Lyka Labs Limited

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29th September, 2020

BSE Ltd 1st Floor, New Trading Ring Rotunda Bldg, P.J. Towers Dalal Street, Mumbai- 400 001	**National Stock Exchange of India Ltd** Exchange Plaza, 5th Floor Plot No. C/1, G. Block Bandra Kurla Complex Bandra (East), Mumbai - 400 051
Script Code: 500259	**Script Code: LYKALABS**

Ref: **SEBI (Adjudication Order No. Order/AA/JR/2020-21/9241)**

Sub: **Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 - Penalty imposed by SEBI in respect of GDR issue.**

Dear Sir/Madam,

We are in receipt of SEBI Adjudicating Order dated 28th September, 2020 which is received by us today at 03.20 P.M. pertaining to imposing of penalty u/s 23E of SCRA amounting to Rs. 10,00,000 (Rupees Ten Lakhs) on the Company in the matter of Disclosures by the Company pertaining to its GDR issue.

A copy of the SEBI order dated 28th September, 2020 is enclosed herewith for your record.

Yours faithfully;

For Lyka Labs Limited

Piyush G Hindia
Company Secretary

Encl. A/a

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AA/JR/2020-21/ 9241]

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

In respect of:
Lyka Labs Ltd.
(PAN: AAACL0820G)

In the matter of disclosures by Lyka Labs Ltd. In respect of its GDR issue

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FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation w.r.t. Indian companies that had issued Global Depositories Receipts (hereinafter referred to as "GDRs") in overseas market with the intention of defrauding Indian investors. Lyka Labs Ltd (hereinafter referred to as "the Noticee / Company/ Lyka") is one among such companies that was investigated by SEBI, in connection with its GDR issue.

2. It is observed that the Company issued 800,000 GDRs (amounting to US $5 million) on December 07, 2005. Fusion Investment Ltd. (hereinafter referred to as **'Fusion'**) was the only entity to have subscribed to 800,000 GDRs and the subscription amount was paid by Fusion by obtaining loan from a Portuguese Bank viz, Banco Efisa (hereinafter referred to as Banco). It was observed that the company provided security for the loan which was taken by a foreign entity who had subscribed to the GDR issue.

3. It was further observed that in the month of December 2005, Lyka committed several irregularities in respect of the disclosures made to BSE with regard to the GDR issue. It is observed that for the Annual reports of the Noticee for the financial year 2005-07 (extended financial year) and 2007-08, the Noticee had failed to disclose the amount lying in deposit account with Banco as contingent liability and therefore, the Noticee is alleged to have failed to comply with section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**") read with clause 50 of the listing agreement. The Noticee had also allegedly, failed to make disclosures to the stock exchanges with regard to the price sensitive information that was likely to impact the performance/operations of the company pertaining to (a) the account charge agreement it entered with Banco and Fusion for subscription of its GDRs, and (b) the approval of the shareholders to the issue of GDRs at Annual General Meeting held on March 29, 2004. In view of the said failure to make timely disclosures to the Stock Exchanges, the Noticee is alleged to have failed to comply with clause 36(7) of the listing agreement.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI vide communique dated July 19, 2017 appointed Shri Suresh B Menon as the Adjudicating Officer under section 23 I of SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**AO Rules**") to inquire into and adjudge the aforesaid violations under Section 23E of SCRA. Pursuant to the transfer of Shri Suresh B Menon to another department, the undersigned was appointed as the Adjudicating Officer which was communicated vide communique dated March 25, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice dated August 7, 2017 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of AO Rules to show cause as to why an

inquiry should not be held and penalty be not imposed on it under section 23E of SCRA for the alleged violations.

6. The Noticee, vide letter dated August 29, 2017 sought inspection of documents. The Noticee was given an opportunity to inspect the documents on September 15, 2017.

7. In the interest of natural justice, an opportunity of personal hearing was given to the Noticee on October 31, 2017 which was subsequently rescheduled to November 7, 2017. However, the Noticee did not appear on the scheduled date and submitted vide letter dated October 10, 2017 that it is waiting to receive copies of documents from SEBI. The Noticee replied to SCN vide letter dated December 5, 2017 stating, inter alia, the following:

- *Company humbly submits that it had received all the proceeds of GDR along with interest and profit due to currency value fluctuations over a period of time. It is submitted that having received the entire GDR proceeds, no allegation of any non-disclosures could lie against the company.*
- *With reference to para 2 of the Show Cause Notice, it is submitted that it is true that the Company had issued 8,00,000 GDRs (amounting to US$ 5.00 Million in December 2005.It is however submitted that the initial subscribers to the GDR issue were Banco Efisa and Unicorn Asset Management Ltd. It is therefore denied that the Fusion Investments Ltd was the only entity that subscribed to entire GDRs.*
- *It is submitted further that the entire proceeds of GDR stood repatriated to India and spent on corporate purposes in terms of the objects of the issue. By 16th June 2009, it had received entire proceeds of GDR. It is submitted that it had received 98% of the Total proceeds were received by the Company by the end of the year 2008. Therefore, it is not true to say that it had taken 3 years to repatriate the funds.*
- *With reference to para 3 of the Show Cause Notice, the Company humbly denies that it had committed any irregularities in respect of the disclosures made to BSE with regard to the issue. With reference to the allegation that the Company failed to disclose for the FY 2005-07 and 2007-08 that there was a contingent liability on the proceeds of the GDR. It is submitted that the Company, as part of GDR documentation had executed certain documents including an account agreement with Banco Efisa, it was not aware as to the loans taken by the Fusion against such a loan. It is not aware that such an agreement was ever implemented or that it had ever received any such document from the Company House UK registering the charge. It is submitted*

that in the statement 27th September 2016 before the Investigating Officer stated as under:

> *Answering to Question No 20 regarding the Copy of the Credit Agreement between Fusion and Banco Efisa regarding Dollar Term loan facility up to US$ 6.50 million executed on 3rd November, 2005, Mr. N.I. Gandhi had stated that the documents referred to in the said question were not furnished by the Company to the Fusion directly for the purposes of Credit Agreement.*
>
> *Answering to Question No. 22 regarding Account Charge Agreement executed between the Company and Banco Efisa on 21st November 2005, Mr Gandhi had stated that he signed many Documents at the time of GDR issue and that he did not remember to have seen these documents before signing. He also had stated to the best of his knowledge such agreements were not implemented.*
>
> *Answering to Question No. 24 regarding intimation by the Companies House to Lyka that account charge has been entered on their register, Mr. Gandhi had stated that the Company had not received any such communication.*

- *In view of the above, it is submitted that the Company is not aware of the Loans taken by Fusion from the Banco Efisa, it had not made the disclosures as required under the listing agreement. It is submitted therefore, that it had not violated clause 36 (7) of the Listing Agreement.*
- *With reference to para 5 of the Show Cause Notice, it is submitted that as stated above, since the Company was not aware that such a loan by Fusion was taken against the pledge/ mortgage of the GDR proceeds, it had not disclosed the same in the relevant financial years as contingent liability. As stated by Mr. Gandhi to the IO during the course of his statement, the very fact that such a charge was created in favor of Banco Efisa as a security for the purported loans taken by the Fusion is not known to the Company. There is no evidence brought on record that such information was available with the Company, and hence it cannot be treated as a contingent liability.*
- *Further, it is not stated anywhere in the Show Cause Notice as to how much loan was availed by the said Fusion, how much funds were disbursed by the Banco Efisa and when was it paid to the Banco Efisa by the said Fusion. In the absence of such basic facts and figures, the bald allegation that there was an agreement of charge is not sufficient to hold the Company guilty of non disclosures. In the absence of any such facts, it cannot be alleged that the amount lying in the account with Banco Efisa is not cash or cash equivalent. It*

is submitted that the Company is not aware of the alleged loan taken by Fusion and hence it continued to treat the same as cash/ cash equivalent. In view of the above, it is submitted that the Company has not violated section 21of SCR Act,1956 or Clause 50 of the Listing Agreement.

- *With reference to para 7 of the Show Cause Notice, it is submitted that the Company had made necessary disclosures to the Exchanges with regard to issuance of GDRs. Hence the allegation that such disclosure were not made is incorrect and is hereby denied.*

8. Due to ongoing pandemic environment and in terms of rule 4(3) of the AO Rules, an opportunity of personal hearing was given to the Noticee to appear before the Adjudicating Officer on August 18, 2020 through WEBEX platform. The Noticee vide email dated August 15, 2020 sought for another date of hearing. The request of the Noticee was acceded to and another opportunity of personal hearing was given to the Noticee on September 8, 2020. The Noticee, vide email dated September 4, 2020 requested that the personal hearing may be conducted on September 10, 2020. Accordingly, the Authorised Representative of the Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated December 5, 2017. The Noticee also made further submissions vide email dated September 19, 2020 stating, inter alia, the following:

- *Noticee No. 1 submitted that after a lapse of 12 years, SEBI had issued the captioned SCN in the year 2017, whereas the GDR issue happened in 2005.Without prejudice to what is stated below, the Noticee submitted that there has been an inordinate delay on the part of SEBI in investigating the matter. In this regard, we submit that the Hon'ble Securities Appellate Tribunal ("SAT") has held that inordinate delay in issuing the SCN vitiates the proceedings.*
- *It was submitted that the company was not aware that such a pledge agreement was executed, if executed, the same was implemented. Therefore, it was respectfully submitted that the Noticee No. 2 had entered into said agreement without any authorization. Further the fact that said agreement was entered into was informed neither to the Board of Directors nor to the Risk and Audit Committee. The position was confirmed by Noticee No. 2 in his statement before the IO.*

- *It was submitted that the Noticee No. 2 had stated that he was not aware of any such document. Further, moreover Noticee No. 2 had stated that Noticee No. 1 had not received any such communication which impeded its ability to take any such cognizance of such unauthorized document.*
- *It was also submitted that the abovementioned Account Charge Agreement was never known to Noticee No. 1, hence it could not make any disclosure to the stock exchanges. Thus, in view of the above, the Noticee No. 1 submitted that it had not failed to make any timely disclosure to the exchanges as alleged against it.*
- *Noticee No. 1 also submitted that monies have been repatriated back to India in Company's account with interest. There was no loss to the company. 92% of the monies was repatriated to India within 3 years and the remaining by June 2008. Those monies were utilized for corporate purpose as per the objectives of the issue.*

The Noticee also referred to 3 case laws regarding inordinate delay by SEBI.

CONSIDERATION OF ISSUES AND EVIDENCE

9. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

I. Whether the Noticee has violated section 21 of SCRA read with clause 36(7) and clause 50 of the listing agreement?

II. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 23E of SCRA?

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 23J of the SCRA?

10. Before proceeding further, I would like to refer to the relevant provisions of the SCRA and listing agreement:

Securities Contract (Regulation) Act, 1956

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

Listing Agreement

36."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."

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information,

The above information should be made public immediately."

50. "The company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time."

11. I note from the documents on record that Fusion had entered into credit agreement dated November 3, 2005 with Banco for subscription of GDRs of Lyka. As per the said credit agreement, Banco would provide loan to Fusion only for subscription of GDRs of the Noticee.

12. An account charge agreement was executed between the Noticee and Banco and the aforesaid agreement was signed by Mr. N.I Gandhi for the Noticee. As per the Account Charge Agreement, the Noticee shall deposit in its designated account with Banco an amount not exceeding loan availed by Fusion for subscription of GDRs of the Noticee as security for all the obligations of Fusion under the Credit Agreement. It was further observed that only upon payment of all or part of the amounts due under Credit Agreement, the Noticee could withdraw an equivalent amount from the bank account of Banco. The Account Charge Agreement contained a clause to the

effect that all communications to be given under the Agreement were to be addressed to Mr. N.I. Gandhi, CMD.

13. The Noticee stated in the annual reports for financial years (hereinafter referred to as "FY") ended 2005-07 (FY commencing from October 1, 2005 to March 31, 2008) and 2007-08 (FY commencing from April 1, 2007 to March 31, 2008) that all accounting standards were recognized and followed. For the FY ended 2005-07, the Noticee had shown cash and cash equivalents ("CCE") at end of the period as ₹2,139.18 lakh in cash flow statement and balance sheet. It was observed that out of ₹2,139.18 lakh, an amount of ₹1,941.78 lakh was lying in deposit account with Banco which was pledged with Banco against loan taken by Fusion. Hence, an amount of ₹1,941.78 lakh lying in deposit account with Banco is not CCE as per AS-3 which read as:

AS 3 – Cash Flow Statements

Cash comprises cash on hand and demand deposits with bank.

Cash equivalents are short term, highly liquid investments that are readily convertible into known amount of cash and which are subject to an insignificant risk of changes in value.

14. The Noticee had pledged its GDR proceeds against the loan taken by Fusion for subscription of GDRs of the Noticee. The Noticee could utilise its GDR proceeds only to the extent of the amount of loan repaid by Fusion and there was an obligation on the Noticee for ₹1941.78 lakh and ₹164.04 lakh as on the date of balance sheet i.e. March 31, 2007 and March 31, 2008 respectively in the event of default of repayment of loan taken by Fusion which is of contingent liability in nature. It was observed from the annual reports of the Noticee for the FY 2005-07 and 2007-08 that the Noticee had not disclosed the amount lying in deposit account with Banco as contingent liabilities for amounts of ₹1,941.78 lakh and ₹164.04 lakh in its financial statements for the FY 2005-07 and 2007-08 respectively. This is not in compliance with AS-29 which reads as:

AS 29 – Provisions, Contingent liabilities and Contingent Assets

10.4 A contingent liability is:

a) A possible obligation that arises from past events and the existence of which will be confirmed only be the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise.

b) A present obligation that arises from past events but is not recognised because:

i. It is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation;

ii. A reliable estimate of the amount of the obligation cannot be made.

A contingent liability is disclosed, as required by paragraph 68, unless the possibility of an outflow of resources embodying economic benefits is remote.

68. Unless the possibility of any outflow in settlement is remote, an enterprise should disclose for each class of contingent liability at the balance sheet date a brief description of the nature of the contingent liability and, where practicable:

a) An estimate of its financial effect, measured under paragraphs 35-45

b) An indication of the uncertainties relating to any outflow; and

c) The possibility of any reimbursement

15. It is observed that the Noticee did not follow prudence as it did not provide for the potential liability, did not follow substance over form and presented its encumbered cash balance as free cash available with the Noticee and also did not follow materiality as it did not disclose the fact of account charge agreement and the encumbrance on the cash balance as the same is an item, the knowledge of which might influence the decisions of the user of the Financial Statements. This is not in compliance with AS – 1, which reads as:

AS – 1 – Disclosure of Accounting Policies

Considerations in the Selection of Accounting Policies

16. The primary consideration in the selection of accounting policies by an enterprise is that the financial statement prepared and presented on the basis of such accounting policies should represent a true and fair view of the state of affairs of the

enterprise as at the balance sheet date and of the profit and loss for the priod ended on that date

17. For this purpose, the major considerations governing the selection and application of accounting policies are:-

a) Prudence – In view of the uncertainty attached to future events, profits are not anticipated but recognized only when realised though not necessarily in cash. Provision is made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information.

b) Substance over form – The accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form.

c) Materiality – Financial statements should disclose all "material" items, i.e. items the knowledge of which might influence the decisions of the user of the financial statements.

16. The Noticee had submitted that there was an inordinate delay on the part of SEBI in investigating the matter. I find that the investigation in the matter was completed in January 9, 2017 and the adjudication proceedings was initiated on February 2, 2017. Subsequently, the Noticee had also applied for settlement. Pursuant to the settlement application getting rejected, an opportunity of personal hearing was given to the Noticee on August 18, 2020. At the request of the Noticee, the personal hearing was finally adjourned to September 10, 2020.

17. The Noticee further had submitted that it was not aware of any loan taken by Fusion against the pledge/ mortgage of the GDR proceeds. It is further not aware that an account charge agreement was ever implemented. As the Noticee was not aware of the alleged loan taken by Fusion, it continued to treat the same as cash/ cash equivalent.

18. The submission of the Noticee cannot be accepted. An account charge agreement dated November 21, 2005 was signed between the Noticee and Banco. The said agreement was signed by Mr. N. I. Gandhi on behalf of the Noticee. Being the CMD of the Noticee, Mr. N.I Gandhi was authorised to sign, execute any agreement from time to time on behalf of the Noticee. There was also a clause in the account charge agreement that all communications to be given under the account charge agreement were to be addressed to Mr. N.I. Gandhi, CMD. Mr. Gandhi never denied signing the agreement but stated that he could not recollect signing the particular account charge agreement as he had to sign many documents at the time of issuance of GDR. Even if one were to accept the submission of the Noticee that it was not aware of the account charge agreement, I observed that even after coming to know about the same, the Noticee had taken no action against Mr. N. I. Gandhi.

19. This indicates that the Noticee was fully aware of the charge created and yet failed to disclose the amount lying in deposit account with Banco as contingent liability, which was not in compliance with the aforesaid accounting standards.

20. In view of the above, I find that the Noticee had made incorrect disclosures regarding compliance with accounting standards. Hence, allegation of violation of section 21 of SCRA read with clause 50 of the listing agreement stands established.

21. It is observed that the Noticee did not inform stock exchange about the account charge agreement with Banco for subscription of GDRs of the Noticee which could have impact on the performance of the company. Further, the shareholders at the Annual General Meeting held on March 29, 2004 gave their consent to the issue of up to US $6.50 million by way of GDRs which is price sensitive information. The Noticee informed BSE of the same only on January 31, 2005. In view of the above, I find that the Noticee has violated section 21 of SCRA read with 36(7) of the listing agreement.

22. The Noticee failed to adhere to the terms of Clause 36(7) of the Equity Listing Agreement w.r.t. disclosures pertaining to the GDR issue. Further, the accounting

treatment given by the Noticee was also incorrect and misleading and therefore, the Noticee has violated the provisions of section 21 of the SCRA read with clause 50 of the Equity Listing Agreement.

23. 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…*".

24. The above violations make the Noticee liable for penalty under section 23E of the SCRA which reads as:

Penalty for failure to comply with provisions of listing conditions or delisting conditions or grounds.

23E. *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.*

25. While determining the quantum of penalty under section 23E of the SCRA, it is important to consider the relevant factors as stipulated in section 23J of the SCRA which reads as under: -

Factors to be taken into account while adjudging quantum of penalty

23J. *While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or 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.

26. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the investigation department of SEBI has not quantified the profit/loss for the violations committed by the Noticee in the said matter. It has not discussed the loss caused to the investors due to such non-disclosure. However, I observe that the GDR funds were repatriated to the Noticee's India account within three years i.e. during the period June 30, 2006 to June 16, 2009.

ORDER

27. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in 23 J of SCRA and in exercise of the powers conferred upon me under 23I of SCRA read with Rule 5 of the AO Rules, 2005, I hereby impose a penalty of ₹ 10,00,000/- (Rupees Ten Lakh only) on the Noticee under section 23E of SCRA.

28. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action - I [**EFD 1-DRA-1**] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

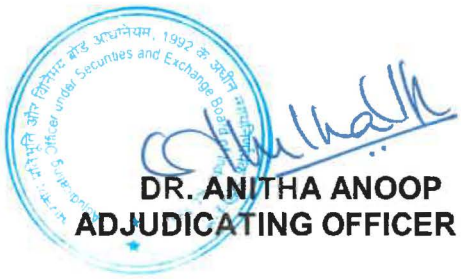
Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

OR

29. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

30. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

31. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.



Date : September 28, 2020
Place: Mumbai

DR. ANITHA ANOOP
ADJUDICATING OFFICER