BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/BS/RG/2023-24/28875

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

In respect of:
Riddhi Corporate Services Limited
(PAN: AAECR9789A)
10, Mill Officers Colony,
Behind Old RBI,
Opp. Times of India,
Ashram Road, Ahmedabad – 380009

In the matter of preferential issue of equity shares and warrants by Riddhi Corporate Services Limited

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A. FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), on November 21, 2022, had received an e-mail from Riddhi Corporate Services Limited (herein after referred to as the "**Noticee**"), wherein the Noticee had sought condonation of the delay in filing application seeking in-principal approval from Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**") with respect to its preferential issue of equity shares and warrants. Subsequently, SEBI investigated the matter and the Noticee was observed to be in violation of Regulation 160(f) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as "**ICDR Regulations**").

B. APPOINTMENT OF ADJUDICATING OFFICER

2. In view of the above, SEBI has appointed the undersigned as Adjudicating Officer under Section 19 of SEBI Act read with Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties), 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") vide communique dated May 15, 2023, to enquire into and adjudicate upon the aforesaid alleged violation by the Noticee.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. The show cause notice (hereinafter referred to as "**SCN")** bearing no. SEBI/EAD-1/BS/RG/620401/1/2022, dated May 19, 2023, was served upon the Noticee under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15A(b) of the SEBI Act for the aforesaid alleged violation. The said SCN was served upon the Noticee through Speed Post with Acknowledgement Due as well as through e-mail. Details of the delivery of SCN and the correspondence exchanged with the Noticee is stated below:

Date	**Remark**
May 19, 2023	SCN sent through e-mail.
May 29, 2023	Physical delivery of SCN.
June 05, 2023	Noticee sought three weeks' extension for filing the reply to the SCN, vide an email.
June 06, 2023	SEBI, vide an email, acceded to the Noticee's request for extension and the Noticee was advised to submit the reply by June 14, 2023.
June 13, 2023	The Noticee, vide an email, requested further extension of one week to submit its reply to the SCN.

	SEBI, vide an email, acceded to the Noticee's request for extension and the Noticee was advised to submit the reply by June 20, 2023.
June 21, 2023	Hearing Notice was issued in the captioned matter and the Hearing was scheduled for June 30, 2023. Hearing Notice sent to the Noticee through email.
June 22, 2023	The Noticee submitted reply to the SCN.
June 26, 2023	Physical delivery of the Hearing Notice.
June 30, 2023	The Noticee appeared for the hearing wherein it reiterated the submissions made vide email dated June 22, 2023. Further, the Noticee was advised to submit the list of preferential allottees and increase in their shareholding as a result of the preferential issue. The Noticee was also granted time till July 10, 2023, to make additional submissions, if any.
July 08, 2023	The Noticee submitted the details with respect to the list of preferential allottees and increase in their shareholding as a result of the preferential issue.

4. **The allegations levelled against the Noticee in the SCN:**

4.1 The Noticee had convened a board meeting for approving the preferential issue of 10,02,000 equity shares and 7,05,000 warrants on 22 September, 2022 and had sent the notice of the Extraordinary General Meeting (hereinafter referred to as "**EGM**") to the shareholders on 27 September, 2022, seeking shareholder's approval for the same. Regulation 160(f) of ICDR Regulations requires an issuer to make an application seeking in-principle approval for preferential issue to the stock exchange(s), whereby its equity shares are listed, on the same day when the notice is sent in respect of the general meeting seeking shareholders' approval by way of special resolution. In the instant case, it is observed that the Noticee failed to file application seeking in-principal approval of BSE for listing its preferential issue of equity shares and warrants, on the same day i.e. on September 27, 2022.

4.2 In the instant matter, the following sequence of events was observed:

Sr. No.	Date	Particulars
1	22/09/2022	Board meeting convened for approving the preferential issue.
2	27/09/2022	Date of dispatch of notice to the shareholders.
3	27/09/2022	Date by which application seeking in-principle approval is required to be filed with Stock Exchange as per provisions of Regulation 160(f) of ICDR Regulations.
4	18/10/2022	Resolution passed at shareholder's meeting for approving preferential issue
5	28/10/2022	Company filed application seeking in-principal approval of BSE for preferential issue of warrants
6	31/10/2022	Company filed application seeking in-principal approval of BSE for preferential issue of equity shares

4.3 Based on the above information, it was observed that there was a delay of 31 days and 34 days on the part of the Noticee in making the application of warrants and equity shares respectively for seeking in-principal approval in terms of Regulation 160(f) of ICDR Regulations, to the BSE.

5. **The reply of the Noticee to the allegations levelled in the SCN:**

5.1 *Noticee in its Board meeting dated September 22, 2022 considered and approved raising of funds up to Rs. 26,11,71,000 by allotting upto 10,02,000 equity shares of Rs. 10/- each at a premium of Rs. 143/- per share and issue of up to 7,05,000 warrants on a preferential basis, subject to regulatory and statutory approvals.*

5.2 *Accordingly, the Noticee was required to inform the shareholders about convening ExtraOrdinary Meeting (EGM) inter-alia for approving the preferential allotment of shares and warrants as stated above*

5.3 *Noticee's existing issued, subscribed and paid-up share capital of the Noticee before the preferential allotment was 1,13,75,000 shares of Rs. 10/- each aggregating Rs. 11,37,50,000/-. In case the shareholders approves the issuance of 10,02,000 shares on preferential basis, the same would exceed the Authorised Capital of the Noticee and the Noticee won't be able to issue the shares on preferential basis unless the Authorised Capital is increased to accommodate the proposed issue of shares on preferential basis.*

5.4 *in order to mitigate the above, the Noticee proposed to seek approval of shareholders to increase authorized share capital of the Noticee as well as for issue of equity shares and warrants on preferential basis, through the same notice as follows:*

a) To increase the authorized share capital from Rs. 11,37,50,000 divided into 1,13,75,000 equity shares of Rs. 10/- each to Rs. 13,50,00,000/- divided into 1,35,00,000 equity shares of Rs. 10/- each and

b) To issue 10,02,000 equity shares of Rs. 10/- each at a premium of Rs. 143/- and 7,05,000 warrants convertible into equity shares.

5.5 *The Noticee had sent notice dated September 26, 2022 to the shareholders informing about convening EGM on October 12, 2022 inter-alia to consider the above issues i.e. increase in authorized share capital and issue of shares and warrants on a preferential basis. The aforesaid notice of EGM was sent to the shareholders on September 27, 2022.*

5.6 *As the Noticee could issue and allot equity shares on preferential basis only when there is adequate authorized capital, the Noticee did not apply to BSE for seeking in principal approval for issuance of equity shares and warrants issued on preferential basis on the date of dispatch of Notice to shareholders convening the EGM i.e. September 27, 2022.*

5.7 *Shareholders of the Noticee approved the increase in the authorized share capital in the EGM held on October 18, 2022, as proposed and also approved the issuance of the equity shares and warrants on preferential basis as stated above.*

5.8 *Post approval of shareholders to increase the authorized share capital, the Noticee had filed it's application with BSE for seeking in-principal approval for issuance and allotment of 10,02,000 equity shares and 7,05,000 convertible warrants to be issued on preferential basis under Regulation 28(1) of the SEBI (LODR) Regulations, 2015, on October 31, 2022 and October 28, 2022 respectively.*

5.9 *Since the Noticee could not have applied for listing of shares and warrants issued on preferential basis as stated above unless the authorized capital is increased to accommodate the same, the Noticee waited till the approval of shareholders is obtained for increase in authorized share capital of the Noticee.*

5.10 *The Noticee had received the in-principle approval from BSE for the preferential issue of warrants and equity shares vide their letters dated January 6, 2023 and January 9, 2023 respectively.*

5.11 *The delay, if any, was only a procedural delay and there was no malafide intent to cause any loss/damage to any other party or otherwise*

6. At the time of hearing, the Noticee reiterated the submissions made vide its reply email dated June 22, 2023. Further, to check the veracity of the contentions regarding allotments, the Noticee was advised to submit the list of preferential allottees and increase in their shareholding, if any, as a result of the preferential issue. The Noticee submitted the required details vide email dated July 08, 2023.

D. CONSIDERATION OF ISSUES AND EVIDENCE

7. I have considered the allegations levelled in the SCN, the relevant material brought on record, and replies/ submissions of the Noticee made during the instant proceedings. In the light of the aforesaid factual position as narrated above, essentially, the following issues arise for determination in the instant matter:
    i. *Issue 1: Whether the Noticee has failed to comply with Regulation 160(f) of ICDR Regulations?*
    ii. *Issue 2: If answer to the aforesaid question is in affirmative, whether the violations would attract monetary penalty on the Noticee under the provisions of Section 15A(b) of the SEBI Act?*
    iii. *Issue 3: If answer to the aforesaid question is in affirmative, what should be the quantum of the monetary penalty?*

8. Before proceeding further, I would like to refer to the relevant regulation:

Regulation 160(f) of ICDR Regulations

"*A listed issuer making a preferential issue of specified securities shall ensure that the issuer has made an application seeking in-principle approval to the stock exchange(s), where its equity shares are listed, on the same day when the notice has been sent in respect of the general meeting seeking shareholders' approval by way of special resolution*."

9. The first issue to be addressed is as follows:

Whether the Noticee has failed to comply with Regulation 160(f) of ICDR Regulations?

9.1 The Noticee in its Board meeting dated September 22, 2022 considered and approved the preferential issue of 10,02,000 equity shares and 7,05,000 warrants. On September 27, 2022, the Noticee sent the notice of the EGM to the shareholders, seeking shareholder's approval for the same. Regulation 160(f) of ICDR Regulations requires an issuer to make an application seeking in-principle approval for preferential issue to the stock exchange(s), whereby its equity shares are listed, on the same day when the notice has been sent in respect of the general meeting seeking shareholders' approval by way of special resolution. It may be noted that the issuer has to make the application for in-principle approval on the same day the notice is sent for EGM. The emphasis placed on the wording "same day" amply illustrates the importance of making the application for listing without any delay. The requirement is to make the process of issue of preferential issue smooth and efficient. The Noticee is required to seek in-principal approval from the stock exchange so that the stock exchange can verify if the Noticee has followed the requisite regulations and in case of any irregularities, the same can be addressed before the listing of securities.

9.2 However, in the instant case, the Noticee had filed application with BSE for seeking in-principal approval for issuance and allotment of 10,02,000 equity shares and 7,05,000 convertible warrants to be issued on preferential basis on October 31, 2022 and on October 28, 2022.

9.3 The Noticee, in response to the SCN, has submitted that it did not have the sufficient authorised share capital to proceed with the aforesaid preferential issue of equity shares and warrants. Hence, the Noticee, through notice dated September 26, 2022 to the shareholders, had convened EGM on October 12, 2022 to seek the shareholders' approval for the aforesaid preferential issue and to increase its authorised share capital. Pursuant to shareholders' approval at EGM on October 12, 2022 to increase the authorized share capital, the Noticee had filed it's application with BSE for seeking in-principal approval for issuance and allotment of 10,02,000 equity shares and 7,05,000 convertible warrants to be issued on preferential basis on October 31, 2022 and on October 28, 2022.

9.4 In view of the above submissions, it is an admitted fact that the Noticee did not make an application seeking in-principle approval for preferential issue to the stock exchange, on September 27, 2022 because it was aware that it did not have sufficient authorised capital to go ahead with the preferential issue. Hence the Noticee was well aware of the eventuality that it's application for in-principal approval is liable to be rejected because of this reason. In this case, as the Noticee did not have the sufficient authorised share capital to proceed with the aforesaid preferential issue of equity shares and warrants, it should have first issued the notice for seeking shareholders' approval for increase in authorised share capital. Only after such approval, the Noticee should have proceeded to seek shareholders' approval for the aforesaid preferential issue of equity shares and warrants. This would have been the natural course of events to follow. I am of the opinion that there has been lack of proper due diligence on the part of the Noticee to ensure compliance with the relevant regulations.

9.5 It is noted that since the Noticee had filed it's application with BSE for seeking in-principal approval for issuance and allotment of 10,02,000 equity shares and 7,05,000 convertible warrants to be issued on preferential basis on October 31, 2022 and October 28, 2022 respectively, there has been a delay of 34 days and 31 days in filing the applications for listing of equity shares and warrants.

9.6 The Noticee had submitted the list of preferential allottees and the ensuing increase in their shareholding as a result of the preferential issue vide email dated July 08, 2023. It is submitted by the Noticee that the preferential allotment was done only to non-promoter entities and there are no malafide intentions on the part of the Noticee. Further, there is no change in control as a result of the aforesaid preferential issue.

9.7 Viewed in the context of the facts and circumstances of the case, one cannot but emphasize the importance of granting of listing permission by the stock exchanges. Listing of securities provides liquidity to the securities issued to investors. In the absence of listing, investors are at the mercy of the promoters of the company. In this context, it is worthwhile to make a reference to the judgment of Hon'ble Supreme Court in M/s. Rishyashringa Jewellery Ltd. and another v. The Stock Exchange Bombay and others, AIR 1996 S.C. 480, wherein the court held that "*In other words the effect of the decision in Allied International Products Ltd that even if any of the stock exchanges mentioned in the prospectus approved the application for enlistment it would mean sufficient compliance with the* *provisions of Section 73 and allotment made in pursuances of that prospectus would be valid was sought to be overcome by amending Section 73 to provide that enlistment has to be done in all the stock exchanges mentioned in the prospectus and in the case of failure to do so the money received in respect of allotment of shares on the basis of the prospectus should be refunded within a specified time. Thus the consequence of rendering the entire allotment of shares void was required to ensue if the enlistment contemplated in all the stock exchanges mentioned in the prospectus does not materialise.*

…

In other words, if the permission has not been granted by any one of the several stock exchanges named in the prospectus for listing of shares the consequence by virtue of sub-section (1A) of Section 73 is to render the entire allotment void and the grant of permission by one of them is inconsequential".

9.8 In this case the issuer had failed to submit the application for listing permission within the timelines. Therefore, considering the paramount importance of listing as emphasised by Hon'ble Supreme Court, I am of the view that the violation of Regulation 160(f) of ICDR Regulations by the Noticee cannot be treated as a technical violation as contended by the Noticee.

9.9 Here, I would like to also refer to the judgement of Hon'ble SAT in the matter of Premchand Shah and others vs. SEBI (Appeal No.192 of 2010 order dated February 21, 2011), wherein the Hon'ble SAT observed that "*When law prescribes a manner in which a thing is to be done, it must be done only in that manner*."

9.10 Therefore, based on the discussion in above paragraphs, the violation of Regulation 160(f) of ICDR Regulations stands established against the Noticee.

10. The second issue to be addressed is as follows:

If answer to the aforesaid question in first issue is in affirmative, whether the violations would attract monetary penalty on the Noticee under the provisions of Section 15A(b) of the SEBI Act?

From the discussion in the first issue, it is noted that the violations were established as described above and accordingly, the Noticee is liable for imposition of penalty in terms of Section 15A(b) of SEBI Act.

In this context, I would also like to rely on the judgement of Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund where it was held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established*".

Section 15A(b) of the SEBI Act is reproduced as under:

SEBI ACT

Penalty for failure to furnish information, return, etc.

15A: *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less";

11. The third issue to be addressed is as follows:

If answer to the aforesaid question in second issue is in affirmative, what should be the quantum of the monetary penalty?

In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI which is reproduced as under:

SEBI Act

15J -Factors to be taken into account by the adjudicating officer

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 group of investors as a result of the default;

(c)the repetitive nature of the default."

12. In view of the aforesaid facts and circumstances of the case and the charges being established, the quantum of penalty would depend on the factors referred to under Section 15J of the SEBI Act stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Also, there was no investor complaint against the Noticee. However, the delay on the part of the Noticee in seeking in-principle approval of stock exchange for listing the securities resulted in not taking adequate steps as mandated by the Regulations. This would have resulted in jeopardising the interest of the allottees. Hence, the violation warrants imposition of monetary penalty. However, considering the fact that the Noticee approached SEBI for condonation of the delay on its part in complying with the Regulation, I am inclined to take a lenient view with regard to the penalty attracted in respect of the violation.

E. ORDER

13. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and in exercise of the powers conferred upon me under Section 15A(b), I hereby impose a monetary penalty of Rs. 1,00,000/- (Rupees One Lakhs Only) on the Noticee for the delay in filing application seeking in-principal approval with respect to its preferential issue of equity shares to BSE and a monetary penalty of Rs. 1,00,000/- (Rupees One Lakhs Only) on the Noticee for the delay in filing application seeking in-principal approval with respect to its preferential issue of warrants to BSE.

I am of the view that the said penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) is commensurate with the violation committed by the Noticee.

14. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

15. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

16. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules, a copy of this order is being sent to Noticee viz. Riddhi Corporate Services Ltd. and also to SEBI.

Date: August 23, 2023
Place: Mumbai

BIJU S
ADJUDICATING OFFICER