



COMPETITION COMMISSION OF INDIA  
Case No. 65, 71, 72 of 2014 and 68 of 2015

Case No. 65 of 2014

**In Re:**

**M/s Alis Medical Agency**

**Informant No. 1/IP-1**

**And**

**Federation of Gujarat State Chemists & Druggists Associations**

**OP-1**

**Amdavad Chemists Association**

**OP-2**

**Cipla Ltd.**

**OP-3**

**Galderma India Pvt. Ltd.**

**OP-4**

**M/s M.B. Enterprises**

**OP-5**

**Lupin Ltd.**

**OP-6**

**M/s S.K. Brothers**

**OP-7**

***With***

Case No. 71 of 2014

**In Re:**

**M/s Stockwell Pharma**

**Informant No. 2/IP-2**

**And**

**Federation of Gujarat State Chemists & Druggists Associations**

**OP-1**

**Surat Chemists & Druggists Association**

**OP-2**

**Intas Pharmaceuticals Ltd.**

**OP-3**

**M/s M.B. Enterprises**

**OP-4**

**Unichem Laboratories Ltd.**

**OP-5**

**M/s Shah Uni Agency**

**OP-6**

**Lupin Ltd.**

**OP-7**



M/s S.K. Brothers



OP-8

*With*

**Case No. 72 of 2014**

**In Re:**

M/s Apna Dawa Bazar

Informant No. 3/IP-3

And

Federation of Gujarat State Chemists & Druggists Associations

OP-1

Shri V.T. Shah, President,  
Chemists & Druggists Association of Baroda

OP-2

Alkem Laboratories Ltd.

OP-3

Aristo Pharmaceuticals Pvt. Ltd.

OP-4

Johnson and Johnson Pvt. Ltd.

OP-5

Kanchan Pharma Pvt. Ltd.

OP-6

Lupin Ltd.

OP-7

Glaxo Smith Kline Pharmaceuticals Ltd.

OP-8

M/s S.K. Agencies

OP-9

Unison Pharmaceuticals Pvt. Ltd.

OP-10

M/s K.B. Corporation

OP-11

*With*

**Case No. 68 of 2015**

**In Re:**

M/s Reliance Medical Agency

Informant No. 4/IP-4

And

The Chemists & Druggists Association of Baroda

OP-1

Shri V.T. Shah

OP-2

Shri Alpesh Z. Patel

OP-3



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<b>Abbott India Ltd.</b>	<b>OP-4</b>
<b>Abbott Healthcare Pvt. Ltd.</b>	<b>OP-5</b>
<b>Kanchan Pharma Pvt. Ltd.</b>	<b>OP-6</b>
<b>Mankind Pharma Ltd.</b>	<b>OP-7</b>
<b>Quality Life Sciences Pvt. Ltd.</b>	<b>OP-8</b>
<b>Novartis India Ltd.</b>	<b>OP-9</b>
<b>Dr. Reddy's Laboratories Ltd.</b>	<b>OP-10</b>
<b>USV Pvt. Ltd.</b>	<b>OP-11</b>
<b>M/s SUA Agency</b>	<b>OP-12</b>
<b>Johnson &amp; Johnson Pvt. Ltd.</b>	<b>OP-13</b>
<b>Allergan India Pvt. Ltd.</b>	<b>OP-14</b>
<b>M/s Aars AARS Agencies</b>	<b>OP-15</b>
<b>Astrazeneca Pharma India Ltd.</b>	<b>OP-16</b>
<b>M/s Chimanlal Pharma</b>	<b>OP-17</b>
<b>Torrent Pharmaceuticals Ltd.</b>	<b>OP-18</b>
<b>M/s Zeal Drugs &amp; Chemicals</b>	<b>OP-19</b>
<b>Alcon Laboratories India Pvt. Ltd.</b>	<b>OP-20</b>
<b>Parekh Integrated Services Pvt. Ltd.</b>	<b>OP-21</b>
<b>Glenmark Pharmaceutical Ltd.</b>	<b>OP-22</b>
<b>M/s B.M. Thakkar &amp; Co.</b>	<b>OP-23</b>
<b>Systopic Laboratories Pvt. Ltd.</b>	<b>OP-24</b>
<b>M/s Medico Agencies</b>	<b>OP-25</b>
<b>Meyer Organics Pvt. Ltd.</b>	<b>OP-26</b>
<b>M/s F. Dinyar Pharma</b>	<b>OP-27</b>
<b>Cadila Healthcare Ltd.</b>	<b>OP-28</b>



**M/s Rimi Distributors**

**OP-29**

**CORAM**

**Mr. Sudhir Mital**  
**Chairperson**

**Mr. U. C. Nahta**  
**Member**

**Mr. Justice G.P. Mittal**  
**Member**

**Order under Section 27 of the Competition Act, 2002**

1. *Vide* order dated 12.07.2018 (hereinafter, the ‘Main Order’), passed under Section 27 of the Competition Act, 2002 (hereinafter, ‘the Act’), the Commission has found contravention of the provisions of the Act by certain chemists and druggists associations and pharmaceutical companies in the State of Gujarat.
2. The erring associations, namely Federation of Gujarat State Chemists & Druggists Associations, along with its district units *i.e.* Amdavad Chemists Association, Surat Chemists Association and Chemists and Druggists Association at Baroda, have been found to be indulging in the anti-competitive practice of mandating a No-Objection Certificate (hereinafter, ‘the NOC’) prior to the appointment of stockists in the State of Gujarat. Such practice has been found to be resulting in limiting and controlling the supply of drugs in the market and hence, held to be an anti-competitive practice, being in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act. Further, the erring pharmaceutical companies, *namely* Glenmark Pharmaceutical Ltd. and its C&F Agent M/s B.M. Thakkar & Co., Divine Savior Pvt. Ltd. and Hetero Healthcare Ltd., have also been found to be liable for entering into an anti-competitive arrangement/ understanding/ coordination with the erring associations in violation of the prohibitions contained under Section 3(1) of the Act.
3. Accordingly, monetary penalties have been imposed on the erring associations and pharmaceutical companies named *supra* at the rate of 10% and 1% respectively, of their respective average incomes. Besides, the Commission has also found certain individuals of these associations and pharmaceutical companies to be liable under



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Section 48(1) and/or 48(2) of the Act for their active involvement and/or by virtue of holding key positions in their respective associations/companies. Accordingly, monetary penalties have been levied upon them at the rate of 10% (in case of office bearers of the erring associations) and 1% (in case of officials of the erring pharmaceutical companies) of their respective average incomes, based on the income tax returns (ITRs) for the three previous years as filed by them.

4. However, since the following individuals did not furnish their ITRs at that stage, despite specific directions and sufficient reminders in this regard been given by the Commission to them from time to time, the Commission decided to pass a separate order regarding imposition of penalty upon them, after receipt of their ITRs in due course and initiated proceedings against them under Section 43 of the Act:
  - i. Shri Glenn M. Saldanha, Managing Director, Glenmark Pharmaceutical Ltd.
  - ii. Shri M. Srinivas Reddy, Managing Director, Hetero Healthcare Ltd.
  - iii. Shri Bharat Pandya, Regional Manager, Hetero Healthcare Ltd.
  - iv. Shri Rakesh Shah, Director, Divine Savior Pvt. Ltd.
5. Show cause notices (hereinafter, 'the SCN') were issued to the aforesaid individuals under Section 43 of the Act, to explain the delay in filing of ITRs despite specific directions of the Commission. In response to the SCNs, all the above-named individuals filed their ITRs promptly and tendered an unconditional apology, besides explaining the reasons for delay in filing of the ITRs. In view of the explanation, the Commission, *vide* order dated 14.08.2018, decided to drop Section 43 proceedings against them.
6. However, in view of the Main Order dated 12.07.2018, wherein the Commission has found the above named individuals to be liable under Section 48 of the Act and decided to impose penalty in due course, penalties are being imposed hereunder, through this order passed under Section 27 read with Section 48 of the Act, for their deemed and/or active involvement in the contravention by their respective companies.
7. The Commission notes that the liability of these four individuals has already been established in detail in the Main Order under Section 48(1) and/or 48(2) of the Act. The relevant paras of that order in this regard are reproduced herein below, for the sake of convenience:



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**“Shri Glenn M. Saldanha, Managing Director, Glenmark**

172. *Shri Glenn M. Saldanha was the Managing Director of Glenmark at the relevant time period when the anti-competitive conduct by Glenmark took place. The contravention against Glenmark is found to be based on the documents placed on record which included data for appointment of new stockist at Ahmedabad prepared by Distribution Department of the Company during 2104-15, showing specified format information regarding requirement of NOC. Further, the ‘Checklist For Stockist Appointment’ also contained marginal notings establishing the NOC practice being followed by Glenmark. Thus, based on the position held by him, presumption of his liability for the contravention by his company arises. Despite opportunity, Shri Glenn M. Saldanha could not establish as to how he was not aware or responsible for such practice. As the Managing Director he ought to have devised measures to ensure that the company, in which he holds a position of responsibility, is not facilitating the practice mandated by the Federation/Shri Jashvant Patel. As explained earlier, Section 48(1) of the Act is triggered when the party in contravention is a company (including a firm or an association of individuals) and a person/individual officer/office bearer is found to be in-charge of, and responsible for the conduct of the business of the contravening company/firm/association. Once Section 48(1) of the Act is triggered, it is for such person/officer/office bearer to then prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention, in order to be absolved of liability under Section 48(1) of the Act. Since he has not been able to rebut the presumption, he is held responsible for the conduct of Glenmark under Section 48(1) of the Act, based on the position held by him during period of contravention.*



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***Shri Bharat Pandya, Regional Manager, Hetero Healthcare Ltd.***

177. *Vide call recording dated 16<sup>th</sup> June, 2015, submitted by Shri Yogesh Patel, Partner, IP-1, Shri Bharat Pandya told Shri Yogesh Patel that stockistship of Hetero Healthcare cannot be offered until NOC is provided from the Association/ Federation to the company. Therefore, the conduct of Shri Bharat Pandya shows his active involvement in perpetrating the NOC practice mandated by the Association and he is thus, held liable under Section 48(2) of the Act.*

***Shri M. Srinivas Reddy, Managing Director, Hetero Healthcare Ltd.***

178. *Shri M. Srinivas Reddy was the Managing Director of Hetero Healthcare at the relevant time period when the anti-competitive conduct by Hetero Healthcare took place. Despite opportunity, Shri M Srinivas Reddy was not able to demonstrate that the anti-competitive conduct took place without his knowledge or that he took adequate measures to avoid its occurrence. Therefore, based on the key position of Managing Director held by Shri M. Srinivas Reddy, it is inferred that he was in-charge of and responsible for the conduct of Hetero Healthcare at the relevant time, making him liable under Section 48(1) of the Act.*

***Shri Rakesh Shah, Director, Divine Savior***

179. *Shri Rakesh Shah was the Director of Divine Saviour at the relevant time period when Divine Saviour indulged in the anti-competitive conduct and thus, held a position of responsibility in the said company. Shri Rakesh Shah has not been able to demonstrate that the contravention by Divine Saviour was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention, in order to be absolved of liability under Section 48(1) of the Act. Rather, the email dated 24<sup>th</sup> April, 2015, recovered from the email dump of the President, SCDA, establishes that Shri Rakesh Shah sought permission of SCDA in relation to appointment of a new stockist by Divine Savior. This*



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*evidence shows his active involvement in addition to the key position held by him, making him liable under Section 48(1) as well as Section 48(2) of the Act.*

8. Further, while responding to the SCN, Shri Glenn M. Saldanha has submitted that in response to the investigation report, an application dated 05.01.2018 was filed by him for deletion of his name from the impugned proceedings wherein he had also requested for a separate hearing on the said application, if the Commission finds Glenmark Pharmaceuticals Ltd. in contravention of the provisions of the Act. However, the Main Order was passed by the Commission without giving an opportunity of hearing to him.
9. In this regard, the Commission notes that the learned Senior Counsel for Shri Glenn M. Saldanha, Shri Amit Sibal had argued at length on the said application and as such, there does not arise any need for another separate hearing on the same application. It was strenuously argued that Shri Glenn M. Saldanha had no role to play in the appointment of stockists and as such, there was no connecting link between Shri Glenn M. Saldanha and the appointment of two stockists, *namely* M/s Sanjay Agencies or Dhruvi Pharma Pvt. Ltd., whose appointment forms contained alleged marginal noting regarding NOC. Thus, any default with regard to their appointment cannot be attributed to him. The Commission observes that as per the *proviso* to Section 48(1) of the Act, Shri Glenn M. Saldanha ought to have demonstrated that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. Being the Managing Director of Glenmark Pharmaceuticals Ltd., he is not expected to be minutely involved in the appointment of stockists but at the same time, he ought to have ensured that the processes and procedures of the company were in strict compliance with the existing laws, including the provisions of the Act. The standard of proof required to rebut such deemed knowledge, owing to position of responsibility held by him, is greater than mere claim of ignorance offered by him. Thus, as already held in the Main Order, he being in-charge of and responsible for the conduct of business of the company Glenmark Pharmaceutical Ltd., is liable under Section 48(1) of the Act for the position held by him in the company.





10. Accordingly, in terms of Section 27 read with Section 48 of the Act, the Commission deems it appropriate to calculate penalties on the four individuals named *supra*, at the rate of 1% of their respective incomes based on their income tax returns (ITRs) for three years as mentioned herein below:

**Income of Officials of Pharmaceutical Companies**

(Income in Rupees)

<b>Year</b>	<b>Shri Srinivasa Reddy, Managing Director, Hetero Healthcare Ltd.</b>	<b>Shri Bharat Pandya, Regional Manager, Hetero Healthcare Ltd.</b>	<b>Shri Glenn M. Saldanha, Chairman and Managing Director, Glenmark Pharmaceutical Ltd.</b>	<b>Shri Rakesh Shah, Director, Divine Savior Pvt. Ltd.</b>
2013-14	13,29,00,095	5,48,919	7,35,77,769	8,98,090
2014-15	2,42,42,287	6,24,955	8,47,01,320	9,00,534
2015-16	4,01,61,159	7,12,295	10,83,67,494	9,02,482
<b>Total</b>	19,73,03,541	18,86,169	26,66,46,583	27,01,106
<b>Average</b>	6,57,67,847	6,28,723	8,88,82,194	9,00,369
<b>1% of Average Income</b>	6,57,678	6,287	8,88,822	9,004

11. It is noted that while imposing penalty on the pharmaceutical companies *vide* the Main Order, the Commission had considered certain mitigating circumstances that worked in favour of Hetero Healthcare Pvt. Ltd. and hence its penalty amount was reduced by 40%. It was observed that Hetero Healthcare Pvt. Ltd. had come forward before the Commission and admitted to its guilt of breaching the relevant provisions of the Act. Further, the facts revealed that it had never refused to sell/supply its drugs to the Informant even during the alleged period. Also, during the course of the proceedings, Hetero Healthcare Pvt. Ltd. had assured the Commission that it would give clear instructions to all its field staff in the matter to prevent any such incident in future. These factors were duly considered by the Commission while reducing Hetero Healthcare's penalty by 40%.



12. The Commission is of the view that benefit of these mitigating factors also need to be extended *qua* its officials, *namely* Shri Srinivasa Reddy and Shri Bharat Pandya, and accordingly, they also deserve a remission in their respective penalties by 40%. Accordingly, the penalty payable by Shri Srinivasa Reddy and Shri Bharat Pandya is quantified at Rs. 3,94,607/- and Rs. 3,772/-, respectively.

13. Resultantly, the following penalties, calculated at the rate of 1% of their average income for 3 financial years *i.e.* 2013-14, 2014-15 and 2015-16, taking into account the remission given to Shri Srinivasa Reddy and Shri Bharat Pandya as stated at para 12 above, are hereby imposed:

**Penalty imposed on Officials of Pharmaceutical Companies**

(In Rupees)

	<b>Shri Srinivasa Reddy, Managing Director, Hetero Healthcare Ltd.</b>	<b>Shri Bharat Pandya, Regional Manager, Hetero Healthcare Ltd.</b>	<b>Shri Glenn M. Saldanha, Chairman and Managing Director, Glenmark Pharmaceutical Ltd.</b>	<b>Shri Rakesh Shah, Director, Divine Savior Pvt. Ltd.</b>
<b>Amount of Penalty</b>	3,94,607	3,772	8,88,822	9,004

14. The aforesaid individuals are directed to deposit the amount of penalty, within 60 days of the receipt of this order.

15. Before parting with the order, the Commission notes that there were certain pharmaceutical companies, whose names were arraigned as Opposite Parties in Case No. 68 of 2015; however, the Investigation Report of the DG contained no specific finding against them. They are the following Opposite Parties:

- a) Abbott India Ltd.
- b) Abbott Healthcare Pvt. Ltd.
- c) Novartis India Ltd.
- d) Dr. Reddy's Laboratories Ltd.
- e) USV Pvt. Ltd.
- f) M/s SUA Agency
- g) Allergan India Pvt. Ltd.



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- h) M/s Aars AARS Agencies
- i) Astrazeneca Pharma India Ltd.
- j) M/s Chimanlal Pharma
- k) Torrent Pharmaceuticals Ltd.
- l) M/s Zeal Drugs & Chemicals
- m) Alcon Laboratories India Pvt. Ltd.
- n) Parekh Integrated Services Pvt. Ltd.
- o) Systopic Laboratories Pvt. Ltd.
- p) M/s Medico Agencies
- q) Meyer Organics Pvt. Ltd.
- r) M/s F. Dinyar Pharma

16. Many of the aforesaid pharmaceutical companies also requested for deletion of their respective names, in response to the Investigation Report forwarded to them. Further, the Informants also could not establish any contravention by any of these pharmaceutical companies during the course of proceedings in the matter.

17. In view of the fact that there is no specific adverse finding against these companies in the Investigation Report, the Commission decides not to proceed further against them. Applications, if any, filed by the companies named above, with regard to deletion of their names, are disposed of accordingly. Needless to mention that these findings are specifically in relation to the present matter and the same shall have no bearing on any existing or future investigation against any of these pharmaceutical companies.

18. The Secretary is directed to inform all the concerned parties, accordingly.

**Sd/-**  
**(Sudhir Mital)**  
**Chairperson**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**  
**Dated: 30/08/2018**