Secretary except occurrence of event date i. e. 23rd October 2012 the date of redemption of said FCCB, which was already intimated to Stock Exchanges at the time of issue of said FCCB (Source BSE).

v. That the Company had separate legal department for looking after and handling legal issues of the Company and the litigation by and against the Company were in the ordinary course of business and were not perceived to have any material implication over the business of the Company. As per the terms of appointment I was appointed for ensuring Secretarial compliances including Listing Agreement compliances and I was neither involved in any decision taken by the Board of Directors in consultation with the legal department to initiate any legal proceedings in the courts nor informed about any court proceedings going to be initiated by the Company in the matter of FCCBs.

vi. Further, I had tendered my resignation on 29th July, 2013 from the post of Company Secretary with a request to relieve at the earliest and after tendering my resignation I was not involved in any discussion which are not placed at the Board Meeting including the Court proceedings initiated on 27th August, 2013.

vii. That the Company has approached Reserve Bank of India (RBI) seeking extension of elongation of maturity of such FCCBs via application dated 22nd October, 2012 as the same is a valid recourse available to the Company and also permissible by law. The RBI has allowed the Company for extension of elongation of maturity of such FCCBs subject to certain conditions via its letter dated 24th January, 2013 for the period upto 23rd April, 2013.

viii. In view of the above, as I came to know about the elongation of maturity of such FCCBs, I had insisted management for its announcement to the Stock Exchanges but they had told that RBI has given subjected approval so announcing such partial information is irrelevant instead we had disclosed the same in quarterly Financial results for information of public at large and considered it to be sufficient for meeting the disclosure requirements. The said results were also reviewed by the Statutory Auditor during audit of financial statements for the period.

ix. Kindly note that such disclosure has been given by the Company via notes to Audited Financial results for the quarter and year ended 31st December, 2012, as submitted to the Exchanges and published in the newspapers.

x. Further, the Noticee has no proximity with the complaint filed by Economic Offence Wing (EOW) to SEBI in the light of Compliant filed by Mr. Sanjeev Dadlani against Plethico for default in redeeming the FCCBs on the ground that being a Company Secretary of Plethico, the Noticee was not involved in any Financial, Accounting and Legal transactions of the Company.

xi. The copies of filings and disclosure made by me in the capacity of Company Secretary and Compliance officer of the Plethico during my tenure of employment in compliance with Clause 36 of the Listing Agreement are duly available at the website of the BSE Limited and the National Stock Exchange of India Limited. Therefore, it is requested to set-aside all the proceedings of the Show Cause Notice No. E&AO/RA/JP/7018/2016 dated 9th March, 2016.

<u>Reply of Noticee No. 7.</u>

i. I have been appointed as Company Secretary cum Compliance Officer of Plethico w.e.f September 27, 2013 and my period of employment with Company was from September 27, 2013 to May 25, 2015. 1 had to directly report to Managing Director.

ii. The working profile designated to me was the secretarial and listing compliances of the Company. The Company has raised FCCBs on October 22, 2007 whose redemption has fallen due on October 23, 2012. The Company has approached Reserve Bank of India (RBI) seeking extension of elongation of maturity of such FCCBs via application dated October 22, 2012. The RBI has allowed the Company for extension of elongation of maturity of such FCCBs subject to certain conditions via its letter dated January 24, 2013 for the period upto April 23, 2013.

iii. Kindly note that such disclosure has been given by the Company via notes to quarterly results for the quarter ended March 31, 2013.

iv. Further, the Company seems its incapacity to redeem such FCCBs by April 23, 2013; it again approached RBI for extension of elongation of maturity of such FCCBs via application dated April 18, 2013. The RBI has allowed the Company for extension of elongation of maturity of such FCCBs via its letter dated January 15, 2014 for the period upto April 23, 2014, subject to consent of Bond holders and Board Resolution is obtained in this respect.

v. The Company had disclosed such progress information via notes to results for the quarter and year ended March 31, 2014. In the above context, when the Company had received RBI letter dated January 15, 2014, I had presented and insisted my concern for public announcement for the same to management but I had been informed that this was not the first time and we had received RBI approval earlier also in this regard and we had disclosed the same in results for information of public at large and secondly RBI has given subjected approval so announcing such partial information is irrelevant. So considering the management view, the announcement was not given. Company received RBI letter dated January 15, 2014 and same was disclosed in notes to results for the quarter and year ended March 31, 2014.

15. After taking into account the allegations, replies / submissions of the Noticees and evidences / material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

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

a) Whether the Noticee(s) had failed to disclose the raising of money through FCCBs on October 22, 2007 to Stock Exchanges?

b) Whether the Noticee(s) had failed to disclose to the stock exchanges the arrangement of amending in terms of FCCB (2007) and also failed to redeem the FCCBs which was due on October 23, 2012?

c) Whether Noticee(s) had failed to disclose separately the court proceedings initiated on August 27, 2013?

d) Whether the Noticee (s) had failed to disclose regarding approval taken from RBI on January 24, 2013 and January 15, 2014 for elongation of redemption of FCCBs?

e) If yes, then, whether the Noticees had violated Clause 2.1, 3.2 & 7 (ii) of Code of Corporate Disclosure Practices under Schedule II read with regulation 12 (2) of the PIT Regulations, clause 21 & 36 of the Listing Agreement read with section 21 of the SCRA.

f) Whether the Noticee No. 2 had failed to make the required disclosure of invocation of pledge in terms of regulation 13(3) of the PIT Regulations and 29(2) of SAST Regulations?

g) If yes, for above, then whether the monetary penalty is attracted under section 15 A (b) of the SEBI Act and under section 23 A (a) of the SCRA?

h) If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act read section 23 J of SCRA and rule 5 (2) of the Adjudication Rules?

ISSUE:-

Whether the Noticee(s) had failed to disclose the raising of money through FCCBs on October 22, 2007 to Stock Exchanges.

17. It was alleged in the SCN that the Noticee(s) / Company had failed to disclose to the Stock Exchange(s) the raising of money on October 22, 2007 through FCCBs. I have gone through the reply of the Noticee No. 1-4 and observed that no evidence has been provided by them to prove that the disclosure regarding raising of funds through FCCBs was made to the Stock Exchange(s). Annexure 1 to 20 relied upon by them are not pertaining to this issue and Annexure 21 to 23 are only relating to holding AGM / EOGM for seeking approval of issuance of FCCBs, intimation to BSE and NSE regarding outcome of AGM / EOGM, in principle approval of BSE / NSE dated May 29, 2007 and August 09, 2007 respectively. It is noted that Annexure 24 is not a disclosure made to the Exchange(s), but it is a letter dated October 25, 2007

addressed to SEBI informing that Company had issued US$ 75 million zero coupon FCCBs. Annexure 25 relied upon by them is a disclosure of EOGM only.

18. In respect to the first allegation, I have seen from Annexure 4 and 5 of the SCN (reply portion of the Stock Exchanges) and observed that on October 16, 2007, the Company had announced to Stock Exchanges(s) viz. "Plethico Pharmaceutical Ltd. today announced that it has successfully priced an offering of US$ 75 million by issue of foreign currency convertible bonds. The bonds have a zero coupon with tenure of five years and one day and are convertible into equity shares at a premium of 35% over the reference share price of ` 447.95 (closing price of the shares on the National Stock Exchange Ltd. on October 16, 2007). Citigroup acted as the sole book runner to the transaction".

19. From the aforesaid announcement, it is noted that the Company / Noticee No.1 had merely made the announcement regarding offer pricing, however, when the FCCBs was issued or money raised on October 22, 2007, such disclosure of FCCBs issuance / raising of money through such FCCBs, was not disclosed / announced to the Stock Exchanges. From the reply and the annexures of the Noticee No. 1-4, nowhere it is shown that they had made announcement or disclosure regarding raising of such money on October 22, 2007, Needless to say that such raising of money by way of issuing of FCCBs, is Price Sensitive Information (PSI) in terms of regulation 2(ha) of the PIT Regulations and being the PSI, the Company and its directors as well as the Compliance Officer of the Company are mandatorily required to disclose the same <u>on immediate basis /</u> <u>promptly</u> in term of Clause 2.1 and clause 7 (ii) of Code of Corporate Disclosure Practices under Schedule II read with regulation 12 (2) of the PIT Regulations. Further, the said requirement is stipulated under as per clause 36 of the Listing Agreement which states that the Company will also immediately inform the Exchange of all the events which will have bearing on the performance / operations of the company as well as price sensitive information including issuance of any class of

securities. Since, the FCCBs which falls within the definition of ‘securities’ in terms of section 2 (h) of the SCRA and if issuance of such securities/FCCBs are not disclosed to the stock Exchange then, certainly, such non-disclosure would tantamount as breach of aforesaid provisions of laws (i.e. clause 2.1 and clause 7 (ii) of Code of Corporate Disclosure Practices under Schedule II read with regulation 12 (2) of the PIT Regulations and clause 36 of the Listing Agreement)

20. I have gone through the remaining annexures viz. (Annexure 26 to 32 of the Noticee No. 1-4) and noticed that the same also does not establish the fact of disclosures about raising of money through FCCBs.

21. In view of the aforesaid observations and keeping the fact that raising of money through FCCBs is a price sensitive information which bears significant impact upon the investors / shareholders of the company, I am of the opinion that Noticee No. 1 (being the Company) and the Noticee No. 2 to 4 (Managing Director / Director etc. who are responsible for the day to day affairs of the Company) had failed to disclose the raising of money through FCCBs and accordingly had violated Clause 2.1 and clause 7 (ii) of Code of Corporate Disclosure Practices under Schedule II read with regulation 12 (2) of the PIT Regulations, clause 36 of the Listing Agreement read with section 21 of the SCRA.

22. It goes without saying that besides the Company / its directors, the Compliance Officer of the Company is also bound to make / oversee the continuous corporate disclosures including PSI in terms of clause 3.1 and 3.2 of the Code of Corporate Disclosure Practices under Schedule II read with regulation 12 (2) of the PIT Regulations. Here, it is pertinent to mention that Noticee No. 5 was alleged to have been the Compliance Officer of the Company during the period of issuance of FCCBs on October 22, 2007; however, no proof is available on records to corroborate the fact of his being Compliance Officer during that time (viz. October 22, 2007). Moreover, it is noted from the reply / evidence (Annexure A) produced by Noticee No. 5 that

he was under employment with Company / Noticee No. 1 as "Company Secretary" only from February 11, 2008 to January 27, 2010.

23. As per the records, it is seen that Mr. Pankaj Pabaiya was the Company Secretary / Compliance Officer during the period of issuance of FCCBs on October 22, 2007. Thereafter, the Company Secretary / Compliance Officer were as - the Notice No. 5 (for the period from February 11, 2008 to January 27, 2010), the Noticee No. 6 (for the period from January 27, 2010 to September 27, 2013) and the Noticee No. 7 (for the period from September 27, 2013 to May 25, 2015). In view of the above, the Noticee No. 5 and also Noticee No. 6-7 cannot be held responsible for the violation of non-disclosures of raising money through FCCBs during the period on October 22, 2007 and accordingly they had not violated Clause 2.1, 3.1, 3.2 and clause 7 (ii) of Code of Corporate Disclosure Practices under Schedule II read with regulation 12 (2) of the PIT Regulations and clause 36 of the Listing Agreement read with section 21 of the SCRA.

ISSUE:

Whether the Noticee(s) had failed to disclose to the Stock Exchanges the arrangement of amending in terms of FCCB (2007) and also failed to redeem the FCCBs which was due on October 23, 2012?

24. I have noticed that there are two allegations; firstly the Company / Noticee(s) had failed to disclose the arrangement of amending in terms of FCCBs and secondly, the Noticee(s) had failed to redeem the FCCBs which were due on October 23, 2012. In respect to these two allegations, I have examined the available records (Annexure IV to V of the SCN) and observed that certain corporate announcement were made by the Company during March 2009 to June 2011 which included amending of terms and conditions of outstanding FCCBs. I have also perused Annexures No. 26 (disclosures dated March 01, 2013 - balance sheet for quarter ended December 2012) and the Annexures No. 29 & 30 filed by Noticee No. 1-4 and observed that the disclosures regarding process of seeking approval for restructuring of FCCBs etc. were

made to the Stock Exchanges. I have also verified the availability of said disclosures from the website of the stock exchange.

25. However, as regards to the allegation of failure in redeeming the FCCBs after due date / maturity date (October 23, 2012), it is an admitted fact that the same could not have been redeemed by the Company / Noticee(s). The reasons for non-redeeming of FCCBs as indicated by the Company are :-

(i) The share price of the Company was ` 246 on October 2012 as against the conversion price of ` 484 as per offering circular.

(ii) As majority of the business of the Company vests in countries such as French West Africa, CIS countries, South East Asia, GCC Countries etc and there was very major fluctuations (more than 30 %) in the currencies of these countries viz the dollar which was one of the factors for increase in the trade receivables and thereby hampering the liquidity of the Company.
(iii) Negative propaganda by Mr. Peter Baney one of the FCCB holder the reputation of the Company was impacted because of which raising of funds became difficult.
(iv) The FCCB Bondholders rejected the proposal of the Company for restructure the outstanding Bonds by exchange of new bonds even though the new bonds were offered having with shorter maturity.
(v) Trustee of the FCCB Bondholders was unable to provide details of the beneficial owners of the FCCBs, inspite of repeated reminders.
(v)Elongation of FCCBs by RBI.

26. After analyzing the aforesaid reasons, I am of the view that the same are not cogent and hence not acceptable. Needless to say that the Company / Noticee No. 1 is supposed to have the details of all the FCCBs bond holders and it cannot take plea that such details were not available with it. The plea of share price, liquidity, negative propaganda by one of the bond holder is without any merit and hence not acceptable. The plea that they were not having details of bond holders is incorrect as it is clearly revealed under disclosure made during the period March 2009 to June 2011 (as per Annexure V of the SCN) and also from subsequent disclosures that the Company was in process of seeking approval for restructuring the said FCCBs from the bond holders and concerned authorities. Needless to say that if the Company was not having the details of bondholders then how it was in the process of seeking approval of bondholders for restructuring FCCBs.

27. The Annexure 27 and 28 as relied upon by the Noticee No. 1-4 are mere copies of suit filed for damages etc. and are not related to the issue of redeeming of FCCBs as alleged. No record / outcome of other court proceeding relating to the issue of FCCBs redemption or bondholders details etc. is brought on records by the Noticee(s). Further, plea of RBI approval for elongation of the maturity of FCCBs is not tenable as the same was subject to the approval consent of the Bondholders and such approval/consent was in fact, not received.

28. I cannot ignore that there was an obligation under Clause 21 of listing agreement whereby the Company is required to notify to Stock Exchange at least twenty-one days in advance of the date on and from which interest on debentures / bonds and the redemption amount of redeemable shares / debentures are payable. Also, the Company is under an obligation to issue simultaneously the interest warrants and cheques for redemption money and such money is required to be reached to the holders of debentures / bonds on or before the date fixed. However, from the aforesaid observations, it is clear that the Noticee No.1 had failed to comply with said obligations.

29. Besides, it is noted from the audited financial statements of the Company for the year ending December 2008 that a figure of ₹102.59 crores was shown as premium payable on redemption of FCCB and Foreign currency fluctuations on outstanding FCCB. Also, it is noted from the records that debtors were on continuous increasing trend from the year 2008 itself. But, debtors turnover ratio of the Company was just 0.74:1 for the year 2012 whereas as per capital line database the industry's latest debtors turnover ratio is 3.91:1, which shows that average debtors of the Company were much higher than the sales of the Company and also there was significant variation in Company's debtor turnover ratio as compared to industry's debtors turnover ratio. It is also noted from records that for the period ending December 2011 and 2012, out of debt of ₹ 672.95 crores as on December 2012, debt worth ₹ 453.57 i.e. 67.40% were outstanding for more than six months and total debt increased during the year 2011 and 2012 are ₹ 240.05 and ₹ 75.74 crores respectively which

shows that most of the Company's sales were on credit basis and major amount from debtors were outstanding for more than six months. Available records also reveals that there was no significant variation in "sales" figures from 2008 to 2012, however "raw materials" figure has been substantially increased during the year 2012, but, there was no major increase in inventories.

30. From the aforesaid observations, it is concluded that the Company (Noticee No. 1) and its directors (Noticee No. 2-4) had failed to redeem FCCBs on its maturity date and accordingly, they had violated of listing condition / clause 21 and clause 36 (7) of Listing Agreement read with section 21 of the SCRA.

31. I cannot ignore to mention that separate and independent obligation has been placed on the Compliance Officer under Schedule II (read with regulation 12 of the PIT Regulations) whereby he is required to make / oversee the continuous corporate disclosures. Similar obligation has been well stipulated under clause 3.1 and 3.2 of the Code of Corporate Disclosure Practices which required Compliance Officer to perform the same. As examined at the pre para that certain corporate announcement were made during March 2009 to June 2011 and March 2013, therefore, the disclosure obligation casted upon Compliance Officer has been met by the Noticee No. 6 (who was the compliance officer at the relevant point of time when the FCCBs got matured for redemption on October 23, 2012).

ISSUE:

Whether Noticee(s) had failed to disclose separately the court proceedings initiated on August 27, 2013? AND Whether the Noticee(s) had failed to disclose regarding approval taken from RBI on January 24, 2013 and January 15, 2014 for elongation of redemption of FCCBs?

32. It is observed from the annexure 4 to 5 of the SCN that disclosures details are available only upto February 29, 2012 which in turn suggested that Noticee No. 1-4 and 6-7 had failed to make a required disclosures regarding court proceedings and elongation of FCCBs redemption. However, it is noticed from

Annexure 26, 29 to 30 provided by the Noticee No. 1-4 along with reply that the disclosure regarding court proceedings and elongation of FCCBs redemption has been made by them to the Stock Exchanges. From Annexure 26 i.e. (disclosure of balance sheet as per listing agreement for the year ended December 31, 2012) disclosure dated March 01, 2013 *inter alia* reveals that *"the said FCCBs issued by the Company had fallen due on October 23, 2012 and the Company is in process of seeking approval for restructuring of said FCCBs from the bond holders and concerned authorities. RBI has approved elongation of maturity period in respect of said FCCBs upto April 23, 2013."*

33. It is also noticed from Annexure 29 to 30 (unaudited financial results for the quarter ended September 30, 2013 dated November 11, 2013) wherein the disclosure regarding court proceedings is indicated in the said disclosure. Further, as per disclosure dated February 14, 2014 (balance sheet for the year ended December 31, 2013), the disclosure regarding court proceedings were indicated therein. Such disclosure regarding litigations / court proceedings has been disclosed vide disclosure dated May 28, 2014 (for the audited financial results of quarter ended March 31, 2014), disclosure dated August 13, 2014 (for the un-audited financial results of quarter ended June 30, 2014), disclosure dated November 14, 2014 (for the un-audited financial results of quarter ended September 30, 2014), disclosure dated March 14, 2016 (for the audited financial results for the year ended March 31, 2014) and Unaudited financial results for quarter ended September 14, 2014.

34. Also, in Annexure 30, the disclosure made by the Company on May 14, 2013 (un-audited financial results for the quarter ended March 31, 2013), the reference regarding elongation of FCCBs is indicated therein.

35. In view of the aforesaid, I am of the view that the required disclosures in respect of court proceedings and FCCBs elongation has been made by the Noticee No. 1-4 and 6-7.

ISSUE:

Whether the Noticee No. 2 had failed to make the required disclosure of invocation of pledge in terms of regulation 13(3) of the PIT Regulations and 29(2) of SAST Regulations?

36. I have noted from the records available that the pledged shares of Noticee No. 2 i.e.16,00,000 shares and 1,03,000 shares (4.73% of the total shareholding) were invoked on March 01, 2013 and on March 13, 2013 respectively by the Sicom Ltd. (a public financial institution). It is noted that Noticee No. 2 had made the disclosure to the Company/Noticee No.1 and to the Stock Exchange for both the pledge invocations under regulation 13(4) & 13(4A) of PIT Regulations and under regulation 31(2) of SAST Regulations. However, as per Annexure 31 and 32 provided along with reply of the Noticee No. 1-4, it is noted that the Noticee No. 2 had failed to make required disclosure under regulation 13(3) of PIT Regulations and regulation 29(2) of the SAST Regulations regarding change exceeding 2% in the total shareholding of the Company due to aforesaid invocation of pledge on March 01, 2013 for 16,00,000 shares.

37. I am of the view that though the Noticee No. 2 had failed to make required disclosure under regulation 13(3) of PIT Regulations and regulation 29(2) of the SAST Regulations, but for the same event / invocation, the disclosure were made under regulation 13(4) & 13(4A) of PIT Regulations and under regulation 31(2) of SAST Regulations. By making such disclosures, the purpose of informing the market about change in shareholding was served. Also, I note that as per the recent practice / guidelines of SEBI in cases of multiple disclosure requirement under different provisions of law / regulations in respect of same transactions and where the disclosure under any of the provision is already made by the entity or is available with public domain, then, for such failure administrative warning may be considered by the SEBI.

38. Since, the Noticee No. 2 had already made the disclosures in terms of regulations 13(4) & 13(4A) of PIT Regulations and under regulation 31(2) of SAST Regulations which in fact are in public domain, therefore, for non-disclosures of the same transaction under regulation 13(3) of the PIT

Regulations and 29(2) of SAST Regulations, I am of the opinion that an administrative warning may be issued by SEBI.

ISSUE:

Whether the monetary penalty can be imposed under section 15 A (b) of the SEBI Act and section 23 A (a) of the SCRA? AND If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act read section 23 J of SCRA and rule 5 (2) of the Adjudication Rules?

39. From the above, it has been established that the Noticee No. 1 (being the Company) and its directors viz. Noticee No. 2 to 4 had violated Clause 2.1 and clause 7 (ii) of Code of Corporate Disclosure Practices for Prevention of Insider Trading under Schedule II read with regulation 12 (2) of the PIT Regulations, clause 21 and 36 of the Listing Agreement read with section 21 of the SCRA on account of failure to disclose the raising of money through FCCBs and failure in redeeming the FCCBs on maturity date.

40. Keeping in view the aforesaid observations and talking into account the gravity of violation committed by the Noticee No. 1- 4, I am of the view that the aforesaid violations makes them liable for penalty under section 15 A (b) of the SEBI Act and section 23 A (a) of the SCRA which read as follows:

<u>Penalty for failure to furnish information, return, etc.</u>

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

(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 therefor in the regulations, he 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;

<u>Penalty for failure to furnish information, return, etc.</u>

23A. *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 recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised 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;

41. While determining the quantum of penalty under section 15 A (b) of the SEBI Act and section 23 A (a) of the SCRA, it is important to consider the similar factors stipulated in section 15 J of the SEBI Act and section 23J of the SCRA read with rule 5 (2) of the Adjudication Rules, which reads as under:-

Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 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."

42. Investigation did not reveal any specify disproportionate gains or unfair advantage made by the Noticee No. 1- 4 or the specific loss suffered by the investors. Investigations revealed the past action taken by SEBI against the Noticee No. 1- 4. However, not making disclosures regarding raising of money through FCCBs and subsequently non redemption of FCCBs despite maturity date, are certainly affecting the rights of the investors / bondholders and justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

43. After taking into consideration all the aforesaid facts / circumstances of the case, in exercise of the powers conferred upon me under section 15 I (2) of the SEBI Act and section 23 I (2) of the SCRA read with rule 5 of the Adjudication Rules, I hereby impose penalty upon the Noticee No. 1 - 4 as shown in table below;

<table>
<tr><th>Name of the Noticee</th><th>Amount of Penalty</th><th>Penalty Provisions and Violations</th></tr>
<tr><td rowspan="2">Plethico Pharmaceuticals Ltd. (Noticee No. 1)

Mr. Shashikant Patel (Noticee No. 2)

Mr. Chirag Patel (Noticee No. 3)

Ms. Gauravi Parikh (Noticee No. 4)</td><td>` 15,00,000/- (Rupees Fifteen Lakh only)

<u>The Noticee No. 1 to 4 shall be liable to pay the said penalty jointly and severally.</u></td><td>Under section 15 A (b) of the SEBI Act for violation of clause 2.1 & 7 (ii) of Code of Corporate Disclosure Practices under Schedule II read with regulation 12 (2) of the PIT Regulations.</td></tr>
<tr><td>` 15,00,000/- (Rupees Fifteen Lakh only)

<u>The Noticee No. 1 to 4 shall be liable to pay the said penalty jointly and severally.</u></td><td>Under Section 23 A (a) of the SCRA for violation of clause 21 and clause 36 (7) of Listing Agreement read with section 21 of the SCRA.</td></tr>
</table>

44. I am of the view that the said penalty would commensurate with the violations committed by the Noticee No. 1 to 4.

45. The Noticee No. 1 to 4 shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

46. The Noticee No. 1 to 4 shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any	PAN	Amount (in `)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually	Bank name and Account number from which payment is remitted	UTR No

47. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the SEBI.

Date: October 27, 2017
Place: Mumbai

(RACHNA ANAND)
GENERAL MANAGER &
ADJUDICATING OFFICER