

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

IN RESPECT OF **SEBI ORDER DATED OCTOBER 27, 2020** AND THE **HON'BLE SAT ORDER DATED APRIL 25, 2023**

IN THE MATTER OF **GDR ISSUE (2008) OF BECKONS INDUSTRIES LTD.**

IN RESPECT OF:

NOTICEE	PAN
CHANDRA PRAKASH	AHBPM1644G

BACKGROUND:

1. Securities and Exchange Board of India (“**SEBI**”) had passed an *Order* dated October 27, 2020 (“**SEBI Order**”) in respect of Global Depository Receipts (“**GDRs**”) issued by Beckons Industries Ltd. (“**Beckons /the Company**”) in 2008. Vide the aforesaid Orders, it was directed as under:
 - a) *Noticee no. 1, the Company, is restrained from accessing the securities market including by issuing prospectus, offer document or advertisement soliciting money from the public and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period 5 years from the date of this order.*
 - b) *The following Noticees are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, from the date of this order, for the period as directed below:*

Names of Noticees	PAN	(Period in Year)
Mr. Gurmeet Singh	ABRPS0882N	02
Mr. I. S. Sukhija	AGEPS8345J	01
Dr. Chandra Prakash	AHBPM1644G	01

2. I.S. Sukhija preferred an appeal against the SEBI Order before the Hon'ble Securities Appellate Tribunal ("**SAT**") and the Tribunal vide Order¹ dated September 20, 2021, allowed the appeal and set aside the directions in the SEBI Order qua the appellant. Subsequently, Chandra Prakash, the Noticee in the present proceedings, also preferred an appeal against the SEBI Order. The Hon'ble SAT after considering the appeal noted that the Show Cause Notice ("**SCN**") issued by SEBI in the matter was not duly served on the Noticee and therefore vide Order² dated April 25, 2023, directed as under:

"The appeals are allowed at the admission stage. The matter is remitted to the authority concerned to pass a fresh order after serving the show cause notice and after providing an opportunity of hearing."

3. In compliance with the directions of the Hon'ble SAT, the Noticee was granted an opportunity of personal hearing on June 21, 2023. The Noticee also submitted written submissions dated May 25, 2023. The summary of the oral and written submissions made on behalf of the Noticee is given below:
- a. The Noticee is currently 79 years old.
 - b. The Noticee has had a distinguished career till date without any blemish on his record.
 - c. The Noticee was a Non-Executive Independent Director during the period when the GDR issues were granted approval by the Board of the Company. The Ministry of Corporate Affairs vide Circular No.1 of 2020, has provided that an independent director is only liable for acts of omissions or commission by the company which had occurred with his knowledge or consent or connivance or where he had not acted diligently attributable through Board processes.

¹ Appeal No. 408 of 2020

² Appeal No. 321 of 2023

- d. It was canvassed on behalf of the Noticee that the communication of disclosures to BSE and any alleged fraud cannot be ascribed to him as he had acted only in the capacity of a Non-Executive Independent Director and, as such, had no involvement in day-to-day management and affairs of the company.
- e. It was also contended that the scheme of Sections 12A (a), (b) and (c) of the SEBI Act, 1992 ("**SEBI Act**") and Regulations 3 (a), (b), (c), (d) and Regulations 4(1) of the (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**"), necessarily includes dealing in securities as an essential ingredient. It was submitted that these requirements are not met in the present case and as such, the charges against ought to be set aside.
- f. The Noticee further submitted that the findings of the Hon'ble SAT in the case of ***I. S. Sukhija v. SEBI (supra)*** are binding on SEBI. It was submitted that the Hon'ble SAT in its Order dated April 25, 2023, held that the observations in the aforementioned case should be taken into account in this proceeding. It was contended that in the said matter, another Non-Executive Independent Director (who was also the Chairman of the Audit Committee), who served along with Noticee on the Board of Company and approved the GDRs, was discharged from any liability by the Tribunal.

CONSIDERATION

4. I have considered the Orders of the Hon'ble SAT in the matters of ***I. S. Sukhija v. SEBI (supra)*** and ***Dr. Chandra Prakash v. SEBI (supra)***, the SEBI Order dated October 27, 2020, the SCN issued in the matter and the written and oral submissions made on behalf of the Noticee. Before I proceed to examine the matter on merits, it would be appropriate to briefly capture the specific contraventions alleged against the Noticee in the SCN.
 - a. Beckons had issued 1.44 million GDR for USD 5 million (approximately Rs. 21.57 Crore) on July 11, 2008. It was noted during the SEBI

investigation that the entire offering was subscribed by just one entity, viz. Vintage FZE (“**Vintage**”). A loan was availed by Vintage from Euram Bank, Austria (“**Euram Bank**”) to subscribe to the GDRs issued by Beckons and the Company had placed the proceeds of the very same issue as collateral for the aforesaid loan obtained by Vintage. Beckons also entered into a Pledge Agreement dated May 30, 2008 (“**Pledge Agreement**”) with Euram Bank for pledging the proceeds of the GDR issue as collateral for the aforesaid loan.

- b. The Investigation conducted by SEBI noted that the Independent Directors of Beckons, which included the Noticee and I.S. Sukhija, were signatories to the Board Resolution authorising the Company to enter into the Pledge Agreement. Further, they had also participated in the Board Meeting which authorised the opening of an account with Euram Bank for the purpose of depositing the proceeds of the GDR issue. Given the same, the SEBI Order had restrained I. S. Sukhija and Chandra Prakash (Noticee) from accessing the securities market and further prohibited them from buying, selling or otherwise dealing in securities in any manner for a period one year from the date of the Order.
5. As stated earlier, I.S. Sukhija had preferred an appeal against the SEBI Order and the Hon’ble SAT had quashed the directions against him. It was held by the Hon’ble SAT that:

“Merely because Mr. I.S. Sukhija was the Chairman of the Audit Committee does not mean that he was party to the fraudulent scheme, if any. The observations made by the authorities in the impugned orders that he should have raised questions as to why the GDR proceeds was not brought into the Company’s account or why the loan was given to Vintage from the GDR proceeds are not matters which comes under the purview of the audit committee. In any case, we find that there was no need to raise such questions as the loan in one case was paid immediately and in the other case was paid within a couple of months.”

Further, the evidence which has come on record indicates that the GDR proceeds were utilized for the purpose for which the resolution for issuance of the GDR was passed. Thus, the finding of the authorities that a fraud has committed by the Company is patently erroneous. When the proceeds have come into the Company and have been utilized for the purpose of setting up a subsidiary in UAE the funds have been utilized for the purpose for which the GDR was issued. Thus, in our view merely because the appellant Mr. I.S. Sukhija was part of the resolution which approved the issuance of the GDR and opening of a bank account with Euram Bank does not lead to a conclusion that the appellant was part of the scheme of the alleged fraud which in any case was not in existence. Thus, imposition of penalty by the AO and debarment by the WTM was wholly erroneous on this appellant.

6. Subsequently, while disposing the appeal filed by the Noticee and remanding the matter back to SEBI for fresh consideration, the Hon'ble SAT had noted that SEBI will consider the directions passed in the ***I.S. Sukhija matter*** while considering the present remand. It is noted from the records that that even though SEBI has preferred an appeal before the Hon'ble Supreme Court (***C.A. No. 802-804 of 2022***) against SAT Order dated September 20, 2021, there is no order staying the operation of the SAT Order.
7. As stated earlier, Hon'ble SAT in its Order in the ***I.S. Sukhija matter*** held that as the funds that were raised through the GDR Issue had come back to the Company, the finding in the SEBI Order pertaining to fraud would not stand. The Tribunal further specifically held that just because I.S. Sukhija was a signatory to the resolution which approved the issuance of GDR and opening of the bank account with Euram Bank, it cannot be concluded that he was part of a fraudulent scheme, if any.

8. It is also noted that the direction issued against the Noticee vide the SEBI Order was to restrain him from accessing the securities market and further prohibit him from buying, selling or otherwise dealing in securities for a period of one year. It is noted from the records that this period had expired prior to the Noticee filing an appeal before the Hon'ble SAT.
9. Given the above, nothing survives in the present proceedings and they are liable to be concluded without any further directions.

DIRECTIONS

10. I, in exercise of the powers conferred upon me under Section 19 read with Sections 11, 11(4) and 11B of the SEBI Act, hereby conclude the proceedings initiated against the Noticee without any further directions.
11. A copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action.

Date: January 31, 2024

Place: Mumbai

**ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**