



## SOUTH CHEMISTS & DISTRIBUTORS ASSOCIATION (Regd.)

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15<sup>th</sup> November 2021

Ref: SCDA/2021/0146

**Subject: Representation against the Draft Red Herring Prospectus (DRHP) of API Holdings**

Dear Sir(s),

This is with reference to the Draft Red Herring Prospectus (DRHP) of API Holdings Pvt Ltd. (hereinafter referred to as "API Holdings").

The present representation is being given by South Chemists & Distributors Association (Regd.) (SCDA) to highlight serious issues regarding the DRHP given by API Holdings which require intensive consideration by SEBI. **SCDA submits that the DRHP needs to be rejected by SEBI.**

### **1.0 Background of SCDA:**

- 1.1 SCDA is a registered association of distributors and retailers of drugs and prescription medicines. The members of SCDA operate various chemist stores and run pharmaceutical distribution business in South Delhi.
- 1.2 The members of SCDA provide various products from their retail outlets such as prescription and non-prescription drugs, ayurvedic medicines, baby care products, cosmetic and skin care products, health care items and patient care medical equipment.
- 1.3 SCDA has actively highlighted various issues due to illegally mushrooming of e-pharmacies, i.e., websites and portals which are selling prescription medicines and drugs online. As per the Drugs and Cosmetics Act and the Rules, prescription medicines and drugs can be sold only through a licensed retailer under strict supervision.

- 1.4 SCDA was also invited to make representation to the Ministry of Commerce and Industry on 15.07.2019 and submitted its written views as well, which were well received. On behalf of the SCDA a representation was also made to the Competition Commission of India on the 'Market Study on E-commerce in India.' SCDA has also played a key and important role in ensuring the availability of pharmaceutical products, masks and hand sanitizers at affordable prices during the COVID – 19 pandemic. SCDA was also invited to be a part of discussion on e-pharmacies on 10th June 2019 in the Ministry of Health & Family Welfare, Nirman Bhawan.
- 1.5 SCDA had also filed a writ petition in the High Court of Delhi against the misuse of *the Aarogya Setu* app for the promotion of e-pharmacies. After our intervention, the link got delisted from the *Aarogya Setu* app and then the website [www.aarogyasetumitr.in](http://www.aarogyasetumitr.in) was also suspended.
- 1.6 At the start of Covid 19 pandemic, SCDA also got an opportunity of get posters printed, matter of which was provided by Ministry of Health & Family Welfare, and got them pasted in each and every chemist shop in south of Delhi.

**2.0 The business of E-pharmacies is not legal under the Indian Law and thus, the DRHP of API Holdings which primarily works on the brand name of 'PharmaEasy', an E-Pharmacy deserves to be rejected:**

- 2.1 At the outset, SEBI needs to consider whether the business activities of the acquiring entities is legal or not.
- 2.2 The DRHP is by API Holdings, whose main business is distribution and wholesale of drugs (including pharmaceutical products, medical devices and over the counter ('OTC') drugs), through e-commerce platform - PharmEasy.
- 2.3 The business of API Holdings – for e-pharmacy: under the name of PharmEasy –is illegal under the Indian Law.

**SEBI cannot let an entity whose business is not legal under the Indian Law, be listed on the Stock Market and Investors investing huge some of their savings in it.**

The DRHP of an entity, whose business is not legal under the Indian law, cannot be approved by SEBI. SEBI cannot put a stamp of approval and give a cloak of legality, to illegal acts.

- 2.4 For the sale and distribution of pharmaceutical medicines and drugs, specific laws and regulations exist, such as Drugs and Cosmetics Act, 1940; Drugs and Cosmetics Rules, 1945; Pharmacy Act, 1948; Pharmacy Practice Regulations, 2015; Indian Medical Act, 1956 and Code of Ethics Regulations, 2002, and Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954. National Pharmaceutical Pricing Authority (NPPA) is an independent Regulator for pricing of drugs and to ensure availability and accessibility of medicines at affordable prices.

- 2.5 The regulatory framework does not distinguish between the conventional and over the Internet sale and distribution of drugs. Thus, in the absence of any special provision, the provisions of the aforesaid legislations have to be complied by the online pharmacies as well.
- 2.6 The specific provisions of the various Acts and rules which are applicable on e-pharmacies as well are:
- (a) The Drug and Cosmetics Act, 1940: Section 18 (b), Section 27;
  - (b) The Drugs and Cosmetics Rules, 1965:
    - Rule 61 (1), (2), (3), which relates the forms of licenses to sell drugs;
    - Rule 62: which relates to sale at more than one place;  
Licenses in Form 20/20 A/20 B/20 BB/20 C/20 D/20 G/21/21 A/21 B;
    - Rule 62 B (1) which deals with conditions to be satisfied before a licence in Form 20-A or Form 21-A is granted;
    - Rule 64, which relates to conditions to be satisfied before a licence in Form 20, 20-B, 20-F, 20-G, 21 or 21-B is granted
    - Rule 65 (2), (3), (9), (10), (11), (11 A), (21), which deal with Conditions of Licenses.
  - (c) The Pharmacy Act, 1948: Section 41; Penalty for falsely claiming to be registered:
  - (d) The Pharmacy Practice Regulations, 2015:
    - Regulation 3.2 relating to privileges of persons registered as a pharmacist on the register of State Pharmacy Council;
    - Regulation 4.3 stating that dispensing against prescription of Registered Medical Practitioner only;
    - Regulation 9.1 which relates to Dispensing/ Supply of Drugs.
- 2.7 The Drugs Controller General of India (DCGI) banned sale through e – pharmacies on 30th December, 2015. (Annexure – 1)
- 2.8 A report in the year 2016 of the “Sub – Committee” constituted by the Drugs Consultative Committee under the DCGI, concluded that the current mode of functioning of e-pharmacies in India is illegal. A true copy of the report is annexed herewith. (Annexure – 2)
- 2.9 The Hon’ble Court of Delhi has passed an order dated 12.12.2018 in W.P.(C) No. 11711 of 2018 titled as Dr. Zaheer Ahmed vs. Union of India & Anr. whereby the Hon’ble Court has **‘injunctioned online sale of medicines without license’** and directed the Government to ensure that the same is prohibited till further orders. The order dated 12.12.2018 continues to operate as it is till this date. A true copy of the order dated order dated 12.12.2018 in W.P.(C) No. 11711 of 2018 is annexed herewith. (Annexure – 3)

- 2.10 The Drugs Controller General (India) also wrote a letter on 08.05.2019 and 28.11.2019 (Annexure 4 & 5) asking the State Drug Controllers to comply with the direction issued by this Hon'ble Court. It was directed that no activity associated with online sales of drugs without license be carried out, whether directly or indirectly. On its direction, Drugs Control Department, Government of NCT of Delhi also issued a letter dated 04.12.2019 in this regard. (Annexure – 6)
- 2.11 A contempt petition is pending before the Hon'ble High Court against various e-pharmacies which continue to operate in blatant violation of the order of the Hon'ble High Court.
- 2.12 On 26 March 2020, vide a notification, the Central Government allowed supply by retail, doorstep delivery of the specified drugs by any person holding a licence in Form 20 or Form 21 to supply. The said notification provides relaxation for those persons who already had a license but were required to dispense the medicines from the premises for which the license had been given. The said notification did not in any manner whatsoever legitimize the operations of the e-pharmacies. The e-pharmacies do not hold any licence in Form 20 or Form 21. A true copy of the notification dated 26.03.2020 is annexed herewith. (Annexure – 7).
- 2.13 Furthermore, in a writ petition, being W.P. (C) No. 3139 of 2020, filed by SCDA before the Hon'ble Delhi High Court, the Ministry of Health and Family Welfare filed an affidavit stating as follows:

“23. It is most respectfully submitted that the issue relating to **online sale of drugs is presently under the consideration** of the Government.

24. That it is pertinent to mention here that at present the Drugs and Cosmetics Act, 1940 and Rules 1945 **have no provision on the online sale of drugs...**

25. “... it is respectfully submitted that **at present there is no provision under the Drugs and Cosmetics Act, 1940 and Drugs and Cosmetic Rules, 1945 for online pharmacies.** However, the provision for registration of e-pharmacies by Central Licensing Authority was proposed in the notification vide GSR (E) 817 dated 28.08.2018 for the amendment of Drugs and Cosmetics Rules, 1945 which is under examination and consideration of the Government.”

A true copy of the affidavit filed by the Ministry of Health and Family Welfare is annexed herewith. (Annexure – 8).

- 2.14 **In view of the above, since the e-pharmacies are not mandated as per law, SEBI cannot permit DRHP of API Holdings whose business is illegal.**

### **3.0 Anti-competitive concerns:**

- 3.1 Though it is not in the domain of SEBI, but it is pertinent to mention here that API Holdings is involved in various anti competitive activities in the pharmaceutical market.

- 3.2 With the policy of Cash Burn, it is creating an imbalance in the pharmaceutical market where millions of jobs have been lost and thousands of businesses have shut down.
- 3.3 API Holdings have had significant adverse impact on competition because of the vertical integration in the supply chain within the fold of API leading to products being sold on the platform e-pharmacy www.PharmEasy.in.
- 3.4 We have submitted a detailed report regarding this specific aspect to the Competition Commission of India.

**The Preamble of Securities Exchange Board of India:**

**“.. to protect the interest of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto”**

**4.0 Interest of Investor**

- 4.1 The primary exposure and business of API Holdings is from the E-Pharmacy PharmEasy.
- 4.2 E-Pharmacy does not have any legal validity in our country and their operations are even 'Injuncted' by Hon'ble High Court of Delhi.
- 4.3 The investors interest in on stake while investing in API Holdings due to the nature of their business.
- 4.4 As the business of E-Pharmacy is Illegal, the Regulatory Authorities can prohibit its business or have various changes in times of come which can have a significant impact on the wealth and investments of the investors. **The investors can lose billions if E-Pharmacy rules which are undecided are made against their business model.**
- 4.5 The investors are at risk of big financial losses if SEBI allows the listing of API Holdings on the Stock Exchange by approving the DRHP.

**5.0 Promote the Development and Regulate**

- 5.1 The development of India's stock exchanges will be greatly challenged if businesses like API Holdings which are illegal in nature are listed on it.
- 5.2 It is SEBI's responsibility of ensure that India's stock exchange does not list any companies whose business model is questioned under the Indian laws.
- 5.3 If API Holdings can be listed on the Indian stock exchange, then in future any company dealing with sale of banned substances under India's laws can also be listed.

- 5.4 This will not leave any differentiation between the Legal and Illegal activities of the companies listed on the exchanges.
- 5.5 As the only Regulatory Agency in India, SEBI needs to examine the business model of API Holdings and see for themselves that their business model is not allowed under the Indian laws.

## **6.0 Conclusion**

- 6.1 We have submitted ample documentary proof that the main business of PharmEasy which forms a major part of API Holdings is Illegal in nature under laws of our country.
- 6.2 **SEBI should not allow listing of API Holdings till PharmEasy forms a part of the entity,** however big or small it may be.
- 6.3 The listing on stock exchange of API Holdings with PharmEasy as its part can result in huge financial losses for the investors in short or long run.
- 6.4 As the only Regulatory Authority and in view of the above proofs, SEBI has to Reject the DRHP of API Holdings.

We sincerely hope that you will take the points submitted by into consideration.

As we have extensive research on the above subject, we would love to provide any clarification on any point you may wish to seek.

Regards,



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Legal Head

CC:

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