

BEFORE THE ADJUDICATING OFFICER SECURITIES AND
EXCHANGE BOARD OF INDIA [ADJUDICATION ORDER
NO. Order/BD/AB/2020-21/10390-10393]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF
INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES)
RULES, 1995

In respect of:

a. M/s KV Impex
PAN: ADPPV6108C

b. M/s New Fashion
Prop. Ketan Vora
PAN: ADPPV6108C

c. M/s Vora Associates Prop. Dinesh Vora HUF
PAN: AAAHD9639N

d. M/s J.C. Enterprise Prop. Jigar Vora
PAN: ADYPV2565Q

FACTS OF THE CASE:

1. Securities and Exchange Board of India (hereinafter be referred to as, the "**SEBI**") conducted investigation into the initial public offer of Birla Pacific Medspa Limited (hereinafter referred to as "**BPML**" or "**the Company**"), for the period from July 7, 2011 to July 15, 2011 (hereinafter be referred to as, the "**Investigation Period**"), since there was high volatility on the day of listing.
2. Based on the findings of the investigation, SEBI initiated Adjudication proceedings against Shri Ketan Vora Proprietor of M/s New Fashion, K V Impex, Shri Jigar Vora Proprietor of M/s J C Enterprise, and Dinesh Vora HUF Proprietor of Vora Associates (collectively referred to as the "**Noticees**") under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "**SEBI Act**"), for the alleged violation of Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and

Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter be referred to as "**PFUTP Regulations**") read with Section 12A(a), (b) & (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as "**SEBI Act**")

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the Shri D. Sura Reddy as the Adjudicating Officer under section 15 I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("AO Rules") to inquire into and adjudge the aforesaid allegations under Section 15A(b) of the SEBI Act on March 10, 2017. Subsequently, Shri Jeevan Sonaparote was appointed as the Adjudicating Officer in the matter after which the undersigned was appointed as the Adjudicating Officer in the matter on September 26, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated April 20, 2017 (hereinafter be referred to as the "**SCN**") was issued to the Noticees under Rule 4 of the AO Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15HA of the SEBI Act for the allegations as detailed in the said SCN.
5. The scrip of BPML was listed on BSE on July 7, 2011, after IPO which was open for subscription from June 20, 2011- June 23, 2011. Investigation revealed that the price of the scrip had seen sharp volatility on listing day, closing on Rs. 25.35 - 154% more than issue price of Rs. 10 per share.
6. BPML received IPO proceeds of Rs. 64,17,63,660.00 (Rs. 64.17 crores) in its bank account on July 06, 2011. From these IPO funds, on July 6 and July 7, 2011, funds worth Rs. 34.91 Crores were transferred by BPML to various entities including the Noticees for purchase of medical equipment in accordance with its prospectus. The details of the 1st layer transfers are given in following table:

1st Layer Fund flow out of IPO proceeds from BPML's account				
Date	From(Name)	To(Name) -1st layer	Sum of (Rs.crore)	Amt
July 06, 2011	BPML's Yes Bank a/c No. 4840000358384	J C Enterprise		2.00
July 06, 2011		K V Impex		2.50
July 06, 2011		New Fashion		3.00
July 06, 2011		Vora Associates		2.16
July 07, 2011		New Fashion		0.62
July 07, 2011		Vora Associates		0.53
Total				10.81

7. These funds from above mentioned accounts in 1st layer were again transferred to other entities as per following table:

Date	From(Name)	To(Name)	Sum of Amt (Rs.crore)
July 06, 2011	J C Enterprise	Jaya Enterprise	0.30
		Kaveri Enterprise	1.40
		Max Enterprise	0.30
			2.00
July 06, 2011	New Fashion	Charm Enterprises	0.40
		Jaya Enterprise	0.30
		Kaveri Enterprise	0.85
		Max Enterprise	0.30
		Mitesh Enterprises	0.50
		2.35	
July 07, 2011	New Fashion	Charm Enterprises	0.34
		Eden Financial Service	0.23
		Mitesh Enterprises	0.50
		1.07	
July 06, 2011	K V Impex	Bhavya Impex	0.55
		Samnidhi Gold	0.70
		Kiran Enterprises	1.00
		Rupam Gems	0.25
			2.50
July 06, 2011	Vora Associates	Kiran Enterprises	0.50
		Rupam Gems	0.75
		Bhavya Impex	0.45
		Samnidhi Gold	0.45
		2.15	
Grand Total			10.07

8. It was observed from Bank KYC documents that the Noticees are proprietorship firms dealing in cloth trading, commission agent etc and have no experience in providing medical equipment. The Noticees are also related to each other as they are family members or relatives. These funds have not been received back by BPML.
9. It was thus alleged that BPML had no plans to utilize money as per disclosures made in the Prospectus and thus, BPML has played fraud on IPO subscribers who had trusted BPML management with their money to be utilized as per issue objectives. BPML had deviated from issue objects and diverted money from IPO proceeds. It is alleged that funds worth Rs. 33.4 Cr was siphoned off by BPML by colluding with various entities including the Noticees.
10. The Noticees vide separate letters dated May 23, 2017 sought inspection of certain documents which was granted to them vide letters dated June 5, 2017. After the inspection of documents, the Noticees didn't submit any response to the SCN but submitted application for settlement of proceedings in the month of July, 2017. These applications were rejected in the month of December, 2018. Subsequently, the Noticees submitted response to the SCN vide letters dated July 11, 2019.
11. Consequent to the appointment of undersigned, an opportunity of hearing was given to the Noticees vide Notice dated November 4, 2020 for which was attended by the authorized representative for the Noticees on November 19, 2020. The authorized representative of these Noticees sought time of 3 days to file the submissions. The common written submissions were submitted through email dated November 22, 2020.
12. A summary of the submissions made by the Noticees are as under:
 - a. The Noticees were approached by one Mr. P V R Murthy, an official of BPML and told them that BPML would be transferring funds to them which have to be transferred to other entities as instructed.
 - b. In order to build potential relationship with the company the Noticees accepted the instructions as given by Mr. P V R Murthy and transferred the funds.
 - c. The funds transferred by the Noticees were as follows:

- i. J C Enterprise – Rs. 2 Crores
 - ii. New Fashion – Rs. 3.075 Crores
 - iii. Vora Associates – Rs. 2.15 Crores
 - iv. K V Impex – Rs. 2.5079 Crores
- d. The funds received and paid were pass through/ routing arrangement between the parties. The Noticees neither purchased/ sold any share of BPML and the role was only limited to transfer of funds. Reliance is placed on order of SEBI WTM in the matter of Accurate Exports.
- e. The Noticees were not aware that the fund transferred to its bank account were part of IPO proceeds of BPML.
- f. As the receipt and further transfer happened within a period of one day, the Noticees were instructed by BPML to knock off the transactions against each other. Since the transaction were knocked off against each other, they did not affect the financial of the Noticees and they were not reflected in the account books of the Noticee.
- g. There is nothing to show any relationship of the Noticees with BPML. Further, there is nothing to show the Noticees were beneficiary of the siphoned off funds.
- h. The alleged transactions took place in July, 2011. However, the SCN was issued in 2017 i.e. after a delay of more than 6 years. 9 years have passed since the transactions took place and on account of delay itself the proceedings should be quashed.

CONSIDERATION OF ISSUES

13. I have carefully perused the charges levelled against the Noticees, their reply and the documents / material available on record. The issues that arise for consideration in the present case are:

- (a) Whether the Noticees had violated Regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations read with Section 12A(a), (b) & (c) of the SEBI Act?
- (b) If yes, then do the violations, if any, on the part of the Noticees attract any monetary penalty under Section 15HA of the SEBI Act?

(c) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Rules?

14. Before proceeding with the matter on merits, the preliminary issue raised by the Noticees regarding delay in proceedings needs to be addressed. It is noted that the Noticees have been unable to show any prejudice or impact which might have been caused due to the time taken to conclude the proceedings. The Noticees were provided with all relevant and relied upon documents along with SCN and also during inspection of documents.
15. The investigation in the present matter was initiated by SEBI in April 2012. Investigation involved examining the following tranches: 1) IPO bidding and Allotment Analysis, 2) Trading Price-Volume Analysis, 3) Broker and Client Concentration Analysis, 4) Analysis for Synchronized trades and Self-trades, 5) LTP, First Trades, Circular or Reversal trade Analysis, 6) Listing Day Trading Analysis and 7) Utilization of IPO Proceeds and Fund Flow Analysis. In order to carry out the aforesaid tranches of investigation, the following activities were involved: 1) Examination of trades of various entities, 2) collecting data from various sources such as exchanges, depositories, banks, Income Tax Dept, etc. 3) Examination of funds flows, 4) Seeking responses from various delinquent entities, etc. and thereafter, various dots were connected to get the complete picture and thus, investigation was concluded on January 12, 2016 and thereafter SCN was issued on April 20, 2017. I note that in the instant case, investigation was hampered intermittently sometime in August 2014 when BPML stopped responding to request for information from SEBI. As stated above, Noticees after availing opportunity of inspection of documents in the month of July 2017, filed for settlement with SEBI in the month of July 2017. Therefore, as per settlement regulations, pending proceedings against noticees were kept on hold till disposal of settlement application. I note that SEBI rejected their settlement application in the month of December, 2018. Further, due to administrative reasons, I was appointed as AO in place of erstwhile AO in the month of September 2019. I also note that Noticees have delayed the proceedings by not filing their detailed reply to SCN promptly. Besides, it is also relevant to note that parallel proceedings before Whole Time Member, SEBI was also pending. Given that the facts of both proceedings are interlinked and connected, I considered it

appropriate to wait till the completion of 11 B proceeding before WTM, SEBI, which was concluded on October 23, 2020.

16. Thus, it can be concluded that there was no unexplained / unreasonable delay that would vitiate the entire proceedings per se. Notwithstanding the same, I also note that there is no provision in the SEBI Act, 1992 which may have the effect of prohibiting SEBI from taking action beyond a particular period of time in a given case. In **Ravi Mohan & Ors. v. SEBI** and other connected appeals decided on August 08, 2013, Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as 'SAT') while referring to its own decision in **HB Stockholdings Ltd. v. SEBI (Appeal no. 114 of 2012)** decided on August 27, 2013 and decision of Hon'ble Supreme Court in **Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)** reported in 2003 (158) ELT 129 (S.C.), observed as under:

"....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."

17. The observations made by Hon'ble SAT in the aforesaid case, were reiterated by it, in a subsequent order in the matter of **Kunal Pradip Savla & Ors. v. SEBI** (Appeal no. 231 of 2017) decided on April 04, 2018. Further, I note that, no prejudice has been caused to the Noticees as all relevant and relied upon information pertaining to the allegations were provided along with the SCN and also during the inspection of documents. Therefore, I conclude that there

is no merit the preliminary submissions made by the Noticees, regarding delays and subsequent laches in issuance of SCN in the instant proceedings.

18. The first issue to be decided is whether the Noticees had violated Regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations read with Section 12A(a), (b) & (c) of the SEBI Act by colluding with BPML and acting as conduit for transfer of funds?

19. Upon perusal of the reply of the Noticees and documents available on record, I find that it is not in dispute that Noticees received funds of Rs 10.81 crores from BPML and transferred it further to such entities as mentioned in tables at para 6 and 7. However, Noticees claim innocence and have submitted that they were not aware of the source of funds and they allowed their accounts to be used for routing with the intention to oblige the Company for potential relationship with company. It can be seen that the amount of funds transferred was huge and the fact that Noticees are interconnected with each other and agreed to remitted to other beneficiaries on the same day clearly indicates that Noticees were aware of the scheme of manipulation and have knowingly participated in such scheme of siphoning of money by BPML for purposes other than stated in IPO Prospectus. Although the transactions are same, the reasons available on record for such transfers as submitted by BPML and Noticees are exactly contradictory. As per BPML, the funds were transferred for purchase of medical equipment, whereas the Noticees were in the business of dealing in cloth trading, commission agent. Given the apparent contradictions, I consider it appropriate to draw conclusion based on the amount involved, pattern and timing of transactions and the amount retained in the bank accounts of Noticees. Had BPML wanted to transfer the funds, it could have done directly without involving the Noticees. Thus, the Noticees can't plead that they were naïve and followed whatever was told to them. In view of above, I conclude that Noticees were fully aware of the scheme of siphoning of IPO proceeds by BPML and willingly became conduit for the said transfer of funds by BPML from the IPO proceeds.

20. Further, the funds received and transferred don't match as submitted by the Noticees. Except in the case of J C Enterprise, all the other firms have transferred more/less than the amount received from BPML. KV Impex transferred Rs, 79,000 more than what it received. New Fashion and Vora Associates together transferred Rs. 74 Lakh less than the amount received by

them from BPML. In such circumstances, the claim of the Noticees that the receipt and transfer were knocked off and there was no impact on their financial position is not acceptable. On the contrary, it becomes apparent that the Noticees were beneficiary to the extent the monies held back by them.

21. In view of the reasons mentioned in aforesaid paragraphs, it can be reasonably concluded that BPML through the Noticees had siphoned off the IPO funds of BPML. The Noticees were an integral part of the scheme by which IPO funds were transferred from BPML to various entities for siphoning off. In view of the aforesaid, I find that the aforesaid acts of the Noticees is in clear violation of Regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations read with Section 12A(a), (b) & (c) of the SEBI Act.

22. The next issue for consideration is If yes, then do the violations, if any, on the part of the Noticees attract any monetary penalty under Section 15HA of the SEBI Act? And

If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Rules?

23. As stated in the preceding paragraphs, the Noticees were part of the scheme to siphon off IPO funds from BPML. The siphoning off of funds resulted in fraud on the investors of BPML.

24. Since violation of Regulations 3(a),(b),(c)&(d) and 4(1) of the PFUTP Regulations read with Section 12A(a), (b) & (c) of the SEBI Act by the Noticees is established, I am of the view that the same warrants imposition of monetary penalty upon the Noticees under Section 15HA of the SEBI Act, text of which is produced as under :

SEBI Act

“Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”

25. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the 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, 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. I note that on the basis of data available on record, Noticees have admittedly routed funds at the behest of BPML to various other entities as mentioned in tables in above paras. Further, as per bank statements of Noticees, I also note that they have retained an amount of around Rs 74 lakhs which can be considered as ill-gotten gains as these funds were not returned to BPML. The amount of loss to an investor or group of investors cannot be quantified on the basis of available facts and data. Even though the monetary loss to the investors cannot be computed, any manipulative transactions which either directly or indirectly affects the volume or price of the stocks erodes investors' confidence in the market. The PFUTP Regulations aim to preserve and protect the market integrity in order to boost investor confidence in the securities market. Noticees, in the instant matter, by agreeing to participate in illegal routing of IPO funds of BPML through deceptive and fraudulent transactions have facilitated BPML to siphon off IPO money for purposes other than stated in the prospectus and thereby defrauded investors who have invested in the IPO of BPML. Further, the manner of routing IPO funds through multiple layers to give a color of genuineness to otherwise fraudulent transfers also demonstrates the manipulative intention of Noticees which had an adverse impact on the fairness, integrity and transparency of the stock market.

ORDER

27. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs only) each on the Noticees.
28. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees. 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 favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
29. The Noticees shall forward said Demand Draft to the Enforcement Department – Division of Regulatory Action– IV of SEBI. The Noticees shall provide the following details while forwarding the Demand Draft:
- i. Name and PAN of the entity (Noticee)
 - ii. Name of the case / matter
 - iii. Purpose of Payment – Payment of penalty under AO proceedings
 - iv. Bank Name and Account Number
 - v. Transaction Number
30. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: February 10, 2021
Place: Mumbai

B.J. Dilip
ADJUDICATING OFFICER