WTM/SM/EFD1/DRA4/13476/2021–22

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF SECUNDERABAD HEALTHCARE LIMITED

In respect of

Serial No.	Name of the Noticee	PAN
1.	Gilani Infra Private Limited (formerly known as Hamraj Fashions Consultants Private Limited)	AACCH2998F

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") passed an order dated April 30, 2021(hereinafter referred to as "**SEBI Order**") against Secunderabad Healthcare Limited (hereinafter referred to as "**SHL/*the Company***") and 8 allottees including Hamraj Fashions Consultants Private Limited, (Noticee no. 4 therein), alleging receipt of equity shares allotted to them by the *Company* post conversion of warrants, without paying the full consideration and thus having got benefited by the *Company* and further causing loss to the other shareholders of the *Company*. Further, the proceeding against one allottee i.e., Anvita Trading Co. Private Limited (Noticee no. 9 therein) was disposed of without any direction. The following directions were issued vide the above mentioned SEBI Order:

> "*37) In view of the facts and circumstances of the case and the aforesaid discussions and findings, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4), 11B of the SEBI Act, 1992 hereby pass following directions:*
>
> *i. The Noticee no. 1 is directed not to access the securities market, directly or indirectly, by issuing prospectus, offer document or advertisement soliciting money from the public for a period of 02 years and is further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of 02 years.*

ii. *The Noticee no. 2 to 8 and 10 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever for a period of 02 years from the date of this order.*

iii. *The Noticee no. 1 is directed to collect the balance consideration from the Noticee no. 2 to 8 and 10 and the Noticee no. 2 to 8 and 10 are directed to pay the balance consideration to the Noticee no. 1 in terms of amount shown to be recovered in Table no.-5 of the order. The above collection and payment shall be completed within a period of 60 (sixty) days from the date of this order.*

iv. *The Noticee no. 2 and 3 shall disgorge the wrongful gain of INR 6,85,98,216/- and INR 3,71,22,625/-, respectively with simple interest @ 6% per annum till the date of actual payment. For the purpose calculation of interest, the period shall commence from December 2012 for the Noticee no. 2 and August 2013 for the Noticee no.3, respectively and continue till the date of actual payment made. The wrongful gain of INR 6,85,98,216/- and INR 3,71,22,625/- along with interest shall be remitted by them to Investor Protection and Education Fund (IPEF) as referred to in Section 11(5) of the SEBI Act, 1992, and intimation, if any may be forwarded to "Division Chief, Enforcement Department-1, DRA-4, Securities and Exchange Board of India SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051". In case, the Noticee nos. 2 and 3 fail to comply with the said direction, they shall be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, till the actual payment of disgorgement amount or till the completion of the debarment directed at sub-paragraph (ii) above, whichever is later.*

v. *The Banks, with whom the Noticee no. 2 and 3's accounts are maintained, are directed that no debit shall be made, without permission of SEBI, in respect of the bank accounts held by them except for the purposes of compliance of this order.*

vi. *The Noticee no. 2 and 3 are directed to furnish details of assets, properties owned directly or indirectly by it respectively and further directed not to dispose of or alienate any of his assets/ properties/ securities, till such time the direction of this order is complied with.*

vii. *The Noticee no. 1 having received the balance consideration as directed in terms of sub-paragraph (iii) above is directed to furnish to SEBI, a Certificate from a Chartered Accountant along with necessary documentary evidencing certifying the compliance of this direction and said Certificate will be furnished within a period of 03 months from the date of this order.*

viii. *This direction is without prejudice to any other action including action for recovery of such amounts from these Noticees which may be initiated by SEBI.*

ix. *It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the Noticee nos. 1 to 8 and 10 shall remain under freeze.*

x. *Obligation of the aforesaid the Noticee nos. 1 to 8 and 10, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the aforesaid Noticees in the F & O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.*

xi. *In light of my observations noted at paragraph 26 of this Order, proceeding against the Noticee no. 9 is disposed of without any direction."*

2. Aggrieved by the above SEBI Order, Hamraj Fashions Consultants Private Limited (now known as Gilani Infra Private Limited) (hereinafter referred to as "***Noticee**")* filed an Appeal No. 383 of 2021 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT/Tribunal**"). The Hon'ble SAT vide its order dated June 17, 2021 allowed the aforesaid appeal and set aside the SEBI Order for the reasons stated therein and remitted the matter to SEBI to pass a fresh order after serving the show cause notice. The Hon'ble Tribunal has further directed the *Noticee* to provide the name and address of the company as well as the details of its directors including email addresses etc. within ten days from the date of the order so that SEBI, thereafter, can proceed in accordance with law. Accordingly, the *Noticee* submitted the aforesaid details vide email dated June 25, 2021.

3. In this regard, I note that SEBI vide its letter dated July 13, 2021 had issued a Show Cause Notice dated July 19, 2019 (hereinafter referred to as "**the SCN**") to the *Noticee* asking it to show cause as to why appropriate directions should not be issued against it under Sections 11(1), 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**the SEBI Act, 1992**") for allegedly violating Section 12A(a),(b),(c) of the SEBI Act, 1992, regulation 3(a),(b),(c),(d) and 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**the PFUTP Regulations**") and regulations 77(1) and 77(3) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**the ICDR Regulations**").

4. The brief facts pertaining to the *Noticee* that are necessary for the disposal of the matter at hand, as contained in the SCN, are as under:

4.1 On October 14, 2010, SHL had allotted 8,00,00,000 warrants convertible into 8,00,00,000 equity shares of INR 10 each for cash at a premium of INR 8.60 per share on preferential basis to 27 non-promoter entities on the following terms of payment:

(a) At least 25% shall be payable before the allotment of warrants and balance on or before 18 months from the date of allotment or else the money received for the allotment of warrants shall be forfeited by the *Company*.

(b) In the event convertible warrants are issued, the same shall at the option of the allottee, be converted into equivalent number of equity shares in one or more tranches but before expiry of 18 months from the date of allotment.

4.2 Upon first tranche of conversion of warrants to shares, SHL allotted 4,00,96,000 equity shares to 13 entities (including the *Noticee*) on March 02, 2011 and the said shares were under lock-in till March 01, 2012. Pursuant to second tranche of conversion of warrants into shares on March 31, 2012, SHL allotted 3,99,04,000 equity shares to 16 entities and the said shares were also under lock-in till March 30, 2013.

4.3 From the analysis of the information gathered during the investigation including the information provided by SHL vide its email dated September 10, 2018 regarding the funds received from the 27 allottees, it was observed that the *Noticee* had paid only 25% of the total consideration (i.e., INR 6,88,20,000) amounting to INR 1,72,05,000 before the allotment and no details were furnished by the *Company* so as to show that the *Noticee* has paid the remaining 75% consideration to the *Company* for the allotment of 37,00,000 shares to it.

4.4 In view of the above, it has been alleged in the SCN that the *Noticee* i.e., Hamraj Fashions Consultants Private Limited now known as Gilani Infra Private Limited, had received equity shares allotted to it by the *Company* post conversion of warrants, without paying the full consideration. Since, the documents furnished in the course of investigation do not show with sufficient evidences that the *Noticee* had paid full consideration for the conversion of warrants to equity shares, the *Noticee* was alleged to have been benefited by the *Company* and by such non-payment has caused loss to the other shareholders of the *Company*.

4.5 It is further noticed that the *Noticee* was enjoying connection to the *Company* i.e., SHL/promoters of SHL through a network of common directors.

4.6 It has also been noticed that although the *Company* at that time gave a public impression of capital infusion through preferential allotment, but in reality, the *Company*, *inter-alia*,

allotted shares to the *Noticee* without receiving full consideration from it thereby providing huge amount of monetary benefit to it and therefore, SHL and other allottees including the *Noticee* are alleged to have perpetrated a fraud on the shareholders and the ordinary investing public who had transacted in the shares of the *Company* post preferential allotment.

REPLY, PERSONAL HEARING AND SUBMISSIONS

5. In response to the SCN, the *Noticee* vide letter dated August 07, 2021 has filed its reply and vide email dated August 23, 2021 has filed additional submissions wherein it has *inter alia* submitted as under:

   i. The SCN is issued with a delay of over 9 years from the date of the transactions and on this ground of delay alone the same is liable to be set aside. Section 11B is a drastic power and cannot be exercised with such a delay.

   ii. Learned Adjudicating Officer has issued show cause notice dated December 31, 2019 on the same cause of action and for similar violations. Thus, the *Noticee* is victim of multiple proceedings and on this ground alone the SCN needs to be quashed.

   iii. It appears that the SCN was issued to the *Noticee* on account of not providing of information by the SHI, w.r.t. to the considerations received by it from the allottees including the *Noticee*. Pertinently, the fact remains that the amount of INR 5,16,15,000 which is alleged to have not been paid by the *Noticee* to SHL has actually been paid on the following dates and the said consideration was paid well before the due dates:

Date	Amount	Due Date	Remarks
October 20, 2010	3,00,00,000	March 14, 2012	75 percent paid
October 22, 2010	1,00,00,000	March 14, 2012	
November 12, 2010	40,00,000	March 14, 2012	
December 09, 2010	75,00,000	March 14, 2012	
February 19, 2011	1,15,000	March 14, 2012	
Total	**5,16,15,000**		

iv. The *Noticee* has paid full consideration towards subscription of the 37,00,000 equity shares of the *Company* at the relevant time and the *Noticee* reiterates that there is nothing due and payable to SHL on part of the *Noticee* w.r.t. the shares allotted to it or otherwise. Therefore, it cannot be said that SHL has issued the shares on preferential basis to the *Noticee* without receiving full consideration and it cannot be said that the *Noticee* has received the equity shares without paying full consideration.

v. As per the Annual Reports of the *Company* for the years 2010 and 2011 which are available in the public domain (published on the BSE Ltd.) the auditors of the *Company* had recorded, receipts of the entire consideration by the *Company* towards issue and conversion of convertible warrants issued by SHL. Moreover, no qualifications have been given by the auditor in the Annual Report w.r.t. conversion of warrants and consideration towards the same.

vi. While issuing the SCN SEBI has not considered that there was substantial compliance of applicable provisions of laws on part of the *Noticee* and all payments were made by the *Noticee* to SHL before the due dates. Hence, there are no violations on part of the *Noticee* under the ICDR Regulations.

vii. Since the full consideration has been paid to the *Company*, the *Noticee* denies that it has received any undue benefit at the cost of other shareholders of the *Company* and therefore, it is also wrong to allege that the *Noticee* was part of a fraudulent arrangement through which it had perpetuated fraud on the other allottees, shareholders and also on the ordinary investing public who had transacted in the shares of the SHL post issuance of the aforesaid preferential allotment and thereby have violated the provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992, regulation 3(a),(b),(c),(d) and 4(1) of the PFUTP Regulations, 2003

viii. The allegation in the SCN showing how the connection, more specifically set out in paragraph 1.10 of the SCN, led to violation of the PFUTP Regulations by the *Noticee*, is entirely baseless and without any evidence on record or otherwise. Insofar as linkage through common directors is concerned, SEBI has failed to demonstrate how the *Noticee* has acted in concert with such other Noticees for the purpose of non-payment of consideration towards conversion of warrants issued on preferential basis. Thus, the allegations of the violation of the PFUTP Regulations against the *Noticee* as more specifically set out in the SCN, do not hold any ground and on this ground alone the SCN may be set aside.

ix. When the amount of consideration for the issue of warrants is already paid to SHL by the *Noticee* the present SCN does not stand the test of trite law and has to be disposed of accordingly.

x. Without prejudice to the aforesaid, the alleged violations in the SCN if any, is a mere lacuna on part of the *Company* and no wrong doing can be attributed to the *Noticee.*

xi. The *Company* vide its disclosure dated April 03, 2012 made on the BSE Ltd. regarding outcome of the Board meeting held on March 31, 2012 has disclosed as under:

"Secunderabad Healthcare Ltd has informed BSE that the Board of Directors of the Company at its meeting held on March 31, 2012, has decided to issue and allot equity shares in lieu of Convertible Equity Warrants to the allottees consequent to their exercising option to convert warrants by paying balance 75% consideration towards the same."

6. In compliance with the principle of natural justice, an opportunity of personal hearing was also granted to the *Noticee* on August 24, 2021. On the scheduled date of personal hearing held through video conferencing, the *Noticee* appeared through its Authorized Representative and made oral submissions on the lines of its reply dated August 07, 2021 and additional submissions filed vide email dated August 23, 2021.

CONSIDERATION

7. I have perused the allegations and facts recorded in the SCN, the submissions advanced on behalf of the *Noticee* and the other materials available on record. In my view, the only issue that needs adjudication in the present proceedings is whether or not, the *Noticee* has received equity shares allotted to it by the *Company* post conversion of the warrants, after paying the full consideration for the said shares allotted to it, to the *Company?*

8. Before adverting to the factual conspectus of the case, I note that the *Noticee* has been alleged to have violated applicable provisions of SEBI Act, 1992, the PFUTP Regulations and the ICDR Regulations. Therefore, the said provisions are reproduced hereunder for ease of reference and better appreciation:

The SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

The PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly –

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

Explanation.–For the removal of doubts, it is clarified that any act of diversion, misutilization or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

The SEBI(ICDR) Regulations, 2009

Payment of consideration.

77. (1) Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allottees at the time of allotment of such specified securities:

Provided that in case of a preferential issue of specified securities pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India, the allottee may pay the consideration in terms of such scheme.

(2) An amount equivalent to at least twenty-five per cent. of the consideration determined in terms of regulation 76 shall be paid against each warrant on the date of allotment of warrants.

(3) The balance seventy-five per cent of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.

9. I note from the SCN that the allegation against the *Noticee* is that post conversion of warrants, it had received 37,00,000 equity shares of SHL from the *Company* for which it made only 25% payment to the tune of INR 1,72,05,000 before the allotment but did not pay the remaining payment of 75 % to the tune of INR 5,16,15,000 post conversion and allotment of shares to it. Thus, the said allotment was done without adequate/full consideration being paid to the *Company* and as a result, the *Noticee* was benefited by the *Company* at the cost of other shareholders of the *Company*. The aforesaid act of the *Noticee of* receiving securities without paying the full consideration has been alleged to be in violation of Section 12A(a),(b),(c) of the SEBI Act, 1992, regulation 3(a),(b),(c) and (d) and 4(1) of the PFUTP Regulations and regulations 77(1) and 77(3) of the ICDR Regulations.

10. In this respect, I find the SCN provides the details of preferential allotment of warrants, conversions of warrants into equity shares, allotment of equity shares to the *Noticee,* total consideration the *Noticee* was required to pay to the *Company* and the actual payment made by the *Noticee* to the *Company* (against the warrants/ equity shares pursuant to conversion of warrants), which for the sake of reference and understanding are summarised here under:

Table no.-1

Preferrential Allotees/ Noticee	**Warrant / Shares allotted**	**Total consideration to be paid**	**Date of Conversion to Equity Shares**		**Amount paid by the allottees**	**Amount to be paid or recovered from the allottees.**
			March 02, 2011	**March 31, 2012**		
Hamraj fashions Consultants	37,00,000	6,88,20,000	√		1,72,05,000	5,16,15,000

Private Limited						

11. From the perusal of the material on records, more specifically the details of payments so made towards the allotment and conversion of securities, in the bank accounts of the *Company* i.e. A/c no. 000684000002574 with Yes Bank and A/c no. 3230011029725 with Kotak Mahindra Bank in which funds towards preferential allotment were received by the *Company* from the allottees including the *Noticee*, the examination of detail of funds transactions/transfers submitted by the *Company* and the analysis of the aforesaid two bank accounts of the *Company* as mentioned in the SCN, I note that the SCN narrates the details of payments received by the *Company* from the *Noticee* as under:

    i. **Hamraj Fashions Consultants Private Limited**: The *Noticee* was required to pay INR 6,88,20,000 for subscription of 37,00,000 shares @ INR 18.60 per share. The *Company* had only provided the details regarding the receipt of 25% of the total consideration from the *Noticee*. Based on the transactions noticed in the bank account statements of the *Company*, it was observed that the *Noticee* had transferred INR 1,72,05,000 (from its Yes Bank account no. 8284000001244) to the Yes Bank account of the *Company* through multiple transactions between August 12, 2010 and October 06, 2010 the aggregate of which was equivalent to only 25% of the subscription amount and there was no details furnished by the *Company* pertaining to receipt of the payment of balance 75 % of the total consideration amount.

12. However, I note that the *Noticee* has now filed a reply in rebuttal to the aforesaid allegations made in the SCN stating that it has already paid remaining consideration of 75% to the tune of INR 5,16,15,000 to the *Company* by February 19, 2011, which is much before the due date of March 14, 2012 set out for the payment of consideration as per terms of payment mandated by the *Company*. The *Noticee* has also furnished the details of the payment of INR 5,16,15,000 it had made to the *Company* as under:

Table no.-2

Date	Amount	Due Date	Remarks
October 20, 2010	3,00,00,000	March 14, 2012	75 percent paid
October 22, 2010	1,00,00,000	March 14, 2012	

November 12, 2010	40,00,000	March 14, 2012	
December 09, 2010	75,00,000	March 14, 2012	
February 19, 2011	1,15,000	March 14, 2012	
Total	**5,16,15,000**		

From a perusal of the copy of the Bank Statements of Yes Bank for Financial Year 2010-2011 furnished by the *Noticee* in support of its afore-stated claim of having paid the remaining 75% of total consideration against the allotment of warrants and equity share, I find that different sums of money on different dates aggregating to INR 5,16,15,000 as indicated above in Table no.-2 have indeed been transferred from Yes Bank Account no. 8284000001244 of the *Noticee* to the Yes Bank Account no. 000684000002574 of the *Company* during the period from October 20, 2010 to February 19, 2011. The said receipt of funds gets corroboration from the amounts paid in tranches by the *Noticee* as shown in the above table from its Yes Bank Account on the respective dates. I therefore find that the *Noticee* has furnished sufficient evidence in supports of the claim that it had paid full consideration to the Yes Bank account of the *Company* by February 19, 2011 from its aforesaid Yes Bank account.

13. I note from the 20th Annual Report of the *Company* for the year 2010-11 as submitted by the *Noticee* and also available on the website of the BSE Ltd. that the auditors had in fact recorded about the receipts of the entire consideration by the *Company* towards issue and conversion of convertible warrants issued by SHL. Further, it is observed that the *Company* vide its disclosure dated April 03, 2012 made on the BSE Ltd. regarding outcome of the Board meeting held on March 31, 2012 has duly disclosed that the *Company* has decided to issue and allot equity shares in lieu of Convertible Equity Warrants to the allottees consequent to their exercising option to convert warrants by paying balance 75% consideration towards the same. Therefore, having considered the materials on record, I am of the view that the *Noticee* is successful in rebutting the allegations made against it in the SCN by establishing that it had indeed paid full consideration towards the allotment of warrants as well as the equity shares post the conversion of those warrants. I am therefore, inclined to grant exoneration to the *Noticee* by accepting its submission that it has actually paid the remaining 75% of the consideration to the tune of INR 5,16,15,000/- by February 19, 2011 to the *Company* from its Yes Bank account and thus in effect, has paid the full consideration to the *Company* towards this purpose.

14. In view of the facts and circumstances of this case and aforesaid discussions, I hold that the *Noticee* has paid full and adequate consideration to the *Company* towards allotment of 37,00,000 equity shares of SHL as per the terms of payment mandated by the *Company*. In view of the aforesaid finding, I do not find it necessary to deal with other submissions of the *Noticee* made vide its letter dated August 07, 2021.

DIRECTION

15. In view of the facts and circumstances of the case and the aforesaid discussions and findings, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4), 11B of the SEBI Act, 1992 hereby pass following direction:

    i. The SCN dated July 19, 2019 issued against the *Noticee* is disposed off without any direction.

16. This Order shall come into force with immediate effect.

17. A copy of this Order shall be served upon the recognized Stock Exchanges, Depositories, Registrar and Transfer Agents and all the banks for necessary compliance.

-Sd-

DATE: September 23, 2021 **S. K. MOHANTY**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA