



QJA/SS/ERO/ERO-OTHER/31620/2025-26

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11A and 11B(1) of the Securities and Exchange Board of India Act, 1992 in the matter of Bengal Artisan Craft Company Limited (CIN: U17122WB2007PLC116612)

In respect of:

Noticee	Name	PAN/DIN
1	Bengal Artisans Craft Company Limited	AADCB1764A
2	Prakash Chand Tripathi	AAFPT6708B
3	Sumita Ghose	AEAPG2340F
4	Soma Roy	ALDPR5018B
5	Anima Mondal	AYRPM5517B
6	Eleanor Margaret King	2909451
7	Rajendran Kavil Poduvattil Achutan	AWMPK6563C
8	Vivek Rishi	AGWPR2443N
9	Arun Chanda	AHMPC3167D
10	Bulu Raha	ARIPR2325J
11	Pankaj	ARYPP9439P

The above-mentioned entities are hereinafter individually referred to by their respective names or Noticee number and collectively as “the Noticees”

1. Bengal Artisans Craft Company Limited (‘BACCL’) is a public limited company incorporated on June 18, 2007 with its current registered address as 33, Bondel Road, Kolkata, West Bengal, India – 700019. Prakash Chand Tripathi (‘Noticee 2’), Sumita Ghose (‘Noticee 3’), Soma Roy (‘Noticee 4’), Anima Modal (‘Noticee 5’), Eleanor Margaret King (‘Noticee 6’) Rajendran Kavil Poduvattill Achutan (Noticee 7) and Vivek Rishi (‘Noticee 8’) are the directors of BACCL appointed on different dates. Arun Chanda (Noticee 9), Bulu Raha (Noticee 10) and Pankaj Pradeep (Noticee 11) were appointed on November 11, 2010 as additional independent directors.



Examination by SEBI

2. While dealing with compounding application by BACCL in respect of certain provisions of the Companies Act, 1956 with respect to allotment of equity shares by it during March 2009 to November 2010, Registrar of Companies (RoC), West Bengal referred the matter of possible violations of SEBI Regulations to SEBI on November 14, 2018.
3. SEBI commenced the examination to ascertain whether there were violations by BACCL of the public issue norms stipulated under the Companies Act, 1956/2013, relevant provisions of the SEBI Act, SEBI (Disclosure and Investor Protection) Guidelines, 2000 ('the DIP Guidelines') and the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ('the ICDR Regulations') and decided as following: -
 - (a) Vide letter dated June 24, 2021, SEBI advised the company to provide an exit option to its shareholders in terms of the SEBI circular CFD/DIL3/18/2015 dated December 31, 2015 read with SEBI circular DIL3/CIR/P/2016/53 dated May 03, 2016 (hereinafter referred to as the 'SEBI DPI Exit circulars') and complete the same within 3 months.
 - (b) Vide its letter dated September 10, 2021, BACCL submitted a compliance report along with necessary documents to SEBI.

Show Cause Notice

4. Subsequently, SEBI, vide circular dated March 13, 2024 (SEBI/HO/CFD/PoD-1/P/CIR/2024/016), repealed the aforesaid SEBI DPI Exit circulars outlining the procedure to deal with cases where securities are issued prior to April 01, 2014, involving offer/allotment of securities to more than 49 but up to 200 investors in a financial year.
5. SEBI felt that BACCL had issued equity shares to more than 200 persons (limit as per Companies Act, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014) in a financial year, which amounts to public issue of securities as per the first proviso to Section 67(3) of the Companies Act, 1956. SEBI initiated proceedings against BACCL and its 10 directors under the SEBI Act, 1992 ('the SEBI Act') by issuing a Show Cause Notice (SCN) No. SEBI/ERO-OTHER/P/OW/2025/3881 dated February 04, 2025 to BACCL and its 10 directors which is the subject matter of the instant proceedings. In the SCN, the following allegations have been made:



“ 25.1 By issuing equity shares to more than 200 persons in FY 2008-2009 and FY 2010-2011, Noticees 1-11 are alleged to have violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3) of the Companies Act, 1956 read with Section 465 of Companies Act, 2013.

25.2 By not making an application to a recognized stock exchange to get the securities listed with the stock exchange, by not filing prospectus in connection with the said issuance of securities, by not keeping the amounts collected in a separate designated bank account, it is alleged that the Noticees 1 to 11 have violated the provisions of Section 73(1) and 73(3) of the Companies Act, 1956 read with Section 465 of Companies Act, 2013, 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, 6.1-6.15, 6.16-6.34, 8.3, 8.8.1, 9 of the DIP Guidelines read with Regulation 115 of the ICDR Regulations, 2009 and Regulations 4(2)(d), (e), 5(1), 5(2), 5(5), 5(7), 6(1), 6(4), 6(5), 7, 26(1), 26(2), 26(6), 32(1), 36, 37, 46(1), 47(1), 57(1), 57(2), 58(1), 58(2) and 63 of the ICDR Regulations.

25.3 By not refunding the money collected through the issue of shares, Noticees 1 -11 are alleged to have violated Section 73(2) read with Section 5 of the Companies Act, 1956.”

6. In view of the above, Noticees 1 to 11 were called upon to show cause as to why suitable direction(s) under Section 11(1), 11(4), 11A and 11B(1) of SEBI Act, 1992, including prohibition on buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period should not be issued against them.
7. Noticee 1 and Noticee 7 filed their preliminary submissions on March 05, 2025 and availed opportunity of hearing on June 06, 2025 when Mr. Surekh Kant Baxy appeared on their behalf and requested for time to make submission on behalf of Noticee 1 and all its directors. Thereafter, Noticee 1 to 8 and Noticee 11, filed common reply vide letter dated June 25, 2025. Noticee 9 filed separate reply vide email dated June 30, 2025. The Noticees also availed opportunity of hearing on July 04, 2025 when Ld. Authorised Representative Mr. Sujoy Dutta appeared on behalf of Noticees 1-8 and 11. It is relevant to mention that proceedings were kept on hold as advised by SEBI in view of internal decision taken on February 27, 2025 advising me to keep such matters on hold till May 2025.



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8. Mr. Sujoy Dutta informed that Bulu Raha ('Noticee 10') has passed away and submitted a copy of his death certificate in support of this submission. I, therefore, find that the proceedings *qua* Noticee 10 being personal in nature have abated as *actio personalis moritur cum persona*. Noticee 9 availed the opportunity of hearing on July 04, 2025 where he represented himself. He reiterated the submissions made in his reply that he was an ordinary supplier of *dopatta* and provided his PAN and signed papers for better business development to one Soma Roy and became a director in BACCL. He was not involved in raising of money by BACCL and had not received any communication from RoC in all these years. He had not attended any Board meeting of BACCL. I do not find any material on record to show that Arun Chanda/Noticee 9 was in charge of affairs of BACCL particularly in relation to impugned allotments. He has demonstrated that he was not aware of or associated with or consented to the impugned allotments. He is, thus, eligible for exception under section 27 of the SEBI Act. I, therefore, drop the SCN *qua* him on this ground alone.
9. During hearing, while reiterating all submissions made by Noticees 1-8 and 11 in their written reply, Ld. Advocate relying upon a compilation of judgements referred to during the hearing and its reply dated June 25, 2025 pithily, yet valiantly, argued the matter both on legal grounds and factual matrices of this case as described in the SCN. He vehemently opposed the maintainability of SCN on both legal and factual grounds. The submissions made by Noticees 1-8 and 11 in their replies and orally during hearing are summarised as under:-
- A. Proceedings barred by principle of *res judicata***
- (a) BACCL was incorporated in 2007 as a joint initiative by artisans based in the rural regions of Bengal to improve the livelihoods of hundreds of rural artisans and that during 2008-09 and 2010-11, BACCL allotted shares to persons associated with BACCL as craftsman, agents, artisans, vendor or otherwise and the total amount received through allotments was only about Rs. 36 lakh.
- (b) Upon conclusion of its enquiry in the matter, SEBI issued a letter dated June 24, 2021, advising BACCL to provide an exit option to the affected shareholders in accordance with the SEBI DPI Exit Circulars. This directive was not framed as a provisional or interim measure, but rather as a conclusive remedial step following SEBI's comprehensive examination of the matter.
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- (c) The SEBI DPI Exit Circulars were issued with the sole intent of protecting companies who had inadvertently breached laws in relation to public issue from penal action. BACCL complied with the directive in both letter and spirit. A compliance report was duly submitted on September 10, 2021, confirming that exit offers had been extended to 14 shareholders. Of these, 6 shareholders expressly declined the offer, while the remaining 8 did not respond within the stipulated period, and their silence was deemed as rejection in accordance with the terms of the offer.
- (d) BACCL was only bound to provide an exit offer, while it is the absolute prerogative of the investor to opt for such surrender of securities. The compliance of BACCL with the directions of SEBI vide order dated June 24, 2021, is not dependent on whether the investors have opted for the surrender of the securities.
- (e) It is also relevant to note that BACCL even prior to any directions issued by SEBI had adopted remedial measures to refund the investments to the investors. The exit option was provided by BACCL admittedly in the following manner: 1) by issuance of cheques 2) by transferring monies via NEFT and 3) transfer of shares to AMFPL Consultants Pvt. Ltd., Dilli Karigari Ltd. (presently amalgamated into Krishna Weaver Ltd.) and Derawala Artisans Limited.
- (f) Subsequent to the submission of the compliance report on September 10, 2021, SEBI did not issue any further communication, clarification, or objection. There was no indication of dissatisfaction with BACCL's compliance nor was there any suggestion that the matter remained under review. This prolonged silence spanning over three years must be construed as acquiescence and tacit acceptance of BACCL's compliance. In regulatory practice, particularly in quasi-judicial proceedings, the absence of further inquiry or objection following a directed remedial action and its confirmed execution reasonably leads to the conclusion that the matter has been closed.
- (g) The communication dated June 24, 2021, therefore, represents the culmination of SEBI's investigative process. It was the final directive issued after a detailed inquiry, and BACCL's compliance dated September 10, 2021 therewith was neither challenged nor supplemented by any subsequent regulatory action.



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- (h) In such circumstances, the principle of finality must apply. The regulatory silence that followed cannot be interpreted as an open-ended reservation of rights to reopen the matter at will, especially in the absence of any new facts, legal developments, or material irregularities.
- (i) Accordingly, the reopening of proceedings through the issuance of SCN based solely on the repeal of the SEBI DPI Exit Circulars amounts to a retrospective reassessment of a matter that had already attained closure. Such action is procedurally irregular and legally impermissible under the doctrine of res judicata, which bars repetitive proceedings on the same cause of action.
- (j) BACCL, having acted in good faith and in full compliance with SEBI's directives, cannot be subjected to renewed regulatory scrutiny on identical grounds and the same cause of action, absent any fresh cause or demonstrable non-compliance. At this juncture, it is also relevant to note that BACCL and its board of directors had also paid a compounding fees as computed by the Regional Director, Eastern Region, MCA, Kolkata for the offence alleged in the SCN.
- (k) The reopening of the investigation on the same set of cause of action, facts and allegations, without any new material evidence or legal basis, is impermissible in law. The principle of res judicata, which applies equally to administrative and quasi-judicial proceedings, squarely bars such repetitive inquiries and investigations.
- (l) The constitutional protection against double jeopardy under Article 20(2) of the Constitution of India, though primarily applicable to criminal proceedings, embodies a broader principle of fairness and finality that extends to regulatory actions. Once an authority has exercised its jurisdiction and the Noticee has complied with its directions, the same authority cannot reinitiate proceedings on the same cause of action merely due to a subsequent change in regulatory framework.
- (m) BACCL has already undergone scrutiny by two competent authorities RoC and SEBI and has fully complied with all directions and advises issued. The present attempt to reopen the matter amounts to a second investigation for the same alleged cause of action and contraventions, which is legally untenable and inconsistent with the established principles of administrative law and binding precedents of the Hon'ble Supreme Court.



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- (n) SEBI, having already investigated the matter and accepted compliance, is now estopped from reopening the same cause of action under the guise of a regulatory change.
- (o) As held by Hon'ble Supreme Court in the matter of ***Ram Kishori Gupta Vs. SEBI*** estoppel operates as a bar not only against parties but also against administrative authorities who have already exercised their jurisdiction and concluded the matter. Specific emphasis was placed on the observations of Hon'ble Supreme Court in *SEBI vs Ram Kishori Gupta* (para 19 and 25 of the Order) and in the case of *Hope Plantations Ltd. vs. Taluk Land Board*.

B. SCN is barred by limitation

- (a) Every authority should exercise power within a reasonable period depending upon the facts of the case and that SEBI was under a legal duty to conclude its investigation and take any consequential action within a reasonable period of time.
- (b) SEBI had multiple clear and independent opportunities to examine and take appropriate regulatory action in relation to the impugned transactions but it failed to act with the promptness and diligence expected of a statutory regulator.
- (c) The impugned transactions were neither concealed nor conducted in a clandestine manner. The allotment of securities in three instances was duly recorded and disclosed in the prescribed statutory filings i.e., Form 2, which was filed with the RoC on April 02, 2009 - SRN No. A59239418, July 19, 2010 - SRN No. A89462469 and January 03, 2011 - SRN No. B02125730, in accordance with the applicable provisions of the Companies Act, 1956. These filings are part of the public domain and accessible to all regulatory authorities, including SEBI and hence, there has been a substantial delay of 14 years in issuance of the SCN.
- (d) RoC issued SCNs on January 02, 2013 and BACCL submitted its reply on January 24, 2013. SEBI, having access to public filings and being the designated regulator for securities transactions, was in a position to take cognizance of the matter at this stage but failed to do so. There has been a substantial delay of 12 years even after RoC took cognisance.
- (e) On November 14, 2018, the Ministry of Corporate Affairs had formally referred the matter to SEBI for appropriate action with respect to the impugned transactions. SEBI had



conducted an extensive enquiry and thereafter, had issued directions on June 24, 2021 to BACCL to provide exit option to the investors in accordance with the SEBI DPI Exit Circulars after 2.5 years. All necessary information and document were provided by BACCL to the RoC and the same was also handed over to SEBI during the enquiry, which had spread across 2 years. Therefore, there is no proper justification for issuance of an SCN after a period of 6 years had transpired from the admitted date of knowledge of the impugned transactions.

- (f) Pursuant to BACCL's full compliance with SEBI's directive and submission of a compliance report on September 10, 2021, SEBI remained silent for over three years. No further inquiry, communication, or regulatory action was initiated until the issuance of the present SCN on February 04, 2025. This prolonged and unexplained inaction, despite SEBI's prior engagement and acceptance of compliance, constitutes gross laches and procedural impropriety. Despite having issued a communication dated June 24, 2021 advising BACCL to offer an exit option to the concerned investors, SEBI remained entirely silent for a period exceeding three years thereafter.
- (g) In view of the above submissions, the Noticees 1-8 and 11 have contended that the issuance of SCN is inordinately delayed, unwarranted and without any lawful justification and therefore, constitutes a substantive violation of principles of natural justice and administrative propriety. SEBI's failure to act within a reasonable time, despite being fully seized of the matter, disentitles SEBI from reopening the issue at this belated stage.
- (h) In support of these submissions Noticees 1-8 and 11 have relied upon the observations of Hon'ble SAT in the case of *BRD Securities Ltd. vs. SEBI* (para 12, 17 and 18 of the Order), and *Libord Finance Ltd. vs. SEBI, Rakesh Kathotia and Other Vs. SEBI* and observation of Hon'ble Supreme Court in the matters of *SEBI vs. Bhavesh Pabarai and SEBI vs. Sunil Krishna Khaitan and Ors.* (para 92-93 of the Order).

C. The repeal of the SEBI DPI Exit circulars is not retrospective

- (a) The present proceedings initiated by SEBI pursuant to the SCN dated February 04, 2025 are flawed because SEBI circular SEBI/HO/CFD/PoD-1/P/CIR/2024/016 dated April 13, 2024 ('the 2024 circular') does not operate retrospectively. Further, the 2024 circular states that "...the same



shall stand rescinded with effect from 6 months from the date of issue of this circular without prejudice to the operation of anything done or any action taken under the said circulars.”

Therefore, all actions already undertaken and completed under the earlier circulars i.e., the SEBI DPI Exit Circulars, cannot be invalidated. BACCL, having fully complied with SEBI’s directive dated June 24, 2021, by offering an exit option to all investors and submitting a compliance report on September 10, 2021, falls squarely within the ambit of this protective clause. SEBI’s conspicuous silence for over three years thereafter till February 04, 2025 further reinforces the critical fact that the aforesaid compliance was categorically accepted by SEBI.

- (b) Regulatory circulars, like statutes, cannot be applied retrospectively to unsettle vested rights or completed actions unless expressly stated. Also, even if any cause of action has arisen after the due compliance of the SEBI DPI Exit Circulars, the same cannot be basis for issuance of the SCN since such cause of action is clearly hit by limitation, delay and laches. In the present case, there is no such express retrospective intent behind the issuance of the 2024 Circular as evident from the fact that the 2024 Circular preserves the validity of past actions.

D. Preventive and remedial measure

- (a) Relying upon judgement of Hon’ble SAT in the matter of *Libord Finance Ltd. vs. Whole Time Member, SEBI* Ltd. Advocate contended that the preventive and remedial measures under section 11/11 B of the Act might also have penal consequences, but that would be incidental. The purpose or the basis of the order or the directions would nevertheless be to protect the securities market and the interest of investors.
- (b) As BACCL has refunded the monies collected in furtherance of the impugned transactions in accordance with the scheme of SEBI DPI Exit Circulars, no cause of action has arisen for invoking any punitive action against BACCL or its directors. In fact, when BACCL had refunded the monies to the investors in the FY 2013-14, it had provided an interest rate which was above 15% per annum, as mandated under the SEBI DPI Exit Circulars.
- (c) The SCN does not highlight any instance of fraud, malpractices, deceit, etc. to justify the invocation of Section 11 of the SEBI Act. The remedial measures adopted by BACCL were with the bona fide intent of protecting the interest of investors.



(d) Additionally, the Ld. AR pleaded that BACCL has displayed good conduct since the first SCN was issued to it by RoC in 2013 and it has already made exit offer to all investors. Therefore, in line with observations in *SEBI vs. Sunil Krishna Khaitan*, SEBI must take into account factors such as interest of investors and market integrity when issuing directions as the use of the word “may” in the SEBI Act, 1992 confers discretion on SEBI.

E. Submissions on merits

(a) There were 1,314 allottees. BACCL refunded the investments to allottees in FY 2013-14 as follows:

- 203 allottees (1,513 shares) have been refunded through cheques; of these, 15 allottees have not encashed cheques (amount not encashed is Rs. 13,440)
- 71 allottees (19,100 shares) have been refunded through NEFT.
- 1,040 allottees (24,387 shares) by way of transfer and internal transfer of shares by original allottees.

(b) In addition to refund, BACCL also filed an application before RoC for compounding of the alleged offences under Section 60 and 73 of the Companies Act, 1956. It paid compounding fee of Rs. 13,000 on February 02, 2017 under Section 291 of the Companies Act, 1956 which indicates BACCLs’ willingness to make amends and there was no *mens rea* or malicious motive behind the alleged violations.

10. I have carefully considered the allegations in the SCN and replies and submissions made by BACCL and its directors. Briefly stated, the following allotments of equity shares are basis of this case as described in Table 1 of the SCN:

Sl. No.	Date of allotment	FY	No. of allottees	No. of shares allotted	Amount raised (in Rs.)
1.	June 25, 2008	2008-09	1	22,050	22,05,000
2.	March 23, 2009		957	1,988	1,98,800



Sl. No.	Date of allotment	FY	No. of allottees	No. of shares allotted	Amount raised (in Rs.)
3.	June 29, 2010	2010-11	210	671	67,100
4.	November 11, 2010		77	498	49,800
5.	March 31, 2011		39	10,948	10,94,800
Total			1,284	36,155	36,15,500

11. Admittedly, the allotments were made before coming into force of the Companies Act 2013, Companies (Prospectus and Allotment of Securities) Rules, 2014 (2014 Rules) and SEBI DPI Exit circulars. The law applicable was admittedly the Companies Act, 1956 at the relevant times when the above allotments were made by BACCL. The relevant section 67(3) as amended on December 13, 2000 provided a rule of interpretation for public issue as under: -

“(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:

Provided further that nothing contained in the first proviso shall apply to the non-banking financial companies or public financial institutions specified in section 4-A of the Companies Act, 1956.”

12. The term private placement was not explicitly defined under the Companies Act, 1956 and any offer which was not a public offer as per above section 67(3) was considered to be a private placement.



The law provided in the above section 67(3) explained that an *offer or invitation to subscribe for shares or debentures made to fifty persons or more* shall be deemed to be a public issue. It is settled position that a view founded on what is claimed to be the spirit of the law is always attractive, for it has a powerful appeal to sentiment and emotion; but the deciding authority has to gather the spirit of the law from the language unless it suffers from ambiguity. What one may believe or think to be the spirit of the law cannot prevail if the language of the law does not support that view. The law provided in first proviso of section 67(3) was not aggregating the multiple ‘*offers*’ in a financial year to calculate the triggering number 50. Thus, only the specific offer must not trigger the threshold of 50 so as to remain a private placement. Accordingly, only the following three of the impugned allotments (*offers- as admitted*) triggered the public offer obligations under the Companies Act, 1956 read with the ICDR Regulations.

Date of allotment	FY	No. of allottees	No. of shares allotted	Amount raised (in Rs.)
March 23, 2009	2008-09	957	1,988	1,98,800
June 29, 2010	2010-11	210	671	67,100
November 11, 2010		77	498	49,800

13. Section 42 of the Companies Act, 2013 that falls in Part II of Chapter III of the Companies Act, 2013 deals with private placement of securities by companies. Section 42(1) is an enabling provision. Sub-section (2) of Section 42, *inter alia*, declares that a ‘*private placement*’–

- (a) shall be made only to *a select group of persons* who have been identified by the Board of Directors, and
- (b) whose number shall not exceed the number of offerees beyond fifty or such higher number as may be prescribed, in a financial year.

Thus, if a company which intends to make a *private placement*, cannot offer or invite to subscribe or issue of its securities to persons more than the prescribed number.



14. Sub- section (3) of section 42 provides for requirements of placement offer and application to be in prescribed manner. Explanations III added after sub-section (3) defines ‘*deemed offer to public*’ as under:

“If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.”

15. For the purposes of section 42, Rule 14(2) of the 2014 Rules, prescribes that an offer or invitation to subscribe securities under private placement shall not be made to more than two hundred persons in the aggregate in a financial year. All these provisions are prospective in nature and repeal and saving provisions under section 465 of the Companies Act, 2013 cannot be applied to extend new laws *ex post facto* to past allotments unless section 42 itself provides for retrospective operation which it does not do. Admittedly, the SCN makes allegation against the Noticees on the basis that ‘*since the allotments were made before this limit of 200 came into effect, the limit of 49 persons as per Companies Act, 1956 is applicable in the instant case*’ and charges them for violation of provisions of section 56, 60 and 73 read with provisions of section 2(36) and 67 of the Companies Act, 1956 but invokes the provisions of 2014 Rules to count the aggregate number 200 in a financial year. This approach in my view is incorrect. In fact, repeal and saving clause contained in section 465 of the Companies Act, 2013 does not have effect of importing the substantive provisions of the 2013 Act so as to amend the provisions of section 67(3) of the Companies Act, 1956 neither by “legislation by incorporation” nor “legislation by reference”. Further, the main purpose of section 465 of the Companies Act, 2013 is repeal of the Companies Act, 1956 with saving clause to preserve the existing rights and actions and ensures continuance of rules, notifications, resolutions etc. for ensuring continuity. Bringing the case of allotment in terms of section 67(3) of Companies Act, 1956 in 2014 Rules by section 465 or otherwise is not the intended purpose of section 42 of the Companies Act, 2013. Thus, the charges suffer with this dichotomy and contradiction which vitiate the proceedings.



16. In fact, for the above reasons alone, the SEBI Circular dated December 31, 2015 recognised that prior to April 01, 2014, (i.e. the date of coming into force of the 2014 Rules), offer of securities by companies to more than 49 persons was deemed to be a public offer. This Circular, therefore, intended to regularise deemed public issues made prior to April 01, 2014 involving issuance of securities to more than 49 persons but up to 200 persons in a financial year. This Circular provided a beneficial measure and did not extend the requirements of 2014 Rules to earlier cases. As per this circular, if a company falling in this threshold, provides option to allottees to surrender the security and get the refund of their investments to the extent of not less than the subscription amount along with 15% interest per annum thereon or the higher return as promised to investors, such company may avoid penal action. This circular did not intend to fall on the companies by aggregating the number to find 50 allottees in a financial year for taking penal actions in prior cases. If, in such prior cases, any single offer was made to 50 or more persons and benefit of this circular was not availed, action for noncompliance of provisions of Companies Act, 1956 and applicable SEBI guidelines/ Regulations would follow.
17. It is noted that the circular dated May 03, 2016 had modified the requirement SEBI DPI Exit Circular dated December 31, 2015 regarding submission of a certificate from an independent peer reviewed practicing Chartered Accountant certifying compliance as prescribed in the said circular and provided that the said certification ‘may’ also be provided by an independent peer reviewed practicing Company Secretary. This circular did not change the other provisions of SEBI DPI Exit Circular dated December 31, 2015.

Res Judicata/ issue estoppel

18. It is settled principle that legal principles of ‘issue estoppel’ and *res judicata* are equally applicable in proceedings before administrative and quasi-judicial authorities as they are based on public policy and justice¹. In its recent judgement in the matter of *SEBI v. Ram Kishori Gupta (supra)*, Hon’ble Supreme Court while reiterating its judgement in *Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Ors. Civil Appeal No. 540 of 1986*² has held that :-

¹ *Ujjam Bai vs. State of U.P.* 1962 SCC OnLine SC 8; *SC in Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Ors. Civil Appeal No. 540 of 1986* decided On: 03.11.1998 ; *Abdul Kuddus vs. Union of India and others* (2019) 6 SCC 604 and *SC judgement in M/s Faime Makers Pvt. Ltd. Vs. District Deputy Registrar, Co-operative Societies (3), Mumbai & ors CA NO..../2025@ SLP(C) NO.26654/2023 ETC. decided on April 01,2025*

² decided On: 03.11.1998



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- The principles of *res judicata*, *constructive res judicata* and other analogous principles and its aspect like 'cause of action estoppel' and 'issue estoppel' as enshrined in section 11 of the CPC equally applies to quasi-judicial authorities and also to administrative authorities.
 - When an issue has been decided by SEBI's administrative decisions or quasi-judicial proceedings, the cause of action has attained finality between the same parties.
 - When decision on cause of action has attained finality, parties are bound by the decision and are estopped from questioning it. They cannot litigate again on the same cause of action.
 - If the doctrine of constructive *res judicata* is not applied, it would be open to a party to take one proceeding after another and urge new grounds every time and that, plainly, would be inconsistent with considerations of public policy.

19. In this case, the above three allotments were questionable under the Companies Act, 1956 but only the allotment of 498 shares on November 11, 2010 to 77 persons was eligible for respite and benefit of above SEBI DPI Exit Circulars. However, when on January 24, 2019 and February 27, 2019 BACCL, *inter alia*, clarified that during March 2009 to November 2010 the allotments of equity shares were actually made to 1,314 allottees (list was provided) and not 1,258 as communicated by RoC, MCA and stated that it had made refund to them, SEBI, in all fairness deemed it appropriate to permit the option of SEBI DPI Exit Circulars to all the impugned allotments of the BACCL, while issuing advisory direction vide a letter dated June 24, 2021 in following terms: -

"It has been established vide various communications between Bengal Artisans Craft Company Ltd. ("Company") and SEBI that the Company had made equity issuances to 1314 allottees during March 2009 to November 2010. Consequently, such issuances are deemed public issues, and they should have been made in compliance with the provisions of the Companies Act, 1956, SEBI (Disclosure and Investor Protection) Guidelines, 2000 and SEBI (ICDR) Regulations, 2009.

2. In this regard, you are advised to provide an exit option to the investors in terms of the SEBI Circular CIR/CFD/DIL3/18/2015 dated December 31, 2015 read with SEBI Circular CFD/DIL3/CRI/P/2016/53 dated May 03, 2016 (copies attached), and submit the certification/proofs to SEBI. **Such exit may be provided by the Company itself or by the promoters or by such persons as arranged by the Company/ promoters.**



3. *The exit offer process must be completed in entirety within 3 months of date of this letter. No extension shall be granted in this regard.”*

20. Thus, SEBI had taken a conscious administrative decision to permit BACCL to avail the option of SEBI DPI Exit Circulars.

21. The above advisory direction does not give any reason as to how it has been established that BACCL had not availed SEBI DPI Exit Circulars even when it had given proof of refund in 2013-2014 and confirmed the exit option provided by it vide its letters dated January 24, 2019 and February 27, 2019 and again on August 19, 2020 when it, *inter alia*, stated that 3 shareholders, viz., AMFPL Consultants Pvt. Ltd., Dilli Karigari Ltd. and Derawala Artisans Limited, are still holding shares by purchasing shares from original shareholders. The above advisory directive permitted BACCL to provide exit itself or by the promoters or by such persons as arranged by it / promoters. The said advisory does not record any dissatisfaction about above response of BACCL dated August 19, 2020. Admittedly, BACCL had made refund to all allottees except 14 who had not accepted refund offer provided by it. However, above advisory directory did not mention this fact and issued vague directions “*to provide an exit option to the investors in terms of the SEBI Circular CIR/CFD/DIL3/18/2015 dated December 31, 2015 read with SEBI Circular CFD/DIL3/CRI/P/2016/53 dated May 03, 2016.*”

22. BACCL, vide its letter dated September 10, 2021, provided the certificate from an independent peer reviewed Chartered Accountant (CA) certifying compliance with the SEBI DPI Exit circulars and that BACCL had offered exit to its shareholders at a price equivalent to the amount of subscription money along with 15% interest p.a. thereon, which was in terms of the SEBI DPI Exit circulars. The CA certificate further stated as follows:

- a) That only 6 (six) out of 14 (fourteen) shareholders replied to the exit offer letter and all the 6 shareholders had refused to accept the exit offer.
- b) No reply was received from the remaining 8 shareholders within the stipulated period.
- c) As no shareholder accepted the exit offer, no payment was done and consequently, no verification of bank accounts needed to be done.



23. SEBI, vide circular dated March 13, 2024 (SEBI/HO/CFD/PoD-1/P/CIR/2024/016), repealed the aforesaid SEBI circular CFD/DIL3/18/2015 dated December 31, 2015 and DIL3/CIR/P/2016/53 dated May 03, 2016. The relevant portion of said circular dated March 13, 2024 is reproduced as under: -

“ In exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, SEBI had issued Circular No. CIR/CFD/DIL3/18/2015 dated December 31, 2015 and Circular No. CFD/DIL3/CIR/ P/2016/53 dated May 03, 2016, stating that in respect of cases under the Companies Act, 1956, involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and receive the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to the investors. This opportunity to avoid penal action was provided to the issuer companies considering the higher cap for private placement provided in the Companies Act, 2013.

2. Given that considerable time has elapsed since the repeal of the Companies Act, 1956, in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets, it has now been decided to repeal the aforesaid circulars and the same shall stand rescinded with effect from 6 months from the date of issue of this circular, without prejudice to the operation of anything done or any action taken under the said circulars.

3. The above said option(?) shall be available under the circular only to those companies who have completed the entire procedure and submitted the certificate in terms of circular No. CIR/CFD/DIL3/18/2015 dated December 31, 2015 and Circular No. CFD/DIL3/CIR/P/2016/53/dated May 03, 2016, within 6 months from the date of issue of this circular.

4. Accordingly, all cases involving an offer or allotment of securities to more than the permissible number of investors in a financial year shall be dealt with in line with the provisions contained under the extant applicable laws.”

24. Thereafter, the instant SCN dated February 04, 2025 has been issued reopening the matter of all the impugned allotments of BACCL making allegation that as BACCL had issued equity shares to



more than 49 persons in a *financial year*, which amounts to public issue of securities as per the first proviso to Section 67(3) of the Companies Act, 1956 and the Companies Act, 2013 read with Rule 14 of the 2014 Rules. As already examined above, the case of above listed three allotments only attracted the provisions of the Companies Act, 1956 and ICDR Regulations.

25. The above Circular dated March 13, 2024 clearly saves the operation of anything done or any action taken under the SEBI circular CFD/DIL3/18/2015 dated December 31, 2015 and DIL3/CIR/P/2016/53 dated May 03, 2016. It further provides that all cases involving an offer or allotment of securities to more than the permissible number of investors in a financial year shall be dealt with in line with the provisions contained under the extant applicable laws. Meaning thereby that in cases involving issuance of securities to more than 49 persons but up to 200 persons in a financial year under the Companies Act, 1956, where benefit of circular CFD/DIL3/18/2015 dated December 31, 2015 and DIL3/CIR/P/2016/53 dated May 03, 2016 has not been availed, the penal action shall be taken. Para 3 of the said Circular ostensibly intends to allow the benefit of SEBI circular CFD/DIL3/18/2015 dated December 31, 2015 and DIL3/CIR/P/2016/53 dated May 03, 2016 for a further period of 6 months. When para 3 and 4 are read cumulatively, the legitimate inference and exaptation are that if the option under SEBI DPI Exit Circulars was not availed within 6 months from March 13, 2024, the penal or remedial consequences as per SEBI Act and Regulations may follow.

26. In this case, though there was no determination of issues in a quasi- judicial proceeding, the matter was determined administratively for all the allotments though only one allotment was eligible for the benefit of SEBI DPI Exit circular of 2015 and advisory directive was issued on June 24, 2021. However, if BACCL had failed to avail the benefit of the said 2015 circular as advised or failed to comply with any of conditions of SEBI DPI Exit Circulars or if SEBI is not satisfied with compliance report as directed by letter dated June 24, 2021, it is always open for SEBI to initiate the penal action and proceedings would not be barred by principles of *res-judicata* or *issue estoppel*.

Delay/Laches

27. The other contentions of the Noticees 1-8 and 11 are that the SCN is barred by limitation and laches in view of decisions of Hon'ble SAT and Hon'ble Supreme Court as described in their submissions.



In this case based on the documents available on record and submissions made by Noticees, it is noted that :-

- **During June 25, 2008 to March 31, 2011**-The allotments were made. All required disclosures were admittedly in public domain.
- **During 2013-14** - After RoC issued notices to BACCL- it, made refunds to allottees as follows:
 - (a) 203 allottees (1,513 shares) refunded through cheques;
 - (b) 71 allottees (19,100 shares) have been refunded through NEFT
 - (c) 1,040 allottees (24,387 shares) by way of transfer and internal transfer of shares by original allottees
- **On November 14, 2018** -Reference from RoC to SEBI;
- **January- February, 2019** – SEBI and BACCL correspondence with regard to allotment/refund;
- **August 09, 2019**- SEBI asked BACCL to provide CA certificate;
- **September 13, 2019**- BACCL provided the required CA certificates to SEBI;
- **June 24, 2021**- SEBI directed BACCL to provide an exit option to the investors in terms of SEBI circular CIR/CFD/DIL3/18/2015 dated December 31, 2015 read with SEBI Circular CFD/DIL3/CIR/P/2016/53 dated May 03, 2016 and submit proof thereof to SEBI;
- **September 10, 2021**- BACCL informed SEBI that it has provided exit option to investors and report along with CA certificates has been obtained; and
- **February 04, 2025**- SEBI issued SCN.

28. It is matter of record that there has been a substantial delay of 14 years in issuance of the SCN in February 2025. However, it is pertinent to note that the reference was received by SEBI from RoC in November, 2018. Although it is matter of record that all the impugned allotments of equity shares by BACCL were duly disclosed on MCA portal and were within notice of RoC, it can be only inference by constructive notice to SEBI. Further, SEBI engaged in correspondence with BACCL and started its inquiry promptly during January – February 2019. However, after elapse of 6 months it asked BACCL in August 2019 to furnish CA certificates (as required in SEBI circular CFD/DIL3/18/2015 dated December 31, 2015). Further, when BACCL provided the required CA certificates to SEBI on September 13, 2019, it took two and half years to issue direction on June 24, 2021 to BACCL to provide an exit option to the investors in terms of SEBI circular



CIR/CFD/DIL3/18/2015 dated December 31, 2015 read with SEBI Circular CFD/DIL3/CIR/P/2016/53 dated May 03, 2016 and submit proof thereof to SEBI.

29. It is noted from record that pursuant to the receipt of CA certificates certifying completion of refund to investors by BACCL in September 2019, considering that refund to 1,040 allottees was made through ‘*transfer and internal transfer of shares*’ rather than through refund to original allottees, the matter was being examined by SEBI. This was a unique situation and several clarifications were sought from BACCL and auditors during December 2019-September 2020. Thereafter, vide letter dated June 24, 2021, SEBI issued advisory direction to BACCL. When BACCL informed SEBI on September 10, 2021 that it has provided exit option to investors and filed report along with CA certificates, SEBI noted that the compliance by it as under –

“remedial action viz;

(i) refund had been undertaken by BACCL before the DPI issuance by the subject company came to SEBI’s notice; and

(ii) Exit offer had been undertaken by the company subsequently on SEBI’s instructions”

30. However, the records show that after deciding as above, SEBI was still holding the case for examination in view of some pending “*policy decision*” in such matters. In my view, when the law is clear and decision was taken to permit benefit of SEBI DPI Exit Circulars, though belatedly on June 24, 2021, there was no scope for going back to review the decision based on any internal policy decision. The principle of *issue estoppel* would be attracted here and any future policy decision cannot be applied to change that decision. The only option available was to examine the compliance report of BACCL and if BACCL has failed to comply with any of the conditions of SEBI DPI Exit Circulars or if SEBI was not satisfied with compliance report as directed, appropriate proceedings could be initiated within reasonable time. The issue and cause of action in that situation would be different than that already decided while issuing advisory direction dated June 24, 2021.

31. However, SEBI kept on examining as to how to deal with refund of monies to the 3 shareholders viz; AMFPL Consultants Pvt. Ltd., Dilli Karigari Ltd. and Derawala Artisans Limited, who are still holding shares by purchasing shares from original shareholders and on August 27, 2024, SEBI decided to issue directions to it as contemplated in the SCN on February 04, 2025 i.e. after 14 years from the date of allotment, more than 6 years after receipt of reference from RoC and about 3.5 years



from the date of receipt of confirmation dated September 10, 2021 along with CA certificate. Although the time was taken in examining and coming to conclusion internally, such approach has not been appreciated by Judiciary repeatedly in similar cases.

32. I note that Hon'ble SAT in the matter of **Girraj Kumar Gupta HUF v/s. SEBI** (Appeal no. 424/2019) vide its order dated August 11, 2021, has, *inter-alia*, observed that....*"We find that the investigation started in the year 2015 which involved examining several entities in the order logs, trade logs, off market transactions and gathering evidence from the Stock Exchange..... and accordingly we find that there is no inordinate delay in the initiation of the proceedings."* This observation of Hon'ble SAT seems to be fact specific and cannot be relied upon as rule of law. In this case, the matter was under detailed investigation of several transactions by several entities and SEBI was acting reasonably.

33. However, the cases like the present one, which do not involve such detailed investigation and are predominantly based on information exchange from the company only without any investigation, it acts and conduct of other involved parties, this order of Hon'ble SAT is of not much help. The following legal position in similar case of *BRD Securities Ltd. and Others vs. SEBI* (2023 SCC OnLine SAT 1182) has been held by Hon'ble SAT and accepted by SEBI as it did not challenge the said observations of Hon'ble SAT: -

"12. The first private allotment was made on October 06, 2001 and the last allotment was made on November 25, 2010. The show cause notice issued on April 05, 2019 after more than 18 years from the date of the first allotment and 9 years from the date of last allotment. The private placements are part of the record which is in the public domain and which is reflected in the annual reports, etc. before RoC, Dividends are being paid by the Company to the shareholders year to year, and therefore, in our opinion there has been an undue delay in issuance of the show cause notice for refund of the allotment of money in terms of Section 73(2) of the Companies Act. The contention that SEBI only came of the irregularities only in 2017 cannot be accepted when everything was in the public domain.



13. This Tribunal in a catena of cases over the past 15 years have held that proceedings must be initiated in a timely manner and that proceedings are liable to be set aside only on the ground of undue delay in the initiation of proceedings”

34. I note that pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the matter of *Adjudicating Officer, SEBI vs Bhavesh Pabari (2019) SCC Online SC 294*, the Hon’ble Supreme Court observed as under:

“35. The appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show-cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc.”

35. Further, in *SEBI vs. Sunil Krishna Khaitan (supra)*, Hon’ble Supreme Court emphatically cautioned SEBI and held as under: -

“93. The directions given in the aforesaid quotation should not be understood as empowering the authorities/Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to inordinate delay in issuance of a show-cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the duty of the authority/officer to consider the question objectively, fairly and in a rational manner. There is



public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified, should be done within reasonable time. This prevents miscarriage of justice, misuse and abuse of the power as well as ensures that the violation of the provisions are checked and penalised without delay, thereby effectuating the purpose behind the enactment.”

36. In its recent judgment in *Ram Kishori Gupta (Supra)* Hon’ble Supreme Court reaffirmed that decision should be taken within reasonable time and made following observations with somewhat anguish and dismay where the SCN was issued after two years of requiring the examination by SEBI:

“30. In this regard, we may also note the unconscionable delay on the part of SEBI. Though the WTM of SEBI passed the order on 01.04.2016, requiring an examination afresh and initiation of disgorgement proceedings, it was only on 19.01.2018 that SEBI got around to issuing a show-cause notice proposing disgorgement and then passed an order seven months later. This laidback and indolent approach on the part of SEBI in dealing with the matter needs mention as it does not augur well for a statutory body enjoined with the duty of protecting investors and regulating the securities market which, by its very nature, is volatile, to drag its feet and indulge in unwarranted and unjustified delays.”

37. In this case, as noted above, at least after deciding in terms of advisory direction dated June 24, 2021 and receipt of compliance report dated September 10, 2021 along with CA certificates, it was legitimately expected on the part of SEBI to take expeditious call on compliance status of BACCL. The long pause after receipt of compliance report dated September 10, 2021 when the case was to be examined within the four corners of SEBI DPI Exit Circulars as already decided is beyond legal and regulatory expectation. The time taken at every stage in this matter is apparently unreasonable as contended by Ld. Advocate of Noticees 1-8 and 11 that SEBI's conspicuous silence for over three years after all actions already undertaken and completed and the aforesaid compliance was deemed to be accepted by SEBI as no questions were raised till issuance of the SCN.

38. Further, the 2024 circular states that “...the same shall stand rescinded with effect from 6 months from the date of issue of this circular without prejudice to the operation of anything done or any action taken under the said circulars.” Thereafter, submitting a compliance report on September 10, 2021, falls squarely within the ambit of this protective clause and conspicuous regulatory



acquiescence. It is relevant to mention that Hon'ble Supreme Court, in the matter of *Chairman, State Bank of India v. MJ James*, 2021 SCC OnLine SC 106111, held that acquiescence virtually destroys the right of the person. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance.

39. Further, Noticees 1-8 and 11 have contended that the SEBI circular dated March 13, 2024 rescinds SEBI DPI Exit circulars without prejudice to the actions taken in accordance with the SEBI DPI Exit circulars. With respect to the said contention of the circular dated March 13, 2024 not being retrospective, I find that the SEBI DPI Exit circulars spell out the procedure to deal with cases prior to April 01, 2014 involving offer/allotment of securities to more than 49 up to 200 investors in a financial year. The SEBI circular dated March 13, 2024 repeals the said circulars, inter alia, stating that the SEBI DPI Exit circulars stand rescinded “*without prejudice to the operation of anything done or any action taken under the said circulars.*” This circular in effect stops the benefit of SEBI DPI Exit Circulars after 6 months from March 13, 2024 and saves the case (involving offers to 49 and up to 200 persons) already being dealt with in accordance with the said circulars.
40. Coming to the merits of the case, it is admitted fact that BACCL has already effected refund to 1,314 allottees through cheques (203 allottees holding 1,513 shares), NEFT (71 allottees holding 19,100 shares) and purchase by corporate entities, i.e., AFMPL, Derawala and Krishna Weavers and Dilli Karigari Ltd. (holding 24,387 shares). This refund has been certified by two independent peer reviewed auditors who have stated that Rs. 23,01,956 was refunded to allottees in 2013-14 as against the sum raised of Rs. 13,97,100). Secondly, when the matter came to SEBI, BACCL had already provided exit offer to investors. I also note that the Noticees informed SEBI that the actual number of allottees was 1,314 as against 1,258 informed by RoC to SEBI.
41. In the facts and circumstances as mentioned hereinabove, the case does not deserve any penal action as contemplated in the SCN. However, since Noticees 1-8 and 11 have confirmed refund to allottees



and transfer of allotted shares to 3 corporate entities, i.e., AFMPL, Derawala and Krishna Weavers and Dilli Karigari Ltd. (holding 24,387 shares), remedial and corrective action must be taken. For this purpose, during hearing, Ld. Advocate for Noticees 1-8 and 11 was directed to provide following information with supporting documents: -

- (a) When were the shares allotted to the 3 corporate investors who purchased shares from other investors?
- (b) What was done to the shares that were allotted to persons and surrendered by them to BACCL?
- (c) The details of dividends paid by BACCL along with amount transferred to Investor Education and Protection Fund;
- (d) Whether shareholders who have exited the company are still members as per Register of Members of BACCL?

42. BACCL vide its letter dated July 14, 2025 submitted following information with supporting proof: -

- (a) Artisans Micro Finance Pvt. Ltd., presently known as AFMPL Consultants Pvt. Ltd. ('AFMPL') was allotted 22,050 shares on June 25, 2008. Thereupon, in furtherance of the refund process initiated by BACCL, AFMPL acquired 15,224 shares from individual investors from August 08, 2013 to August 14, 2023 and on December 12, 2023.
- (b) The acquired shares were then transferred to Desert Artisans Handicrafts Pvt. Ltd. , presently known as Derawala Artisans Handicrafts Private Limited ('Derawala') on December 28, 2013. Desert Artisans had also acquired 819 shares from individual investors from December 03, 2013 to December 28, 2013.
- (c) Dilli Karigari Limited ('DKL') had also acquired 6,750 shares from individual investors on December 25, 2013. DKL later merged into Krishna Weavers Ltd.
- (d) the number of shares held by corporate investors on completion of refund process in FY 2012-13 were as follows:

Shareholder Name	Number of shares held
AFMPL	22,050
Derawala	16,043
Krishna Weavers Ltd.	6,750

- (e) These 3 corporate entities were companies framed with the objective of preserving India's artisanal and handloom traditions and their intervention was intended solely to facilitate



structured and dignified exits for those artisans who wished to divest their holdings. The shares transferred to them by original allottees have not been cancelled and are held by them.

- (f) After SEBI's letter dated June 24, 2021, BACCL provided exit option to 14 shareholders. Of these, only 6 responded refusing the offer and 8 did not respond. Out of these, 14 allottees, in impugned issuances – presently 3 are corporate entities, one IPEF and 10 individual shareholders.
- (g) Out of the 10 individual shareholders, 3 have communicated to BACCL in writing that they are not interested in pursuing the exit option and the remaining 7 shareholders had not responded to BACCL.
- (h) The shareholders who exited BACCL are no longer shown as members in the Register of Members of BACCL.
- (i) The shareholders received approximately 180% of their investment amount through the transfers with shares issued at face value of Rs. 100 having been acquired at a price of Rs. 280 per share. The rate of return has been verified by two independent Chartered Accountants and no investor has raised any concern about the refund.

43. BACCL had declared dividends for FY 2011-12 amounting to Rs. 2,25,000. The 62 shareholders did not claim the dividend declared by BACCL and therefore, an amount of Rs. 18,275 was transferred to the unpaid dividend account of BACCL. Thereafter, in accordance with provisions of Section 124 of the Companies Act, 2013, this amount of Rs. 18,275 along with the corresponding 86 equity shares of face value of Rs. 100 each were transferred to Investor Protection and Education Fund on January 08, 2020.

44. Before deciding the corrective measures, I deem it appropriate to examine responsibility of Noticees 2-8 and 11 who are directors of BACCL. Section 42(10) in the Companies Act, 2013 provides that if a company makes an offer or accepts monies in contravention of applicable sections, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty. Section 42(11) which starts with non obstante terms declares that *'Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act*



and the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be applicable.’ This provisions reinforces SEBI’s powers under these referred sections read with section 27 of the SEBI Act. Thus, penal directions can be issued to directors yet refund orders cannot be passed *qua* them as held by Hon. SAT in **G Unnikrishnan Nair Vs. Securities and Exchange Board of India** dated September 27, 2019 in Appeal No: 5 of 2018. In this case, though penal action is not being invoked these directors shall be bound to ensure all corrective measures as directed for BACCL in this order.

45. This is a peculiar case, where the allotments have been made by the BACCL to artisans who were known to the company and its management. Out of all impugned allotments only three were triggering the threshold of 50 allottees. BACCL had made refund to several original allottees who received approximately 280% of their investment amount as shown by BACCL by evidence. Some of the original allottees have sold their shares to the three corporates who, at present, collectively hold 99.65% shares in BACCL. The matter in controversy remains with respect to 14 of the shareholders out of which 6 have refused to take refund and want to remain shareholders of BACCL and their shares cannot be cancelled for this reason alone. These 6 shareholders also include above mentioned 3 corporate entities. Additionally, significant time has lapsed since the shares were allotted/acquired by these shareholders.
46. The 6 shareholders have decided to remain shareholders of BACCL and do not need refund of any monies from it. All the three corporate entities have communicated to BACCL in writing that they are not interested in pursuing the exit option. In view of these facts, BACCL cannot make any refund to these 6 shareholders and their shares cannot be cancelled. Of the 8 shareholders who have not responded to BACCL’s exit options, 7 are individuals and the other is IPEF. In view of these facts, BACCL cannot make any refund to them presently. However, several original allottees, who have been refunded their monies, are not members of the BACCL on its register of members as admitted by it. Hence, their shares for which refund had been made should not form part of capital of BACCL.
47. In view of the peculiar facts and circumstances of this case, in my view, no penal action needs to be taken at this stage in this case. However, remedial directions are warranted in accordance with law.



48. Considering the above facts of this case and directions passed in a similar matter³, I, in exercise of the powers conferred upon me under sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, read with section 19 of the SEBI Act do hereby issue the following remedial directions to Noticees 1-8 and 11:

- a) Make refund to any of the remaining 8 shareholders along with interest of 15% per annum, who approaches them for refund within a period of one year from the date of this order. Present directors of BACCL are directed to ensure compliance of said direction by BACCL.
- b) To cancel, with immediate effect, the securities surrendered to BACCL by original allottees who have exited BACCL and are no longer members as per its Register of Members.

49. I dispose of this SCN accordingly.

50. A copy of this Order shall be sent to all the Noticees and SEBI.

Date: August 29, 2025

Place: Mumbai

**SANTOS
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SHUKLA** Digitally signed by
SANTOSHKUMAR
SHUKLA
Date: 2025.08.29
15:42:25 +05'30'

Santosh Shukla

Quasi Judicial Authority

Securities and Exchange Board of India

³ Final Order in the matter of GCM Securities Ltd. dated September 27, 2022