

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11B (1), 11B(2) and 11(4A) of the SEBI Act, 1992, and Section 12A(2) of the Securities Contracts (Regulation) Act, 1956, read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

In Re: SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, Listing Agreement and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

In respect of SCN:

SCN: SEBI/HO/IVD/ID14/OW/P/2021/0000005604/1 dated March 8, 2021	
Name of Noticee	PAN
M/s. Achal Investments Ltd	AADCA6696C

In the matter of Mis-utilization of funds raised through preferential issue

BACKGROUND

1. M/s. Achal Investments Ltd (hereinafter referred to as AIL/ Company) was incorporated on July 14, 1980, as a public limited company in Delhi. The company is engaged in the business of financing and investment activities. The shares of the company are listed on BSE Limited (BSE) with effect from August 7, 2014. Prior to this listing, the shares of the company were listed on Delhi Stock Exchange (DSE). The registered office of AIL is at: Office No. 208, 2nd Floor, Plot No. A-1, Madhuban Tower, Veer Savarkar Block, Shakarpur, Delhi (East) – 110092.

2. Securities and Exchange Board of India (hereinafter referred to as SEBI) has conducted an investigation in dealing in securities by raising of funds through preferential issue of equity shares and utilization thereof by the Company to ascertain whether there was any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as SEBI Act), Listing Agreement read with provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as LODR Regulations) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as PFUTP Regulations).

SHOW CAUSE NOTICE

3. Pursuant to approval of the shareholders in the Extraordinary General Meeting (EGM) held on August 12, 2013 the company had issued 19,06,000 equity shares of face value Rs.10/- at an issue price of Rs.10/- on preferential basis to 47 entities. Thus, the issue proceeds were Rs. 1,90,66,000/-. The chronological sequence of the issue is as under:

S No.	Events	Date of event
1	Circulation of notice of EGM	July 19, 2013
2	Date of EGM	August 12, 2013
3	Date of allotment	August 22, 2013

4. The objects of the preferential issue of equity shares as per the Notice of EGM dated July 19, 2013, issued to the shareholders are as under:

- 4.1. To strengthen the equity base of the company,
- 4.2. To arrange the funds required for meeting the enhanced working capital requirements of the company,
- 4.3. To meet certain capital expenditure, and
- 4.4. To meet expenditure for general corporate purposes

5. As against the stated objects mentioned above, the company, in response to BSE notice dated June 13, 2018 has admitted before BSE, vide its letter dated October 25, 2018 that it has deviated from the stated objects in utilization of the issue proceeds. Further, the company vide its letter dated June 7, 2019, has informed SEBI that it has obtained ratification for the deviation from its shareholders in the AGM held on September 18, 2018. The ratified details of utilization of proceeds of preferential issue is mentioned below:

Particulars	Amount (Rs.)
Loans & Advances	1,55,00,000
Advance for purchase of shares	27,69,600
Repayment of Loan	8,50,000
Total	1,91,19,600

6. In order to ascertain the particulars of the diversion of preferential issue proceeds by the company, SEBI analyzed the bank statement of the company (HDFC Bank account no.: 00032000044658) and of the recipients of the funds, replies of the company and that of the said recipients. Pursuant to conclusion of the investigation, a Show Cause Notice (SCN) dated March 08, 2021, was issued to the Company (hereinafter referred to as the “**Noticee**”). It has been alleged, inter alia, that:

- 6.1. Noticee has mis-utilized and diverted the proceeds received through the preferential issue of equity shares.
- 6.2. Noticee, while seeking ratification from its shareholders after a delay of 5 years, has not made full and complete disclosure of facts and information pertaining to the alleged mis-utilization and diversion of proceeds.
- 6.3. Noticee by mis-utilizing and diverting the proceeds received through the preferential issue of equity shares has committed fraud on its shareholders.
- 6.4. Noticee failed to make the quarterly disclosure regarding utilization of preferential issue proceeds as required under Clause 43 of Listing Agreement.

7. The Noticee was alleged to have violated the following provisions of law:

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 12A: No person shall directly or indirectly:

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

Regulation 2(1) (c)

2. (1) In these regulations, unless the context otherwise requires, —

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include--

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

...

(7) deceptive behaviour by a person depriving another of informed consent or full participation;

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -

...

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

...

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors”;

...

(r) planting false or misleading news which may induce sale or purchase of securities;

SCRA

Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Listing Agreement

Clause 43 of Listing Agreement

a) The Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilization of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability.

LODR Regulations

Repeal and Savings

103.(1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the listing agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations

8. It is also observed from the material made available on record that certain entities, to whom funds were allegedly transferred from the preferential issue proceeds, are yet to return these funds to the Company. The said funds amount to Rs. 1,38,29,600/- (Rs. 44,29,600 + Rs. 94,00,000). Since these funds are alleged to be diverted by the Noticee out of the subscription money paid by the shareholders for the preferential issue of equity shares, the onus is on the Noticee to bring back the money and restore to the Company.

9. In view of the above, the Noticee was called upon to show cause as to:

9.1. why suitable directions under Sections 11B (1) and 11(4) read with Section 11(1) of SEBI Act including debarment for an appropriate period and direction to restore a sum of Rs 1,38,29,600/- for the alleged violations of the provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act for the deviation and redeployment of preferential issue proceeds.

9.2. Also, why suitable directions for imposing monetary penalty should not be imposed under Sections 11B (2) and 11(4A) of SEBI Act read with Section 15HA of SEBI Act for violation of provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act for the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares.

9.3. And further, why suitable directions for imposing monetary penalty should not be imposed under Sections 11B (2) and 11(4A) of SEBI Act read with Section 12A (2) of SCRA, Section 23E of SCRA for violation of the provisions of Section 21 of SCRA read with Clause 43 of erstwhile Listing agreement read with Regulation 103 of the LODR Regulations.

REPLY, WRITTEN SUBMISSION AND ADDITIONAL SUBMISSION:

10. The SCN was issued to the Company at its registered office, Office No. 208, 2nd Floor, Plot No. A-1, Madhuban Tower, Veer Savarkar Block, Shakarpur, Delhi (east)-110092. However, the SCN was returned undelivered with the remark “No such person in the address”. Copy of SCN was sent simultaneously to the Company’s Whole Time Director, Mr. Pradeep Ram. Copy of the SCN was also affixed on the last known address of the Company on March 20, 2021, and was also sent by email to the email ID, achalinvest@yahoo.com on March 26, 2021, which was also delivered. As such, the Company is in receipt of the SCN through all the stated supplementary means. However, till date no response has been received from the Company.

11. In the interests of natural justice, a personal hearing was granted to the Noticee on June 10, 2021. Hearing notice was issued to the Company on May 14, 2021, through registered post. As per details on India Post website, the same has been returned undelivered with remark “Returned Unclaimed”. Copy of the hearing notice was also served through email and through affixture. Copy of the SCN was delivered to the last

known address of Mr. Pradeep Ram. However, the SCN sent to the Whole Time Director was returned undelivered on June 21, 2021.

12. Further, a Public Notice regarding the SCN and the hearing notice was issued on May 21, 2021, in two newspapers viz., Hindustan Times and Dainik Jagran, in New Delhi. Copy of SCN and hearing notice was also uploaded on the SEBI website under the section "Unserved Summons/ Notices". On June 09, 2021, the WebEx link to join the hearing was sent to the Company. During the hearing on June 10, 2021, an email was again sent to the Noticee advising it that the hearing had started and that it should join the same. However, the Noticee failed to attend the hearing.

13. As such, from the above I note that the SCN and the hearing notice has been served on the Noticee through all the stated supplementary means and no reply has been received till date from the Noticee, while it also did not appear before me for the personal hearing.

14. Accordingly, I shall now proceed in the matter on the basis of the material available on record.

ISSUES FOR CONSIDERATION:

15. Before delving into the merits of the case, I note that the Noticee has neither replied to the SCN nor has attended the hearing. Proof of service of SCN and hearing notices are on record. In this regard, I take note that the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the matter of Sanjay Kumar Tayal & Others Vs. SEBI decided on February 11, 2014, has held the following:

"...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of

personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”

16. I also note from MCA records that on July 15, 2021, the Noticee has uploaded the document in respect of financial statements with the RoC. The registered office address and the email ID are the same as the ones on which SEBI has sent the SCN and hearing notice. This document has been digitally signed by Mr. Pradeep Ram, Director of the Company. Hence, I note that there are no changes in the communication details of the Noticee.

17. Without prejudice to the above observation, I proceed to examine the matter on merits. To that effect, I have perused the SCN and other materials available on record. The following issues arise for consideration:

17.1. **Issue No. 1:** *Whether the allegations made in the SCN stand established against the Noticee on the basis of the material available on record?*

17.2. **Issue No. 2:** *If the answer to Issue No. 1 is in affirmative, whether directions as proposed in the SCN and direction of penalty, if any, needs to be issued against the Noticee?*

18. I shall now proceed to deal with the issues enumerated above.

Issue No. 1: Whether the allegations made in the SCN stand established against the Noticee on the basis of the material available on record?

Mis-utilization of proceeds of preferential issue of equity shares by the Company:

19. It has been alleged that preferential issue proceeds of Rs. 95 lakhs were transferred by the Noticee to Panchsheel Securities Pvt. Ltd. (**Panchsheel**) It is observed from the bank statement of the company that it had transferred a sum of Rs. 95 lakhs to

Panchsheel. The following are the details of fund transfer from the company to Panchsheel:

S. No.	Date	Narration	Debit amount (Rs.)
1.	12-8-2013	RTGS DR-ICIC0000007-PANCHSHEEL SECURITIES P LTD-SURYAKIRAN.N-HDFCHI3224715657	60,00,000
2.	13-8-2013	RTGS DR-ICIC0000007-PANCHSHEEL SECURITIES P LTD-SURYAKIRAN.N-HDFCHI3225726933	35,00,000
Total			95,00,000

20. It has also been alleged that preferential issue proceeds of Rs. 1.56 crores were transferred by the Noticee to TCG Stock Broking Pvt. Ltd. (TCG). It is observed from the bank statement of the company that it had transferred a sum of Rs. 1.56 crores to TCG. The following are the details of fund transfer from the company to TCG:

S. No.	Date	Narration	Debit amount (Rs.)
1	20-8-2013	00030340005442-FT-SURYAKIRAN,N	22,00,000
2	20-8-2013	00030340005442-FT-SURYAKIRAN,N	21,00,000
3	23-8-2013	00030340005442-FT-SURYAKIRAN,N	1,13,00,000
Total			1,56,00,000

21. I note that in response to SEBI's query for the basis of selecting Panchsheel and TCG for the purpose of broad basing the equity holdings of the company, the company in its reply dated June 7, 2019, has submitted the following:

21.1. Since the Company and Panchsheel and TCG are in same line of business and in order to establish the identity of the company and to remain in competitive market, the advance was given to Panchsheel and TCG. The advance was for purchase of shares for it by Panchsheel and TCG.

21.2. The company has provided two documents stated to be Memorandum of Understanding (MoU) entered into on August 20, 2013, with Panchsheel and TCG for purchase of shares.

22. It has been alleged that the transfer of funds to Panchsheel and TCG could not have been for the purpose of purchase of securities. I note that this allegation stands established for the following reasons:

22.1. Panchsheel and TCG are SEBI registered Sub-brokers affiliated with ISE Securities and Services Ltd (ISSL) and Crimson Financial Services Pvt. Ltd. (Crimson), respectively. Sub-broker as a class of market intermediary, in terms of amendment to Code of Conduct prescribed for Stock brokers and Sub-brokers in Schedule II to Regulation 15 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 on September 25, 2003, cannot do direct client dealing in as much as settling a trade or a transaction in terms of receipt and payment of funds or securities directly with clients and the same needs to be done only through the stock broker to whom the sub-broker is affiliated.

22.2. If the intention of the Noticee was to purchase shares through from the secondary market through the Stock Exchange mechanism, then it should have opened a trading account with the affiliated stock broker of these sub-brokers, by duly complying with the KYC formalities. As per information provided by BSE, vide email dated September 3, 2019, I note that the Noticee is registered as a client only with stock broker Integrated Master Securities Private Limited and hence, it is not registered as a client with ISSL or with Crimson.

23. It has also been alleged that the MoUs submitted by the company in support of its contention are not acceptable. I note that this allegation stands established for the following reasons:

23.1. The said documents have not been executed on a legally valid stamp paper.

23.2. It does not contain the identity of the persons who had executed the document either on the part of the Noticee or on the part of Panchsheel/ TCG.

23.3. The contents of the MoUs do not stipulate even the basic details of the names of the scrips that need to be purchased, quantity of shares, rate at which the shares have to be bought, whether the shares have to be purchased in the primary market or in the secondary market through Stock Exchanges or in off-market, etc.

24. Hence, from the above, I am of the view that the transfer of funds by the Noticee to Panchsheel and TCG could not have been for the purpose of purchasing shares.

25. The aforesaid finding that the transfer of funds by the company to Panchsheel was not for the purpose of purchasing securities can be further corroborated from the response of Panchsheel to the query raised by SEBI as to the purpose of the funds transferred by the company. Panchsheel vide its email dated August 14, 2019, submitted the following:

25.1. Subsequent to transfer of funds by the Noticee, no order was given by the Noticee for purchase of shares and therefore it had to return the funds so received to the Noticee.

25.2. As per the ICICI Bank statement of Panchsheel, it had transferred the entire funds received from the company, back to the company on August 23 and 27, 2013, i.e., within a period of 2 weeks.

25.3. It is further observed, based on the bank statement of Panchsheel, that subsequent to receipt of funds from the Noticee in two tranches of Rs. 60 lakhs and Rs. 35 lakhs on August 12, 2013, and August 13, 2013, respectively, Panchsheel transferred Rs. 35 lakhs to a trading member, Narayan Securities Limited, a member of NSE and BSE on August 14, 2013. Narayan Securities Limited is one of the group companies of Panchsheel. The sequence of transfer of funds from company to Panchsheel and return to company are as under:

S. No.	Date of Transaction	Particulars of Transaction	Amount involved (Rs.)	From	To
1.	12.08.2013	RTGS-HDFC13224715657-ACHAL INVESTMENTS LIMITED	60,00,000	Noticee	Panchsheel
2.	13.08.2013	RTGS-HDFC13225726933-ACHAL INVESTMENTS LIMITED	35,00,000	Noticee	Panchsheel
3.	14.08.2013	INF/000007340472/24646-13045	35,00,000	Panchsheel	Narayan Securities Ltd.
4.	19.08.2013	INF/000007366145/13045-24646	35,00,000	Narayan Securities Ltd.	Panchsheel
5.	23.08.2013	RTGS:ICICH13235002546/ACHAL INVESTMENTS LIMITED	90,00,000	Panchsheel	Noticee
6.	23.08.2013	RTGS:ICICH13235013212/ACHAL INVESTMENTS LIMITED	4,50,000	Panchsheel	Noticee
7.	27.08.2013	ACHAL INVESTMENTS LIMITED	50,000	Panchsheel	Noticee

25.4. It has been alleged that the funds transferred by the Noticee to Panchsheel were not for the purchase of securities but for the own use of Panchsheel. This allegation stands established for the following reasons:

25.4.1. The funds were transferred to its group company the very next day. If the funds were for purchase of shares for the Noticee, then Panchsheel should have transferred the funds only to its affiliated stock broker ISSL.

25.4.2. No KYC formalities of the company were completed with the affiliated stock broker of Panchsheel.

25.4.3. Narayan' Securities Limited had accounted the money so received, only against Panchsheel, and not against the company which is evident from the client ledger of Panchsheel, as below:

Narayan Securities Limited								
Statements of Accounts								
Account:cpa13 Panchsheel Securities Pvt. Ltd.								
Date	Particular	Bill/Chq no.	Transaction date	Qty.	Rate	Debit	Credit	Balance
14.08.2013	Net Banking TFR[N]	BRV3-1408	14.08.2013	0.00	0.00	0.00	35,00,000	-7455117.50
19.08.2013	Net Banking TFR[N]	BPV4-1908	19.08.2013	0.00	0.00	35,00,000	0.00	-4245117.50

25.4.4. As soon the money was returned by Narayan Securities Limited, Panchsheel returned the funds to the company.

25.5. Thus, if the Noticee had genuinely transferred funds to Panchsheel to purchase securities, it would have placed at least some orders with Panchsheel during the two-week period that these funds were with Panchsheel.

26. The finding that the transfer of funds by the Noticee to TCG was not for the purpose of purchasing securities is further corroborated by the response of TCG to the query raised by SEBI as to the purpose of the funds transferred by the company. TCG vide its letter dated May 31, 2019, has categorically denied that it had received the funds for purchase of shares for the company. TCG had further reiterated that the said funds were received by it only as an Inter-Corporate Deposit for a short time period to meet its own working capital requirement and that it had deployed the funds to meet its margin requirements for its own trading in shares being done through its stock broker, Crimson. TCG has also submitted that this amount was returned to the Noticee on October 23 and 24, 2013.

27. I also note that the above mentioned submissions of Panchsheel and TCG have been provided to the Noticee.

28. Therefore, in view of the above, I conclude that the Noticee has mis-utilized the proceeds of the preferential issue of equity shares to the tune of Rs. 95 lakhs and Rs.

1.56 crores in the guise of purchase of shares through Panchsheel and TCG, respectively. These funds were given by the Noticee to Panchsheel and TCG for their own use without any benefit in terms of shares acquired or any monetary benefit accruing to the Company as same amount was returned to it by Panchsheel and TCG, without any interest. In other words, considering that the Noticee in its normal course of business operations invests in shares and lends money to other entities, it is reasonably expected that the transaction with Panchsheel and TCG would result either in acquisition of shares or some interest income would accrue to the Noticee. Thus, the aforesaid transactions of Rs. 95 lakhs and Rs. 1.56 crores were neither in the interest of the Noticee nor its shareholders.

29. In view of the above, I conclude that the Noticee, by transferring Rs. 95 lakhs and Rs. 1.56 crores from the proceeds received from the preferential issue of equity shares, to Panchsheel and TCG, respectively, has mis-utilized the proceeds received from the preferential issue of equity shares by the company. The aforesaid action of the company is not only detrimental to the interest of the company but also to the interest of its shareholders.

Diversion of proceeds of preferential issue of equity shares by the Company:

30. It is observed from the reply of the Noticee dated June 7, 2019, that it had transferred Rs. 28 lakhs out of the Rs. 1.91 crores raised from the preferential issue of equity shares to certain entities, namely, Ms. Nileshaben Bharatbhai Choksi, Mr. Raju Choksi and Ms. Rekhaben Anil Bhai Choksi for the purchase of equity shares of Ace Tours Worldwide Ltd. (**Ace Tours**). As per the bank statement of the Noticee, Rs. 44 lakhs were paid to Ms. Suhaginiben Jayeshbhai Choksi, Ms. Nileshaben Bharatbhai Choksi, Ms. Mala Raju Choksi and Ms. Rekhaben Anil Bhai Choksi (promoters of Ace Tours) out of the issue proceeds as an advance for purchase of shares of Ace Tours. The details of the transactions are given as under:

S. No.	Date	Narration	Debit amount (Rs.)
1.	19-8-2013	RTGS DR-YESB0000176-SUHAGINIBEN JAYESHBHAI CHOKSI-SURYAKIRAN.N-HDFCH13231808183	16,40,000
2.	19-8-2013	RTGS DR-YESB0000176-NILESHABEN BHARATBHAI CHOKSI-SURYAKIRAN.N-HDFCH13231808495	14,52,800
3.	19-8-2013	RTGS DR-YESB0000176-MALA RAJU CHOKSI-SURYAKIRAN.N-HDFCH13231808630	11,36,800
4.	19-8-2013	RTGS DR-YESB0000176-REKHABEN ANILBHAI CHOKSI-SURYAKIRAN.N-HDFCH13231809334	2,00,000
Total			44,29,600

31. It has been alleged that the preferential issue proceeds were not transferred by the Noticee to the promoters of Ace Tour to purchase the shares of Ace Tour. This allegation is established in view of the following reasons:

31.1. The submission of the Noticee that it had transferred Rs. 28 lakhs from the preferential issue proceeds to 3 promoters of Ace Tours, including Mr. Raju Choksi, is factually incorrect. As noted from the Noticee's bank statement, it has transferred funds to 4 promoters of Ace Tour including the wife of Mr. Raju Choksi, Ms. Malaben Raju Choksi. The Noticee has not transferred any proceeds to Mr. Raju Choksi. Hence, while the Noticee has submitted wrong information about the identity of the recipients of the funds, it is has also submitted false information with respect to the amount of preferential proceeds that was transferred to the promoters of Ace Tour. As seen from the bank statement, Rs. 44,29,600/- has been transferred from the preferential issue proceeds to promoters of Ace Tour as opposed to the claim of Rs 28 lakh made by the Noticee.

31.2. The Noticee has submitted that the decision to advance money to the promoters of Ace Tours for purchase of securities was so spontaneous that no agreement was entered with any of these entities. However, this submission cannot be accepted as the agreement could have been executed later i.e., subsequent to the transfer of funds; however, no such agreement is available on record.

Further, it is the Noticee's own admission that it is not connected with Ace Tour. Therefore, in the absence of any connection or prior dealings, coupled with the absence of any communication or evidence of documents exchanged between the promoters of Ace Tour and the Company with respect to purchase of shares, this submission of the Noticee is not sustainable.

31.3. Further, if the Noticee was desirous of purchasing shares of Ace Tour, it could have approached its stock broker for the same as Ace Tour is listed on BSE.

31.4. It has been admitted by the Noticee in its reply that it has neither received shares of Ace Tour nor the funds were returned by the promoters of Ace Tour. The Noticee has also submitted that on January 01, 2014, a letter was sent to each entity seeking refund and further reminders were sent on October 24, 2014, June 10, 2015, and March 15, 2016, respectively, but no response was received. Thereafter, a legal notice was sent on June 10, 2016, to each entity. The Noticee, vide its reply dated August 21, 2019, has submitted that the legal notice sent was the last attempt by it to recover the money from the entities. The company has not stated about any further action taken for recovery of money subsequent to receipt of letter and summons from SEBI in investigating the matter viz., filing of an FIR against promoters of Ace Tours or complaint with RoC/ SEBI or initiating any court proceedings against promoters of Ace Tours etc. Considering that the Noticee has not submitted any documentary proof of dispatch or service of the letters and legal notice on the promoters of Ace Tour, coupled with the fact that it has not taken any concrete or concerted action to recover the money, I am of the view that the Noticee has not been serious about recovering the money given to these entities. Further, even if Noticee's submission is accepted, I note that it has waited for more than 4 months before sending a letter to the promoters of Ace Tour for refund. No plausible reason has been furnished by the Noticee for such a significant delay in seeking back its money from the promoters of Ace Tour.

32. In view of the aforesaid discussion and considering that the Noticee is yet to receive the money from the promoters of Ace Tour, I am of the view that it has diverted the proceeds of preferential issue of equity shares to the tune of Rs. 44,29,600/- in the guise of purchase of shares from the promoters of Ace Tour. I hold that it has provided funds to the promoters of Ace Tour for a purpose other than those mentioned in the notice of EGM dated July 19, 2013, issued to shareholders for seeking their approval for issuance of equity shares on a preferential basis. The aforesaid action is not only detrimental to the interest of the Company but also to the interest of its shareholders.

Preferential Issue proceeds of Rs. 94 lakhs were transferred to Mr. Kapil Gupta:

33. It is observed from the material available on record that the Noticee, vide its reply dated June 7, 2019, has confirmed that loan given to a certain Mr. Kapil Gupta was part of proceeds obtained from allotment of preferential shares. The amount of loan given to Mr. Kapil Gupta is Rs. 94 lakhs, i.e., Rs. 45 lakhs on September 24, 2013, and Rs. 49 lakhs on September 25, 2013.

34. I note that the said loan amount cannot be considered as a normal business transaction of the Noticee as deployment of funds out of the working capital due to the following reasons:

34.1. The money deployed has been granted in the name of loan without any interest to Mr. Kapil Gupta, an individual, on the grounds that he introduces clients to the company and the levying of interest requirement has also been waived, whereas the company's prime business is lending activity and interest charged on such lending activity is one of the sources of income of the Noticee.

34.2. No legally binding agreement has been entered into by the Noticee with Mr. Kapil Gupta and further, the terms and conditions of such purported loan

arrangement is for an indefinite period in as much as there are no terms and conditions governing the tenure of the loan, the repayment schedule etc.

34.3. No collateral has been taken by the Noticee for the purported loan advanced to Mr. Kapil Gupta.

35. The Noticee has also admitted in its reply dated August 21, 2019, that it is yet to receive the purported loan amount from Mr. Kapil Gupta. Thus, I am of the view that the Noticee had no intention to secure the return of funds.

36. In light of the aforesaid discussion, I conclude that the Noticee has diverted the proceeds of preferential issue of equity shares to the tune of Rs. 94 lakhs in the guise of loan given to Mr. Kapil Gupta as it has provided funds to Mr. Kapil Gupta for a purpose other than those mentioned in the notice of EGM dated July 19, 2013, issued to shareholders for seeking their approval for issuance of equity shares on a preferential basis. The aforesaid action is not only detrimental to the interest of the Company but also to the interest of its shareholders.

37. In light of the aforesaid discussion, which brings out the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares by the Noticee, it has been alleged that the company has committed fraud as defined under Regulations 2(1)(c)(2) and 2(1)(c)(4) of the PFUTP Regulations.

38. I note that the Noticee has mis-utilized and diverted the proceeds received from the preferential issue of equity shares, as discussed in preceding paragraphs in a fraudulent manner by:

38.1. Transferring funds to two sub-brokers not in line with stated purpose, which was neither in the interest of the company or its shareholders and

38.2. Diverting the proceeds of the preferential issue of equity shares by providing the funds to certain entities for purpose other than those stated in its notice of EGM dated July 19, 2013, to its shareholders.

39. These aforesaid fraudulent acts not only led to the misrepresentation by the Company to the subscribers of shares issued on preferential basis but it has also misled and influenced the shareholders who have provided approval for raising funds through preferential issue and the prospective shareholders. Moreover, as noted from the bank statement of the Noticee, as and when the proceeds of preferential issue of equity shares were credited to the bank account of the Noticee, the same were mis-utilized or diverted by the Noticee for transactions other than what was disclosed to its shareholders at the time of seeking approval for preferential issue of shares. I also note from material available on record that the Noticee had started collecting proceeds even prior to the approval given by the EGM, which indicates that the Noticee had taken steps for mis-utilization and diversion even before it has received the approval for issuance of shares on a preferential basis. In other words, I note that the extant situation is not one where the entire proceeds of preferential issue of equity shares was first credited to the bank account of the company and then the aforesaid acts were implemented by the Noticee. Instead, I note that the act of the company of mis-utilization and/ or diversion of proceeds started even prior to the EGM taking place, continued as and when the proceeds were credited and was even carried on further when the proceeds were received back by the company from the entities who were its initial recipients. Hence, the actions of the Noticee contradicts/ belies what it had promised to its shareholders at the time of seeking their approval and I am of the view that the Noticee has made a suggestion to its shareholders which it knew was not true. Thus, I am of the view that the Noticee has committed "fraud", as defined under Regulations 2(1)(c)(2) and 2(1)(c)(4) of the PFUTP Regulations.

40. The Noticee has employed, in connection with the preferential issue of securities, a manipulative device to defraud the existing and prospective shareholders and has engaged in a practice which has acted as a fraud on them. These acts of the Noticee

in making such a suggestion are a fraudulent or an unfair trade practice as it knew the same to be not true and the Noticee was aware that such misleading information would influence the decision of investors and induce them in dealing in securities. Such acts are prevented by the PFUTP Regulations under the provisions of Regulations 3(a), (b), (c) and (d) and Regulations 4 (2)(f), 4(2)(k) and 4 (2)(r).

41. In view of the above discussion, I conclude that the company has violated provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

Ratification of deviation by shareholders:

42. It is observed from the Notice of EGM dated July 19, 2013, and the explanatory note attached therein that the Noticee called for seeking approval of shareholders for issuance of preferential shares. The Notice contained only the purpose for which the preferential issue is being made but the Noticee has not stated nor mentioned about the following:

- 42.1. The extent of allocation of funds out of the proceeds proposed for each of the purposes; list of items of capital expenditure for which funds is required;
- 42.2. The basis of arriving at the working capital requirement;
- 42.3. List of entities who have been identified for the purpose of deployment of funds to broad base its equity holdings;
- 42.4. Nature of “general corporate requirements”.

43. Further, the Noticee has stated vide its letter dated June 7, 2019, that it had taken shareholders ratification for the deviation from the purpose for which the preferential issue was made vide notice dated August 24, 2018, issued to shareholders. I note from the explanatory note attached to the said notice that the Noticee has merely informed the shareholders that it had deviated from the purpose for which the proceeds were raised as mentioned earlier.

44. Therefore, the Noticee, while seeking ratification from its shareholders after a delay of 5 years, has not made full and complete disclosure of facts and information pertaining to the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares as discussed in preceding paragraphs. An illustrative list of information / facts that have not been disclosed by the Noticee are as follows:

44.1. The advances to purchase securities (as per company's submission) had been provided to two sub-brokers for purchase of shares, who as a class of market intermediary as sub-brokers cannot settle with clients directly their transactions in terms of receipt and payment of funds and securities while dealing in securities;

44.2. No securities were purchased by the company for the funds that were transferred to Panchsheel and TCG.

44.3. Rs. 44 lakhs were transferred to 4 promoters of Ace Tour for purchase of shares of Ace Tour. However, no shares of Ace Tour were purchased on behalf of the company.

44.4. The promoters of Ace Tour are yet to return the money to the company.

44.5. The preferential issue proceeds were given as interest free loan to Mr. Kapil Gupta to the tune of Rs. 94 lakhs and the said money is yet to be returned by Mr. Kapil Gupta.

45. In view of the aforesaid discussion, I note that the Noticee has not put forth any of the facts and information about the mis-utilization and diversion of proceeds of preferential issue of equity shares before the shareholders and has suppressed/ concealed material information from the shareholders during ratification. Therefore, the company has misled the shareholders by providing untrue and incorrect information to the shareholders which has influenced their decision making. Thus, I am of the view that the Noticee has committed "fraud", as defined under Regulations 2(1)(c)(1), 2(1)(c)(3) and 2(1)(c)(7) of the PFUTP Regulations.

46. Hence, I conclude that the Noticee in order to ratify the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares from its shareholders, has in the said process, misled and influenced its shareholders, as discussed above. Further, I am of the view that the act of the Noticee not to make true and complete disclosure and diversion of proceeds of preferential issue of equity shares is not only a device to manipulate its shareholders to ratify the mis-utilization and diversion of proceeds of preferential issue of equity shares but it is also meant to deprive the shareholders of giving informed consent regarding the ratification process. I hold that the said act of the Noticee has led to the violation of provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

Disclosures to Stock Exchange regarding deviation from the purpose of the preferential issue:

47. Section 21 of the SCRA requires listed companies to comply with the provisions of the Listing Agreement that it has entered into with the concerned stock exchange.

48. I note that Clause 43 of the erstwhile Listing Agreement read with Regulation 103 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**), *inter alia*, states that “*the Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilization of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability.*”

49. In the instant case, the Company, vide its notice dated August 24, 2018, of AGM had sought a ratification from the shareholders for the deviation made in respect of the preferential issue raised on August 22, 2013. It is observed from DSE’s email dated January 22, 2020, that it does not have any records pertaining to the Noticee’s

quarterly disclosure with respect to the deviation made from the objects of the preferential issue. Therefore, I note that the Noticee has failed to make the quarterly disclosures as required under Clause 43 of the Listing Agreement. Therefore, I am of the view that the Noticee has violated Section 21 of the Securities Contracts (Regulation) Act, 1956 (SCRA), read with Clause 43 of the erstwhile Listing Agreement read with Regulation 103 of the LODR Regulations.

50. Therefore, the violations of the Noticee are summarized as below:

- 50.1. Noticee has mis-utilized and diverted the proceeds received through the preferential issue of equity shares.
- 50.2. Noticee, while seeking ratification from its shareholders after a delay of 5 years, has not made full and complete disclosure of facts and information pertaining to the mis-utilization and diversion of proceeds.
- 50.3. Noticee by mis-utilizing and diverting the proceeds received through the preferential issue of equity shares has committed fraud and has violated provisions of the Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.
- 50.4. Noticee failed to make the quarterly disclosure regarding utilization of preferential issue proceeds as required under Clause 43 of Listing Agreement and has violated Section 21 of the Securities Contracts (Regulation) Act, 1956, read with Clause 43 of the erstwhile Listing Agreement read with Regulation 103 of the LODR Regulations.

Issue No. 2: If the answer to Issue No. 1 is in affirmative, whether directions as proposed in the SCN and direction of penalty, if any, needs to be issued against the Noticee?

51. I note that the Noticee has been called upon to show cause as to:

51.1. why suitable directions under Sections 11B (1) and 11(4) read with Section 11(1) of SEBI Act including debarment for an appropriate period and direction to restore a sum of Rs 1,38,29,600/- for the alleged violations of the provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act for the deviation and redeployment of preferential issue proceeds.

51.2. Also, why suitable directions for imposing monetary penalty should not be imposed under Sections 11B (2) and 11(4A) of SEBI Act read with Section 15HA of SEBI Act for violation of provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act for the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares.

51.3. And further, why suitable directions for imposing monetary penalty should not be imposed under Sections 11B (2) and 11(4A) of SEBI Act read with Section 12A (2) of SCRA, Section 23E of SCRA for violation of the provisions of Section 21 of SCRA read with Clause 43 of erstwhile Listing agreement read with Regulation 103 of the LODR Regulations.

52. While the preferential allotment of securities, mis-utilization and diversion has occurred in the year 2013, I note that the diverted funds are yet to be brought back to the Company and as such this violation is still continuing. Further, the violation of the provisions of the erstwhile Listing Agreement read with the relevant Regulations of the LODR Regulations is still continuing. Hence, the extant provisions of the SEBI Act and the SCRA are reproduced below:

SEBI Act

Power to issue directions and levy penalty.

11B(1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

- (i) in the interest of investors, or orderly development of securities market; or
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
- (iii) to secure the proper management of any such intermediary or person, it may issue such directions,—
 - (a) to any person or class of persons referred to in section 12, or associated with the securities market; or
 - (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

Section 15HA

Penalty for fraudulent and unfair trade practices.

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

SCRA

Power to issue directions.

12A(1)]...

(2) Without prejudice to the provisions of sub-section (1) and section 23-I, the Securities and Exchange Board of India may, by an order, for reasons to be recorded in writing, levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23H after holding an inquiry in the prescribed manner.

Section 21

Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Section 23E

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

53. I note that in view of the Noticee having committed the fraud as established above, the Noticee is liable for imposition of monetary penalty under Section 15HA of the SEBI Act. Further, for violation of provisions of the Listing Agreement, as established above, the Noticee is also liable for monetary penalty under Section 23E of the SCRA.

54. Further, I note that the SEBI Act and the SCRA both provide for the same factors that are to be taken into consideration when determining the quantum of penalty to be levied.

55. In respect of whether these factors have to be mandatorily considered at the time of adjudging the penalty the Hon'ble Supreme Court in the *Adjudicating officer, SEBI vs. Bhavesh Pabari* held that "... At this stage, we must also deal with and reject the argument raised by some of the private appellants that the conditions stipulated in clauses (a) to (c) of Section 15J are mandatory conditions which must be read into Sections 15A to 15HA in the sense that unless the conditions specified in clauses (a) to (c) are satisfied, penalty cannot be imposed by the Adjudicating Officer under the substantive provisions of Sections 15A to 15HA of the SEBI Act." The Hon'ble Supreme court further held that "...We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty..."

56. In view of the above discussion, as already mentioned above, the Noticee has diverted issue proceeds to the tune of Rs. 1,38,29,600/-, which are yet to be returned to the Company and as such, this violation is still continuing. I note that this diverted amount is a loss to the Company and hence, the Noticee is required to restore this amount to

the Company by taking necessary steps. Accordingly, this has been taken as one of the factors for determination of the penalty. Appropriate directions in this regard are incorporated in the operative part of this Order.

57. I note that the Noticee, being a listed entity, has defrauded its shareholders through the acts discussed above. Not only has the Noticee diverted and mis-utilized the proceeds received from the preferential issue of shares, it also did not provide the relevant and adequate information to the shareholders when it sought ratification of the diversion and mis-utilization that it had carried out. The Noticee has misled and influenced its shareholders by putting in place a device to manipulate them. Further, such a device was already in place even before the approval of shareholders was sought for making preferential issue. I note that the Noticee has not adhered to the high standards of ethics and corporate governance that it is required to meet in order to protect shareholder interest and has instead, put its own interest before the shareholder interest. I am of the view that appropriate directions and penalty need to be issued against the Noticee for its acts.

ORDER

58. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4A), 11B(1) and 11B(2) of the SEBI Act, 1992, and Sections 12A(2) of the Securities Contracts (Regulation) Act, 1956, read with Section 19 of the SEBI Act, 1992, hereby issue the following directions:

58.1. Achal Investments Ltd. is restrained from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of five (05) years from the date of this Order.

58.2. Achal Investments Ltd. shall bring back a sum of Rs 1,38,29,600/- due to it, which has been extended either directly or indirectly, to the entities mentioned in this Order, along with due interest, expeditiously and take all necessary

action, including legal actions, towards bringing back the above said sum. Achal Investments Ltd. shall file a quarterly report stating the compliance of this direction to SEBI.

58.3. The following penalty is levied on the Noticee:

Under Section	Achal Investment Ltd. (in Rs.)
Section 15HA of the SEBI Act, 1992	10,00,000/- (Rupees Ten lakhs only)
Section 23E of the SCRA	10,00,000/- (Rupees Ten lakhs only)
Total	20,00,000/- (Rupees Twenty lakhs only)

59. Needless to say that in view of the prohibition on sale of securities, during the period of restraint, the existing holding, including units of mutual funds, of all the Noticee shall remain frozen.

60. If the Noticee has any open position in any exchange traded derivative contracts, as on the date of the Order, it can close out/ square off such open positions within 3 months from the date of Order or at the expiry of such contracts, whichever is earlier. The Noticee is permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this Order.

61. The penalty shall be paid by the Noticee within a period of forty-five (45) days, from the date of receipt of this order. Payment can be made online by following the below path at SEBI website www.sebi.gov.in

ENFORCEMENT → Orders → Orders of Chairman/Members → Click on PAY NOW or at <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html> and selecting Type of Category as 11B orders.

62. In case of any difficulties in online payment of penalty, Noticees may contact the support at portalhelp@sebi.gov.in.

63. The Order shall come into force with immediate effect.

64. If there is a failure to pay the penalty, as mentioned above, SEBI may recover the amount from the Noticee as per applicable law.

65. A copy of this Order shall be served on the Noticee, the stock exchanges, depositories and RTAs for information, necessary action and compliance with the above directions.

DATE: September 02, 2021

MADHABI PURI BUCH

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA