BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. PM/NR/2020-21/9398

UNDER SECTION 23I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956, SECTION15I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,1992 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIE) RULES, 2005 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES,1995

In respect of

Paramount Printpackaging Limited

(PAN: AADCP8527D)

BACKGROUND OF THE CASE

1. Paramount Printpackaging Ltd., (hereinafter referred to as “PPL” / “Noticee” / “Company”) came out with an Initial Public Offer (“IPO”) of 1,30,94,175 equity shares to the public in the price band of ₹32/- to ₹35/- per equity share of face value of ₹10/- each. The issue opened for subscription from April 20, 2011 to April 25, 2011 and its shares were listed on May 09, 2011. The issue price was ₹35/- per equity share aggregating to ₹4,582.96 Lakhs. On the listing day, the price of the scrip opened at ₹35.00 at 09:15:00 hrs., and was in the range of ₹35.00 to ₹37.50 until 13:56:26 hrs., and thereafter started falling sharply from 13:56:27 hrs., and reached its intraday low ₹24.60 at 15:29:46 hrs., and closed at ₹26.65. In view of above, Securities and Exchange Board of India (“SEBI”) carried out an investigation into the IPO of equity shares by PPL. The day of listing of the scrip of PPL i.e. May 09, 2011 was taken as the investigation period.

2. The objects of the issue and cost of project as estimated by the management as disclosed in the Prospectus were as under:

Sl. No.	Objects of the issue	Funds required (₹in Lacs)
A.	Setting up new facility for manufacturing high end duplex board cartons, Shippers and printed corrugated box at Gujarat	3,194.27
B.	Augmenting Long Term Working Capital Requirement	495.82
C.	General Corporate Purpose	338.87
D.	Issue expenses	554.00
	Total	**4,582.96**

3. The details of utilization of IPO proceeds as submitted by the company vide its letter dated February 06, 2013 were analyzed and upon analysis it was observed that the Company had utilized only ₹357.90 lakhs towards objects stated in the prospectus and the balance ₹4225.07 lakhs was not utilized for the objects stated in the prospectus. Further, out of ₹4,225.07 lakhs, ₹3,887.46 lakhs were diverted to different entities in the guise of making payments towards the objects stated in the prospectus either on the day of receipt of funds or within a few days thereof. It was also alleged that PPL had a pre-determined plan to transfer the IPO proceeds to different vendors including the vendors whose names were not disclosed in the prospectus, on receipt of funds from public issue accounts. Thus, PPL allegedly devised fraudulent scheme or device to mis-utilize/ divert the IPO proceeds. It was further alleged that PPL provided wrong disclosures in Prospectus/RHP, as it never intended to utilize the IPO proceeds for the Objects stated in the prospectus and diverted the IPO proceeds to vendors including those whose names were not mentioned in the prospectus. PPL allegedly also failed to disclose material information, which is true and adequate so as to enable the applicants of IPO to take an informed investment decision. These false, misleading and inadequate disclosures in the RHP / Prospectus allegedly misled and defrauded the investors in securities market in connection with the issue of shares of PPL. By the said conduct on the part of PPL, it allegedly caused

publication of misleading information in the RHP/Prospectus thus influencing investors to purchase the shares of the company. Further, the disclosures on utilization of IPO proceeds, which have been provided by the company in the notes to the financial results for each of the quarters during June 2011 until December 2012 was not true and the same is misleading and contains information in a distorted manner, which may influence the decision of the investors. Further as required under clause 43A, the company has not furnished to the stock exchange on a quarterly basis, a statement indicating material deviations in the use of proceeds of public issue.

4. In view of the above findings of investigation, it is alleged that the Noticee has violated the provisions of Regulations 57(1) and 57(2)(a) read with Clause 2 (XVI)(B)(2) of part A of Schedule VIII and 60(7)(a) of the SEBI (ICDR) Regulations, 2009 and Section 12A (a), (b), (c) of SEBI Act,1992 and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003 and Clause 43A of the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956.

APPOINTMENT OF ADJUDICATING OFFICER

5. Based on the findings of investigation, SEBI initiated Adjudication proceedings against the Noticee and appointed the undersigned as Adjudicating Officer vide Order dated July 5, 2017, under Sub-section (1) of Section 23-I of SCRA and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as ***"SCR Adjudication Rules")*** and under Section 19 read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred to as "***SEBI Adjudication Rules***") to inquire into and adjudge the alleged violations committed by the Noticee under Section 23E of SCRA and Section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. EAD/AO-PM/NK/12676/2018 dated April 26, 2018 was issued to the Noticee under Rule 4 of SCR Adjudication Rules and SEBI Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the SCR Adjudication Rules and SEBI Adjudication Rules and penalty be not imposed under Section 23E of SCRA and Section 15HA of the SEBI Act, 1992, for the violations alleged to have been committed by it. I note that the SCN sent by Speed Post to the Noticee returned undelivered. Thereafter, the SCN was sent by email to the Noticee under Rule 7 (b) of SCR Adjudication Rules and SEBI Adjudication Rules on August 27, 2020 requiring the Noticee to furnish its reply, if any, by September 15, 2020, besides providing with an opportunity of hearing on September 18, 2020. I note that the email sent to the Noticee did not bounce. In view of the prevailing circumstances owing to Covid-19 pandemic, the hearing was scheduled through video conferencing on Webex platform on September 18, 2020 and accordingly the login credentials were sent to the Noticee. However, I note that the Noticee neither submitted its reply nor appeared for the hearing. Further, the SCN addressed to the Noticee was sent to Shri Divyesh Sukhadia, Managing Director of the Company vide email dated September 25, 2020, whereby an opportunity of hearing was accorded through videoconferencing on October 8, 2020. Vide email dated September 29, 2020, Shri Divyesh Sukhadia submitted that PPL is presently under liquidation and in view of the same, Adjudication proceedings instituted against the Company in some other matter have been dropped and requested that the same view be taken for the instant proceedings.

7. Taking into account the submissions made by Shri Divyesh Sukhadia on behalf of the Noticee, I now proceed further in the matter.

CONSIDERATION OF ISSUES

8. I have carefully perused the charges levelled against the Noticee, submissions and the documents / evidence available on record. The issues that arise for consideration in the present case are :

   (a) Whether the Noticee has violated the provisions of Regulations 57(1) and 57(2)(a) read with Clause 2 (XVI)(B)(2) of part A of Schedule VIII and 60(7)(a) of the SEBI (ICDR) Regulations, 2009 and Section 12A (a), (b), (c) of SEBI Act,1992 and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003 and Clause 43A of the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956?

   (b) Does the violation, if any, attract monetary penalty under Section 23E of SCRA and Section 15HA of the SEBI Act?

   (c) If yes, what should be the quantum of penalty?

9. I note that the status of the Noticee is mentioned as 'Under Liquidation' on the website of Ministry of Company Affairs. Before proceeding further in the matter on its merit, it would be in the fitness of the thing to first decide the preliminary issue as to whether the adjudication proceedings initiated by SEBI against the Noticee would continue. I find from the documents available on record that the Hon'ble High Court of Bombay had passed an order of liquidation against the Noticee on January 25, 2018 in the Company Petition No. 710 of 2014 and the Official Liquidator of Hon'ble High Court of Bombay has been appointed as liquidator of the Noticee.

10. In this regard, it will be appropriate to refer to provisions of Section 446 of the Companies Act, 1956 and corresponding provisions of Section 279 of the Companies Act, 2013. The said provisions are reproduced as under:

Section 446 of the Companies Act, 1956

Suits stayed on winding up order.

(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.

(2) The court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of -

(a) any suit or proceeding by or against the company ;

(b) any claim made by or against the company (including claims by or against any of its branches in India) ;

(c) any application made under section 391 by or in respect of the company ;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company; whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.

(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court.

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a high Court

Section 279 of the Companies Act, 2013

Stay of suits, etc., on winding up order.—

(1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may

impose: Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."

11. I note that the provisions of Section 279 of the Companies Act, 2013 are *pari materia* the provisions of Section 446 of the Companies Act, 1956 in so far as the commencement or continuation of any 'other legal proceedings', after appointment of official liquidator, are concerned. In this regard, I note that the submissions made on behalf of the Noticee rely on the observations of Hon'ble High Court of Bombay, in the case of Deutsche Bank v. S.P. Kala {(1990) 67 Com. Cases}, wherein it was held that –

"Section 446 of the Companies Act provides that, when a winding up order is made or the official liquidator is appointed as provisional liquidator, no suit or legal proceedings should be commenced or if pending on the date of the winding-up order, shall be proceeded with, against the company, except with the leave of the court and subject to such terms as may be imposed. Subsection (2) further lays down that the court which is winding-up the company shall, notwithstanding anything contained in any other law in force, have jurisdiction to entertain or dispose of, inter alia, any suit or proceeding by or against the company, whether such suit or proceeding has been instituted or is instituted. A careful examination of these provisions of law makes it clear that once a winding-up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any suit or proceeding by or against the company is vested in the company court without any kind of restriction…….. The expression "any suit or proceeding by or against the company" is wide enough to bring within its sweep any kind of suits."

12. I note from above that it is mandatory and a pre-condition to obtain the leave of Hon'ble Court / Tribunal for commencing the instant proceedings against the Noticee, which is under liquidation in terms of aforesaid order dated January 25, 2018 passed by Hon'ble High Court of Bombay. I note that there

is no material on record to suggest that leave of Hon'ble Court has been taken in the instant proceedings.

ORDER

13. In view of the facts mentioned in the preceding paragraphs, I am of the view that the adjudication proceedings initiated against Noticee vide SCN dated April 26, 2018 cannot be proceeded with. The matter is, accordingly, disposed of.

14. In terms of the provisions of Rule 6 of the SCR Adjudication Rules and SEBI Adjudication Rules, a copy of this order is being sent to the Noticee viz., Paramount Printpackaging Ltd., and to SEBI.

Date: 14 October 2020 **PRASANTA MAHAPATRA**
Place: Mumbai **ADJUDICATING OFFICER**