
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) RULES, 1995

In respect of
Mayur Developments and Leasings Ltd.,
(PAN: Not available)
CIN: L65910DL1983PLC016322

In the matter of HPC Biosciences Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation in the scrip of HPC Biosciences Ltd., (*hereinafter referred to as "HPC"*) relating to manipulation, if any, in the Initial Public Offer (IPO) process of HPC. The focus of the investigation was to (a) to check whether any irregularity in bidding and allotment in non-compliance with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, (b) to check any mis-statement in the Prospectus with regard to objects of the issue and (c) to check whether the IPO proceeds were diverted for other than the objects stated in the Prospectus.
2. HPC came out with an IPO to raise `1575.00 lacs by way of issue of 45,00,000 equity shares of `10/- each at an issue price of `35/- The shares of HPC got listed on BSE-SME Segment on March 19, 2013.
3. During the course of investigation, the Investigating Authority of SEBI had issued summons to Mayur Developments and Leasings Ltd., (*hereinafter referred to as "Mayur" / "Company" / "Noticee"*) under Section 11(3) and 11C(3) of SEBI Act, requiring it to furnish certain information with regard to transfer of funds by HPC from the IPO proceeds, which was relevant for the purpose of investigation.

4. It was observed that the Noticee failed to provide the details as sought for by the Investigating Authority. Therefore, SEBI initiated Adjudication proceedings against the Noticee for violation of the provisions of Section 11(3) and 11C(3) of SEBI Act for not complying with the summons, under Section 15A(a) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticee and appointed the undersigned as the Adjudicating Officer vide Order dated July 5, 2017 under Section 19 of SEBI Act read with Sub-section (1) & (2) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter referred to as "SEBI Adjudication Rules"*) to inquire into and adjudge under Section 15A(a) of SEBI Act for the violation of the provisions of SEBI Act alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/ADJ/PM/AA/OW/1669/2018 dated January 16, 2018 was issued to the Noticee under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the SEBI Adjudication Rules and penalty be not imposed under Section 15A(a) of SEBI Act, 1992, for the violations alleged to have been committed by it. I note that the SCN sent to the Noticee by Speed Post at its registered address returned undelivered. Subsequently, in terms of Rule 7 (b) of SEBI Adjudication Rules, the SCN was sent to the Noticee's Email ID: mayurdevelop@yahoo.com through digitally signed email on December 7, 2020 requiring the Noticee to submit its reply, if any, by December 21, 2020, besides providing them with an opportunity of hearing through videoconferencing on December 23, 2020. I note that the email sent to the Noticee did not bounce. Vide the aforementioned email dated December 7, 2020, the Noticee was informed that if no reply is received by December 21, 2020 and no appearance is made on December 23, 2020, the

matter shall be decided based on the facts and documents made available. In view of the prevailing circumstances owing to Covid-19 pandemic, the hearing was scheduled through video conferencing on Webex platform on December 23, 2020 and accordingly the web link along with the login credentials were sent to the Noticee through email on September 8, 2020 at its Email ID: mayurdevelop@yahoo.com. However, I note that the Noticee neither submitted its reply nor appeared for hearing.

7. In this connection, I would like to refer to the observations of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Dave Harihar Kirtibhai Vs SEBI (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:

"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."

8. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly I deem it appropriate to proceed against the Noticee *ex-parte*, based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

9. After perusal of the material available on record, I have the following issues for consideration viz.,

- I. Whether the Noticee has violated the provisions of Section 11(3) and 11(C)(3) of SEBI Act?
- II. Whether the Noticee is liable for monetary penalty under Section 15A(a) of the SEBI Act?
- III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

10. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder.

ISSUE I: Whether the Noticee has violated the provisions of Section 11(3) and 11(C)(3) of SEBI Act?

11. Before moving forward, it is pertinent to refer to the relevant provisions of 11(3) and 11(C)(3) of SEBI Act which reads as under:

Section 11(3) of SEBI Act

Notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub-section (2A), the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely: —

- (i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;*
- (ii) summoning and enforcing the attendance of persons and examining them on oath;*
- (iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;*
- (iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);*
- (v) issuing commissions for the examination of witnesses or documents.*

Section 11(C)(3) of SEBI Act

The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

12. I note from the records that vide Summons dated August 4, 2016 the Investigating Authority summoned the Noticee to furnish the following data by August 18, 2016:

(i) *It has been observed from the bank account of HPC that it had transferred ` 87 lacs on 19/03/2015 from the IPO proceeds. In this regard, provide the following information:*

(a) Purpose for which the amount was transferred by HPC to you with supporting documents;

(b) Provide your relationship with HPC;

(c) End use of the money received by you from HPC;

(ii) *Name, Designation, Address, Contact number and PAN of all the Directors/Partners/Proprietors of the Company as on the date of submission of the above information to SEBI.*

13. Vide the aforementioned summons, the Noticee was informed that if it fails to furnish the documents as required, it is liable for monetary penalty under Section 15A(a) of SEBI Act and also criminal prosecution under Section 11C(6) of SEBI Act.

14. I note from the content of the summons issued to the Noticee that the Investigating Authority had sought the details of fund transfer by HPC from the IPO proceeds and the reasons thereof. I note from the records that the summons dated August 4, 2016 was received by the Noticee, yet the Noticee failed to submit the information as sought for by the Investigating Authority. Therefore, I conclude that Noticee failed to submit the information / documents sought by Investigating Authority vide summons dated August 4, 2016, which hampered the investigation to ascertain the facts under investigation.

15. It is not in dispute that the Noticee has been served with the summons, yet the Noticee failed to furnish the documents / information as sought by the Investigating Authority. I note that the failure on the part of the Noticees to comply with the summons has hampered the investigation. In this connection, I note that it is the responsibility of every person from whom information is sought vide summons to fully co-operate with Investigating Authority and promptly produce all documents, records, information, etc., to the Investigating Authority. It is pertinent to note that SEBI is basically constituted to promote orderly and healthy growth of securities market apart from protecting investors' interest. For discharging this onerous job, and with a view to achieve the underlined object, SEBI as a regulator is required to conduct investigation and enquiries in the affairs of various parties from time to time. For this purpose, first and the foremost thing is co-operation from the concerned officers of the companies not only to produce the relevant records as and when required by an investigating officer or enquiring authority or by any person authorised by the SEBI in this behalf and to appear in person as and when called upon. In case of failure on the part of the concerned person to furnish such records/information is not only contemptuous but also a hindrance in the way of conducting smooth investigation and enquiry by the regulator to arrive at a just and fair conclusion as per the provisions of SEBI Act, 1992.

16. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in its Order dated October 22, 2013, in the matter of Rich Capital & Financial Services Limited and Mr. Shashwat Agarwal Vs SEBI observed that-

"We note that requisite information and relevant records are pre-requisites for a meaningful investigation. In the absence of cooperation by the concerned company, the SEBI cannot move an inch. Therefore, every company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If companies are allowed to take the statutory

summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins.”

17. In this context, I would like to also refer to the judgment of the Hon'ble SAT in the case of Asian Films Production and Distribution Ltd. (earlier known as K.C. Bokadia Films vs. SEBI (Appeal No.203 of 2010, Date of Decision:19.01.2011) wherein it has been held that:

“Non-compliance with the summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market.”

18. Further, the Hon'ble SAT in the matter of Mr. Jalaj Batra vs. SEBI (Appeal no. 184 of 2010, date of decision dated December 06, 2010) wherein it observed that:

“.....We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non- cooperation with the market regulator has to be viewed seriously. We do not know what else would have come to light if the appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him.”

19. In view of the aforesaid findings and in view of the ratio laid down by Hon'ble SAT, I conclude that the Noticee has failed to comply with the summons issued to it. Therefore, I hold that the Noticee has violated the provisions of Section 11(3) and 11(C)(3) of SEBI Act.

ISSUE -II: Does the violation, if any, attract monetary penalty under Section 15A(a) of SEBI Act.?

20. Pursuant to detailed analysis as brought out above, it is established that the Noticee has violated the provisions of Section 11(3) and 11(C)(3) of SEBI Act by not complying with the summons. I note that failure to produce the documents / information under Section 11(3) and 11(C)(3) of SEBI Act tantamount to scuttling the investigation to the detriment of the investors.

21. In this connection, I deem it appropriate to refer to the observations of the Hon'ble SAT in Appeal No.95/04 in the matter of Mayfair Paper & Board Pvt. Ltd. V SEBI, which reads as:

“failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under section 15A of the SEBI Act”.

22. In view of the flippant approach of the Noticee towards regulatory compliance with respect to submission of critical information as sought by the Investigating Authority, vide summons dated August 4, 2016 and also in view of the settled principles of Law in this regard as discussed above, the conduct of the Noticee is liable for monetary penalty under Section 15A a) of SEBI Act. The provisions of Section 15A(a) are reproduced hereunder:

Section 15A(a) of SEBI Act

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

(a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

ISSUE – III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

23. While determining the quantum of monetary penalty under Section 15A(a) of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 15J - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under Section 15 - 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.*

24. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default. Needless to say that the details of fund transfer from IPO proceeds is a vital information, to ascertain any mis-utilization of IPO proceeds. Therefore, non-furnishing of the details of fund transfer as mentioned in the summons in the above background hampered the investigation and any hurdle due to non-cooperation by any person is detrimental to the interest of investors in securities market, which needs to be dealt strictly.

ORDER

25. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers

conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose a penalty `10,00,000/-(Rupees Ten Lakhs only) on the Noticee i.e., Mayur Developments and Leasings Ltd., under Section 15 A (a) of SEBI Act.

26. The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

27. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

28. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

29. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: January 7, 2021
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER