

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/BD/AB/2020-21/9858]**

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

In respect of:

**M/s Rikhav Investments**

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**FACTS OF THE CASE:**

1. Securities and Exchange Board of India (hereinafter be referred to as, the "**SEBI**") conducted investigation into the initial public offer of Birla Pacific Medspa Limited (hereinafter referred to as "BPML" or "the Company"), for the period from July 7, 2011 to July 15, 2011 (hereinafter be referred to as, the "**Investigation Period**"), since there was high volatility on the day of listing.
2. Based on the findings of the investigation, SEBI initiated adjudication proceedings against Rikhav Investments (hereinafter be referred to as, the "**Noticee**") under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "**SEBI Act**"), for the alleged violation of Violation of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter be referred to as "PFUTP Regulations").

**APPOINTMENT OF ADJUDICATING OFFICER**

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

appointed as the Adjudicating Officer in the matter after which the undersigned was appointed as the Adjudicating Officer in the matter on September 26, 2019.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

4. A Show Cause Notice dated April 20, 2017 (hereinafter be referred to as the “**SCN**”) was issued to the Noticee under Rule 4 of the AO Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15HA of the SEBI Act for the allegations as detailed in the said SCN.
5. The scrip of BPML was listed on BSE on July 7, 2011, after IPO which was open for subscription from June 20, 2011- June 23, 2011. It was observed that the Noticee had entered into self-trades for 10,483 shares during the Investigation Period on 5 days and having a net LTP contribution of Rs. 0.15. Hence it was alleged that the Noticee manipulated the scrip of BPML and violated regulations 3 (a),(b),(c) and (d), 4 (1), 4 (2) (a) and (g) of the PFUTP Regulations.
6. The Noticee vide letter dated May 5, 2017 sought inspection of certain documents but when letter granting inspection returned undelivered. The Noticee sent a reminder for seeking inspection from a new address through a letter dated July 13, 2017. The Noticee was granted an opportunity of inspection vide letter dated July 20, 2017. The Noticee submitted its reply vide letter dated August 4, 2017.
7. A summary of the submissions made by the Noticee are as under:
  - a. The self-trades in the scrip of BPML were unintentional, non-manipulative and were a result of bonafide intra-day/jobbing activity.
  - b. The turnover of the Noticee during 2009-10, 2010-11 and 2011-12 was Rs. 527.61 crores, Rs. 49,215 crores and Rs. 30,454 crores. The scripwise dealing of the Noticee in 2009-10, 2010-11 and 2011-12 was 330 scrips, 1359 scrips and 559 scrips respectively. This shows that the Noticee was in the business of trading/jobbing in various scrips.
  - c. The contribution of the Noticee as regards total volume in the scrip of BPML was very insignificant and not more than 0.02% on any day. In

terms of trade count the trade count of the Noticee was not more than 0.08% on any day.

- d. The Noticee submitted that mere occurrence of self trades is not per-se manipulative or fraudulent. The insignificant volume of trading of the Noticee could not have impacted the price or the volume of the BPML scrip.
  - e. The Noticee relied on the judgments of the Hon'ble SAT in the matter of *SPJ Stock Brokers Pvt. Ltd.*, *Kapil Chaturabhij Bhuptni*, *BP Fintrade Pvt. Ltd.* and *Krupa Sanjay Soni* in support of its submissions. The Noticee also cited SEBI AO orders in the matters of Ajay Desai and Indira Securities Pvt. Ltd., JMP Securities Pvt. Ltd. and various other orders in support of its submissions.
8. Since the undersigned was appointed as AO subsequently, an opportunity of personal hearing was granted to the Noticee on November 13, 2020 through email dated November 4, 2020. The hearing was rescheduled to November 25, 2020 which was attended by the representative of the Noticee. During the hearing the Noticee reiterated the submissions made earlier.

### **CONSIDERATION OF ISSUES**

9. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration in the present case are :
- (a) Whether the Noticee has violated the provisions of Regulation 3(a), (b), (c), (d), 4(1), 4(2) (a) and (g) of PFUTP Regulations?
  - (b) If yes, then do the violations, if any, on the part of the Noticee attract any monetary penalty under Section 15HA of the SEBI Act?
  - (c) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Rules?
10. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations which at the relevant time read as under:

## **PFUTP Regulations**

### **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:—*

*(a) indulging in an act which creates false or misleading appearance of trading in the securities market;*

*(b) .....*

*(c) .....*

*(d) .....*

*(e) .....*

*(f) .....*

*(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security*

11. The first issue to be decided is whether the Noticee has violated the provisions of Regulation 3(a), (b), (c), (d), 4(1), 4(2) (a) and (g) of PFUTP Regulations?

12. Upon perusal of the reply of the Noticee and documents available on record, I find that it is not in dispute that 74 self-trades for 10,483 shares were executed by the Noticee in the scrip of BPML at BSE on five days.
13. I find that on BSE the total traded volume of BPML's shares during the five days when Noticee traded was 16,29,55,469 shares and self-trades done by the Noticee for a total quantity of 10,483 shares through 74 trades constituted a total of 0.006% of the market volume in scrip of BPML.
14. The details of self-trades of the Noticee, during the investigation period as extracted from the trade log are as follows:

Date	BSE		
	Self-trades volume (No. of shares)	Market Volume	% of self-trades to market volume (no. of shares)
07/07/2011	7282	135859684	0.01
08/07/2011	1514	7936167	0.02
11/07/2011	1467	9547173	0.02
12/07/2011	13	7505035	0.0001
14/07/2011	207	2107410	0.009
<b>Total</b>	<b>10,483</b>	<b>16,29,55,469</b>	<b>0.006</b>

15. I also note that on all trading days when the Noticee has executed self-trades, the percentage of self-traded volume to total market volume traded on BSE is seemingly miniscule. In addition to that the percentage of self-trade volume of the Noticee to the total traded market volume was only 0.006% on BSE during the five days when these self-trades were executed. Therefore, I conclude that the percentage contribution as mentioned above does not suggest possibility of any manipulative intent to the extent of creating artificial volume in BPML during the period of investigation.
16. I note that volume transacted in self-trades is one of the important factors to determine the manipulative intention, if any, of a person on the issue of self-trades. If the self-trades of the Noticee are considered in that background, then it would be difficult to hold in the present matter that there was any

manipulative intent on the part of the Noticee to engage in intentional self-trades as such percentage / volume of self-trades of the Noticee in the scrip of BPML was miniscule as compared to the total trading in the said scrip during the relevant period.

17. From aforesaid such negligible percentage in the scrip, it is difficult to arrive at the conclusion that these self-trades were executed by the Noticee with an intent to create misleading appearance of trading in the securities market. It is important to note here that the motive behind executing fraudulent self-trades can either be to artificially raise the volume in a scrip / or to manipulate the price of a scrip by way of creating misleading appearance of trading so as to induce others to deal in the particular scrip. I note that the Investigation Report, *per se*, has not brought out any allegation of price manipulation attributed to Noticee's self-trades. The net LTP contribution of the trading of the Noticee is Rs. 0.15 which is very insignificant to establish any manipulation.

18. I am in agreement with the precedents cited by the Noticee and as stated above the volume of self-trades done by the Noticee are very insignificant to conclusively establish any manipulation by the Noticee. After taking into account aforesaid observations, perusal of investigation report and taking into account, in particular, the miniscule percentage / volume of self-trades as compared to the total market volume during the investigation period, I am of the view that it is difficult to conclude that self-trades of Noticee in the scrip of BPML were intentional and manipulative and I am inclined to conclude that violations of provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations, 2003 by the Noticee do not stand established. Since the alleged violations are not established against the Noticee, Issues No. (b) and (c) require no consideration.

### **ORDER**

19. For the aforesaid reasons, Show Cause Notice dated December 12, 2017 alleging violations of provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations, 2003 by the Noticee i.e. M/s Rikhav

Investments, is disposed of without imposition of any penalty under Section of 15HA of SEBI Act.

20. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

**Date: December 18, 2020**  
**Place: Mumbai**

**B.J. Dilip**  
**ADJUDICATING OFFICER**