BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BD/AB/2020-21/9850]

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:

Silver Stallion Ltd.

PAN: AAICS7877A

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 Silver Stallion Ltd. (hereinafter be referred to as, the "***Noticee***") under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "***SEBI Act***"), for the alleged violation of Violation of Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the "***PIT Regulations***") and Regulation 7(1) of the SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter be referred to as, the "***SAST Regulations***").

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 Noticee 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 15A(b) 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. It was observed that the Noticee was allotted 1,06,21,500 shares (9.47% shares) in the IPO of BPML. However, the requisite disclosure to the exchange and BPML were not made and hence it was alleged that the Noticee failed to make appropriate disclosures under Reg. 13(1) of the PIT Regulations and Reg. 7(1) of the SAST Regulations.

6. In terms of Regulation 13(1) of PIT Regulations a disclosure in Form A has to be made to the company and to the Stock Exchange by any person who is holding more than 5% shares for any transaction which leads to a change in excess of 2% shareholding; and such disclosure has to be made within two working days of such change. Similarly, under Reg. 7(1) r/w 7(2) of the SAST Regulations, a disclosure is required to be made with 2 days of acquisition of shares in excess of 5% to the company and the stock exchange.

7. The Noticee vide letter dated May 4, 2017 submitted its reply to the SCN stating that it was not aware that the allotment by BPML in IPO would result in acquisition of more than 5% shares. As a result, the Noticee inadvertently omitted to file the requisite disclosures.

8. Since the undersigned was appointed as AO subsequently, an opportunity of personal hearing was granted to the Noticee on November 12, 2020 through email dated October 29, 2020. However, no response was received from the Noticee and on the scheduled date of hearing no one attended the hearing.

CONSIDERATION OF ISSUES

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

   (a) Whether the Noticee has violated the provisions of Regulation 7(1) read with 7(2) of the SAST Regulations and Regulation 13(1) of the PIT Regulations?

   (b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?

   (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

10. Before proceeding further, I would like to refer to the relevant provisions of the PIT and SAST Regulations as below:

SAST Regulations

Acquisition of 5% and more shares of a company

7.(1) Any acquirer, who acquires shares or voting rights which(taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent. or fourteen percent or fifty four per cent. or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

…

(3) The disclosures mentioned in sub-regulations(1) and (1A) shall be made within two days, -

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

PIT Regulations

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

11. I find that the disclosure requirements under the PIT and SAST Regulations are triggered when the shareholding of an entity/ person crosses 5% of the share capital of that company. In the instant matter, I note from the data that the Noticee acquired 9.47% of the share capital of BPML. Consequently, the Noticee was required to make the disclosures to the Company and to BSE in the prescribed format within two working days of the allotment in terms of Regulation 7(1) read with Regulation 7(3) of the SAST Regulations and 13(1) of the PIT Regulations. I note that no such disclosures were made by the Noticee in the stipulated time frame and the same has also been admitted by the Noticee. The Noticee has submitted that since BPML did not inform it about allotment leading to acquisition of 5%, it did not make disclosures. This submission is not acceptable as the Noticee would have applied for allotment in the IPO of BPML and would be aware of the issue size. Once shares were allotted, the Noticee could itself find out that the allotment was in excess of 5%. Infact, the Noticee was allotted 9.47% shares which is a huge number and thus, it cannot be said that the Noticee wasn't aware of its holding in BPML.

12. In this context, I observe that the Hon'ble SAT has consistently held that the obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI had observed that*

"*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon*

as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."

13. I further observe that the Hon'ble Supreme Court of India, in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006]} 5 SCC 361} held that:

"*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial …. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

14. In view of the violation of the provisions of law by the Noticee, as established above, the Noticee is liable for monetary penalty under the provisions of Section 15A(b) of the SEBI Act, which reads as under :

Penalty for failure to furnish information, return, etc.
15A. If any person, who is required under this Act or any rules or regulations made there under-

(b)To file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

15. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

16. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the concerned department of SEBI has not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature. As a mitigating factor, I also note that the Company while making disclosure of shareholding on the exchange after the IPO in July, 2011 for the quarter ending has shown the name of the Noticee (in the category of public shareholder holding more than 1% shareholding) along with its shareholding in the Company. Thus, I am inclined to consider that the information about Noticee's shareholding in the Company was in public domain from July, 2011.

17. I am also of the view that the disclosure requirements that have been prescribed under SAST and PIT Regulations are of utmost significance for the protection of interest of the investors, as such information received by them in a time bound manner would facilitate them to take an informed investment decision as regards their holdings in the Company. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

ORDER

18. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹3,00,000/- (Rupees Three Lakh only) on the Noticee viz. Silver Stallion Limited under the provisions of Section 15A(b) of the SEBI Act.

19. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The Noticee 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

20. The Noticee shall forward said Demand Draft to the Enforcement Department – Division of Regulatory Action– IV of SEBI. The Noticee 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

21. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DILIP BOLLEDDU JOSEPH

Digitally signed by DILIP BOLLEDDU JOSEPH
Date: 2020.12.16 16:45:09 +05'30'

Date: December 16, 2020
Place: Mumbai

B.J. Dilip
ADJUDICATING OFFICER