

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[SETTLEMENT ORDER Ref No.: Order/AP/AS/2020-21/7828-7829]

**UNDER SECTION 15JB OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
READ WITH REGULATION 23(1) OF THE SEBI (SETTLEMENT OF ADMINISTRATIVE
AND CIVIL PROCEEDINGS) REGULATIONS, 2018.**

In respect of:

Application No. 4105/2020

1. IDBI Asset Management Limited (PAN: AACCI2317R)

Application No. 4106/2020

2. IDBI MF Trustee Company Limited (PAN: AACCI2337M)

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1. Securities and Exchange Board of India ('SEBI') observed that on February 23, 2017 credit rating of Ballarpur Industries Limited ('BILT') was downgraded by India Ratings and Research Private Limited (herein after referred as "Ind-Ra") on February 22, 2017 and the schemes of Taurus Mutual Fund were impacted due to the same. In view of the aforesaid event, information was sought from all the Mutual Funds seeking details of their exposure(s) in the debt papers of BILT. In the aforesaid context, IDBI Asset Management Limited (herein after referred as "Noticee No. 1") vide its email dated Feb 27, 2017 informed that schemes of IDBI Mutual Fund ('IDBIMF') had not held any investments in securities issued by BILT as on January 31, 2017. However, Commercial Papers (CPs) issued by Bilt Graphic Paper Products Ltd. ('BGPPL'), a subsidiary of BILT, were held by its few schemes. The mentioned CPs got matured on January 13, 2017 and the issuer, BGPPL had not repaid the principal amount of the said CPs on maturity.
 2. In view of the above, an inspection of IDBIMF under Regulation 61 of SEBI (Mutual Funds) Regulations, 1996 (herein after referred as "Mutual Funds Regulations") was carried out by SEBI on January 4-5, 2018, January 9-11, 2018 and January 18-19, 2018. On the basis of aforesaid inspection findings/ observations and reply of the Noticee No. 1, SEBI *prima facie* noted that Noticee No. 1 and IDBI MF Trustee Company Limited (herein after referred as "Noticee No. 2") had failed to comply with the following requirements under the provisions of Mutual Funds Regulations and SEBI Circulars:

S.No.	Particulars
Noticee No. 1	
I	Failure in investment due diligence
(a)	Failed in its duties to monitor the compliance of the Mutual Funds Regulations.
(b)	Not exercised due diligence and care in all its investment decisions as would be exercised by other persons engaged in the same business.
(c)	Failure to follow its own approved investment policy documents from May 2015 onwards.
(d)	Liquidated other securities to further invest in a company viz BGPPL which is already not able to fully honor maturity of earlier investments.
(e)	Invested in the securities of BGPPL despite decision in its own Investment Committee (IC) regarding not to further invest and liquidate all holdings before March 2016.
(f)	Failure of system to conduct an in-house credit risk assessment / due diligence before investing in fixed income products.
(g)	Failure of systems of checks & balances to ensure proper due diligence of investment decisions.
II	Failure in fair valuation of securities
(a)	Failed to carry out valuation of investments made by its scheme(s) in accordance with the investment valuation norms specified in Eighth Schedule.
(b)	Failed to value partially defaulted and fully defaulted securities based on the principles of fair valuation i.e. valuation shall be reflective of the realizable value of the securities/assets.
(c)	Failed to value the securities at fair market value at that time of partial default itself and instead entering into arrangement with the issuer or provided adjustment to the issuer due to its financial stress.
(d)	Applied NPA provisioning while it was not applicable even though it is clearly mentioned in Mutual Fund Regulations that principles of fair valuation prevails over all other provisions in case of any conflict.
(e)	Valuation Committee did not meet or discuss on happening of a major event of default by an issuer rather all decision seems to have been taken by Noticee No. 1 Board, while as per regulation the power to review shall be at execution level.
(f)	The Valuation Policy adopted by Noticee No. 1 is broad and general in nature and does not detail or describe the process that will be adopted in case of an exceptional event nor does it elaborate any procedure or process to deal with instances of default of debt securities. Noticee No. 1 failed to ensure that the valuation policy is in lines with the Regulatory mandate.
(g)	The valuation policy adopted by Noticee No. 1 does not put in place any specific procedure to address conflict of interest as mandated by the Mutual Funds Regulations.
(h)	Failed to deviate from the established policies and procedures in order to value the BGPPL securities at fair value.
(i)	Failed to ensure that the Valuation policy was framed in line with the Regulatory mandate to detect incorrect valuation.
(j)	Failed to follow in spirit the regulatory requirement of principles of fair valuation on Inter-Scheme transfers.
(k)	Failed to ensure that correct NAV is disclosed after considering appropriate valuation.
(i)	Reallocated investments in default from flagship scheme in terms of AUM (i.e.

	Liquid Fund) to other schemes, so as to distribute the resulting loss to other not so successful schemes. This was done apparently to reduce the impact on schemes as and when the default comes to light in future. This leads to unfair treatment to investors of the transferee schemes
III	Failure to insure fair treatment to all investors
(a)	Not valued its investments in accordance with the overarching principles of fair valuations so as to ensure fair treatment to all investors including existing investors as well as investors seeking to purchase or redeem units of mutual funds in all schemes at all points of time.
Noticee No. 2	
IV	IDBI MF Trustee has not complied with following:
(a)	Failed to detect the lapses in due diligence process followed by the AMC, Noticee No. 1.
(b)	Failed to ensure that all the activities of the Noticee No. 1 are in accordance with the provisions of the Mutual Funds Regulations.
(c)	Failed to ensure that the valuation policy is in lines with the Regulatory mandate.

3. In view of the above it was alleged that Noticees No. 1 and 2 have failed to comply with the provisions specified in/ under the following Circulars and Mutual Funds Regulations:

S.No.	Provisions
Noticee No. 1	
(a)	SEBI Circular No. MFD/CIR/6/73/2000 dated July 27, 2000.
(b)	SEBI circular SEBI/IMD/CIR No.5/ 63714 dated March 29, 2006.
(c)	Clause D of the SEBI Circular No. SEBI/HO/ IMD/DF2/CIR/2016/42 dated March 18, 2016.
(d)	Clause (a), (c), (e), (g), (h) & (i) of Investment Valuation Norms as specified in Eighth Schedule under Regulation 25 (19) and Regulation 47 of the Mutual Funds Regulations.
(e)	Sub-regulation (1) & (2) of Regulation 25 of the Mutual Funds Regulations.
(f)	Clause 2, 8 and 9 of the Fifth schedule under Regulations 25 (16) of the Mutual Funds Regulations.
(g)	Regulation 75 A(b) of the Mutual Funds Regulations.
(h)	Regulation 76 of the Mutual Funds Regulations.
Noticee No. 2	
(a)	SEBI Circular No. MFD/CIR/6/73/2000 dated July 27, 2000.
(b)	SEBI circular SEBI/IMD/CIR No.5/ 63714 dated March 29, 2006.
(c)	Clause 8 and 9 of the Fifth schedule under Regulation 18(22) of the Mutual Funds Regulations.
(d)	Clause (a), (c), (e), (g), (h) & (i) of Investment Valuation Norms as specified in Eighth Schedule under Regulation 47 of the Mutual Funds Regulations.
(e)	Regulation 18(9) of the Mutual Funds Regulations.
(f)	Regulation 75 A(b) of the Mutual Funds Regulations.
(g)	Regulation 76 of the Mutual Funds Regulations.

4. Pursuant to above, the competent authority in SEBI was satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations of the aforesaid provisions of the Mutual Funds Regulations and aforesaid circulars dated July 27, 2000, March 29, 2006 and March 18, 2016 by the Noticees No. 1 and 2 (hereinafter collectively referred as “the Noticees”). Vide a *communication-order* dated May 28, 2019, the competent authority had appointed Mr. Santosh Shukla, CGM, as Adjudicating Officer (“erstwhile AO”) under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘SEBI Act’) and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as ‘SEBI Adjudication Rules’) to inquire into and adjudge under Sections 15D(b) and 15HB of the SEBI Act, 1992 for the aforesaid alleged violations. Subsequently, by a *communication-order* dated January 07, 2020, this case has been transferred to the undersigned with an advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders ‘*shall remain unchanged and shall be in full force and effect*’ and that the ‘*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*’.
5. Accordingly, in terms of rule 4(1) SEBI Adjudication Rules read with section 15I of SEBI Act, the notice to show cause no. EAD-2/SS/AKS/25345/1-2/2019 dated September 26, 2019 (hereinafter referred to as ‘the SCN’) was issued to the Noticees, by erstwhile AO, calling upon them to show cause as to why an inquiry should not be held against them in terms of rule 4 of the SEBI Adjudication Rules and penalty be not imposed under Sections 15D(b) and 15HB of the SEBI Act, 1992. The Noticees vide their letter dated October 09, 2019 requested for time up to November 30, 2019 to submit their reply to the SCN. Accordingly, vide letter dated October 11, 2019, the Noticees were allowed time upto October 31, 2019 to submit their reply to the SCN and also granted an opportunity of hearing on November 05, 2019 by the erstwhile AO.
6. Thereafter, vide e-mail dated October 29, 2019, the Noticees through their authorized representative requested for inspection of documents and same was availed on November 08, 2019 by the Noticees, wherein their authorized representative requested for several documents, which were provided to them by Enforcement Department on December 02, 2019.
7. Meanwhile, vide application dated November 25, 2019, the Noticees proposed to SEBI to settle the instant proceedings, without admitting or denying the findings of fact and conclusions of law, through a settlement order and filed settlement applications bearing reference no. 4105/2020 and 4106/2020 with SEBI in terms of regulations 3(1) and 3(2) of the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2018 (hereinafter referred to as ‘Settlement Regulations’).

8. After attending meeting with the Internal Committee of SEBI on March 04, 2020, in terms of the Settlement Regulations, the Noticees vide letter dated March 12, 2020, proposed the settlement terms. The High Powered Advisory Committee (‘HPAC’) in its meeting held on April 01, 2020, considered the settlement terms proposed and recommended the case for settlement upon payment of ₹90,47,228/- (Rupees Ninety Lakh Forty-Seven Thousand Two Hundred and Twenty-Eight only) towards settlement charges.
9. The Panel of Whole Time Members of SEBI approved the said recommendation of the HPAC on April 16, 2020 and the same was communicated by SEBI to the Noticees on April 17, 2020. Accordingly, the Noticees, vide their email dated April 24, 2020, informed about the payment of ₹90,47,228/- (Rupees Ninety Lakh Forty-Seven Thousand Two Hundred and Twenty-Eight only) towards the settlement charges. The concerned department of SEBI vide email dated May 04, 2020 has confirmed the receiving of the penalty amount.
10. Therefore, in view of the acceptance of the settlement terms and receipt of penalty amount as above by SEBI, the instant adjudication proceedings initiated against the Noticees vide SCN dated September 26, 2019 are disposed of in terms of section 15JB of the SEBI Act, 1992 read with regulation 23(1) of the Settlement Regulations on the basis of the settlement terms.
11. This order shall come into force with immediate effect. Further, in terms of regulation 28 of the Settlement Regulations, this order is without prejudice to the right of SEBI to take any enforcement action including restoring or initiating the proceedings in respect to which this settlement order is passed, if:
 - a) The Noticees fails to comply with the settlement order or at any time after the settlement order is passed,
 - b) The Noticees has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed.
12. In terms of regulation 25 of the Settlement Regulations, a copy of this order is sent for service to the Noticees and the order is also published on the website of SEBI.

Date: June 01, 2020

Place: Mumbai

Amit Pradhan

Adjudicating Officer