BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/BS/VS/2022-23/18701

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

BRH Wealth Kreators Limited
(formerly BMA Wealth Creators Limited)
[PAN: AACCB5141L]
14/1 Paul Mansion, 1st Floor,
6, Bishop Lefroy Road,
Kolkata 700 020

BACKGROUND

1. An examination was initiated by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") for possible violations regarding issuance of securities by BRH Wealth Kreators Limited, formerly known as BMA Wealth Creators Limited (hereinafter referred to as "**Noticee**"/ "**BRH**") pursuant to the receipt of a complaint.

2. It was, *inter alia,* observed during the course of the examination, the following alleged violations:
    a. Noticee issued equity shares by inviting applications from the general public without filing the same with SEBI.
    b. Noticee did not file any prospectus with SEBI in connection with the issue of securities.
    c. Noticee did not get the securities listed with the Stock Exchange.
    d. Noticee did not refund the money collected.

3. In view of the above, it was alleged that the Noticee made issuance of equity shares to public without following public issue norms under the Companies Act, 1956 and SEBI

(Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as "**DIP Guidelines, 2000**") and therefore violated the provisions of Clauses 2.1.1, 2.1.4, 2.1.5, 2.2, 2.8, 4.1, 4.11, 4.14, 5.3.1, 5.3.3, 5.3.5, 5.3.6, 5.4, 5.6, 5.6A, 5.7, 5.8, 5.9, 5.9.1, 5.10, 5.12, 5.13, 5.14, 6.0, 6.1 to 6.15, 6.16 to 6.34, 8.3, 8.8.1, 9 of the DIP Guidelines, 2000 read with Regulation 115 of (Issue Of Capital And Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**ICDR Regulations, 2009")**.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed the undersigned as the Adjudicating Officer (**AO**) vide order dated August 05, 2021 under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992'**) to inquire into and adjudge the above mentioned violations by the Noticee as observed by SEBI.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice dated February 15, 2022 (hereinafter referred to as '**SCN'**) was issued to the Noticee under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Inquiry Rules, 1995**') to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Inquiry Rules, 1995 read with section 15-I of SEBI Act, 1992 and penalty, if any applicable, be not imposed under Section 15 HB of the SEBI Act, 1992 for the alleged violations against the Noticee as mentioned above. In response to the SCN, the Noticee vide its letter dated February 28, 2022 acknowledging the receipt of the SCN sought for additional time to submit its reply. However, even after 3 months from the aforesaid letter, the Noticee failed to submit any reply.

6. In view of the facts and circumstance of the case and in the interest of natural justice and in terms of Rule 4(3) of the Inquiry Rules, 1995, vide email dated May 23, 2022, it was opined that an inquiry needs to be held in the matter and accordingly, the Noticee was granted an opportunity of personal hearing on June 10, 2022. Vide the said letter, the Noticee was once again granted additional time to submit its reply.

7. The Noticee vide its email dated June 9, 2022 confirmed its attendance for the hearing through its Authorized Representatives. However, the Noticee failed to submit any reply before the said date of hearing and sought additional time to file reply stating that the same skipped their attention. In view of the request by the Noticee, the Hearing was adjourned granting them one final opportunity to submit its reply.

8. The Noticee vide email dated June 16, 2022 submitted reply dated June 15, 2022, *inter alia,* stating as under:

"… all allegations contained in the said Notice contrary thereto and/or inconsistent therewith are denied and disputed as if in seriatim and specifically traversed. Furthermore, the Notice is barred by law.

It appears that the said Notice has been issued by mistake and/or by non-appreciation of facts. The facts of the matter is as follows:

1. *BRH WEALTH KREATORS LIMITED (hereinafter called "the Company") was incorporated on 15th December, 2004.*

2. *The Authorized Share Capital of the Company as on 31st March, 2017 is Rs. 23,00, 00,000/- (Rupees Twenty Three Crore) only, divided into 23, 00, 00,000 Equity Shares of Rs. 1/- each. The issued, subscribed and paid-up capital of the Company is Rs. 21, 67, 36,358/- (Rupees Twenty One Crore Sixty Seven Lakh Thirty Six Thousand Three Hundred and Fifty Eight) only, divided into 21, 67, 36,358 Equity Shares of Rs. 1/- each, fully paid up. Subsequent to the said date, there has been no change in the Authorised and Paid-up Share Capital of the Company.*

3. *The Company, during the period 2008-2017, made the following preferential allotments to investors from time to time:*

Sl. No.	*Date of Allotment*	*No. of Allottees*	*No. of Shares allotted*
1.	*25.10.2008*	*4*	*5,00,00,000*
2.	*10.08.2009*	*10*	*18,30,000*
3.	*20.08.2009*	*515*	*29,48,838*
4.	*31.03.2011*	*2*	*2,50,00,000*
5.	*15.09.2011*	*1*	*1,000*
6.	*18.08.2015*	*1*	*4,34,78,260*
7.	*19.08.2015*	*1*	*4,34,78,260*

4. *The Company had previously received a letter from the Investigation Department of SEBI on 22nd June, 2017, inter alia, seeking various information and documents pertaining to mobilisation of funds from public. Similar letters were also received inter alia by the present and ex-directors of the Company including Mr. Anubhav Bhatter.*

5. *In response to the above letter, the Company had submitted its reply on 5th July, 2017 providing information as sought. Subsequently, another letter was received from SEBI dated 10th July, 2017 seeking further information. In response to the same, the Company through its letter dated 17th July, 2017, sought time for collating the required information and was advised by SEBI through letter dated 8th August, 2017 to submit its reply by 18th August, 2017, to which the Company submitted its reply along with all the documents as required on 17th August, 2017.*

6. *Upon receipt of the aforesaid letters and while compiling and collating the required information as sought by the Investigation Department of SEBI, it came to the notice of the Company that it had inadvertently and unknowingly acted in variance to Section 67(3) read with section 73 of the erstwhile Companies Act, 1956 relating to the allotment of shares on 20th August, 2009, since equity shares of the Company was allotted to more than 49 persons. It was completely a bonafide mistake on the part of the Company to allot 29,48,838 equity shares of Re. 1/- each at a premium of Rs. 14/- per share to 515 investors on preferential basis on 20th August, 2009. Such mistake is depiste the fact that all the investors to whom allotment had been made were bonafide and genuine and the amount of allotment money paid by such allottees were received through cheque/ normal banking channels.*

7. *The Company was under bonafide impression that it had complied with the provisions of the Companies Act, 1956 while making the allotment of shares. However, there was ambiguity in the interpretation of the provisions of Section 67 of the Companies Act, 1956 as to what constitutes a public offering of shares at time allotment was made. The clarity on the interpretation of such provision emerged post the passing of judgment by the Hon'ble Supreme Court of India in the matter of Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI in the year 2012, wherein for the first time it was held that offering to fifty or more persons would constitute a public offering.*

8. *The Company on realizing such mistake and with a view to put an end to protracted proceedings, suo moto made a settlement application along with requisite fee as per the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 for SEBI's Consent Order vide its letter dated 21st August, 2017 received by SEBI on 24th August, 2017, with regard to any and/or all violations that it may be alleging or contemplating to allege against the Company pertaining to the preferential allotment made on 20th August, 2009.*

9. *The Company, in the aforementioned settlement application, undertook the following:*

a) *To submit Rs 2,00,000/- (Rupees Two Lakh Only) as consolidated monetary settlement charges or any reasonable settlement charges instead of subjecting them to directions as issued by SEBI. The Company and its directors involved shall jointly and severally return the money to all the allottees to whom shares were allotted on 20th August, 2009 and who consent to surrender the shares and obtain refund with interest at the rate of 12% per annum from the date of receipt of allotment money till the date of such refund, within a time frame as advised by SEBI.*

b) *The Company would individually write letters to all the allottess/ subsequent transferees, inter alia, setting out the details of refunds, etc. and seeking their option as to whether they want to surrender their shares and obtain refund or continue as shareholders.*

c) *The Company shall make a refund to the allottees/ subsequent transferees, who choose the option of surrendering their shares and obtaining refund, through crossed account payee cheque/ crossed demand draft/ internet banking channels, so as to enable a proper audit trail in respect of refunds.*

d) *Post completion of the refund process, the Applicant Company shall file a certificate of such completion with SEBI from Independent peer reviewed Practising Chartered Accountant, inter alia, certifying that the certification has been made after verifying various documentary evidences including proof of dispatch/ delivery of letters, responses of investors, bank statements of the company, etc.*

e) *Any other reasonable condition imposed by SEBI as it may deem fit in the facts and circumstances of the case.*

10. *On receipt of the aforesaid settlement application, SEBI vide its letter dated 28th December, 2017 directed the Company to comply with certain procedures before availing the settlement as per SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. The aforesaid letter by SEBI included the following directions:*

a) *Giving and completing option to the investors in equity shares during the FY 2009-10 to surrender the securities and repay collected amount along with applicable interest @ 15% p.a. from the date of mobilization to the date of refund or fair market value, whichever is higher;*

b) *Repayments to investors are to be effected only in cash through bank Demand Draft or Pay Order;*

c) *Issue of public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) with wide circulation, detailing the modalities for* *refund, including details of contact persons including names, addresses and contact details;*

d) *After completion of the aforesaid repayments, to file a certificate of such completion with SEBI, within a period of three months from the date of such communication by SEBI from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution;*

e) *Approaching the Hon'ble National Company Law Tribunal under intimation to SEBI to compound the violations.*

11. *SEBI vide letter dated 2nd March, 2018, clarified that the promoter group entity of the Company, viz., Snowtex Investment Ltd. ("**SIL**"), was permitted to purchase the shares from the allottees of allotments dated 10th August, 2009 and 20th August, 2009 and/or their subsequent transferees, subject to the conditions specified in its earlier communication dated 28th December, 2017 and any other laws in force for the time being.*

12. *In due compliance of the SEBI's aforesaid directions, the Company offered the existing shareholders of the Company the option to sell their shares to SIL vide Notice dated 31.03.2018 along with offer/consent letter and gave a public notice in all editions of "Financial Express" in English, "Jansatta" in Hindi and "Aajkal" in Bengali, being the local daily where the Company's registered office is situated, with details of refund, contact persons, etc.*

13. *The promoters, in compliance of the directions by SEBI and as disclosed in the Notice, proposed to buy the shares allotted on 10th August, 2009 at a price of Rs. 2.45/- per share and the shares allotted on 20th August, 2009 at a price of Rs. 36.75/- per share, such price being higher of the collected amount along with interest at 15% p.a. till 30.04.2018 and fair market value of the shares as determined by ER & Associates, Independent Chartered Accountants, with the option to the shareholders/ subsequent transferees of retaining their shareholding in the Company.*

14. *In response to such offer:*
    a. *6 shareholders/ subsequent transferees of the Company holding 44,65,553 shares refrained/ refused from selling their shares;*
    b. *86,885 shares from 63 shareholders/ subsequent transferees were purchased and full payment was made by SIL;*
    c. *3 shareholders/ subsequent transferees holding 4000 shares could not be purchased due to non submission of complete documents;*
    d. *In case of the rest of the 123 shareholders/ subsequent transferees holding 2,22,400 shares, the offer letter by the Company was either returned or no reply has been received from them.*

15. *Thereafter, the Company through its director, Anubhav Bhatter made an application before the Hon'ble National Company Law Tribunal, Kolkata Bench being C.P. No. 2566/KB/2018 for compounding the violation of aforesaid sections of the Companies Act, 1956. Such application was allowed by an order dated 23rd August, 2019 and offences were compounded upon payment of Rs. 5,00,000/- as compounding fees. Such compounding fees was deposited on 30th August, 2019.*

16. *It is humbly submitted that the Company has made a number of allotments over the years from 2008-2017 and except the afore-mentioned allotment made on 20th August, 2009, all other allotments have been made in consonance with the provisions of section 67(3) of the Companies Act, 1956. Further, the money received have been returned with interest.*

17. *The Company further reiterates that there was no mala fide intention and the mistake was purely unintentional, however, no harm to the investors has been caused.*

In view of the above, no purpose would be served for initiating any inquiry for a bonafide mistake which has been rectified. Please note that the Company has no business, all its bank accounts have been frozen by SEBI. The Company is facing extreme financial hardship and if any further penalty is levied, the same shall cause extreme hardship to the Company. It is humbly prayed that the present proceedings be dropped and for such act of kindness we shall remain deeply obliged.

9. The personal hearing was attended by the Noticee through its Authorised Representatives Mr. Anubhav Bhatter & Mr. Amit Agarwalla ('**AR**') through video conference call on June 22, 2022. During the hearing, the contents of the SCN and the allegations levelled against the Noticee in the SCN were explained to the AR. The AR reiterated the submissions made vide reply dated June 15, 2022. Further, the AR requested for time to make post-hearing submissions along with the Auditor's Certificate in respect of the Exit Opportunity provided to the allottees, Order of NCLT etc. Accordingly, the Noticee was granted time till July 02, 2022 to make additional submissions and the hearing proceedings were completed.

10. The Noticee submitted its additional reply dated July 02, 2022, *inter alia,* stating as under: "*With reference to your above-mentioned Notice dated 15.2.2022 and the meeting held on 22nd June, 2022 through video conference on Zoom, we are providing herewith the following documents for your ready reference, which are germane for the adjudication process:*

a) *Copies of Public notice of "Financial Express" in English, "Jansatta" in Hindi and "Aajkal" detailing the modalities for refund, including details of contact persons including names, addresses and contact details;*
b) *Two separate certificate from Independent peer reviewed Practising Chartered Accountant, inter alia, Certifying that the certification has been made after verifying various documentary evidences including proof of dispatch/ delivery of letter, responses of investors, bank statement of the company, etc. and the payments made to the Allottees through bank Demand Draft / Pay order;*
c) *Copies of applications filed before the Hon'ble National Company Law Tribunal compounding the violations;*
d) *Copy of order passed by the Hon'ble National Company Law Tribunal compounding the violations*
e) *Copy of challan demonstrating the payment of compounding fees imposed by the Hon'ble National Company Law Tribunal.*

We would like to state that there was no mala fide intention in making the allotment at the first place and the mistake was purely unintentional, however, no harm to the investors has been caused and we have complied with the conditions imposed by SEBI on our Settlement Application.

In view of the above, no purpose would be served for initiating any inquiry for a bonafide mistake which has been rectified. It is reiterated that the company has no business and all its bank accounts together with the bank accounts of its directors have been frozen by SEBI. The Company is facing extreme financial hardship and if any further penalty is levied, the same shall cause extreme hardship to the Company. It is humbly prayed that the present proceedings be dropped and for such act of kindness we shall remain deeply obliged."

CONSIDERATION OF ISSUES AND FINDINGS

11. After perusal of the material available on record, I have the following issues for consideration viz.

    I. Whether the Noticee violated the provisions of Clauses 2.1.1, 2.1.4, 2.1.5, 2.2, 2.8, 4.1, 4.11, 4.14, 5.3.1, 5.3.3, 5.3.5, 5.3.6, 5.4, 5.6, 5.6A, 5.7, 5.8, 5.9, 5.9.1, 5.10, 5.12, 5.13, 5.14, 6.0, 6.1 to 6.15, 6.16 to 6.34, 8.3, 8.8.1, 9 of the DIP Guidelines, 2000 read with Regulation 115 of ICDR Regulations, 2009?

II. Whether the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, 1992?

III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

12. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder.

ISSUE I: Whether the Noticee violated the provisions of Clauses 2.1.1, 2.1.4, 2.1.5, 2.2, 2.8, 4.1, 4.11, 4.14, 5.3.1, 5.3.3, 5.3.5, 5.3.6, 5.4, 5.6, 5.6A, 5.7, 5.8, 5.9, 5.9.1, 5.10, 5.12, 5.13, 5.14, 6.0, 6.1 to 6.15, 6.16 to 6.34, 8.3, 8.8.1, 9 of the DIP Guidelines, 2000 read with Regulation 115 of ICDR Regulations, 2009?

13. I note that during the examination by SEBI for possible violations regarding issuance of securities by the Noticee, information was sought from BRH vide letters dated June 22, 2017, July 4, 2017, and August 8, 2017. The said communications have not been disputed by the Noticee during the instant proceedings and the Noticee has admitted to the said letters. In reply to the letters issued by SEBI, the Noticee, *inter alia,* vide its letter dated August 17, 2017 had submitted the following information in respect of the details sought by SEBI:

    i) While Audited accounts was submitted vide letter dated July 04, 2017, Annual Returns of the Company since F.Y. 2008-09 till date was submitted vide the aforesaid letter;

    ii) Name, addresses, PAN and details of promoters/directors and KMP of the Company;

    iii) Details of the allottees;

    iv) Copies of the minutes of Board/committee meeting in which the resolution was passed for raising such additional capital and also for allotment of shares/debentures &

    v) Copies of Form 2 and Form 10 filed with the RoC.

14. I note from the copy of the Form -2 filed by the Noticee with RoC which was enclosed vide its aforementioned letter dated August 17, 2017, the following allotments were made by it in the Financial Year 2009-10:

Date	Allottees	Allotted	Value	Type
20/08/2009	515	29,48,838	4,42,32,570	Equity
10/08/2009	10	18,30,000	18,30,000	Equity
Total	525	47,78,838	4,60,62,570	

15. It is noted that the Noticee had allotted 29,48,838 equity shares of Face Value of Rs. 1/- at a premium of Rs. 14/- each to 515 investors on August 20, 2009. The total amount raised was Rs. 4,42,32,570/-. It was also observed from the reply that the Noticee had allotted 18,30,000 shares of face value Rs. 1/- at a price of Rs. 1/- each to 10 investors on August 10, 2009 raising a total amount of Rs. 18,30,000/-.

16. It is noted that in the Board Meeting held on August 20, 2009 (enclosed by the Noticee in its letter dated August 17, 2017), the board of BRH passed the resolution to the effect that 29,48,838 Equity shares of Re. 1/- each in the capital of the company be allotted at a premium of Rs. 14/- per share to the applicants and the list of 515 such allottees were approved as a part of the minutes of the said meeting. Further, the Noticee vide the aforesaid letter also provided the list of the allottees since FY 2009-10 along with the details of the shares so allotted. From the same, it is also forthcoming that the on August 10, 2009, shares were allotted to 10 persons and on August 20, 2009, shares were allotted to 515 persons.

17. As the preferential allotment have been made to the public during the year 2009, the provisions of Section 67 of the Companies Act, 1956, are applicable to the said allotments

made by the Noticee. In this regard, the relevant Sections 67(1) and 67(3) of the Companies Act, 1956, are reproduced as under :

*"**67. Construction of reference to offering shares or debentures to the public, etc.***
***(1)** Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
***(2)** Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
***(3)** No offer or invitation shall be treated as made to the public by virtue of sub- section (1) or sub- section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances- (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.*

***Provided** that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*

18. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the "**Sahara Case**") observed :

" 85. The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of

Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. …

86. Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. …

90. I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. …"

98. The above discussion clearly indicates that from the years 1988 to 2000, private placement of preferential allotment could be made to fifty or more persons if the requirements of Clauses (a) and (b) of Section 67(3) are satisfied. ***However, after the amendment to the Companies Act, 1956 on 13.12.2000, every private placement made to fifty or more persons becomes an offer intended for the public and attracts the listing requirements under Section 73(1). Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1),*** *an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange."*

19. In the instant matter, for ascertaining whether the preferential allotment made by BRH is a public issue or issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance. Based on the material available on record as noted above, BRH has issued equity shares to 525 investors during August 2009. As per the first proviso to Section 67(3) of the Companies Act, 1956, where the "*offe*r" or "*invitation to subscribe for shares or debentures*" is made to fifty persons or more, then it has to be construed as a public offer. In view of the foregoing, it is *prima facie* observed that the aforesaid issues of equity shares made by BRH to more than 50 investors (i.e. 525 investors) were deemed public issue. It is observed that BRH is not stated to be a Non–banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I,

therefore, find that BRH is not covered under the second proviso to Section 67(3) of the Companies Act, 1956. In view of the above, the allotment of shares by BRH during FY 2009-10, will prima facie qualify as a public issue under the first proviso to Section 67(3) of the Companies Act, 1956. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

20. Therefore, in addition to the compliance with the provisions of the Companies Act, 1956, BRH was mandated to comply with the applicable provisions of SEBI Rules/Regulations/Guidelines. I note that the DIP Guidelines, 2000 were applicable to all public issues by listed and unlisted companies at the relevant time. The ICDR Regulations, 2009 (which came into effect from August 28, 2009) replaced the DIP Guidelines, 2000. The Noticee has made the allotments on August 10, 2009 and August 20, 2009, when the DIP Guidelines, 2000 were in force. As per Regulation 115 of the SEBI ICDR Regulations, anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said DIP Guidelines shall be deemed to have been done or taken under the corresponding provisions of ICDR Regulations, 2009.

21. SEBI had framed the DIP Guidelines, 2000 in exercise of the powers conferred on it under the SEBI Act, 1992. The Hon'ble Supreme Court in Sahara Case has observed that:

"DIP Guidelines had statutory force since they were framed by SEBI in exercise of its powers conferred on it under Sections 11 and 11A of the SEBI Act. Powers have been conferred on SEBI to protect the interests of the investors in securities and regulate the issue of prospectus, offer documents or advertisement soliciting money through the issue of prospectus. Section 11 of the Act, it may be noted has been incorporated, evidently to protect the interests of investors whose securities are legally required to be listed. DIP Guidelines were implemented by SEBI with regard to the listed and unlisted companies, which made public offer, until it was replaced by ICDR 2009".

22. As per Clause 2.1.1 of DIP Guidelines, 2000, no issuer shall make a public issue unless a draft offer document has been filed with SEBI through the lead merchant banker, at least thirty days prior to registering the prospectus/red herring prospectus with the RoC. However, I note from the record that none of the disclosure requirements specified by SEBI or the investors protection measures specified for public issues, under the DIP Guidelines, 2000 have been complied with by BRH. In terms of the DIP Guidelines, 2000, I find that BRH had failed to comply, *inter alia,* with the following as required under the said Guidelines:

a) to file the draft offer document with SEBI;
b) to enter into dematerialization agreement with depository and provide the option to investors to receive the securities in dematerialized form;
c) to mention the risk factors and provide the adequate disclosures that is stipulated, to enable the investors to take a well-informed decision;
d) has denied the exit opportunity to the investors;
e) to contribute for minimum promoters contribution;
f) to lock-in the minimum promoters contribution;
g) to grade their issue;
h) to furnish due diligence certificate;
i) to appoint intermediaries;
j) to make offer document public for the stipulated period;
k) to make pre-issue advertisement;
l) for dispatch of issue material thereafter;
m) to file details regarding complaint;
n) to appoint compliance officer for the purpose of the issue;
o) to enter into an agreement with the depositories for the dematerialisation of securities pursuant to the issue;
p) to provide undertaking as to transactions in securities by the promoter group;
q) to open and close the issue within the stipulated time limit;
r) to place lock-in of pre-issue share capital of an unlisted company
s) to enter into MoU with Lead Merchant Banker.
t) to file draft offer document with Stock Exchange

23. The above non-compliance by the Noticee is also forthcoming from its letter dated August 17, 2017 , wherein replying to the information sought by SEBI, it was admitted that no prospectus or any information /statement in lieu of prospectus was filed with RoC in respect of the allotment of shares. It was also admitted that neither any advertisement nor any application forms were circulated and Noticee had not applied for listing of its securities with any of the stock exchanges. Further, vide its reply dated June 15, 2022 filed before me, reiterating its admissions, the Noticee has stated that it was a *bona fide* mistake on its part to make the allotment of shares to 515 entities on August 20, 2009.

24. It has been further submitted by the Noticee that such allottees were genuine and the amount in respect of the said allotment was paid by such allottees through cheque/ normal banking channels. The Noticee has submitted that it was under a *bona fide* impression that it had complied with the provisions of the Companies Act, 1956 while making the said allotments and that there was an ambiguity in the interpretation of Section 67 of the Companies Act, 1956 as to what constitutes a public offering of shares at the time of allotment and the clarity regarding the same was emerged after the Judgment of Hon'ble Supreme Court in the Sahara case in 2012.

25. I do not find any merit in the said submissions of the Noticee. I note that ignorance of law as pleaded by the Noticee cannot merit any favourable consideration to condone the actions of the Noticee. The violation involved in the instant matter is of significant nature as the Noticee has made the allotment of shares to an extent of more than Rs. 4.6 Crores to about 525 allottees in 2009 in gross non-compliance with the provisions of the Companies Act, 1956 and the DIP Guidelines, 2000 read with the ICDR Regulations, 2009 as admitted by it. Section 67(3) of the Companies Act, 1956 by way of amendment in the year 2000 made it clear that any transfer/offer of shares to more than 49 persons would make it attract mandatory compliance of the requirements for a public issue including the Rules, Regulations and guidelines issued by SEBI. The law has been clear and been in place since the amendment came into effect and the Hon'ble Supreme Court in the Sahara Case dealt with the issue pertaining to the securities of the nature of Optionally Fully Convertible Debentures and the law that was already in place was reaffirmed by the Hon'ble Supreme court. The preferential allotment of equity shares to more than 49 persons was squarely covered under the first provision to the Section 67(3) of the

Companies Act, 1956 by its plain reading and there was no ambiguity on the same as claimed by the Noticee. In such case, the allotment being in violation of law cannot bear any legality/sanctity by way of claimed genuineness of the allottees and the amount being paid through cheques/ banking channels.

26. Further, contrary to the submissions of the Noticee that only the allotment dated August 20, 2009 to 515 allottees constituted the aforesaid violation, I note that the allotment dated August 10, 2009 to 10 allottees (which was 10 days prior and pertaining to the same financial year) is also to be considered along with the allotment dated August 20, 2009 together for which, the Noticee is in violation of the abovementioned provisions.

27. In view of all the above, I conclude that the Noticee has violated the provisions of Clauses 2.1.1, 2.1.4, 2.1.5, 2.2, 2.8, 4.1, 4.11, 4.14, 5.3.1, 5.3.3, 5.3.5, 5.3.6, 5.4, 5.6, 5.6A, 5.7, 5.8, 5.9, 5.9.1, 5.10, 5.12, 5.13, 5.14, 6.0, 6.1 to 6.15, 6.16 to 6.34, 8.3, 8.8.1, 9 of the DIP Guidelines, 2000 read with Regulation 115 of ICDR Regulations, 2009.

28. It has been further submitted by the Noticee before me that BRH, *suo motto,* had made a settlement application before SEBI in respect of the preferential allotment made by it on August 20, 2009 stating various undertakings including refunding to the allottees. It has been submitted that SEBI vide its letter dated December 28, 2017 had directed the Noticee to comply with certain procedures before availing the settlement as per SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2018 (hereinafter referred to as "**Settlement Regulations, 2018**") including giving option to the allottees to surrender and repay with applicable interest of 15% p.a., filing of the certificate of completion of repayments to SEBI through CA on the panel of public authority and approaching Hon'ble National Company Law Tribunal ("**NCLT"**) to compound the violations. It has also been submitted that SEBI vide its letter dated March 02, 2018 clarified that promoter group entity of the Noticee, Snowtex Investment Limited (hereinafter referred to as "**SIL**") was permitted to purchase the shares from the allottees of allotment dated August 10, 2009 and August 20, 2009. It has been submitted that compliance with the above, BRH through a public notice dated March 31, 2018 made an offer to the allottees for an option to sell their shares to SIL and in response:

a. 6 shareholders/ subsequent transferees of the Company holding 44,65,553 shares refrained/ refused from selling their shares;
b. 86,885 shares from 63 shareholders/ subsequent transferees were purchased and full payment was made by SIL;
c. 3 shareholders/ subsequent transferees holding 4000 shares could not be purchased due to non submission of complete documents;
d. In case of the rest of the 123 shareholders/ subsequent transferees holding 2,22,400 shares, the offer letter by the Company was either returned or no reply has been received from them.

29. It has also been submitted that the Company through its director, Mr. Anubhav Bhatter applied before the Hon'ble NCLT, Kolkata for compounding the violations of the provisions of the Companies Act, 1956 arising out of the abovementioned preferential allotments. The Hon'ble NCLT vide its order dated August 23, 2019 allowed the compounding of the violations of the Companies Act, 1956 as against the Applicant, Mr. Anubhav Bhatter, Director of BRH upon the payment of Rs. 5,00,000/- . The Noticee has submitted a copy of the challan demonstrating the payment of the aforesaid compounding fees.

30. I have perused the documents that have been placed before me in this regard by the Noticee in the instant Proceedings. While it appears that the Noticee has taken steps to comply with the pre-requirement to apply for settlement of Proceedings with SEBI in terms of the provisions of Settlement Regulations, 2018, there is no material on record that the violations of the DIP Guidelines, 2000 read with ICDR Regulations, 2009 administered by SEBI arising out of the aforesaid allotments made by the Noticee have been settled. Therefore, the steps taken by the Noticee in providing the option to the allottees to sell their shares and repayment at the most can be considered as mitigating factors but these cannot absolve the liability for the violations committed by the Noticee.

ISSUE II: Whether the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, 1992?

31. From the conclusion arrived at with respect to Issue I as above, I further conclude that the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, 1992 which reads as under:

Penalty for contravention where no separate penalty has been provided.

Section 15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

By Securities Laws (Amendment) Act, 2014, which came into effect from September 08, 2014, the words "liable to a penalty which may extend to one crore rupees" in section 15HB of SEBI Act have been substituted by the words "liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees".

ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticee?

32. While determining the quantum of monetary penalty, it is important to consider the factors stipulated in Section 15 J of the SEBI Act, which reads as under :

SEBI Act
Factors to be taken into account by the adjudicating officer

15J*. While adjudging quantum of penalty under Section 15 I, the adjudicating officer shall have due regard to the following factors, namely:*

- *a)* *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- *b)* *the amount of loss caused to an investor or a group of investors as a result of the default ;*
- *c)* *the repetitive nature of the default*

33. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss suffered by the investors as a result of the Noticee's failures. From the documents available on record, it is noted that no prior default is on record.

34. It is noted from the record that the Noticee has placed before me that pursuant to the letter by SEBI in reply to its Settlement Application, the Noticee has taken steps by providing the option for sale of allotted shares to the allotted and repayment with interest as noted at pre-paras 28 and 29 above. As noted, apart from providing an opportunity for selling back their allotted shares to the allottees, the Noticee has also made a payment of Rs. 5,00,000/- towards to compounding of the violations of the provisions of the Companies Act, 1956 as directed by the Hon'ble NCLT vide its aforementioned order dated August 23, 2019. For the purpose of determining the quantum of penalty to be imposed on the Noticee in respect of the conclusions arrived at para 27 and 31 above, I also take into consideration the said factors.

35. In view of the abovementioned conclusion after considering the factors under Section 15J of the SEBI Act, 1992, I hereby impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) on the Noticee under Section 15HB of the SEBI Act, 1992 for the violation of provisions of Clauses 2.1.1, 2.1.4, 2.1.5, 2.2, 2.8, 4.1, 4.11, 4.14, 5.3.1, 5.3.3, 5.3.5, 5.3.6, 5.4, 5.6, 5.6A, 5.7, 5.8, 5.9, 5.9.1, 5.10, 5.12, 5.13, 5.14, 6.0, 6.1 to 6.15, 6.16 to 6.34, 8.3, 8.8.1, 9 of the DIP Guidelines, 2000 read with Regulation 115 of ICDR Regulations, 2009 which is appropriate in the facts and circumstances of the case.

ORDER

36. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) on M/s BRH Wealth Kreators Limited in terms of the provisions of Section 15HB of the Securities and Exchange Board of India Act, 1992 for the violation of Clauses 2.1.1, 2.1.4, 2.1.5, 2.2, 2.8, 4.1, 4.11, 4.14, 5.3.1, 5.3.3, 5.3.5, 5.3.6, 5.4, 5.6, 5.6A, 5.7, 5.8, 5.9, 5.9.1, 5.10, 5.12, 5.13, 5.14, 6.0, 6.1 to 6.15, 6.16 to 6.34, 8.3, 8.8.1, 9 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 read with Regulation 115 (Issue Of Capital And Disclosure Requirements) Regulations, 2009.

37. M/s BRH Wealth Kreators Limited shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties

remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO →PAY NOW

38. M/s BRH Wealth Kreators Limited shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, Division of Regulatory Action-2, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051". M/s BRH Wealth Kreators Limited shall provide the following details while forwarding DD/ payment information:

    a) Name and PAN of the entity
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

39. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the Securities and Exchange Board of India Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

40. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to M/s BRH Wealth Kreators Limited (formerly BMA Wealth Creators Limited) and also to the Securities and Exchange Board of India, Mumbai.

Mumbai
August 29, 2022

Biju S
Adjudicating Officer