BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/GN/2024-25/30331-30332]

UNDER SECTION 15-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:

Noticee No.	Noticee Name	PAN
1	Muzali Arts Limited	AACCS6703P
2	Mr. Rohit Raghunath Jadhav, CS	BCJPJ9141H

In the matter of
Muzali Arts Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) examined into the alleged non-compliance of Regulation 160(f) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as **'ICDR Regulations'**) by Muzali Arts Limited (hereinafter referred to as **Noticee 1**) and regulation 6(2)(b) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **LODR Regulations**) by Mr. Rohit Raghunath Jadhav (hereinafter referred to as **Noticee 2**) (Noticee 1 and Noticee 2 hereinafter collectively referred to as **Noticees**).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide communique dated July 03, 2023, appointed Ms. Soma Majumder as Adjudicating Officer to inquire into and adjudge under the provisions of Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act**) for the alleged violations of regulation 160(f) of ICDR regulations by Noticee 1 and Regulation 6(2)(b) of LODR regulations by Noticee 2. Subsequent to the transfer of the case, the undersigned was appointed as an Adjudicating Officer in the matter vide communique dated December 19, 2023.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice (hereinafter referred to as **"SCN"**) dated August 04, 2023 was issued to the Noticees and Supplementary Show Cause Notice (hereinafter referred to as **"SSCN"**) dated March 14, 2024 was issued to the Noticee 2 under rule 4(1) of the SEBI (Procedures for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **SEBI Rules**) to show cause as to why an inquiry should not be held against them in terms of Rule 4 of SEBI Rules read with Section 15-I of SEBI Act and penalty, if any, be not imposed on Noticees under Section 15HB of the SEBI Act.

4. During examination, it was observed that the Noticee 1 made an application for in-principle approval to BSE for the proposed preferential issue of equity shares with a delay of 10 days. In view of the same, it was alleged in the SCN and SSCN that Noticee 1 violated Regulation 160(f) of ICDR Regulations, 2018 and Noticee 2 violated regulation 6(2)(b) of the LODR regulations.

5. The SCN was issued at the last known addresses of Noticees through Speed Post Acknowledgment Due (SPAD) which was delivered to the last known addresses of the Noticees. SCN was also sent through Digitally Signed E-mail dated August 04, 2023 which was delivered and the delivery of the notice is on record. Vide letter dated August 17, 2023, Noticee 1 submitted its reply, the same is summarized below-

   a) *Noticee 1 submitted that its company secretary applied to the BSE for in-principal approval on September 17, 2022 i.e. after 10 days of the dispatch of notice to the shareholders. Noticee 1 acknowledged that the delay was made inadvertently by the company secretary of the Noticee 1.*

   b) *Noticee 1 submitted that it ensured that the interest of the investors should not be adversely affected and only after it received the in principle approval from the BSE, the Noticee 1 utilised the funds till that time the funds were deposited in the share application money account.*

   c) *Noticee 1 submitted that its alleged violation had no market wide impact, has not resulted in causing loss to large number of investors and has not affected the integrity of the securities market.*

6. In addition to the above reply, Noticee 1 submitted that it is opting for settlement mechanism as provided under the Securities and Exchange Board of India (Settlement Proceedings) Regulation, 2018. As the Noticee 1 applied for settlement, further proceedings were kept in abeyance until the completion of settlement proceedings. Vide letter dated November 09, 2023 settlement division of SEBI informed the Noticee 1 to file the revised settlement application within 15 days from the date of receipt of communication, however settlement division received the settlement application by Noticee 1 in April 2024. The settlement application of Noticee 1 was not accepted as the revised settlement application was not filed within the specified time period.

7. Vide hearing notice dated March 01, 2024, opportunity of hearing was provided to Noticees on March 14, 2024. Hearing Notice was issued to the Noticees through SPAD was delivered and Hearing Notice was also sent through Digitally Signed E-mail dated March 01, 2024 which was delivered and the delivery is on record. The authorized representative (**AR**) of Noticee 1 attended the hearing on the schedule day and reiterated the submission made vide reply dated August 17, 2023.

8. As Noticee 2 did not attend the hearing on scheduled day, another opportunity of hearing was provided to Noticee 2 on April 10, 2024 vide hearing notice dated April 03, 2024 and was advised to submit its reply to the SCN and SSCN on or before April 08, 2024. Hearing Notice issued to the Noticee 2 through SPAD was delivered and Hearing Notice was also sent through Digitally Signed E-mail dated April 03, 2024 which was delivered and the delivery is on record.

9. Vide email dated April 06, 2024, Noticee 2 sought extension for submission of reply, in view of the same, extension till April 15, 2024 was provided to Noticee 2 for submission of reply, further vide email dated April 12, 2024 third opportunity of hearing was provided to Noticee 2 on April 18, 2024. Vide email dated April 18, 2024 Noticee 2 submitted its reply, which is summarized below-

   a) *Noticee 2 acknowledged that there was delay in filing the application seeking in-principal approval to the stock exchange, as mandated by regulation 160(f) of the ICDR regulation.*

   b) *Noticee 2 submitted that during the period from September 5, 2022, he was unfortunately afflicted with acute gastritis accompanied by severe symptoms including vomiting and high grade fever. In this situation he informed the management to duly apply for in-principal approval on time. However, the management also missed the same.*

c) *Notice 2 admitted that the administrative lapse regarding the timely filing of the application with the Bombay Stock Exchange (BSE) occurred due to the incapacitating nature of his illness.*

d) *Noticee 2 further acknowledged that as a Company Secretary, it is incumbent upon him to ensure strict compliance with all regulatory requirements, irrespective of personal circumstances.*

e) *Noticee 2 submitted that no disproportionate gain or unfair advantage, wherever quantifiable, made and no amount of loss caused to the investor or group of investors as a result of the delay.*

10. The authorized representative (**AR**) of the Noticee 2 attended the hearing on the schedule day. AR reiterated the submission made vide email dated April 18, 2024 and further sought time till April 23, 2024 for making the additional submission of document. Vide email dated April 23, 2024, Noticee 2 submitted the copy of the letter dated September 06, 2022 sent by Noticee 2 to the Managing Director of Noticee 1 stating the following and the letter was acknowledged by the managing director of the Noticee 1-

"I regret to inform you that due to a sudden medical emergency, I am unable to perform my duties as company secretary for the time being. To ensure compliance, I recommend delegating my responsibilities to a designated individual; or team. I will provide documentation and support remotely as needed." –

<u>ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS</u>

11. I have taken into consideration the facts and circumstances of the case and the material available on record. The issues that arise for consideration in the present case are:

ISSUE I: (a) Whether Noticee 1 violated the Regulation 160(f) of ICDR Regulations, 2018?

(b) Whether Noticee 2 violated the Regulation 6(2)(b) of LODR Regulations, 2015?

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under Section 15HB of SEBI Act?

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

12. Before proceeding further, it will be appropriate to refer to the relevant provisions:

ICDR Regulation, 2018

Conditions for preferential issue

Regulation 160 - *A listed issuer making a preferential issue of specified securities shall ensure that:*

(f) 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

LODR Regulation, 2015

Compliance Officer and his/her Obligations.

Regulation 6(2) - *The compliance officer of the listed entity shall be responsible for-*

(b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.

FINDINGS

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

ISSUE I: (a) Whether Noticee 1 violated the Regulation 160(f) of SEBI (ICDR) Regulations, 2018?

14. It was observed that the Noticee 1 delayed in making application for in-principal approval to BSE for the preferential allotment of equity shares, within the stipulated time as prescribed under the provision of regulation 160(f) of ICDR regulations, 2018. Therefore, it is alleged in the SCN that Noticee 1 violated regulation 160(f) of ICDR Regulations, 2018.

15. Noticee 1 in reply to the SCN, vide letter dated August 17, 2023 admitted that they applied to the BSE for in-principal approval on September 17, 2022 i.e. after 10 days of the dispatch of notice to the shareholders and the delay was made inadvertently.

16. Regulation 160(f) of the ICDR regulations, 2018 provides that the listed issuer making a preferential issue of specified securities shall ensure that the issuer has made an application seeking in-principal 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.

17. I observe from the material available before me that Noticee 1 had proposed a preferential allotment of equity shares to the non-promoters and the same was approved in the meeting of Board of Directors of the company held on September 07, 2022 and also approved by shareholders of the company in Annual General Meeting (AGM) held on September 30, 2022. The dispatch of the notice to the shareholders was completed on September 07, 2022. As per regulation 160(f) of the ICDR regulations, 2018, Noticee 1 was required to apply to BSE for in principal approval on the same day when the notice has been sent in respect of general meeting seeking shareholders' approval i.e. on September 07, 2022 however, Noticee 1 applied for in-principle approval to BSE on September 17, 2022, which was 10 days after the completion of dispatch of the said notice. Therefore, I observe that there was a delay of 10 days in making an application for in-principle approval to BSE by Noticee 1 for preferential allotment of equity shares within the stipulated time as prescribed under the regulation 160(f) of ICDR regulations, 2018.

18. In view of the above, it is established that Noticee 1 has violated regulation 160(f) of the SEBI (ICDR) regulations, 2018.

b) Whether Noticee 2 violated the Regulation 6(2)(b) of SEBI (LODR) Regulations, 2015?

19. It was observed that Noticee 2 failed to ensure co-ordination with and reporting to the recognized stock exchange with respect to compliance with regulations 160(f) of ICDR regulations, 2018 by Noticee 1. Therefore, it was alleged in the SCN and SSCN that Noticee 2 violated regulation 6(2)(b) of LODR regulations, 2015

20. Noticee 2 in reply to the SCN, acknowledged the delay in filing the application seeking in principle approval to the stock exchange and submitted that he was suffering from medical

emergencies during the period from September 05, 2022 to September 14, 2022. Further vide letter dated September 06, 2022 Noticee 2 informed the managing director of Noticee 1 that he is unable to perform his duties as company secretary for the time being.

21. Regulation 6(2)(b) of the LODR regulations, 2015 provides that the compliance officer of the listed entity shall be responsible for the co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.

22. I observe from the material available before me that the application for in principal approval to BSE for the proposed preferential allotment of equity shares had to be made on September 07, 2022 by Noticee 2 as the compliance officer of the Noticee 1. However, Noticee 2 fell ill on September 05, 2022 and was advised to rest from September 05, 2022 to September 14, 2022 and thus could not make the required application. I note that vide letter dated September 06, 2022, Noticee 2 informed the managing director of Noticee 1 that he is unable to perform his duties as company secretary for the time being due to a sudden medical emergency and to ensure compliance Noticee 2 recommended to Noticee 1 to delegate his responsibilities to a designated individual or team and the same was acknowledged by the managing director of Noticee 1. However, Noticee 1 still did not take any step for making the application for requisite in principle approval to the stock exchange. I observe that Noticee 2 by intimating Noticee 1 of his inability to carry out his function as company secretary on medical ground had taken steps to ensure that necessary compliance is done in his absence.

23. In view of the above, I find that the allegation against the Noticee 2 as mentioned in the SCN and SSCN does not stand established.

ISSUE II: Does the violation, if any, on part of the Noticee 1 attract penalty under Section 15HB of SEBI Act?

24. It has been established in the foregoing paragraphs that the Noticee 1 has violated regulation 160(f) of the ICDR regulations, 2018. In context of the above, I would refer to Judgment of the Hon’ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}, in which Hon’ble Supreme Court has 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 and hence the intention of the parties committing such violation becomes wholly irrelevant..............."

25. Thus, I am of the view that it is a fit case for penalty under section 15HB of the SEBI Act, which reads as given below:

Section 15HB – Penalty for contravention where no separate penalty has been provided.

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.]

ISSUE III: If so, how much penalty should be imposed on the Noticee 1 taking into consideration the factors mentioned in Section 15J of the SEBI Act?

26. While determining the quantum of penalty under sections 15HB of the SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

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."

27. I would like to also refer to the judgment 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."*

28. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, I note that the material made available

on record does not quantify the amount of disproportionate gain or unfair advantage obtained by the Noticee 1 or loss caused to investors as a result of the default nor it has been alleged by SEBI. I also note from the records that Noticee 1 has not been penalized by SEBI in past and thus do not bring out any repetitive default on the part of the Noticee 1. However, the delay on the part of the Noticee 1 in seeking in-principle approval of stock exchange for listing the securities resulted in not taking adequate steps as mandated by the Regulations. Hence, the violation warrants imposition of monetary penalty.

ORDER

29. Having considered the facts and circumstances of the case, the material available on record, the submissions made by the Noticee 1, the factors mentioned in Section 15J of the SEBI Act, and also taking into account judgment of the Hon'ble Supreme Court in *SEBI vs. Bhavesh Pabari (2019) 5 SCC 90* and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HB of the SEBI Act, 1992 on the Noticee 1:

S. No.	Name of entity	Penalty Provisions	Penalty (Rs.)
1	Muzali Arts Limited (PAN:- AACCS6703P)	15HB of SEBI Act, 1992	₹ 2,00,000/- (Rupees Two Lakh Only)

30. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee 1.

31. The Noticee 1 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

32. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

33. In terms of the provisions of rule 6 of the SEBI Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai	**BARNALI MUKHERJEE**
Date: May 13, 2024	**ADJUDICATING OFFICER**