

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SBM/KL/2021-22/12900]

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

**Ashmi Financial Consultancy Private Limited
(PAN: AAECA8167F)
CIN No: U67190GJ2004PTC054995**

In the matter of
IPO Investigations

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the irregularities observed in connection with the Initial Public Offering ('**IPOs**') of several companies during the period 2003-2005. The investigation observed that several persons/entities had cornered / acquired the shares in various IPOs of the companies during the above period by financing several other entities (hereinafter referred to as 'Key Operators'), who made fictitious applications in the category reserved for the retail investors through the medium of thousands of fictitious / benami applicants for the IPOs of various companies during the period 2003-2005. It was observed that Ashmi Financial Consultancy Private Limited (hereinafter referred to as '**Ashmi**' / '**Noticee**') was one such key financier who had, allegedly, cornered the shares of the IPOs of the companies through the key operators. In view of the same, it was alleged that the Noticee has violated the provisions of Section 12A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), Regulation 3, 4 and 6 of SEBI (Prohibition of Fraudulent and Unfair Trade



Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as '**PFUTP Regulations, 1995**') read with Regulation 3 and 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations, 2003**').

2. In view of the above observations, adjudication proceedings were initiated against the Noticee under the provisions of section 15 HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer ('**AO**') in the matter vide communique dated June 22, 2015 to conduct the adjudication proceedings in the manner specified under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') against the Noticee and impose such penalty on the Noticee, as deemed fit, in terms of Rule 5 of the Adjudication Rules and Section 15HA of the SEBI Act. In this regard, from the records made available, it is observed that, Shri Biju S. was initially appointed as the Adjudicating Officer in the matter under the provisions of the Adjudication Rules to conduct the adjudication proceedings for the alleged violations committed by the Noticee. Pursuant to the transfer of Shri Biju S, Shri Satya Ranjan Prasad was appointed as the Adjudicating Officer vide Order dated May 05, 2009. On transfer of Shri Satya Ranjan Prasad, Shri D. Ravi Kumar was appointed as the Adjudicating Officer in the matter, vide communiqué dated May 22, 2012.

SHOW CAUSE NOTICE. REPLY AND HEARING

4. Show Cause Notice ref. A&E/BS/69527/2006 dated June 16, 2006 (hereinafter referred to as '**SCN**') and a Supplementary Show Cause notice ref: EAD-1/SRP/DL/OW/16623/2011 dated May 25, 2011 (hereinafter referred to as '**Supplementary SCN**') were issued to the Noticee under Rule



4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and penalty be not imposed on it under the provisions of Section 15HA of the SEBI Act for the alleged violation of the provisions of Section 12A of the SEBI Act and Regulation 3, 4 and 6 of PFUTP Regulations, 1995, read with Regulation 3 and 4 of PFUTP Regulations, 2003 by the Noticee. In the context of the present proceedings, the SCN and Supplementary SCN which were issued to the Noticee are hereinafter collectively referred to as '**SCNs**'.

5. The details in respect of the violation / non-compliance by the Noticee, as alleged in the SCNs are as under:

- a) *Ashmi- was identified as financier for three Key operators i.e. Dhaval K Katakia, Dharmesh Bhupendr and Dhaval Mehta, in the IPO of IDFC and Shopper Stop Ltd. It is seen that Ashmi provided finances to these key operators around the closure of IPO, which exactly corresponded with the application money in respect of set of applications. Thereafter, corresponding shares in respect of set of applications funded by the financiers along with refund money was received back by financiers.*
- b) *Ashmi extended loan of Rs. 71,40,000/- Dhaval Katakia on July 27, 2005 which exactly corresponds to 150 applications at the rate of Rs. 47,600/- each (150 * 47,600). The timing of the loan coincides during the currency of IPO (The IPO of IDFC was opened on July 22, 2005 and closed on July 27, 2005.) which suggests that it was specifically given to Dhaval for making 150 IDFC IPO applications in the retail category.*
- c) *Thus, from the above, it is clearly seen that the application money of Rs. 71,40,000 and the corresponding refund money of Rs. 57,83,400 exactly corresponds for 150 applications of Rs. 47,600 each and the timing of the disbursement and repayment also corresponds with the timing of the IPO and also the refund date. Such a coincidence cannot be considered merely accidental as such coincidence can be possible only when it is coordinated and pre-planned or with prior understanding. In light of the two parameters already reconciled, the question would be regarding the allotted shares. As corresponding allotment money has also been paid by the Ashmi as could be seen from the disbursement, it is quite but natural that Ashmi will have right/ claim over such shares and therefore as a part of the scheme, the share will go to Ashmi.*
- d) *You are, therefore, called upon to show cause as to why an inquiry be not*



held against you in terms of rule 4 of the Rules read with section 151 of SEBI Act and penalty be not imposed under section 15HA of SEBI Act for the aforesaid alleged contravention/ violation of the provisions of the SEBI Act and PFUTP Regulations.

6. In the context of the present proceeding, I note that pursuant to the SCN dated June 16, 2006, the Noticee had filed an application before SEBI seeking a Consent Order in the matter, which was subsequently rejected by the concerned Department of SEBI and intimation to this effect was also communicated to the Noticee vide letter dated March 28, 2011. On rejection of the aforementioned consent application, the adjudication proceedings were continued against the Noticee. Thereafter, from the material made available on record, it is noted that further examination in the matter was carried out by SEBI and a supplementary examination report was also submitted, which had brought out additional allegations/observations against the Noticee. The supplementary SCN dated May 25, 2011 was issued to the Noticee on the basis of the additional findings/observations against the Noticee. I find that the SCNs were served on the Noticee. The Noticee vide its letters dated March 12, 2007 and May 13, 2009, submitted the reply to the SCN and denied its role in the manipulation alleged against it in the SCN. Further, pursuant to the issuance of the supplementary SCN to the Noticee, it was informed by the concerned department of SEBI that the Noticee had filed a consent application in the matter.
7. Subsequently, pursuant to the appointment of the undersigned as an the Adjudicating officer in the matter, a letter was also issued to the Noticee informing it about the change in Adjudicating Officer and the Noticee was also advised to submit its reply in the matter. It is however observed from the records that Noticee has failed to submit its reply to the aforesaid letter. Thereafter, the concerned department of SEBI was requested to provide the status of the consent application filed by the Noticee in the matter. As per the information submitted by the department, vide its communication dated July 06, 2021, it has been informed that the consent application filed by the Noticee has been rejected. It was further mentioned by the department that as on date no settlement application filed by the Noticee in the said matter is pending with SEBI.



8. During the course of the proceedings, the details of the Noticee were examined from the Ministry of Corporate Affairs (MCA) website. It was observed from the ROC website that vide notice ref. no: ROC/AHMD/248(5)/STK-7/PUB/1/2018 dated 14.08.2018, the name of the Noticee has been struck-off from the list of companies by the Registrar of Companies, Ahmedabad (RoC) as on August 06, 2018. As per the Notice of Striking Off and Dissolution list (Form No. STK-7), which was downloaded from the MCA website, a list of 5408 companies were attached as per the Notification issued by ROC, Ahmedabad in terms of sub-sections (5) of Section 248 of the Companies Act, 2013 and rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. I find that the name of the Noticee was mentioned in the said list (at sl.no. 527 under CIN No U67190GJ2004PTC054995). The Notification downloaded from the Ministry of Corporate Affairs (MCA), Government of India, (www.mca.gov.in) website inter alia, mentioned the following:

In the matter of Companies Act, 2013 and the following companies in table "A" (List of 5408 Cos.)

This is with respect to this Office's Notice No. 248(1)2018 dated 09.05.2018 and notice in the form STK 5 issued on dated 10.05.2018. Notice is hereby that pursuant to sub-section (5) of Section 248 of the Companies Act, 2013 the name of following companies in table "A" have this day of 06th August, 2018 been Struck of the register of companies in table "A" have this day of 06th August, 2018 been Struck off the register of companies and the said Companies are dissolved.

9. Further, the details of the Noticee as mentioned by it in Form 20B i.e the relevant Annual Returns form submitted by the Noticee to the ROC in terms of section 159 of the Companies Act, 1956 was verified with the details captured in the 'Company Master Data' as available on the website of MCA and the following observations are made :-
- The e-mail ID of the Noticee/company mentioned in Form 20B matched with the 'company master data' i.e rsparmaar31@rediffmaail.com



- The Authorized Capital of the Noticee/company mentioned in both the forms and also in other documents made available on record was 10,000 shares (value of Rs 1,00,000)
 - The address of the company/Noticee mentioned in both the forms matched.
 - The names of the directors that were mentioned in both forms and also in other records made available also matched i.e Rameshbhai Sanabhai Parmar and Arunkumar Kacharalal Mehta.
 - The Directors Identification no. (DIN) of the above directors mentioned in the above two forms and also in the other records/material made available also matched.
 - The date of incorporation of the Noticee/company mentioned in the various IT filings made by it also matched with the 'Company master data' as per the MCA Website.
10. It is an established fact that when a company's name is struck-off from the RoC list and the company is also dissolved, then it is a non-existing company and the adjudication proceedings against the non-existing company is thus nullity. In this context, I would like to draw reference to a judgment of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax (CIT) vs Vived Marketing Services (P) Ltd., ITA NO. 273/2009 dated September 17, 2009 in which it was held that - *"When the Assessing Officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of companies under Section 560 of the Companies Act. In these circumstances, the Tribunal rightly held that there could not have been any assessment order passed against the company which was not in existence as on that date in the eyes of law it had already been dissolved. We are of the opinion that the view taken by the Tribunal is perfectly valid and in accordance with law."*
11. Further, Black's Law Dictionary explains 'dissolution' as termination or winding up. It further clarifies that the dissolution of a corporation is the termination of its legal existence. Strike off essentially means removing the name of the company from the Register maintained by the Registrar of Companies. It is like closure of the company and the company will not be in



existence after being struck- off and cannot perform any operations.

- 12 It is pertinent to note that in the context of the alleged irregularities observed in the IPOs of various companies, I find that in exercise of the powers conferred under sections 11(1), 11(4) & 11 B of the SEBI Act, the Noticee along with other entities were already restrained by SEBI vide Order dated April 7, 2011 from accessing the securities market and further, the Order has also directed disgorgement of the ill-gotten gains made by the Noticee in the matter. I note that, vide the said order, the Noticee was prohibited from buying, selling or dealing in securities in any manner whatsoever, for a period of three months and was also directed to disgorge an amount of Rs. 1,23,55,840/-.
- 13 Therefore, in view of the above facts and circumstances and also considering that the Noticee's name has been struck-off from the RoC list and also 'dissolved' as on August 06, 2018 as per the RoC notification, I conclude that the present adjudication proceedings initiated against the Noticee cannot be proceeded with.

ORDER

- 14 In view of the above observations/findings and in exercise of the powers conferred upon me under section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings against the Noticee viz. Ashmi Financial Consultancy Private Limited initiated vide SCNs dated June 16, 2006 and May 25, 2011.
- 15 In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticee, viz., Ashmi Financial Consultancy Private Limited and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: July 30, 2021



SURESH B MENON
ADJUDICATING OFFICER