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Bharatiya Global Infomedia Limited

(An ISO 9001 : 2008 Company)

By E-filling

To,

Date: 27th June, 2019

The General Manager,
The Bombay Stock Exchange Limited,
25th Floor, P.J. Towers, Dalal Street,
Mumbai-400001

The General Manager,
National Stock Exchange of India Limited
Exchange Plaza, Plot No. C/1, G Block,
Bandra-Kurla Complex, Bandra (E),
Mumbai-400051

Sub: Disclosure of Information as per Regulation 30 of the SEBI (LODR) Regulations, 2015.

Dear Sir/Madam,

With reference to above captioned subject we hereby inform that the Securities Appellate Tribunal (SAT) disposed off our Appeal no. 481/2016 on 25th July 2019.

This is for your information and records.

For **Bharatiya Global Infomedia Limited**

Kumar Pushkar
Company Secretary

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BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on:10.4.2019
Date of Decision: 25.6.2019

Appeal No.481 of 2016

1. Bharatiya Global Infomedia Ltd.
   B-13, LGF, Amar Colony,
   Lajpat Nagar-IV,
   New Delhi-110024.

2. Shri Rakesh Bhatia
   A-93, SECTOR -26,
   Noida -201301.

3. Shri Sanjeev Kumar Mittal
   D-51/B, SECTOR -26,
   Noida -201301.

4. Shri Rajeev Kumar Agarwal
   26/161, II Floor, West Patel Nagar,
   New Delhi -110008. ….. Appellants

Versus

Securities & Exchange Board of India
SEBI Bhavan, G Block, C-4A, Bandra
Kurla Complex, Bandra (E), Mumbai …… Respondent
400051.

Ms. Madhumita Bhattacharjee, Advocate with Ms. Aarti Jain and Mr. K.K. Singh, PCS for the Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b. K. Ashar & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice M.T. Joshi

1. Appellant No.1 Bharatiya Global Infomedia Limited and its Directors - rest of the appellants, are penalized by the Adjudicating Officer by the impugned order dated 17th April, 2014 jointly and severally to the tune of Rs.15.5 crore in exercise of the powers conferred under Section 15HA and 15HB of Securities and Exchange Board of India (hereinafter referred to as 'SEBI Act') for violation of various Regulations of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as the 'ICDR Regulations') and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').

2. Facts on the record would show that Appellant no.1 came out with an Initial Public Offering (hereinafter referred to as 'IPO') during the period of 11th July, 2011 to 14th July, 2011. The initial preliminary investigation showed various irregularities, diversion of funds and suppression of material

facts in the Red Herring Prospectus (RHP) and prospectus. Thereafter, an ad-interim ex-parte order was passed on December 28, 2011 debarring the present appellants from buying, selling or dealing in the securities market and also the Merchant Banker from taking any new assignment etc. Appellant no.1 was also directed to bring back the amount invested in the Inter Corporate Deposits (ICDs) etc. This order later on was confirmed by SEBI.

3. Further investigation was there upon taken up by SEBI and twelve violations were noted. In the circumstances, the adjudication proceedings were initiated. After considering the reply of the present appellant, scrutinizing the documents on record, the Adjudicating Officer found that all the alleged acts stood proved and, therefore, on each of the violations separate penalty from Rs.25 lakhs to Rs.5 crores as enumerated in para 70 of the impugned order came to be imposed. Hence this appeal.

4. The learned counsel for the appellant submits that error apparent on the face of record committed by the Adjudicating Officer in the impugned order can very well be rectified by this Tribunal. The learned counsel relied on the ratio of Nagendra Nath Bora and Ors. Vs. The Commissioner of Hills

Division and Appeals, Assam and Ors. [AIR1958 SC 398] and Chairman and Managing Director Central Bank of India and Ors. Vs. Central Bank of India SC/ST Employees Welfare Association and Ors. [AIR 2016 SC 326]. These cases however are on the scope of powers of the court under Article 226, under Article 227 of the Constitution of India and the scope of review. In fact in the present appeal against the order of the Adjudicating officer the jurisdiction of this Tribunal is wider, as this Tribunal has to examine the correctness of the finding of facts also.

5. In a nutshell, the impugned order covers the following facts. The findings of the Adjudicating Officer, the submission of both the sides and finding of this Tribunal are detailed herein under separate headings.

1. **Wrong statements/Mis-utilization of Fund utilization:**

a. In the RHP as well as the prospectus the appellants had disclosed nine objects of the IPO on which total expenses were estimated at Rs.5553.08 lakhs.

b. The Respondent no.1 informed the Stock Exchange on November 14, 2011 that the IPO proceedings had been utilized as per the object of the issue.

c. The Respondent however found that the said funds were not utilized as mentioned in the RHP or prospectus.

d. The table of the same is given by the Adjudicating Officer in Para no.11 which reads as under:-

S. N.	Category	To be utilized as per RHP/ Prospectus in crore	Utilized (as Per Company) in crore	Utilized in crore (investigation findings)
1.	Setting up its owned corporate office at Noida	3.960	0.410	0.410
2	Relocation of branch office at Mumbai	5.936	4.024	1.524
3	Up-gradation of Digital post production studio	13.655	9.389	0.000
4	Investment in IT division	8.392	3.910	0.400
5	Expansion of R&D Technology centre and advance made to Avance technologies (paid before IPO and recovered from IPO fund)	6.567	4.321	0.035
6	Repayment of bank borrowing	2.697	2.931	2.931
7	Working capital requirement	5.050	4.9106	2.396
8	General Corporate expenses	6.500	2.115	0.855
9	Meeting the issue expenses	2.774	2.690	2.690
Total		55.53	34.70	11.241

e. It was thus concluded that 67.60 percent of the funds were not utilized for the objects disclosed in the RHP and prospectus.

f. The Adjudicating Officer concluded that even as per the information supplied by the appellant there was a deviation as detailed in the table.

g. He further concluded that though the said information is not supported by documentary evidence still the figures as detailed supra would show that Appellant no.1 Company made a wrong and misleading statement in the prospectus and misutilised the IPO proceeds.

h. The reply/letter of the Appellant no.1 dated 12th December, 2011 sent to the Respondent SEBI raising objection to the passing of the interim order would show that the appellant had accepted utilization of the IPO as detailed above. The appellant's merely added that as on the date, the utilization was in the amount of Rs.43.88 crore. The learned counsel for the appellant submitted that there were various factors in this regard. However, no definite answer could be given even in the reply.

i. The necessary conclusion therefore would be that the appellant failed to utilize the IPO proceeds for the stated purpose in the RHP and prospectus. The findings of the Adjudicating Officer on this count therefore requires no interference.

2. **Wrong disclosure regarding the vendor's details and non disclosures of new vendors and payment**

a. In the RHP and prospectus the names of suppliers and vendors were detailed to whom the funds were intended to be paid. The details regarding expected time schedule etc were given.

b. As per the disclosure though the names of certain vendors were given it was declared that Appellant No.1 did not pay any amount to these vendors or suppliers. According to SEBI, during investigation it was however found that Appellant no.1 had placed orders and made payment much before the RHP date, before the prospectus date and before the date of allotment of securities.

c. The details are given in the impugned order as under:

S. No	Supplier Name	Quotation date	Payment date	Buy order date	Invoice date	Amount in lakh (as per invoice)	Total as per invoice in lakhs	Amount paid in lakh (as per bank account)	Total paid as per bank account	Remark
1	Houston Technologies Ltd.	20-Jun-11	21-Jun-11	20-Jun-11	07-Sep-11	175.94	430.07	191.4	439	Quotation as well as the payments date were before the RHP date
2			23-Jun-11	20-Jun-11	16-Sep-11	221.77		178.6		
3			24-Jun-11	20-Jun-11	12-Sep-11	32.36		69		
4	Quantum Hi-Tech Merchandising Pvt. Ltd.	20-Jun-11	23-Jun-11	-	28-Sep-11	35.14	35.14	36	36	Quotation as well as the payments date were before the RHP date
5			28-Jun-11		12-Sep-11	134.87	130			
6					09-Sep-11	65.89				
7					14-Sep-11	44.62				
8	Vivid IT Solutions Pvt Ltd.	02-Jul-11	02-Jul-11	04-Jul-11	1.11	1.11	1.11	1.11	1.11	Quotation as well as the payments date were before the prospects date
9	Himalayan Times Pvt. Ltd.	28-Jun-11	02-Jul-11	-	16-Sep-11	57.94		60	140	Quotation date was on the RHP date and payments date were before the prospectus date
10			05-Jul-11		19-Sep-11	39.46				
11					21-Sep-11	46.89		80		
12	Millennium Automation & Systems Limited	21-Jun-10	06-Jul-11	02-Sep-11	02-Sep-11	17.13	233.82	50	200	Quotation date was on the RHP date and payments date were before the prospectus date
13			06-Jul-11	03-Sep-11	03-Sep-11	56.5		50		
14			08-Jul-11	06-Sep-11	06-Sep-11	160.19		100		
	Total					10859.81	1089.8	1066.11	1066.11	

From the above table the Adjudicating Officer concluded that the date of quotation in 13 instances was prior to RHP date and in the case of Serial no.8 i.e. Vivid IT Solutions Pvt. Ltd. the quotation was prior to the prospectus date. Above all it was found that the amount of Rs.6.05 crores was already paid to the vendors even before the RHP date and Rs.4.61 crores

were paid to the vendors before the prospectus date as well as the allotment of securities date. The Adjudicating Officer highlighted that in case of Millennuim Automation & Systems Limited, Serial nos.12, 13 and 14 above though the quotation was dated 21.6.2010 i.e. one year prior to the RHP the same does not figure either in RHP or in the prospectus.

d. Appellant no.1 submitted that in the prospectus itself it was clarified that actual vendors may be different from those mentioned in the prospectus. The Appellant no.1 had paid advance to the vendors for taking advantage of competitive pricing. The payment was paid by raising Inter Corporate Deposits (hereinafter referred to as 'ICD') of Rs.15 crore. The disclosure of name of the vendors in the prospectus would not have an adverse effect on the informed decision of any investors. In the prospectus it was mentioned that pending the receipt of the issue proceeds, Appellant no.1 may be required to make initial payment to the various suppliers in order to obtain the competitive rates quoted by them.

e. The learned counsel for the appellant therefore submits that no fault can be found with the appellants on that count.

f. In our view, however, when the vendors were already shortlisted and even payments were made to them as detailed supra the appellant could have very well disclosed the same in the RHP or prospectus. The details of the vendors to whom Appellant no.1 had transacted was a material information for the investing public and in the circumstances the findings of the Adjudicating Officer in this regard will have to be confirmed.

3. **Non disclosure of purchase of office space at Kolkata and respective payments made to the sellers in this regard**.

a. The Appellant no.1 has in his statement to the Stock Exchanges declared that it had spent an amount of Rs.2.50 crores from the IPO proceeds for the purchase of office at Kolkata. The copy of the agreement submitted in the proceedings before the Adjudicating Officer by Appellant no.1 however showed that a payment of Rs.1 core was made by it to the vendors on

2nd July, 2011, Rs.1.5 crores on 5th July, 2011 just within three days of the RHP date and before prospectus date.

b. The vendor was one Dhanmangal Developers Private Limited (Dhanmangal).

c. These amounts were stated to be an advance towards the total consideration of Rs.5 crores.

d. The Adjudicating Officer pointing towards the provisions of Regulation 60(4) of ICDR Regulations concluded that the statement in the RHP and prospectus that on the dates the Appellant no.1 had not entered into any commitment for an strategic initiative was wrong.

e. The Adjudicating Officer further pointed out that the statement made in para 73 of the RHP that the Appellant no.1 has not purchased or proposed to purchase any property from the proceeds of the issue was also a wrong statement.

f. The Adjudicating Officer has further examined the transaction between the Appellant no.1 and Dhanmangal and found that Dhanmangal had no wherewithal at all to fulfill the promise of providing office space at Kolkata.

g. According to the appellants the deal was entered for the purpose of establishing pan India presence of the Company. The said deal was even ratified by shareholders in postal ballot in March, 2012. However, as SEBI had objected to the said deployment of funds, the appellant no.1 is calling back the amount. An amount of Rs.50 lakh could be recovered and the efforts to recover the balance amount were going on.

h. The Adjudicating Officer examined the copy of the agreement and found that in fact Dhanmangal was not in the business of developing any non-agricultural property as it was clearly stated in the agreement that Dhanmangal was into the business of agricultural land developing. The assets of Dhanmangal were only in cash and bank balance of merely 3.43 lakhs as against loans and advances of Rs.77.72 lakhs. Hence the Adjudicating Officer concluded that there was misutilisation of funds of Rs.2.5 crores from the IPO proceeds for the purpose other than mentioned in the RHP/prospectus.

i. He also found that only an amount of Rs.50 lakhs was recovered and, therefore, Adjudicating Officer

concluded that these facts of deployment of substantive amount would have to be viewed seriously. The learned counsel for the appellant pointed to us an additional letter sent to Adjudicating Officer to show that an amount of Rs.1.5 crore could be recovered from Dhanmangal.

j. The learned counsel for respondent SEBI submitted that the admitted facts would show that though prior to the RHP date and prospectus date the Appellant no.1 had paid 50% of the consideration for purchase of office in Kolkata, the Appellant no.1 in RHP made a positive statement that the Appellant no.1 did not intend to purchase any property.

Taking into consideration all the facts that the appellant did not disclose the fact of entering into a contract of purchase of office from Dhanmangal at Kolkata which was not dealing in non-residential property, which had no wherewithal for honoring the same premises, clearly proves that the appellant had withheld material information in RHP as well as in the prospectus.

4. **Non disclosure of availing services from Jupiter Infraenergy Limited**.

a. It was alleged that the Appellant no.1 had paid an amount of Rs.30 lakhs out of a total consideration of Rs.5 crores to one Juipter Infra Energy Limited (JIL) prior to the date of the prospectus. Thereafter from time to time payment was made totaling Rs.251.50 lakhs. However, the fact of payment and availing the services of JIL was not disclosed in the prospectus nor any public notice was issued as required by ICDR Regulations.

b. It was further found that appellant Rakesh Bhatia and appellant Rajeev Kumar Agarwal at certain point of time were Directors and major shareholders respectively in JIL. It was also found that three employees of the Appellant no.1 Company working as office boys and hardware maintenance employees were shown as Director of JIL since 2005. The appellants in the reply to the show cause notice on this issue did not deny the payment made to JIL. They did not answer the allegations regarding the connection of JIL with Appellant no.1 as detailed supra. On the other hand,

during the pendency of the proceedings it was found that an amount of Rs.180.75 lakhs was transferred from JIL to the account of Appellant no.1 and an amount of Rs.32.45 lakhs remained with JIL.

c. The learned counsel for the appellant submitted all the details were not required to be given in the prospectus and non disclosure of availing the services of JIL would not have any material impact on the decision process of the investors.

d. Upon considering the above facts as noted by the Adjudicating Officer it is difficult to accept the submissions. The facts clearly stare towards the stark reality that JIL was nothing but a shadow of the Appellant no.1 and the very fact that substantive amount was returned from the account of JIL to the account of Appellant no.1 during the period of pendency of proceedings before the Adjudicating Officer would show that the initial availing of the services of JIL is suspicious.

Further Non-disclosure of substantive payment in the prospectus or by a public notice had certainly caused breach of the ICDR Regulations.

5. Wrong disclosure regarding purchase order placed for the equipment.

a. The RHP as well as the prospectus of the Appellant no.1 has affirmed that the Appellant no.1 had not placed orders for 81.48% of the plant and machinery equipment etc for proposed expansion as specified in the objects of the issue. During the investigation, respondent SEBI has found that as on the prospectus date, orders were already placed in the value of Rs.30.64 crore i.e.55% and on the date of prospectus and in the value of Rs.16.03 cores i.e.29% on RHP date.

b. Appellant no.1 replied that all the documents and information in this regard was provided to the Merchant Banker. However, the Merchant Banker defaulted in making the disclosure in the RHP and prospectus. The Adjudicating Officer found that wrong disclosures were made by the appellant Company in RHP and prospectus which had affected the process of informed decision to be taken by the investors.

c. Learned counsel for the appellant submits that as per Regulation 64 of the ICDR Regulations the lead Merchant Banker is required to exercise due diligence

and satisfy itself about all the aspects of the issue including the veracity and adequacy of the disclosure in RHP. In fact the Appellant no.1 had produced all documents in this regard to the Merchant Banker and, therefore, the appellant cannot be faulted with for the negligence of the lead Merchant Banker.

d. In our view the appellant cannot escape the responsibility by blaming the lead Merchant Banker in this regard. The findings of the Adjudicating Officer for these reasons are required to be confirmed.

e. Learned counsel for the appellant relies on the observation of this Tribunal made in the judgement dated 15th March, 2015 in Appeal no.331 of 2014 in the case of DLF Limited vs. SEBI. In the said case at paragraph no.48 this Tribunal has interalia observed that the primary responsibility of making true and adequate disclosure lie on the statutory auditor or merchant bankers. In paragraph no.49 it was observed that the merchant banker has to ensure the truthfulness and adequacy of the disclosure contained in the offer document.

f. A reading of the observation however would show that in the said case no action was taken against the merchant banker by SEBI. Further in the present case, the copy of the order passed by this Tribunal, filed by the appellant in the case of present merchant banker would show that merchant banker had in fact taken care for making true and adequate disclosure regarding the relations etc. However, the appellant made the wrong declaration as detailed supra.

g. Therefore, the observations made in the DLF Ltd are not relevant in the present case.

6. Non disclosure of source of funds already deployed and to be repaid from the IPO proceeds.

a. During the investigation, respondent SEBI had sought information regarding the repayment of amount from IPO proceeds towards the funds already deployed. From time to time queries were made with Appellant no.1 and Appellant no.1 appears to have put three different versions at three different points of time when further queries were made by the respondent SEBI. From all those statements made by Appellant no.1 it could be gathered that Appellant no.1 had raised an

amount of Rs.7 crores prior to the RHP in the nature of Inter Corporate Deposits (hereinafter called as 'ICD'). This fact however was not disclosed in the RHP. Further an amount of Rs.8 crore through ICD was obtained before the prospectus date as well as the date of allotment of securities. This fact also was not disclosed either in the prospectus or by issuing any public notice as required by the Regulations. On the other hand, there was positive statement in the RHP as well as in the prospectus "our company has not raised any bridge loan against the proceeds of the present issue". The explanation given by the Appellant no.1 showed that there was no formal agreement entered into while taking the above ICD and memorandum in the form of letters only were available. These memoranda provided about the rate of interest to be paid. However, the subsequent payment from the IPO proceeds would show that only principal was returned.

b. The explanation of the Appellant no.1 was that considering the share capital plus free reserves of the Company it was well within the power of the Board of Directors to borrow the amount through ICDs. The

Board of Directors was not required to take any specific approval for the same. As regards the absence of any agreements, the Appellant no.1 submitted that as it enjoyed a reputation in the market, without entering into a written agreement the lender advanced the loans through ICDs. Therefore it shall not be assumed that any contravention had taken place. Further, as a period of six months had passed in between finalization of DRHP, the Appellant no.1 required funds for implementation of the project and to take advantage of the competitive rates offered by the lenders. Therefore the money was borrowed.

c. The Adjudicating Officer however remarked that ICDs of Rs.15 crore should have added to the total liability of the Company in the RHP and in the prospectus. The Adjudicating Officer therefore concluded that the IPO proceeds utilized for repayment towards ICDs was beyond the objects than those mentioned in the RHP/prospectus.

d. The leaned counsel for the appellant submits that the delay which occurred in finalization of the RHP by respondent SEBI required the appellant to raise the loan

within its power. The loan was obtained from market where no formal agreement was required. The learned counsel therefore submitted that the conclusions of the Adjudicating Officer in this regard are wrong.

e. The learned counsel for the respondent placed reliance on the observation of this Tribunal in Appeal no.224 of 2017 in Corporate Strategic Allianz Ltd. vs. SEBI dated 29.3.2019. In that case after taking into consideration the scheme of regulations this Tribunal has found that non disclosure of details of bridge loan or other financial arrangement are specifically required to be indicated in the prospectus etc.

Upon hearing both the sides we are of the opinion that the appellant is missing the point. The issue is not as to whether the Board of Directors were empowered to raise the money but as to whether they should have disclosed this event in RHP and prospectus. The events had taken place prior to the RHP and the prospectus and before the listing date.Therefore, the appellants could have very well disclosed these facts in RHP, in the prospectus and by issuing a public notice thereby giving information to the investor public about this material

fact. The conclusion of the Adjudicating Officer in this regard therefore needs no interference.

7. Investments in Contradiction with RHP and prospectus.

a. Respondent SEBI found that Appellant no.1 Company without any approval of the Board of Directors had given loan from IPO proceeds to three entities for the amount of Rs.12.50 crores in the nature of ICDs without examining the reliability of those three entities. Said amount could not be recovered though vide ex-parte order dated December 28, 2011 respondent SEBI had directed appellant Company to call back these ICDs from the three entities.

The Appellant no.1 explained that the decision of investment in the ICDs was taken on the basis of recommendations of audit committee. Subsequently, it was ratified by the Board of Directors. Even the shareholders by way of postal ballot consented for the same. At the time of agreement the three entities agreed to repay the amount within three days and the same term was incorporated in the ICD agreement. As a result of protracted correspondence through legal notice

the Appellant no.1 could recover an amount of Rs.6.50 crores from these parties. It was explained by another letter dated April 2, 2014 that the money advanced to these entities was interest bearing short term deposits. Upon receiving objections from SEBI, Appellant no.1 started the process of recovering the money and only a sum of Rs.1 crore remained to be recovered from one of the entities i.e. Darshan Tradelink P. Ltd.

In the circumstances, the Adjudicating Officer found that while according to the Appellant no.1 the agreement itself was merely for three days, the explanation that when the respondent SEBI objected, it started the process of recovering the money would not lie in the mouth of the Appellant no.1 Company. It was further found that in fact the said amount was found to have been utilized by these entities for trading in the scrip of Appellant no.1 and suffered loss.

d. The learned counsel for the appellant submitted that investment in the ICDs was approved by the Board of Directors and the shareholders also agreed through postal ballot. She further submitted that the Adjudicating Officer however, completely ignored

these facts. However, in our view, the very fact that though the investment was merely for three days, the fact that Appellant no.1 thought it fit not to pursue the recovery of the same till respondent directed would show that the IPO proceeds were diverted not only for the purpose beyond the objective of IPO but also the subsequent findings regarding the use of IPO proceeds for trading in the scrip of the Appellant no.1 would show that part of the IPO proceeds were not utilized for the purposes as claimed in the DRHP or the prospectus.

8. Non disclosure of related party transactions and Directors relatives details

a. One of the object of the IPO was to purchase property from Gadeo Electronics (hereinafter referred to as 'Gadeo') for Rs.5.96 crores. As per the RHP Rs.2 crore were already paid to Gadeo by issue of 2,00,000 shares and balance of Rs.3.96 crore was to be paid from the IPO proceeds. The amount was 7.2% of the IPO proceeds. During investigation respondent SEBI had sought the list of Appellant no.1's director's relatives. List of 25 relatives was given. However the name of Richa Mittal, (one of the partners of Gadeo) did not

figure in the list. During the investigation respondent SEBI however found that the partners of Gadeo during the relevant period were Richa Mittal (sister-in-law of appellant Sanjeev Kumar) and R.K. Mittal (father of same appellant). Both of them were related to present appellant Sanjeev Kumar Mittal. Ninety five percent of the partnership firm was owned by Richa Mital and five percent by R.K. Mittal. As explained above both of them are the relatives of appellant Sanjeev Kumar.

The Appellant no.1's version regarding this non disclosure is that though all these facts were disclosed to the Merchant Banker during the process of due diligence, the non disclosure of names in the list of relatives is a mistake on the part of Merchant Banker. The mistake of the Merchant Banker cannot be attributed to the appellants.

The Adjudicating Officer, reproducing the provision of Section 6(c) of the Companies Act, 1956 and the relevant provision of ICDR Regulations, held that non disclosure of name of Richa Mittal and R.K. Mittal in relation to the purchase, was in breach of the ICDR Regulations. Learned counsel for the appellant

submits that the appellant in its reply has explained that vide letter dated 7.2.2011 sent to the Merchant Banker had in the form given the details of Richa Mittal as brother's wife. However the Merchant Banker in the capacity of Book Running Lead Manager (hereinafter referred to as 'BRLM') drafted the letter dated 7th February, 2011 and sent over email to the appellant wherein no such disclosure was made and the same was routinely signed by the Directors. The learned counsel additionally submits that the Merchant Banker – Almondz Global Securities Ltd. (hereinafter referred to as 'Almondz') is absolved on this issue by this Tribunal in Appeal no.129 of 2014 vide decision dated 13.5.2016 (copy of judgment Annexure 'A-1').

d. The learned counsel for the respondent pointed out that as per the appellants themselves in the DRHP these facts are not disclosed and the Merchant Banker is blamed on this count. This Tribunal exonerated Merchant Banker on this count on the ground that the present appellant Company itself had not disclosed these facts and therefore the Merchant Banker, was given benefit of doubt.

Upon considering the rival pleas in our view the claim of the appellants that the Merchant Bankers is to be blamed cannot be accepted. The documents were admittedly vetted and signed by the appellants. Further admittedly as pointed out earlier when the respondent SEBI specifically made query regarding the relatives of directors, the name of Richa Mittal did not find place in the list of 25 relatives. The lame excuse in the reply to the show cause notice that the appellants assumed that the disclosure was required to be made for sister-in-law means the wife's sister only and not the brother's wife and therefore the name of Richa Mittal being brother's wife was not mentioned is ridiculous and contrary to each other. The appellants claim that they had disclosed name of Richa Mital as a related party to the Merchant Banker and found fault with the banker in this regard, and again they answer that according to them sister-in-law does not mean brother's wife but only wife's sister. The explanation is absolutely not convincing. The findings of the Adjudicating Officer therefore needs no interference.

9. Diversion of funds to promoters and promoter related entities

a. In the RHP/prospectus the appellant had averred that "No part of the issue proceeds, will be paid by our company, as consideration to promoters, directors, promoter group entities and key managerial personnel". Respondent SEBI had examined the bank statement of the appellant and found that from the IPO proceeds an amount of Rs.125.96 lakhs was paid to appellant Rakesh Bhatia, his son Gaurav Bhatia, Rakesh Bhatia HUF and related entities of the promoters namely BGIL Films and Technologies and Number one Finsec Pvt. Ltd. During the investigation the appellants submitted that these payments were repayment towards the loan received from the entities and the amount of loan was disclosed in RHP. Further as the same cannot be termed as consideration as declared in the RHP/prospectus as mentioned above the same was not required to be disclosed. The appellants also put the legal dictionary meaning of "Consideration" in the reply as "something of value given by both the parties to a contract that induces them to enter into agreements to perform mutual

performances". However during investigation the appellant explained that an amount of Rs.2,60,000/- paid to Gaurav Bhatia out of the above amount was employee's advance and after the SEBI's interim order even recovered it from Gaurav Bhatia with interest. The Adjudicating Officer therefore observed that the explanation that it was a loan is merely an afterthought.

b. The learned counsel for the appellant submitted that repayment of unsecured loans cannot be considered a consideration of any contract. Therefore there is no violation of the statement made in RHP as quoted above.

c. We find that it was merely mentioned in the RHP/prospectus that the appellants have raised the loan but it was not disclosed that these loans would be repaid from IPO proceeds. Further the repayment of the said loan to the appellant Rakesh Bhatia, his son and his HUF and further later on dubbing the part of the same as an employee's advance to Gaurav Bhatia is nothing but a ruse. In the circumstances, the finding of the Adjudicating Officer in this regard needs no interference.

10. Wrong disclosure in the objects of the issue

a. The allegation in this contention are twofold. First allegation is that though Appellant no.1 Company had declared in RHP/prospectus that an advance payment of Rs.2.65 crores was made to Avance Technologies Limited (hereinafter referred to as 'Avance') prior to the IPO, later on in the fund utilization table, the entire cost of Rs.6.57 crores was shown payable to Avance from IPO proceeds without discounting the advance already made. The second allegation is that in fact the amount of Rs.2.65 crore shown to be paid to Avance by way of advance in effect is a circuitous transfer of money out of which only Rs.50 lakhs remained with the Avance and rest of the cash came to the Appellant no.1.

b. As regards the first of the allegation no specific reply was given by the appellants. As regards the second allegation it was submitted that the alleged circuitous transaction of this amount from the Appellant no.1 to Avance and from Avance to three different entities i.e. Priority Exports P. Ltd., Satshri Multitrade Private Ltd. and Saptrishi Suppliers Private Limited which ultimately went to coffers of Appellant no.1 were nothing but business transfers in good faith with

bonafide intention. It is explained that it is only a coincidence that the payment and repayments were made within the same period which is branded as a return of amount to the Appellant no.1 through circuitous transactions.

c. The appellants had claimed that advance was paid to Avance to expedite the timely delivery of one Building Management System. However, there is no explanation as to why from the IPO proceedings entire amount is shown toward the utilization while an amount of Rs.2.65 crores was allegedly already paid by the Appellant no.1 towards advance.

d. As regards the circuitous transactions the diagram of those transactions placed by the Adjudicating Officer in para no.32 of the impugned order would show that within a period from 8th June, 2011 to 15th June, 2011 the amount of Rs.2.15 crore returned to the coffer of Appellant no.1 leaving an amount of Rs.50 lakh with Avance. The appellant could have very well supported these transactions which occurred “by coincidence” by documentary evidence like services rendered etc. In

that view of the matter, the findings of the Adjudicating Officer on this count cannot be faulted with.

11. Diversion of IPO proceeds to traders

a. It was alleged that an amount of Rs.10.53 crores of the IPO proceeds had reached two groups immediately after the receipt of the same by Appellant no.1 either directly or indirectly which was used by these two groups in trading of the scrip of the Appellant no.1 on the listing day itself.

b. These two groups are GRD group and Korp group. While GRD group consists of five entities, Korp group consists of four entities as listed in the impugned order. It was found by the respondent SEBI that Rs.7.5 crore was transferred by Appellant no.1 to two group entities of GRD group. This amount reached the stock broker entity, the GRD Securities P. Ltd. which had traded on behalf of other entities namely Marutinanadan Infosolutions, Jalan Cement Works Ltd., Orbit Financial Consultant Private Ltd and Swift Tie Up Private Limited. A summary of the trade is given by the Adjudicating Officer at para 38 of the impugned order. The fund movement chart is given in paragraph

no.39. Respondent SEBI had inspected the Income Tax returns of all these entities and found that they had either less income or nil income and incurred loss in crores while trading in the shares of Appellant no.1 which were compensated by Appellant no.1 in the above fashion. The respondent SEBI had unearthed the connection between all these entities and detailed the same in paragraph no.40 of the impugned order. The respondent SEBI found that 90 percent of the trades on the listing day were made by GRD as a broker. Buy trades were by their group entities.

c. As regards the Korp group the respondent SEBI found that Appellant no.1 Company had transferred one crore each to three entities of this group namely Abhilasha Exports Pvt. Ltd, Skylight Distributors Private Limited and Subhshree Hirise Pvt. Limited. Out of the said amount Rs.2.9 crores reached Divya Drishti Traders Private Ltd. (DDTPL). Additionally Appellant no.1 transferred an amount of Rs.53 lakhs directly to DDTPL. Out of this amount DDTPL had transferred Rs.89 lakhs to Wheelers Developers Private Limited (Wheelers) and Rs.1.97 crores to Korp Securities Ltd.

(Korp). One another entity namely Divya Drishti Merchants Private Ltd. (DDMPL) is also the group Company of the Korp group. While one Rajesh Kumar Agarwal is the common director of DDMPL, DDTPL and Wheelers, director of Korp is Sushil Kumar Agarwal who is the brother of Rajesh Kumar Agarwal. Anuj Agarwal son of Sushil Kumar Agarwal is also director of Korp. The details of the transactions are given in the subsequent paragraph.

According to SEBI, thus total amount of Rs.10.24 crores from the IPO proceeds was transferred to these two group by Appellant no.1. These two groups had synchronized and structured trade with Mr. V.P. Patel (VPP). This VPP and the entities of two groups had entered into two trades with a buy and sell order within time difference of 4 seconds and 2 seconds respectively. This VPP had also executed two structured trades to these group entities within 16 seconds on NSE. The entity wise details are given in para nos.46, 47 and 48 of the impugned order. It was additionally alleged that these two groups and VPP had even provided exit to the top four allottees of the IPO through structured trades of

86 percent of the shares to these top four allottees. The details of the same are given by the Adjudicating Officer in para 50 of the impugned order. Additionally further 38 allottees were given exit route by executing structured trades by these two groups with one Shika Somani. Further, 2,57,324 shares were purchased from one Shree Bahubali International Private Limited and 72,493 shares from PELP Securities Ltd. by GRD, Korp and VPP group and in turn gave exit to their allottees client through structured trades. The details are given in para no.51 of the impugned order.

d. It is therefore alleged that Appellant no.1 had a prior understanding with all these entities and thus an amount of Rs.10.53 crore i.e. Rs.7.10 crore (GRD group) and Rs.3.43 crores (Korp group) was diverted to compensate the loss incurred by them while trading in the shares of the appellant in a manipulative manner on the very date of listing.

The Appellant no.1 vide letter dated 12th February, 2014 submitted that they had no connection with any of these group of entities. Vide subsequent letter dated 2nd April, 2014 the appellants explained that in fact the

amount was advanced to these entities as interest bearing short term deposits. When SEBI during investigation raised objection the Appellant no.1 started the process to recover the said amount and more than 83 percent of the amount was recovered. A sum of Rs.1 crore however still remained to be recovered from one of the entities.

The learned counsel for the appellant submitted that though different trades may have been executed by different entities on the day of listing of the shares of the appellant, no connection could be established between these entities and the appellant. Merely money was advanced by the appellant to some of the entities as interest bearing short term deposit from IPO proceeds to benefit the Appellant no.1 Company.

e. According to us, the fact however remains that IPO proceeds were utilized by the appellants for the purposes beyond the object of the IPO. It is further a fact that while substantive amount was transferred to these entities, immediately preceeding the day of listing of the shares on 1st August, 2011 as “short term interest bearing deposit” some part of the amount was recovered

by the Appellant no.1 only after investigation by SEBI and still as on 2nd April, 2014 a sum of Rs.1 crore remained to be recovered. The very fact that the amount was transferred by Appellant no.1 to these entities but these entities in-turn indulged in synchronized trade with different groups as detailed above would point towards the only fact that the IPO proceeds was used for manipulating the shares of the Appellant no.1. The findings of the Adjudicating Officer on this count also therefore needs no interference.

12. Failure by Audit Committee

a. The offshoot of the above allegations is that the Audit Committee of the Appellant no.1 failed to notice this fund diversion. It did not record anything in its minutes of the meeting and did not make any recommendations to the Appellant no.1 Company. Appellant Rakesh Bhatia, the Executive Director and appellant Sanjeev Kumar Mittal were the members of the Audit Committee while appellant Rajeev Kumar Agarwal was one of the signatories to the certification of the report.

In the circumstances, the respondent SEBI alleged that these appellants had perpetrated a fraud on the investors, and suppressed facts in the Auditing. The appellants replied that the Audit Committee recommendations dated 16th July, 2011 were put up before the Board meeting held on the same date. The Board of Directors empowered appellant Rakesh Bhatia to advance and receive ICDs from these entities. At page no.38 of the prospectus it was already notified by the appellant that the appointment of monitoring agency is not required in accordance with clause 16 of ICDR Regulations, 2009. Therefore no agency was appointed for the purpose of monitoring the utilization of issue proceeds. Utilization of proceeds would be disclosed under a separate head in the Company's balance sheet of the next year. Accordingly, in the next balance sheet the details of fund utilization including investment in the above ICDs is given and the same was presented to the shareholders and it was ratified in Postal Ballot in March 2012 and subsequently in its Annual General Meeting held in September, 2012. Further, the recommendations of the Audit Committee were ratified

by the Appellant no.1 which was accepted by 99.93% of the shareholders.

b. Learned counsel for the appellant on the above lines submitted that everything was revealed to the Appellant no.1 as well as to the shareholders and that they have ratified the act of the appellant of investing in ICDs. The Adjudicating Officer however held that the undertaking of the Audit Committee in its report that all the disclosure made in the offer document were true and correct is a wrong certification. The Adjudicating Officer further expressed the view that these appellants have perpetrated a fraud on the investors by entering into above manipulations.

c. The Adjudicating Officer lastly found that though from time to time the appellants were advised to recover the amount, said directions were not complied with as on the date of passing of the order. He held that an amount of Rs.10.53 crore to two groups i.e. GDR group and Korp group was diverted by the appellant for trading in a manipulative manner causing loss to the shareholders. The Adjudicating Officer therefore held the Audit Committee responsible for wrong

certification. In the circumstances, merely because the shareholders accepted the general financial statement without being aware of the above details, in our view also, can not absolve the Audit Committee.

Penalty

Aggregate penalty of Rs.15.50 lakh in the following manner was imposed.

Sr. No.	Name of the Noticee	Penal provision (i.e. Section under SEBI Act)	Amount of Penalty (`)
1.	Bharatiya Global Infomedia Limited	15HA	5 Crores
		15HB	1 Crore
2.	Shri Rakesh Bhatia Promoter Chairman and Managing Director, Audit Committee Member	15HA	4 Crores
		15HB	1 Crore
3.	Shri Sanjeev Kumar Mittal Executive Director, Audit Committee Member	15HA	3 Crores
		15HB	1 Crore
4.	Shri Rajeev Kumar Agarwal Manager (Finance)	15HA	25 lakhs
		15HB	25 lakhs
	TOTAL		15.50 Crores

The learned counsel for the appellant relying on the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari decided by the Supreme Court of India on 28th

February, 2019, submits that when the Adjudicating Officer was not able to find any unfair advantage, the maximum penalty under Section 15HB of Rs.1 crore and Rs.5 crores under Section 15HA of the SEBI Act is uncalled for. The learned counsel therefore submits that the appeal be allowed or alternatively the penalty be modified. On the other hand, learned counsel for the respondent opposed the plea. He submitted that the documents on record and even explanations to the charge given by the appellants would show that the investor public was misled by suppressing the material facts or transactions which occurred prior to RHP, post RHP and before issue of shares. Not only this, the IPO proceeds were misused for entering into manipulative trades. Some of the substantive amount was diverted by making payment to a firm at Kolkata for purchasing office which was not even dealing in non-residential premises. There were diversion of funds to the relatives of the Appellant no.2 to 4 and different explanations were given at different point of time on this count contradictory to each other. He therefore submitted that the appeal be dismissed in toto.

6. Upon hearing both the sides in our view for the reasons already recorded hereinabove there is no merit in the present appeal. In the circumstances, the following order.

The appeal is hereby dismissed with no order as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C. K. G. Nair
Member

Sd/-
Justice M.T. Joshi
Judicial Member

25.6.2019
Prepared and compared by
RHN