



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

ORDER	
Name of the Company	Citi Pharma Limited
Show Cause Notice No. and Issue Date:	No. 2(369) SMD/Adj-I/2022-209 dated April 26, 2024
List of Respondents:	i. Mr. Rizwan Ahmed, Chief Executive ii. Mr. Nadeem Amjad, Chairman/ Director iii. Mr. Zamir ul Hassan Shah, Executive Director iv. Mr. Saira Aslam, Non-executive Director v. Mr. Mohammad Naeem, Non-executive Director vi. Mr. Abdul Jaleel Shaikh, Independent Director vii. Ms. Farzin Khan, Independent Director
Date(s) of Hearing(s):	i. August 23, 2024 ii. October 31, 2024
Present at the Hearing(s):	Mr. Ghulam Dastgeer- Director Finance; (as the Authorized Representative.)
Provisions of the law involved:	Regulation 3(15a), 3(15b), 16(a) of the Public Offering Regulations, 2017 and Section 88 of the Securities Act, 2015 read with Section 159(5) thereof.

This Order shall dispose of the proceedings initiated through the Show Cause Notice No. 2(369)SMD/Adj-I/2022-209 dated April 26, 2024 (the "SCN") against Board of Directors (BOD) (herein collectively referred to as the "Respondents") of Citi Pharma Limited (the "Company") on account of alleged contravention of Regulation 16(a) of the Public Offering Regulations, 2017 (the "Regulations") and Section 88(8) of the Securities Act, 2015 (the "Act") read with Section 159(5) of the Act.

2. The Company was incorporated as a private limited company in Pakistan under the Companies Ordinance, 1984 (now Companies Act, 2017) on October 08, 2012. The principal business of the Company is manufacturing and sale of (i) Active Pharmaceutical Ingredients (API) and (ii) Pharmaceutical Formulation. It was converted from Private Limited to Public Limited Company on October 13, 2020 and it was listed on Pakistan Stock Exchange ("PSX") on July 09, 2021.

3. The brief facts of that case are that the Company through its approved Prospectus dated June 16, 2021 invited offers from public for the subscription of 72.692 million ordinary shares of Rs. 10 each (face value) at a floor price of Rs.28 per shares (including premium of Rs. 18 per share). The Company mentioned principal purpose of the issue which consists of two projects; one was establishment of a 50 bed Hospital healthcare facility at an already acquired 4-kanal plot at Hali Road, Near Qaddafi Stadium, Main Gulberg, Lahore for the consideration of price of PKR 264.2 million and the second was to enhance and develop the Pharmaceutical Segment. Brief financing break-up of projects as disclosed in the Prospectus is as under:

Source of Funds for the Project		Expenditure of the Funds		
Particulars	Rupees in million	Particulars	Rupees in million	Percentage (%) of Total Project Funding
IPO Proceeds	2035.376	For hospital segment	1426.00	55
Borrowings (100% for the Hospital Segment)	503.449	For pharmaceutical segment	1112.825	45
Total Project Funding	2538.825	Total	2538.825	100

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4. According to the implementation schedule of the two projects provided in the Prospectus, they were scheduled to commence commercial operations by first quarter of 2023. The total estimated cost for the 50 bed Hospital allocated from IPO and additional borrowing, as disclosed in the Prospectus, was Rs.1,426 million for which the Company had 4-kanal property at Hali Road, Gulberg, worth of Rs. 264 million as disclosed in the Prospectus. It is pertinent to mention here that the Company in its annual accounts for the period ended June 30, 2021 (ref; on Pg. 34 under Section "Company's Products") also disclosed that the Company has acquired a 4-kanal plot located on Hali Road, Gulberg, to set up a 50-bed hospital facility at this location.

5. However, the offsite review of the accounts of the Company for the year ended June 30, 2022 (the "Accounts") revealed in Note 17 of the Accounts that the Company has allocated a site near Pine Avenue Opposite DHA Rahbar, Raiwind Road, Lahore, to establish a Hospital. Further, at note 42 of the Accounts, the Company disclosed principal purpose of the initial public offering, included to set up a 200 bed Hospital facility in Lahore, contrary to the disclosure made in the Prospectus. In addition to the above, Chief executive Officer's (CEO) message annexed to the Accounts also revealed that the Company has planned to establish health care facility, which includes 200 bed capacity hospital along with research based medical science university with an inhouse facility of practical training.

6. The aforesaid change in the location and size of the Hospital Segment were contrary to the commitments/disclosures made to the members in the Prospectus as the Company changed the location for establishing Hospital from a prime location of the City i.e. Gulberg, Lahore, to outskirts of the City i.e. DHA Rahbar, Raiwind Road, Lahore. It also enhanced the scope of the project substantially from 50-bed hospital to 200-bed hospital with in house practical training facility.

7. Accordingly, the matter was taken up with the Company. The Company vide letter dated March 11, 2023, responded *inter alia* stating as under:

"The principal purpose of the Company is the construction of hospital as defined in the prospectus and the Company is not deviating from the principal purpose i.e. construction of hospital. Further, the land located at 71-E, Hali Road, Lahore was only 4 kanals and Company has tried its best to obtain connected properties considering future project expansion of the Company i.e. establishment of medical college etc. but could not possible due to non-availability of connected properties. Company has acquired 10 kanals of land at Pine Avenue, Opposite DHA Rahbar, Lahore for hospital and establishment of college/university. Company has now purchased land considering future expansion of hospital (from 50 beds to 200 beds) and new related property connected with the hospital."

8. The aforementioned responses of the Company revealed, *prima facie*, non-compliances of the Regulations 3(15)(a) and 3(15)(b) and 16(a) of the Regulations and Section 88(8) of the Act which attract penal action in terms of Section 159(5) of the Act.

9. Taking cognizance in the aforesaid matter, the SCN was issued to the Respondents, calling upon them to show cause in writing as to why a penal action as provided under Section 159(5) of the Act, may not be taken against them for contravening the aforementioned provisions of the law. In response, the Company on behalf of the Respondents, requested an extension of one month to address the show cause owing to the vacation of office by its Company Secretary.

10. In order to provide the Respondents an opportunity of personal representation, hearing in the matter was fixed for May 28, 2024. However, the Respondents vide letter dated May 23, 2024 reiterated their request for extension due to vacation of office by the Company Secretary. Thereafter, the Respondents submitted the

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written reply to the SCN vide a letter dated June 13, 2024. The relevant excerpts of the letter are reproduced hereunder:

"The original prospectus mentioned the establishment of the hospital at Gulberg Lahore and the Company already purchased 4 kanal's Land. However, due to regulations by the Lahore Development Authority (LDA) (which will further squeeze the area available for construction to 3.2 kanals), the situation constraints and due to the non-availability of additional land on offer for sale in the adjacent area, the company had to reconsider the location. The Gulberg plot is situated adjacent to the Gaddafi Stadium on one side and an Imam Bargha on the other. This environment posed significant challenges for a hospital due to anticipated noise levels and space constraints, which would affect the hospital's operational efficiency and patient care. The company has conducted an internal survey regarding this and placed the matter before the board for their approval and after detailed discussion, the Board has approved the same.

The new location at DHA Rahbar, Raiwind Road, Lahore, offers a more conducive environment for a hospital, ensuring compliance with LDA Regulations and providing sufficient space for future expansion. The decision to expand the hospital from 50 to 200 beds was driven by the need to meet the increasing healthcare demands for the community and to better utilize the new location's space and facilities. We will be using our own funds for the additional 150 beds and the funds allocated for the hospital segment from the Initial Public Offering (IPO) proceeds have been securely set aside in term deposit receipts. These funds remain untouched and have not been utilized for any other expenses, ensuring they are available for the intended purpose of establishing the hospital. This expansion also aligns with our long-term vision and commitment to providing enhanced medical services and infrastructure.

The changes were communicated to our stakeholders during the corporate briefing session conducted after the financial year closure on June 30, 2022. This session included investors, promoters, and financial analyst, demonstrating our commitment to keeping them informed and involved in major decisions. The changes were necessary to comply with LDA regulations and to ensure the project's successful completion in a viable location.

We regret any oversight in compliance of the regulations. As a newly listed company on the stock exchange, we are committed to adhering to regulatory requirements and fostering transparent communication with our stakeholders. However, we believe these changes were essential for the project's success and sustainability. We kindly request SECP to consider our justifications and the practical challenges we faced. We seek your cooperation and support as we navigate these initial challenges as a newly listed entity."

11. In order to provide another opportunity to present their case, the hearing was fixed on August 23, 2024 which was attended by Mr. Ghulam Dastgeer, Director Finance, on behalf of the Respondents (the **"Authorized Representative"**). During the hearing proceedings, the Authorized Representative reiterated the arguments as provided in reply to the SCN dated June 13, 2024 and submitted as under:

- I. The matter will be taken up in EOGM in September, 2024 and the approval process will be initiated, the evidence of which will be provided subsequent to the hearing.
- II. Requisite approval from the PSX and the Commission will be obtained accordingly.

12. Subsequent to the hearing, the Authorized Representative vide its letter dated September 04, 2024, submitted the following:

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- a. Extract of resolution passed by Board of Directors of the Company via circulation on September 04, 2024, that contained recommendation of ratification of hospital location from Gulberg to DHA Rahbar in the upcoming Annual General Meeting:

"Resolved that the Board of Directors of M/s Citi Pharma Limited hereby approves and recommends to the members for approval and ratification at the upcoming Annual General Meeting to be held in October 2024, the relocation of the hospital from its current address at 71-E/1, Hali Road, Lahore to a new site opposite DHA Rahbar Lahore, adjacent to Khayaban-e-Zafar, Lahore.

- b. Statement of Term Deposits and T-Call Account Balances certified by Aslam Malik & Co. Chartered Accounts as at September 03, 2024.

13. A second opportunity of hearing was fixed on October 31, 2024 which was also attended by the Authorized Representative in person. Thereafter, the Company vide its letter dated November 02, 2024 submitted the following further documents:

- I. Minutes of the Board Meeting dated: October 1, 2024 with a resolution passed via circulation by the board for the proposed change of location.
- II. Minutes of Annual General Meeting (AGM) for the financial year ended June 30, 2024 held on October 28, 2024 where shareholders approved the location change.
- III. CDC Voting Results at the AGM indicating the outcome of shareholding voting for the proposed location change.

14. I have considered the facts of the case based on the relevant provisions of the Act and the Regulations, and the record available with this office and submissions made by the Respondents and Authorized Representative. At this juncture, it is imperative to discuss the following legal and factual points:

- i. The scope and relevance of a prospectus are inherently tied to the period during which public offers for subscription are being invited. Regulation 3(15a) of the Regulations explicitly addresses changes made to a prospectus after its approval by the Commission but prior to its publication. Similarly, Regulation 3(15b) of the Regulations governs changes made after the prospectus has been published and before funds are raised. The provisions relating to the change in prospectus do not remain relevant in the post-subscription scenario which is the case in the instant matter. Therefore, it may not be relevant to adjudicate the matter pursuant to Regulation 3(15a), 3(15b) of the Regulations read with Section 88(8) of the Act.
- ii. In the instant matter, the initial offering was made to construct a 50-bed hospital at the prime location of the City. By acquiring land for construction at a new location to the outskirts of Lahore with enhancement of scale to a 200-bed hospital with a teaching facility, the Respondents have principally changed the purpose of issue. It is pertinent to note that the initial plan catered to the provision of basic medical facilities to the patients; whereas the later has changed the principal purpose by expanding the size and the scope of facilities to be provided by the Hospital including the establishment of medical college within the vicinity of the hospital. The subsequent change has not only extended/delayed the time-frame of construction of hospital, but the incurred costs and expenses will also increase which is contrary to the commitments made to the members in the prospectus. It may be noted that the original project was supposed to commence commercial operations by the first quarter of 2023. However, as the records show, the project has not commenced till date. Therefore, such deviation from principal purpose has proven to be detrimental towards the interests of shareholders.

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- iii. As envisaged in Regulation 16 of the Regulations, the change in principal purpose of issue may only be done in exceptional circumstances. In such a case, it was mandatory for the Respondents to seek approval of members through special resolution and provide an exit opportunity for the dissenting shareholders. It is also pertinent to note that the Respondents had the cardinal responsibility of deciding the initial location of the Hospital and to fully analyze the pros and cons of its operations at the given location before disclosing the same in the prospectus. Subsequently, the same could have only been changed in exceptional circumstances. It is pertinent to note that in the case of *Muhammad Zaheer Hussain v The Recruitment Committee and other* [2017 PLC (C.S) 1070], exceptional circumstances include, "*circumstances beyond human control...*". The reasoning provided by the Respondents in the instant matter do not qualify as exceptional circumstance. The change of business decision in terms of location and scope of the project will have a substantial impact on completion and financial outlay for the Company that may not be aligned with the vision of the shareholders who contributed during the initial public offering. Hence, there has been a clear violation of Regulation 16a (1) of the Regulations which obligated that the issuer shall not at any time change the principal purpose of the issue as disclosed in the prospectus.
- iv. Furthermore, it must be noted that the requirement of change in exceptional circumstances, which clearly did not exist in the instant matter, is subject to approval of the members through special resolution and provision of an exit opportunity to dissenting shareholders as per the requirements of Regulation 16a (2) of the Regulations. In this case, the Respondents have claimed that the investors were informed regarding the change in Corporate briefing in June, 2022 whereas, no documentary evidence has been provided to support such claim. The record available with the Commission clearly shows that the formal consent from the members regarding the change in principal purpose was not obtained until Annual General Meeting (AGM) held in October 2024 which was subsequent to the initiation of adjudication proceedings through the SCN. The Authorized Representative provided extracts of the board's decision dated October 1, 2024 with a resolution passed via circulation by the members of the board for approval of relocation of the proposed hospital site to be sought from the members at the upcoming AGM. Furthermore, the Authorized Representative provided copy of the minutes of AGM for the financial year ended June 30, 2024 held on October 28, 2024 where majority of the shareholders approved the location change of the hospital while a minority of the shareholders also dissented to the proposed change. However, it is pertinent to note that the subsequent approval/ratification by the members of the board and the shareholders does not exonerate the Company from the breach of statutory obligations as mandated under Regulation 16a (1) of the Regulations.
- v. In the case of *Hafiz Abdul Salam v Hassan Din* [2020 YLR 2297], it was held, "*It is by now settled that when law requires a thing to be done in a particular manner, then it would be nullity in the eye of law, if not done in that very prescribed manner...*" In this instance, the lack of compliance with the requirement in the modification of the principal purpose of the issue is tainted with illegality. Hence, the subsequent change shall be deemed void under law.
- vi. The Respondents' assertion that IPO proceeds allocated for the hospital project remain untouched fails to address the central issue and non-compliance with project scope and location commitments as disclosed in the prospectus. Furthermore, evidence/claim submitted by the Authorized Representative do not qualify as plausible by failing to establish any direct linkage between the proceeds of the IPO and the funds placed in Term Deposits.

15. In view of the foregoing and the submissions made by the Authorized Representative of the Respondents, non-compliances of Regulation 16a (1) of the Regulations has been established beyond doubt. Moreover, the Respondents efforts to achieve compliance with provisions of Regulation 16a (2) of the

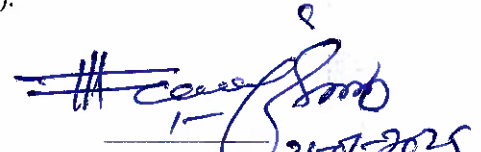
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Regulations in the post-facto manner also stand injured by failing to present a plausible case of exceptional circumstances while also falling short on account of meeting the requirements of offering an exit opportunity through the general meeting notice to the dissenting shareholders. Therefore, I, in terms of powers conferred upon me under Section 159(5) of the Act read with SRO 1545(I)/2019 dated December 06, 2019, hereby, impose an aggregate penalty of **Rs. 200,000/- (Rupees Two Hundred Thousand Only)** on the Respondents in the following manner on account of established default.

S. No	Name of Respondents	Designation	Penalty (in Rs.)
1.	Mr. Rizwan Ahmed	Chief Executive	50,000
2.	Mr. Nadeem Amjad	Chairman/ Director	25,000
3.	Mr. Zamir Ul Hassan Shah	Executive Director	25,000
4.	Ms. Saira Aslam	Non-Executive Director	25,000
5.	Mr. Mohammad Naeem	Non-Executive Director	25,000
6.	Mr. Abdul Jaleel Shaikh	Independent Director	25,000
7.	Ms. Farzin Khan	Independent Director	25,000
Total			200,000

16. Furthermore, the Supervision Department of the Commission is advised to evaluate the matter with respect of compliance of Regulation 16a (2), (3) of the Regulations to ensure preserving the right of the dissenting shareholders; and exercise its powers conferred upon the Department by the Commission to enforce the compliance of the Regulations.

17. The Respondents are, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue pursuant to provision of Section 42 of the Securities and Exchange Commission of Pakistan Act, 1997 (**the SECP Act**).


 (Sohail Qadri) 31-01-2025
 Director/ HoD
 Adjudication Department-I

Announced:

January 31, 2025
Islamabad