Brooks
LABORATORIES LIMITED
A WHO GMP & ISO : 9001-2008 Certified Company
Corp. Off.: 502, Kanakia Atrium - 2,
Next to Courtyard Marriott Hotel,
Andheri Kurla Road, Andheri (East),
Mumbai - 400 093 (India)
Ph.: + 91 22 61933100 Fax : +91 22 61933114

21.03.2018

BSE Limited
Phiroze Jeejeebhoy Towers
Dalal Street
Mumbai-400001

Stock Symbol-533543
Through : BSE Listing Centre

National Stock Exchange of India Ltd.
Exchange Plaza, C-1, Block G
Bandra Kurla Complex
Bandra (E), Mumbai-400051

Scrip Code- BROOKS
Through : NEAPS

Sub: Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 – SEBI Order u/s 15HA/HB of SEBI Act, 1992

Dear Sirs,

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015, we wish to intimate that Brooks Laboratories Limited ('the Company') has received SEBI final order u/s 15HA/HB of SEBI Act, 1992.

The detail Order is enclosed for your reference.

Thanking You,

Yours faithfully
For **BROOKS LABORATORIES LIMITED**

BROOKS LABORATORIES LTD. 502, Kanakia Atrium-2, Andheri (E), Mumbai-93.

(Jyoti Sancheti)
Company Secretary
Membership No. A24124

BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 06.03.2018
Date of Decision : 21.03.2018

Appeal No. 246 of 2015

1. Brooks Laboratories Ltd.

2. Mr. Atul Ranchal

3. Mr. Rajesh Mahajan
   502, 5th Floor,
   Kanakia Atrium-2,
   Next to Hotel Courtyard Marriott,
   Andheri Kurla Road,
   Andheri (East),
   Mumbai- 400 093 …Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 …Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Vinay Chauhan, Ms. Kalpana Desai and Mr. K. C. Jacob, Advocates i/b Corporate Law Chambers India for Appellants.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 322 of 2015

Durga Shankar Maity
502, 5th Floor,
Kanakia Atrium-2,
Next to Hotel Courtyard Marriott,
Andheri Kurla Road,
Andheri (East),
Mumbai- 400 093 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 …Respondent

Mr. Vinay Chauhan, Advocate with Mr. K. C. Jacob, Advocate i/b Corporate Law Chambers India for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 323 of 2015

Ketan Shah
350/5, Sharda Niwas,
Jawahar Nagar,
Goregaon (W),
Mumbai- 400 062 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051 …Respondent

Mr. Vinay Chauhan, Advocate with Mr. K. C. Jacob, Advocate i/b Corporate Law Chambers India for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

AND
Appeal No. 324 of 2015

Parvinder Kaur
R/o. # 433, HMT Colony, Pinjore,
Dist. Panchkula- 134113 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondent

Mr. Vinay Chauhan, Advocate with Mr. K. C. Jacob, Advocate i/b Corporate Law Chambers India for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar

1. Appellants in all these appeals are aggrieved by the common order passed by the Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) on January 12, 2015. By the said order individual penalty on each appellant in all aggregating to ₹ 11.80 crore has been imposed under Section 15HA/ 15HB of SEBI Act for violating SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for short) and SEBI (Issue of Capital and Disclosure requirements) Regulations, 2009 ("ICDR Regulations" for short). Since the dispute in all these appeals arise from the common order passed by the AO, all these appeals are heard together and disposed of by this common decision.

2. Brooks Laboratories Limited ("company" for convenience) is engaged in research and manufacture of wide range of pharmaceutical products catering to the critical care segment. Mr. Atul Ranchal and Mr. Rajesh Mahajan (Appellant Nos. 2 & 3 in Appeal No. 246 of 2015) are Chairman & Managing Director of the company. Mr. Durga Shankar Maity (Appellant in Appeal No. 322 of 2015), Mr. Ketan Shah (Appellant in Appeal No. 323 of 2015) and Ms. Parvinder Kaur (Appellant in Appeal No. 324 of 2015) are the Chief Executive Officer, Chief Financial Officer and Company Secretary of the company respectively.

3. Facts relevant for disposal of these appeals are as follows:-

a) In the year 2009, the company decided to expand its business by setting up an additional plant in JB SEZ at Panoli, Gujarat.

b) On 01.06.2010, company paid ₹ 63,30,169/- as 10% advance for acquiring a plot in JB SEZ.

c) Sometime in May 2010, D&A Financials Ltd., a Merchant Banker suggested to the company to raise funds for the above expansion project through the Initial Public Offer ("IPO") and assured that they would handle all the formalities. Accordingly, the company appointed D&A Financial Ltd., as the Merchant Banker for the IPO.

d) On 25.11.2010 Draft Red Herring Prospectus ("DRHP") was filed by the Merchant Banker before SEBI.

e) Pursuant to an application made on 26.11.2010, Bombay Stock Exchange Ltd., ("BSE") & National Stock Exchange of India Limited ("NSE") granted in-principle approval on 23.12.2010 & 03.02.2011 respectively for listing the shares of the company after the IPO.

f) In the Annual Budget presented in February 2011, the Government of India proposed to cut tax incentives for new industries in Special Economic Zone (SEZs) and proposed a deadline of 31.03.2012 for setting up the manufacturing units in SEZs to avail the tax incentives.

g) On 04.04.2011 JB SEZ called upon the company to pay 20% of the purchase price of the plot as per the Memorandum of Understanding ("MOU") entered into by and between them. By letter dated 07.04.2011 the company refused to pay any amount by stating that it will not pay until the infrastructure required to start the plant was ready.

h) To avail the benefits of tax holiday as per the annual budget, it was necessary for the company to ensure that the new plant was set up in JB SEZ before 31.03.2012. Since the DRHP was still pending clearance from SEBI, the company started exploring options for short term funding for purchase of plant and machinery /civil work for the new plant and started short listing suppliers/ contractors for supply of plant and machinery/ civil work. A Chartered Accountant brought lenders who were agreeable to give Inter Corporate Deposits ('ICD's') to the company on interest.

i) *On 25.05.2011 the Board of Directors of the company passed a resolution to raise funds through ICD's from (i) Shitalnath Buildcon Pvt. Ltd. (Shitalnath), (ii) Blue Print Securities Ltd. (Blue Print), (iii) Konark Commerce & Industries Ltd. (Konark), & (iv) Shardaraj Trade Fin Ltd (Shardaraj). Similar resolution were passed subsequently on 02.07.2011 and 21.07.2011 for raising funds through ICDs from other parties. Thus the company raised ₹30.40 crore by way of ICDs during the period from 30.05.2011 to 25.07.2011.*

j) *On 01.06.2011 the company entered into a contract with Suryamukhi Projects Pvt. Ltd. ("Suryamukhi") for supply of design, engineering, planning, civil work, electrical work etc., for the new project. Between 01.06.2011 to 04.06.2011 the company paid ₹ 15.30 crore to Suryamukhi so that they could procure materials and tie up with sub-contractors for commencing the work.*

k) *After the Chairman and Managing Director of the company attended an International Conference in China relating, inter alia, to Pharma Machinery and equipment in June 2011, the company decided that for the purpose of ensuring that the products*

manufactured by the company meet the stringent requirements for exports to the developed countries it would be just and proper to import the machineries for the new project rather than using the indigenous machinery. Accordingly, on receiving proforma invoice dated 20.06.2011 from Neo Power Universal FZ LLC, UAE ('Neo Power'), the company paid ₹ 13.97 crore to Neo Power between 05.07.2011 to 30.08.2011 for importing the requisite machinery.

l) After SEBI Approved the DRHP dated 25.11.2010 on 01.08.2011, Red Herring Prospectus (RHP) was filed by the company on 03.08.2011. Thereafter, the IPO opened on 16.08.2011 and closed on 18.08.2011. The prospectus was filed by the company with SEBI/ Registrar of Companies on 22.08.2011.

m) On 2/3.09.2011 the company received ₹ 61.03 crore as the IPO proceeds from the Merchant Banker (after deducting the issue related expenses). On 05.09.2011 the shares of the company were listed on the stock exchanges.

n) Out of the IPO proceeds so received, the company repaid ₹ 30.40 crore (along with interest after deducting TDS) towards the ICDs availed by the company. Further the company parked ₹ 14.40 crore

in fixed deposit and the remaining balance IPO proceeds were temporarily utilized by the company for the purposes in consonance with disclosures made in the prospectus.

o) Sometime in October 2011 the promoters of the company visited JB SEZ site to assess the infrastructure development work and found that it was too slow and it would not be possible to meet the 31.03.2012 deadline and accordingly requested Suryamukhi & Neo Power not to commence work or deliver any machineries.

p) On 17.12.2011 the Board of Directors of the company passed a resolution to shift the project from JB SEZ in Panoli to Domestic Tariff Zone (DTZ) in Vadodara and secure the approval of the shareholders of the company through postal ballot in that regard.

q) In the meantime, SEBI formed a prima facie opinion that utilization of the IPO proceeds towards repayment of ICD amounted to siphoning of funds. SEBI also formed prima facie opinion that the company and its Book Running Lead Manager (BRLM) to the IPO had failed to disclose material information in the DRHP/ prospectus. Accordingly by an ad interim order dated 28.12.2011 the Whole Time

Member ("WTM" for short) of SEBI prohibited the company and its promoters from accessing the securities market until further orders and directed the company to call back the advances given to Suryamukhi and Neo Power and further directed that unutilized IPO proceeds be deposited in an ESCROW account.

r) *By its letter dated 03.01.2012 the company called upon Suryamukhi and Neo Power to return the advance amount paid to them. However, Suryamukhi informed the company that it cannot return the money as it had already tied up with sub-contractors and had procured raw materials required for the construction work as contracted and that they were ready to start the construction work whenever asked by the company. Similarly, Neo Power informed the company, that refund of advance amount was not possible as it had already procured the machinery and the same were ready for shipment at any time desired by the company.*

s) *Between 28.01.2012 & 01.02.2012 postal ballot resolution was duly passed by the shareholders of the company to shift the project from JB SEZ to Vadodara. On 03.02.2012 the company informed the stock exchanges about the said resolution.*

t) *On 09.03.2012 the company bought 23,573 Sq. m. of land at Vadodara for the new project. Immediately, thereafter on 10.03.2012 the sub-contractor of Suryamukhi commenced the development work and on 10.03.2012 itself the Ground Water Testing work at Vadodara was undertaken by the sub-contractor of Suryamukhi. Thereafter, on completion of other civil work, Neo Power delivered 1st consignment of the imported machinery to the appellant on 17.05.2012. It is not in dispute that Suryamukhi and Neo Power have discharged their obligation in relation to the new project at Vadodara for which advance payments were made to them in June-July 2011. It is also not in dispute that new project at Vadodara is fully functional.*

u) *On 09.07.2013 confirmatory order was passed by SEBI thereby confirming the directions contained in the ex-parte order dated 28.11.2011 until further orders. Thereafter, show cause notice was issued to the appellants and after considering the reply filed by the appellants and after giving an opportunity of hearing to the appellants, the AO of SEBI has passed the impugned order on 12.01.2015. By the said order it is held that the appellants are guilty of violating the PFUTP Regulations and ICDR Regulations and*

accordingly individual penalty has been imposed under Section 15HA/15HB of SEBI Act in all aggregating to ₹11.80 crore.

v) *To complete the narration of facts we may also note that the WTM of SEBI initiated proceedings against the appellants for the same violations and passed an order on 10.09.2015 thereby debarring the appellants from accessing the securities market for 5 years from the date of the ex-parte order dated 28.12.2011. The WTM of SEBI has also permitted the company to use the IPO funds of ₹ 14.40 crore kept in ESCROW account for the purposes set out in the prospectus. Appellants had filed appeal against the order of WTM dated 10.09.2015. However, before the appeal could be disposed of on merits the appellants suffered the debarment specified in the order passed by the WTM on 10.09.2015. Hence, the appeal became infructuous and was disposed of accordingly.*

4. Mr. Modi learned Senior Advocate and Mr. Chauhan, learned counsel for appellants and Mr. Mehta learned Senior Advocate for SEBI have extensively argued before us on behalf of their respective clients.

5. By the impugned order dated 12.01.2015 the AO of SEBI has imposed penalty on the appellants on ground that the appellants have committed the following violations:-

a) *Appellants have fraudulently in complicit with Suryamukhi indulged in round tripping of funds and ultimately siphoned of ₹ 8 crore from the IPO proceeds in the guise of repaying the ICDs.*

b) *Appellants transferred ₹ 2.50 crore from the IPO funds to Overall Financial Consultants P. Limited ("Overall" for convenience) through layers of several entities which were ultimately utilized by Overall to trade in the scrip of the company and thus the losses incurred by Overall were adjusted through the IPO proceeds resulting in misutilization of IPO proceeds to the extent of ₹ 2.5 crore.*

c) *Appointment of Suryamukhi for the project work and advance payment of ₹ 15.30 crore to Suryamukhi for the project work was a material information and a risk factor required to be disclosed under the PFTUP Regulations and under the ICDR Regulations. However, the same were not disclosed. Moreover, even after making advance payment of ₹ 15.30 crore to Suryamukhi it was falsely stated in the RHP/ Prospectus that the cost of construction was ₹ 12.20 crore. Therefore, failure to disclose material facts and making false and misleading statements in the RHP/ Prospectus relation to the cost of construction*

was in gross violation of the PFUTP Regulations and ICDR Regulations.

d) *Neither the appointment of Neo Power for supply of plant and machinery nor advance payment of ₹ 13.97 crore made to Neo Power for supply of plant and machinery was disclosed in the RHP/Prospectus. Moreover, even after appointing Neo Power for supply of plant and machinery and making advance payment to Neo Power it was falsely stated in the RHP/Prospectus that the company has not entered into definitive agreement for supply of plant and machinery. Thus, failure to disclose material facts, and making false/ misleading statements in the RHP/ Prospectus in relation to supply of plant and machinery was in violation of the PFUTP/ICDR Regulations.*

e) *Raising funds by way of ICD to the extent of ₹ 30.40 crore to be repaid with interest from the IPO proceeds was a material information required to be disclosed under the PFUTP/ ICDR Regulations, however, the said information was not disclosed in the RHP/ Prospectus. On the contrary, it was falsely stated in the RHP/ Prospectus that the company had not entered into any bridge loan facility that would be*

repaid from the IPO funds, which was in violation of the PFUTP/ ICDR Regulations.

For all the aforesaid reasons, the AO has deemed it fit to impose penalty on each appellant in all aggregating to ₹ 11.80 crore.

6. In our opinion, decision of the AO that the appellants have indulged in round tripped of funds deserves to be upheld in view of facts and for the reasons set out herein below:-

a) During May-July 2011 the Board of Directors of the company resolved to borrow funds through ICDs from several entities including Shitalnath, Blue Print, Konark, Shardaraj and Sunshine.

b) Accordingly, on 30.05.2011 the company received ₹ 4 crore as ICD from Shitalnath.

c) On 01.06.2011 the company entered into an agreement with Suryamukhi for supply of design, engineering, planning, civil work, electrical work for the new project and paid ₹ 4 crore to Suryamukhi as advance even though there was no infrastructure available for commencing the project work at JB SEZ.

d) On June 1 / 2, 2011, Suryamukhi transferred total sum of ₹ 3.5 crore to Blue Print (through Mangalmayee Hirise Pvt. Ltd.), Shardaraj, sunshine

Housecon Ltd. (Sunshine) and Konark (through Pushpanjali Hirise Pvt. Ltd. and Balram Tie-up) and on 02.06.2011 itself Blue Print, Shardaraj, Sunshine and Konark paid to the company ₹ 3.50 crore by way of ICDs. Thus, out of the amount of ₹ 4 crore paid by the company to Suryamukhi, ₹ 3.5 crore came back as ICDs through Blue Print, Sunshine, Shardaraj, and Konark.

e) *Thereafter, on 02.06.2011 the company received additional amount of ₹ 3 crore as ICD from Shitanath.*

f) *On 03.06.2011 the company transferred ₹ 6 crore to Suryamukhi and on 03.06.2011 itself Suryamukhi transferred ₹ 4.5 crore to Konark and on the same day Konark in turn transferred ₹ 4.5 crore as ICD to the company.*

g) *Thereafter, on receipt of IPO proceeds, the company repaid the ICDs with interest inter alia to Konark, Blue Print, Shardaraj and Sunshine from the IPO proceeds.*

h) *Aforesaid facts clearly show that the amounts transferred by the company to Suryamukhi came back to the company by way of ICD through four connected*

entities, viz., Blue Print, Shardaraj, Sunshine and Konark.

i) It is an admitted fact that till October 2011 infrastructure was not available at JB SEZ for commencing the project work. In such a case, giving advance amount to Suryamukhi on 01.06.2011 for the project work cannot be said to be a bonafide decision taken by the appellants.

j) Apart from the above, as per the agreement dated 01.06.2011 the project cost was to be paid to Suryamukhi in installments. Thus, making advance payment to Suryamukhi was not in consonance with the agreement dated 01.06.2011 entered into by and between the company and Suryamukhi.

k) On 04.04.2011 JB SEZ had called upon the company to pay 20% of the purchase price, however, the company declined to pay any amount till the infrastructure was made available. Thus, the company on one hand declined to pay any amount to JB SEZ till the infrastructure was made available and on the other hand made advance payment to Suryamukhi even though infrastructure was not available for commencing the project work.

l) It is interesting to note that on 01.06.2011 itself Suryamukhi transferrered ₹ 3.50 crore to Blue Print, Shardaraj, Sunshine and Konark, who in turn paid that amount of ₹ 3.50 crore to the company on 02.06.2011 as by way of ICD.

m) Similarly, 03.06.2011 the company transferred ₹ 6 crore to Suryamukhi as advance. On the same day Suryamukhi transferred ₹ 4.50 crore to Konark and Konark in turn transferred ₹ 4.50 crore to the company as and by way of ICD on the same day.

n) Thus, funds received from Shitalnath were rotated through Suryamukhi and the four connected entities viz., Konark, Sunshine, Blue Print and Shardaraj who had common directors and had common address. In these circumstances, the AO was justified in holding that the appellants had indulged in round tripping of funds.

7. Decision of the AO that ₹ 8 crore paid from the IPO funds to the four connected entities towards repayment of the ICDs amounts the siphoning of the IPO funds cannot be sustained for the following reasons:-

a) Since the four connected entities viz., Konark, Sunshine, Shardaraj and Blue Print had paid ₹ 8

crore by way of ICD only after receiving funds from Suryamukhi, the AO arrived at a conclusion that the said amount of ₹ 8 crore represented fictitious ICDs and accordingly held that repayment of the said amount of ₹ 8 crore from IPO funds amounts to siphoning of the IPO funds.

b) *It is relevant to note that the total amount raised by the company by way of ICDs was ₹ 30.40 crore which included ICD of ₹ 8 crore received from the four connected entities. Out of the amount of ₹ 30.40 crore raised through ICDs, ₹ 15.30 crore was paid by the company as advance payment to Suryamukhi towards the project work. It is not in dispute that Suryamukhi commenced the project work at Vadodara on 10.03.2012 and utilized entire amount of ₹ 15.30 crore for completing the said project and it is not in dispute that the said project is fully operational. Since the entire amount of ₹ 15.30 crore paid by the company to Suryamukhi from the funds received through ICDs has been fully utilized for the project work, the AO is not justified in holding that the ICDs to the extent of ₹ 8 crore received from the four connected entities were fictitious ICDs.*

c) *Although AO has held, in the impugned order that Suryamukhi submitted bills only to the extent of ₹ 14.09 crore, counsel for the appellants demonstrated before us, that Suryamukhi had also done the electrical installation work at the project site and the AO has failed to consider bills relating to electrical installation work submitted by Suryamukhi. It is not in dispute that if the bills relating to electrical installation work given by Suryamukhi is taken into consideration, the total amount utilized for the project work at Vadodara by Suryamukhi would be ₹ 15.30 crore.*

d) *Fact that Suryamukhi before commencing the project work on 10.03.2012, had paid ₹ 8 crore to four connected entities and the said connectecd entities in turn had paid that amount of ₹ 8 crore as ICDs to the company cannot be a ground to hold that the amount of ₹ 8 crore received by the company from the four entities were fictitious because, admittedly, entire amount of ₹ 15.30 crore paid as advance has been used by Suryamukhi for the project work. In such a case, fact that Suryamukhi, before commencing the project work had advanced ₹ 8 crore to four connected entities and the said four connected entities had advanced ₹ 8 crore by way of ICDs cannot be a ground to hold that the ICDs to the extent of ₹ 8 crore*

were fictitious and illusory. Consequently, repayment of the said amount of ₹ 8 crore from the IPO proceeds cannot be said to be siphoning of IPO proceeds. In these circumstances, decision of the AO that ₹ 8 crore has been siphoned-off from the IPO proceeds cannot be sustained.

8. Decision of the AO that the appellants have misutilized IPO funds by financing ₹ 2.50 crore to Overall through layers of several entities is also unsustainable for the following reasons:-

a) *Admittedly, the company has not paid ₹ 2.50 crore to Overall. In fact, the company had paid ₹ 2.50 crore from the IPO proceeds to Konark and Shardaraj towards repayment of ICDs given by them. Konark and Shardaraj thereupon paid ₹ 2.50 crore to Overall which was utilized by Overall for trading in the scrip of the company and thereby incurred loss of ₹ 2.19 crore.*

b) *In the impugned order the AO has recorded a clear finding that there is no connection between the company and Overall. In such a case, fact that Konark and Shardaraj on receiving ₹ 2.50 crore as repayment of ICDs, gave that amount to Overall for buying/ selling the shares of the company, cannot be a ground to hold that ₹ 2.50 crore was paid by the*

appellants from the IPO funds to finance Overall to trade in the shares of the company.

c) *Fact that the company had raised ₹ 2.50 crore from Konark and Shardaraj by way of ICDs is not in dispute. Having received ₹ 2.50 crore from Konark and Shardaraj the company was obliged to repay ₹ 2.50 crore with interest to Konark and Shardaraj. Accordingly, on receipt of IPO proceeds the company was justified in repaying ₹ 2.50 crore with interest from the IPO proceeds to Konark and Shardaraj. Fact that Konark and Shardaraj on receiving ₹ 2.50 crore from the company paid that amount to Overall could not be considered as payment by the company to overall through Konark and Shardraj especially when no connection is established between the company and Overall. In these circumstances, decision of the AO that repayment of ₹ 2.50 crore from the IPO proceeds amounts to siphoning of ₹ 2.50 crore from the IPO proceeds cannot be sustained. Consequently, payment of ₹ 2.50 crore to Konark and Shardaraj from IPO funds cannot be said to be misutilization of IPO funds.*

9. Decision of the AO that the appellants have failed to disclose appointment of Suryamukhi for the project work, failed to disclose

advance payment of ₹ 15.30 crore made to Suryamukhi and further made false/ misleading statement in the RHP/ Prospectus relating to the cost of the project and thereby violated the PFUTP Regulations and ICDR Regulations deserves acceptance for the following reasons:-

a) *Awarding the project work to Suryamukhi and giving advance amount of ₹ 15.30 crore was a material information and hence required to be disclosed to the investors. While it was open to the appellants to reject the lower offer given by Syal and Associates and accept the offer given by Suryamukhi, once the offer given by Suryamukhi was accepted and an agreement was entered into for the project work, the appellants were obliged to disclose the same to the investors in the RHP/ Prospectus.*

b) *It is relevant to note that advance payment of ₹ 15.30 crore was made to Suryamukhi between 1st June, 2011 to 4th June 2011 whereas RHP was filed subsequently on 03.08.2011 and the prospectus was filed thereafter on 22.08.2011. Thus, it is evident that in the RHP/ Prospectus material fact relating to advance payment of ₹ 15.30 crore to Suryamukhi has not been disclosed.*

c) *Apart from the above, it was wrongly stated in the RHP/ Prospectus that the cost of construction of the project was ₹ 12.20 crore. Since, ₹ 15.30 crore was already paid to Suryamukhi towards the cost of construction before filing of RHP/ Prospectus, it is apparent that the appellants have made false and misleading statement in the RHP/ Prospectus in relation to the cost of construction.*

d) *Making advance payment of ₹ 15.30 crore to Suryamukhi even when there was no infrastructure available at JB SEZ for developing the project was clearly a risk factor in terms of Clause 1(iv) of Part A of Schedule VII of the ICDR Regulations and was therefore, required to be disclosed in the RHP/Prospectus. Moreover, in Section III of the RHP/ Prospectus, especially in para 6 thereof, it was stated that the company has not entered into any definitive agreement to utilize the net proceeds of the IPO funds, which was clearly a false statement. Under, Clause 1(VII) (F) of the ICDR Regulations deployment of funds are required to be disclosed in the RHP/ Prospectus. In the table containing the details of deployment of funds at Page 77 of the RHP/Prospectus it was stated that no amount has been spent towards civil works/ construction as on 31.07.2011 and that the estimated amount was*

₹ 12.20 crore which was a false and misleading statement because in June 2011 the appellants had paid advance amount of ₹15.30 crore to Suryamukhi towards civil works/ cost of construction.

e) *Argument advanced on behalf of the appellants that advance payments were made to Suryamukhi so that they are ready to commence work immediately on being told to do is without any merit, because, firstly, there was no infrastructure available for commencing project work and JB SEZ immediately and there was no reason to believe that the infrastructure would be made available at JB SEZ in the near future. Secondly, even the agreement entered into with Suryamukhi on 01.06.2011 did not provide for advance payment. Thirdly, having declined to give advance amount to JB SEZ for providing infrastructure, there was no reason for the appellants to make advance payment to Suryamukhi. In any event above material facts ought to have been disclosed in the prospectus. Argument that the Merchant Banker was responsible for the above lapses has no merit, because, under the regulations framed by SEBI appellants were equally responsible to ensure that true and all material information were disclosed in the RHP/ Prospectus.*

f) For the aforesaid reasons, decision of the AO that the appellants have failed to disclose material facts relating to appointment of Suryamukhi, failed to disclose advance payment of ₹ 15.30 crore made to Suryamukhi and further made false and misleading statements in the RHP/ Prospectus in gross violation of PFUTP Regulations and ICDR Regulations cannot be faulted.

10. Decision of the AO that the appellants have failed to disclose appointment of Neo Power for supply of plant and machinery, failed to disclose advance payment of ₹ 13.97 crore made to Neo Power and further made false and misleading statement in the RHP/Prospectus relating to supply of plant and machinery, in violation of PFUTP Regulations and ICDR Regulations deserves acceptance for the following reasons:-

a) Admittedly, appellants in June-July 2011 had placed orders with Neo Power for supply of plant and machinery and had made advance payments to Neo Power on 5th July, 21st July, 25th July and 2nd August, 2011 in all amounting ₹ 13.97 crore. However, in the RHP and the prospectus subsequently filed on 03.08.2011 and 22.08.2011 respectively these facts were not disclosed. Appointing Neo Power (Foreign Supplier) for supplying plant and machinery and paying advance amount of ₹ 13.97 crore to Neo

Power even when there was no infrastructure available for commencing the project work at JB SEZ, was a material information and also a risk factor which ought to have been disclosed as per the PFUTP Regulations and the ICDR Regulations.

b) *Apart from the above, in Section III of the RHP (Pg. 13) and particularly in para 6 thereof (Pg. 15) it was expressly stated that the company has not entered into any definitive agreement to utilize the net proceeds to the issue and had not placed any order for purchase of plant and machinery required for the project. It was further stated that the company has received certain quotations from the Indian Suppliers for supply of plant and machinery. Since, the appellants had already appointed Neo Power (Foreign Supplier) and had paid ₹ 13.97 crore to Neo Power for supply of plant and machinery, it is apparent that false and misleading statements were made in the RHP/ Prospectus that no agreement has been entered into for utilizing the IPO proceeds and no order has been placed for purchase of plant and machinery.*

c) *Assuming that the plant and machinery supplied by Neo Power are of superior quality and by awarding contract to Neo Power the company has saved substantial amount, these facts being material*

information could not be suppressed in the RHP/ Prospectus.

d) *Therefore, in the facts of present case, decision of the AO that the appellants have failed to disclose material information relating to appointment of Neo power, failed to disclose advance payment of ₹ 13.97 crore to Neo Power and made false/ misleading statement in the RHP/ Prospectus relating to purchase of plant and machinery in violation of the PFUTP/ ICDR Regulations cannot be faulted.*

11. Decision of the AO that the appellants are guilty of not disclosing funds raised through ICDs and thereby violated PFUTP Regulations and ICDR Regulations deserves acceptance for the following reasons:-

a) *Fact that the company pursuant to the resolutions passed by the Board of Directors received ICDs aggregating to ₹ 30.40 crore from several parties during the period from May to July 2011 not in dispute. Raising such funds with interest liability was clearly a material information required to be disclosed. However, neither in the RHP filed on 03.08.2011 nor in the prospectus filed on 22.08.2011 above facts were disclosed.*

b) *This tribunal in the case of P. G. Electroplast Ltd. V/s SEBI (Appeal No. 144 of 2014 decided on 30.08.2016) has held that raising funds through ICD was in the nature of a bridge loan and hence, required to be disclosed in the RHP/Prospectus.*

c) *Even under the ICDR Regulations, particularly Clause 2(VII)(F) of Part-A of Schedule VIII thereof, the sources of funds for a project are required to be disclosed in the offer document.*

d) *Moreover, in the RHP/ Prospectus filed by the company it was stated that the company has not entered into any bridge loan facility that would be repaid from the IPO fund. Having raised ₹ 30.40 crore by way of ICDs to be repaid through IPO proceeds, the appellants could not have stated in the RHP/ Prospectus that the company has not entered into any bridge loan to be repaid from the IPO proceeds.*

e) *Argument that the merchant banker is responsible for not disclosing the ICDs in RHP/ Prospectus is without any merit. Appellants were equally responsible to ensure that all material information was disclosed and further ensure that false/ misleading statements were not made in the RHP/ Prospectus.*

f) Therefore, in the facts of present case, decision of the AO that the appellants have failed to disclose material information relating to funds raised through ICDs and further made false statement in the RHP / Prospectus that they have not entered into any bridge loan to be repaid from the IPO funds, was in gross violation of PFUTP Regulations and ICDR Regulations cannot be faulted.

12. To sum up,

a) Decision of the AO that the appellants have indulged in round tripping of funds is upheld.

b) Decision of the AO that receipt of ₹ 8 crore by way of ICDs from the four connected entities was a fictitious and illusory ICD and hence repayment of ₹ 8 crore to the four connected entities amounts to siphoning of IPO funds cannot be sustained.

c) Decision of the AO that the appellants have misutilized ₹ 2.50 crore from IPO funds by financing Overall through layer of entities, to trade in the shares of the company cannot be sustained.

d) Decision of the AO that failure to disclose material information relating to appointment of Suryamukhi

for the project work and failure to disclose advance payment of ₹ 15.30 crore made to Suryamukhi was in violation of the PFUTP Regulations and ICDR Regulations is upheld.

e) *Decision of the AO that false and misleading statements were made in the RHP and Prospectus relating to the cost of construction in violation of the PFUTP Regulations and ICDR Regulations is upheld.*

f) *Decision of the AO that failure to disclose appointment of Neo Power for supply of plant and machinery and failure to disclose advance payment of ₹ 13.97 crore made to Neo Power was in violation of PFUTP Regulations and ICDR Regulations is upheld.*

g) *Decision of the AO that even after appointing Neo Power for supply of plant and machinery, false and misleading statements were made in the RHP and Prospectus relating to the purchase of plant and machinery, in violation of PFUTP Regulations and ICDR Regulations is upheld.*

h) *Decision of the AO that the appellants have failed to disclose raising of funds amounting to ₹ 30.40 crore through ICDs in the RHP and the Prospectus in violation of PFUTP Regulations and ICDR Regulations is upheld.*

i) Decision of the AO that false and misleading statements were made in the RHP/Prospectus that the company has not raised any bridge loan to be repaid from the IPO proceeds in violation of PFUTP Regulations and ICDR Regulations is upheld.

13. Question then to be considered is, whether, the AO is justified in imposing individual penalty in all aggregating to ₹ 11.80 crore on the appellants.

14. Failure to disclose material information and making false/ misleading statements in the RHP/ Prospectus constitutes serious violation of the PFUTP/ ICDR Regulations. Appellants who are Chairman, Managing Director, Chief Executive Officer, Chief Financial Officer and Company Secretary of the Company cannot escape penal liability for the aforesaid violations by merely stating that they had relied on the merchant banker. Appellants were equally responsible to ensure that all material facts were disclosed and further ensure that false and misleading statements were not made in the RHP/ Prospectus. Penalty imposable for such violations is up to ₹ 25 crore under Section 15HA and up to ₹ 1 crore under Section 15HB of SEBI Act.

15. After considering all mitigating factors, the AO has imposed individual penalty in all aggregating to ₹ 11.80 crore. However, as we have held that the decision of the AO that repayment of ICDs amounting to ₹ 10.50 crore (₹ 8 crore + ₹ 2.50 crore) from the IPO proceeds

amounts to siphoning of ₹ 10.50 crore from the IPO proceeds cannot be sustained, penalty imposed on the appellants to that extent deserves to be deleted.

16. Thus, considering the fact that though belatedly the project at Vadodara is fully operational and the appellants have already undergone debarment for 5 years, we modify the impugned order and direct each appellant to pay penalty as follows:-

a) *Brooks Laboratories Ltd., shall pay consolidated penalty of ₹ 15 lac to SEBI within one month from today.*

b) *Mr. Atul Ranchal (Chairman), Mr. Rajesh Mahajan (Managing Director) & Durga Shankar Maity (CEO)of Brooks Laboratories Ltd., shall pay consolidated penalty of ₹ 35 lac each to SEBI within one month from today.*

c) *Mr. Ketan Shah (CFO) and Ms. Parvinder Kaur (Company Secretary) of Brooks Laboratories Ltd., shall pay consolidated penalty of ₹ 5 lac each to SEBI within one month from today.*

17. If the appellants fail to pay the aforesaid penalty within one month from today, then SEBI shall be entitled to recover the above penalty from each appellant with interest as provided under the SEBI Act.

18. All four appeals are disposed of in the aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

21.03.2018
Prepared & Compared By: PK