QJA/MN/CFID/CFID-TPD/32406/2026-27

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**In compliance with the Order of the High Court of Judicature at Bombay (W.P. No. 3409 of 2024) in the matter of Bajaj Hindusthan Sugar Limited**

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In respect of:

| Noticee No. | Name of the Noticee | PAN |
|---|---|---|
| 1 | Bajaj Hindusthan Sugar Limited | AAACB4351J |
| 2 | Shishir Bajaj | ACJPB6303J |
| 3 | Kushagra Bajaj | ABBPB5704G |

*(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise)*

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## A. BACKGROUND

1. Securities and Exchange Board of India ('**SEBI**') conducted an investigation in the matter of Bajaj Hindustan Sugar Limited ('**BHSL**' or '**Noticee No. 1**' or '**the Company**') for the period FY 2010-11 to FY 2021-22 ('**Investigation Period**' or '**IP**') based on the complaint received against BHSL to ascertain as to whether there was any diversion or misappropriation of funds by way of advancing loans to Ojas Industries Private Limited ('**OIPL**'), Bajaj Power Generation Private Limited ('**BPGPL**') and non-disclosure of related party transactions ('**RPTs**') in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 ('**SEBI Act**'), Securities Contracts (Regulation) Act,1956 ('**SCRA**'), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('**PFUTP Regulations**') and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR Regulations**').

## B. ABOUT THE COMPANY

2. BHSL is a sugar and ethanol manufacturing company with 14 sugar plants located in Uttar Pradesh. The Company is listed on BSE Limited ('**BSE**') and National Stock Exchange of India Limited ('**NSE**').

## C. FINDINGS OF THE INVESTIGATION

3. The investigation revealed prima facie evidence of:

3.1. Transfer of funds by the Company to its related parties through OIPL to avoid disclosures as RPT in the annual report since March 2014;

3.2. Publishing/reporting/ dissemination of misleading information pertaining to the RPTs in the Annual Reports since March 2014 w.r.t. loans to OIPL;

3.3. Diversion of funds worth ₹ 318.50 crore from the Company to the entities under control/influence of Shishir Bajaj and Kushagra Bajaj by way of net transfer of ₹ 318.50 crore from the Company to its related parties through OIPL between December 31, 2013 to August 01, 2014;

3.4. Diversion of 870.60 crore from BHSL for the benefit of entities under the influence/control of the Noticees through BPGPL by advancing loan for infrastructure projects from November 28, 2011 to October 21, 2014.

## D. SHOW CAUSE NOTICE, REPLY AND HEARING

4. Accordingly, a Show Cause Notice ("**SCN**") dated October 16, 2023 was issued to Noticees, alleging violations of various provisions and calling upon them to show cause as to why appropriate directions should not be issued against them and/or penalty, as deemed fit, be not imposed on them, jointly and/or severally under Section 11(1), 11(4), 11(4A) and 11 B read with Section 15HA and 15HB of the SEBI Act, Section 12A(2) read with Section 23H of the SCRA, and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Rule 5 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 for the violations alleged therein.

5. The SCN was served to all the Noticees by Speed Post Acknowledgment Due ('**SPAD**') as well as email dated October 16, 2023 and initial response was received vide letter dated December 06, 2023.

6. It was noted that the Noticees had filed separate settlement applications under the SEBI (Settlement Proceedings) Regulations, 2018 ('**Settlement Regulations**') on December 13 &14, 2023. In terms of Regulation 8(1) of the Settlement Regulations, the filing of an application for settlement of any specified proceedings did not affect the continuance of the proceedings save the passing of the final order which was required to be kept in abeyance till the disposal of settlement applications and hearings were scheduled.

7. The Noticees filed Writ Petition No. 3409/2024 before the Hon'ble Bombay High Court on account of the contention that certain crucial facts (i.e. FAR submitted during the course of investigation) were withheld from the Hon'ble Whole Time Member ('**WTM**') while approving the SCN, rendering the SCN without jurisdiction and *non-est.* The

Hon'ble Bombay High Court by its order dated May 08, 2024, *inter-alia*, disposed of the writ petition by passing a reasoned order with directions mentioned in its order.

8. In the meanwhile, the legal representatives of the Noticees availed an opportunity of personal hearing before the erstwhile QJA on April 23, 2024 re-iterating their earlier submissions and were granted time till May 08, 2024 for filing of additional reply. Subsequently, vide letter dated June 04, 2024, the Noticees sought an opportunity of personal hearing with regard to the aspect of jurisdiction.

9. Thereafter, the undersigned was assigned as the QJA. In view of the principles of natural justice, opportunity of hearing was granted to all the Noticees. Hearing Notice dated August 13, 2025 was sent to all Noticees through email for availing an opportunity of personal hearing on September 18, 2025 which got adjourned. The Noticees withdrew their settlement applications on February 25, 2026. The personal hearing on February 26, 2026 was attended by authorised representatives ('**AR**') wherein the Noticees sought adjudication of their preliminary objections w.r.t. various jurisdictional facts. Since the matter was part heard, the hearing was re-scheduled on March 20, 2026 wherein the legal representatives of the Noticees made submissions in line with the replies filed by them. Since the matter was part heard, the hearing was re-scheduled on April 22, 2026. During the hearing, the AR of the Noticees sought adjournment and the hearing in the matter got rescheduled on May 06, 2026 wherein the AR of the Noticees appeared.

10. Submissions of the Noticees in response to the SCN vide letter dated December 06, 2023 are available on record. Further, submissions w.r.t. preliminary issues during the hearings held on April 23, 2024, February 26, 2026, March 20, 2026 and April 22, 2026 and written replies vide letter dated May 14, 2024, June 04, 2024, February 20, 2026, March 19, 2026, April 13, 2026 and May 05, 2026 are summarized below:

<u>Submissions on preliminary issues:</u>

10.1. Hon'ble High Court, vide Order dated May 08, 2024, directed SEBI to pass a reasoned order with regard to the issue of jurisdiction which was raised as a

preliminary issue and that before disposing the matter on merits, SEBI shall also decide and dispose the issue of jurisdiction as a preliminary issue.

10.2. The Noticees prayed that objection regarding jurisdiction be decided at the forefront, and a separate order be passed in that regard in view of the Order of the Division Bench of the Hon'ble High Court in the matter of '***Aman Kokrady vs SEBI (WP/2461/2024) dated March 19, 2024***' wherein it was, *inter-alia,* held that a preliminary issue must be decided first, prior to proceeding in the matter on merits. Reference is also drawn to the Order of the Hon'ble SAT in the matter of '***Nalwa Sons Investments Limited & Ors. v. SEBI' (Appeal No. 291 of 2025) dated December 16, 2025*** wherein SEBI was directed to decide the issue of jurisdiction at the threshold. Preliminary issues are discussed in the subsequent paragraphs of this Order.

*a. Forensic Audit conducted by M/s Deloitte Touche Tohmatsu India LLP ('**Deloitte**')*

10.3. The SCN has impugned a loan transaction through which Noticee No. 1 provided a loan to OIPL in the FY 2012-14 and 2014-15 and investments made by Noticee No. 1 to its wholly owned subsidiary, BPGPL in FY 2010-11 to 2014-15.

10.4. In 2017, the Noticee No. 1 underwent loan restructuring with various banks in accordance with Circular dated June 13, 2016 bearing RBI/2015-16/422 (DBR No.BP.BC.103/21.04.132/2015-16, issued by the Reserve Bank of India ('**RBI**') which is statutory in nature. The said circular provided the 'Scheme for Sustainable Structuring of Stressed Assets' ('**S4A**') and prohibited restructuring where malfeasance, or diversion, of any nature, existed. In terms of the said Circular, S4A will not be applicable in cases where malfeasance has been reported on the part of promoters through a forensic audit or otherwise.

10.5. Accordingly, Deloitte was appointed by lenders, which was a consortium of banks, to conduct forensic audit for the period April 01, 2014 to June 30, 2017. The impugned loan transactions/investments were outstanding during that time and were examined by the concerned auditor for its propriety. Upon detailed audit undertaken by the Deloitte, it was *inter alia* concluded that no diversion, or misappropriation, had occurred with regard to the affairs of the Noticee No. 1.

10.6. On the basis of the audit conducted by the Deloitte, the Noticee No. 1 and the consortium of lenders executed 'Master Framework Agreement on Scheme of Sustainable Structuring of Stressed Assets' on December 16, 2017. The fact of the said restructuring was disclosed to NSE and BSE on January 01, 2018 and was in public domain and could have been easily verified.

*b. Forensic Audit conducted by M/s Mazars Business Advisors Private Limited ('**Mazars**')*

10.7. In 2022, the Noticee No.1 again undertook restructuring of its debt (which was not concluded since the Company cleared its dues). In compliance with the RBI norms, in order to conduct the mandatory forensic audit, including the impugned loan transactions and investments alleged by SEBI, Mazars were appointed.

10.8. The report dated November 28, 2022 of the said auditor concluded that transactions occurred in the ordinary course of business and no diversion, siphoning or fraudulent transactions were identified. This report was provided to the IA on February 02, 2023. However, the same was not reflected either in the Action Matrix or Investigation Report placed before the Hon'ble WTM, as discovered by the Noticees during the course of inspection conducted in February 2024.

10.9. RBI formulated statutory directions in 'Master Directions-Classification & Reporting by commercial banks and select FIs' (as updated on July 03, 2017) to enable banks to detect and report fraud early. In view of the same, successful restructuring itself legally establishes absence of any financial wrongdoing, a jurisdictionally relevant fact ignored by the IA. No reasons have been provided by the IA, either in the Action Matrix, or in the Investigation Report, as to why the aforesaid forensic audits were ignored, and not considered. The act of not putting up/bringing to notice the audit report before the Hon'ble WTM reeks of malafide and unfairness. It would not be wrong to point out that the said conclusion (i.e. issuance of the SCN) was drawn, without considering the exculpatory material i.e. conclusions drawn in the FAR and subsequent restructuring. It is submitted that the reports of Deloitte and Mazars remain unrebutted and unchallenged, and their conclusions apply with full force.

c. *BPGPL equity conversion: Loan Exposure Squared Up*

10.10. The Action Matrix omitted the material fact that BPGPL, a wholly owned subsidiary of BHSL, received 13% equity in Bajaj Power Ventures Private Limited ('**BPVPL**') which, in turn, holds majority stake in two profitable and operational power generation companies of the Bajaj group namely Bajaj Energy Ltd. ('**BEL**') and Lalitpur Power Generation Pvt. Ltd. ('**LPGPL**'). This directly impacts the factual basis of alleged impropriety and should have been placed before the Hon'ble WTM, to allow an informed decision to be taken in relation to the initiation of any proceedings/action.

10.11. *Per contra*, the Action Matrix dated March 15, 2023, noted that '*it is highly unlikely that measures would be taken for recovery of interest or loan*' which points out to the malafide nature of the investigation. The non-consideration of facts i.e. squaring up of loans in both the cases (i.e. OIPL and BPGPL) gives a diametrically opposite view and disclosure of these facts could have swayed the Appointing Authority to take a favourable view of the Noticees.

*d. Delays and laches*

10.12. The SCN has been issued after an inordinate and unexplained delay of 9 years. As per the SCN, SEBI received complaints in 2020 and thereafter investigated the present matter for about 3 years (2021-2023). However, the present SCN was issued on October 16, 2023. The impugned transactions took place from FY 2011 to 2015 and were disclosed in the annual reports of BHSL during the relevant financial years. As a part of disclosure requirements, BHSL had to file said annual reports to the exchanges, as a mandatory compliance. Therefore, SEBI had the requisite information regarding the said transactions, which it has now sought to impugn, after an inordinate delay of at least 9 years.

10.13. Further, as aforementioned, the information regarding restructuring, as part of regulatory regime, had to be disclosed to stock exchanges, which was done on January 01, 2018. Therefore, the said fact, too, had been in public domain for more than 2 years even before the initial complaints which were received in the year 2020.

10.14. The Noticees have relied on various judgement of ***'Bombay Dyeing and Manufacturing Company Ltd. & Anr v. SEBI' (2026 SCC OnLine SAT 26)*** wherein Hon'ble SAT had *inter alia* held that SEBI acquires knowledge of any fact the day it becomes public information. The fact that the knowledge about the impugned transactions and the restructuring was in the public domain, SEBI cannot be allowed to wake up suddenly on receipt of a certain complaint without even explaining the reasons for delay. The delay, in the light of the judgement of the Hon'ble SAT, also becomes a jurisdictional issue and thus, ought to be decided at the threshold, and in favour of the Noticees.

10.15. Noticees have also referred to several other judgments viz., ***Yatin Pandya HUF vs SEBI (SAT Appeal No. 719 of 2021), SEBI Order in the matter if Monarch Networth Capital Limited dated December 30, 2021,*** etc.

10.16. Due to delay in the present matter, grave prejudice has been caused to the Noticees as they are not in possession of the documents/ materials/records for such an old period. Therefore, the Noticees capacity to defend themselves stands compromised.

*e.* *Investigation, Enquiry & Quasi-Judicial Proceeding*

10.17. Section 11C of the SEBI Act read with Regulation 5 of the PFUTP Regulations allows appointment of IA if the Board, the Chairman, the member of the Executive Member has reasonable ground to believe that the transactions in securities have been dealt in a manner which is detrimental to the interests of the investors, or against the provisions of the Act.

10.18. The IA so appointed then submits a report to the appointing authority after completion of investigation, after taking into account all relevant facts in terms of Regulation 9 of the PFUTP Regulations. It is on the basis of the report of the IA that the appointing authority acquires the jurisdiction to pass directions in terms of Sections 11(4), 11B, 15A, 15HA of the Act and Regulation 10 of PFUTP Regulations.

Therefore, the facts taken into consideration by the IA, forms the basis of direction of the Board, and thus, the quasi-judicial inquiry. During the course of the inquiry, it was discovered that relevant and exculpatory facts were not presented by the IA before the appointing authority i.e. Hon'ble WTM, who appointed the Ld. QJA. The Hon'ble WTM on the basis of action matrix dated March 15, 2023 and the investigation report gave his concurrence w.r.t. issuance of the SCN and as per Section 19 of the SEBI Act, Ld. QJA has been appointed to inquire into the present matter and has been specifically vested with the jurisdiction now as per the Order of the Hon'ble Bombay High Court dated May 08, 2024 to enquire into jurisdictional facts.

10.19. Sections 11C and 19 of the SEBI Act read with Regulation 5 & 9 of the PFUTP Regulations provide for jurisdiction of the IA and the Board to take action. Therefore, conclusions drawn by the IA and its reliance on various relevant facts/material is critical and becomes the foundation for any quasi-judicial enquiry. Reference has been made to the observations of the Hon'ble Supreme Court in ***T. Takano v.SEBI & Anr. [2022) 8 SCC 162]***.

10.20. In the present case, the Action Matrix, which finds its basis in IA, and considered under Regulation 9 of the PFUTP Regulations suffers from infirmities as following facts have not been mentioned/considered and indicates non-application of mind:

10.20.1. BHSL undertook act of restructuring of its debt with its lenders, during which time, it was subjected to a forensic audit, as per the RBI guidelines and the Report of Auditors indicate no malfeasance/fund diversion by BHSL;

10.20.2. The fact about loans to OIPL and BPGPL being squared up and no loss to the public shareholders;

10.20.3. BPGPL, to square off its loan, had acquired 13% stake in BPVPL;

10.20.4. Non-consideration of defences laid down by the Noticees during examination.

*10.21.* Non-consideration of FAR, and findings contained in them, by IA, goes against the very role, it was bestowed with, that is, consideration of relevant facts, as per SEBI Act, particularly under Regulations 9 & 10 of the PFUTP Regulations.

10.22. If a statute requires an authority to exercise power, only when such authority is satisfied that conditions exist for exercise of that power, that it can proceed. Such satisfaction must be on the grounds mentioned in the statute and that grounds must be made on the basis of relevant material ***[Indian Nut Products & Ors.v. Union of India & Ors., (1994) 4 SCC 269 (Paras 10)]***. SEBI must consider all relevant considerations and must not be influenced by the irrelevant considerations, as failure to do that would make the entire proceedings vitiated and without jurisdiction ***[Indian Railway Construction Co. Ltd. v. Ajay Kumar., (2003) 4 SCC 579 (Paras 18)***. The duty to act fairly is inextricably tied with the principles of natural justice and to deal with complaints in a fair manner and not circumvent the rule of law in order to attain convictions *[**Reliance Industries Limited v. SEBI & Ors., (2022) 10 SCC 181 (Paras 44 & 45); DLF Ltd. v. Securities & Exchange Board of India and Others, 2012 SCC OnLine Del 5765 (Para 45)**]*.

*f.* *Diversion of Monies – Conclusion based on conjectures and surmises*

10.23. The impugned transactions were conducted with various companies, including OIPL and BPGPL. The Noticee No.1 had been conducting business with OIPL for several years and had granted loans to the company, which was repaid in the form of equity in BPVPL. For the transaction pertaining to BPGPL, the Noticee No.1 had granted a loan to the company to set up a thermal power project, but since it did not materialize, some monies were returned and others were invested in companies, *albeit* related-parties.

10.24. The IA did not consider these justifications or provide reasons for disbelieving them. The IA's conclusion of diversion is unsupported by independent cogent evidence, and when the Noticees sought to cross-examine witnesses, it was observed that the witnesses had not been relied upon. Contrary to allegations, the subsidiary

company of Noticee No.1 infused ₹ 2361 Crore into it and paid its dues to sugarcane farmers.

11. Therefore, the Noticees have requested the QJA to decide the preliminary issues at the forefront and pass a separate order with respect to lack of jurisdictional facts in the present case.

## E. Issues for consideration

12. I have perused the directions mentioned in the order dated May 08, 2024 of the Hon'ble Bombay High Court, on the issue of jurisdiction. After considering the SCN, the replies filed by the Noticees, the issue that arise for consideration is whether there is no jurisdiction as contented by the Noticees to issue the instant SCN dated October 16, 2023.

### a. Jurisdictional facts

13. The Noticees have contended that the present proceedings lack the requisite jurisdictional facts and that, pursuant to the Order of the Hon'ble Bombay High Court, the present QJA has been specifically vested with the jurisdiction to examine the issue of jurisdiction through a reasoned order. In this regard, the Noticees have submitted that if it is found that the investigation suffers from malafide or that crucial and relevant facts were withheld in the action approval process, the matter can be disposed of at the threshold without entering into the merits. The Noticees have further submitted that the jurisdiction of the QJA flows from Section 19 of the SEBI Act, which permits delegation of powers by the Board through a general or special order in writing. According to the Noticees, the present proceedings emanate from the concurrence accorded on March 31, 2023 by the Hon'ble WTM for initiating action by way of SCN based on the Action Matrix and the Investigation Report, pursuant to which the present QJA was appointed. It has been contended that although the QJA originally did not possess jurisdiction to review the decision of the Hon'ble WTM, such jurisdiction now stands expressly conferred pursuant to the Order of the Hon'ble Bombay High Court.

14. The Noticees have further based their contention that under Section 11C of the SEBI Act read with Regulations 5 and 9 of the PFUTP Regulations, the jurisdiction to initiate and continue proceedings arises only upon investigation is conducted after taking into account all relevant facts. In this regard, the Noticees have submitted that Regulation 9 specifically mandates the IA to submit its report after considering all relevant facts and that such report forms the basis for the exercise of powers under Sections 11(4), 11B, 15A and 15HA of the SEBI Act and Regulation 10 of the PFUTP Regulations. According to the Noticees, the IA suppressed relevant and exculpatory material from the action approving authority, namely the Hon'ble WTM, and therefore the decision to initiate action on the basis of the Investigation Report is without jurisdiction. It has been contended that the failure to place such relevant facts before the appointing authority constitutes a violation of Regulation 9 of the PFUTP Regulations and consequently affects the validity of the proposed directions and the present quasi-judicial proceedings.

15. The Noticees have cited case laws to establish that where a statute grants power conditional upon the satisfaction of an authority, the existence of those jurisdictional conditions is a mandatory pre-requisite. In absence of such satisfaction, the exercise of power is unauthorized and legally unsustainable. Such satisfaction must be on the grounds mentioned in the statute and that grounds must be made on the basis of relevant material ***[Indian Nut Products & Ors.v. Union of India & Ors., (1994) 4 SCC 269 (Paras 10)]***. SEBI must consider all relevant considerations and must not be influenced by the irrelevant considerations, as failure to do that would make the entire proceedings vitiated and without jurisdiction ***[Indian Railway Construction Co. Ltd. v. Ajay Kumar., (2003) 4 SCC 579 (Paras 18)***. The duty to act fairly is inextricably tied with the principles of natural justice and to deal with complaints in a fair manner and not circumvent the rule of law in order to attain convictions ***[Reliance Industries Limited v. SEBI & Ors., (2022) 10 SCC 181 (Paras 44 & 45); DLF Ltd. v. Securities & Exchange Board of India and Others, 2012 SCC OnLine Del 5765 (Para 45)].***

**b. Consideration:**

16. In order to deal with the contentions of the Noticees, it is essential to identify what constitutes jurisdictional facts. ***In Arun Kumar v. Union of India, 2006 (9) SCALE 3202***, the Hon'ble Supreme Court of India has stated as follows:

*"A 'jurisdictional fact' is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess."*

17. It is also relevant to refer the observations referred to in the full bench of the Calcutta High Court in ***Hirday Nath Roy v. Ramachandra Barna Sarma. ILR 48 Cal 138 = AIR 1921 Cal 84 (FB)*** what is meant by jurisdiction is of importance.

*"...in other words, by jurisdiction is meant 'the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision."*

18. In another case of ***Smt. Ujjam Bai v. State of Uttar Pradesh, AIR 1962 SC 1621***, the word jurisdiction employed in Section 9, CPC came up for consideration. The Hon'ble Apex Court held that jurisdiction means the authority to decide and observed as under:

*"(15) ... What is the position with regard to an order made by a quasi-judicial authority in the undoubted exercise of its jurisdiction in pursuance of a provision of law which is admittedly intra vires? It is necessary first to clarify the concept of jurisdiction. Jurisdiction means authority to decide. Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding until reversed on appeal. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion whether it is wrong in law or in fact. The question, whether a tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their*

*nature, and it is determinable "at the commencement, not at the conclusion, of the inquiry'. Rex v. Bolten [1841] I Q.B. 66. Thus, a tribunal empowered to determine claims for compensation for loss of office has jurisdiction to determine all questions of law and fact relating to the measure of compensation and the tenure of the office, and it does not exceed its jurisdiction by determining any of those questions incorrectly, but it has no jurisdiction to entertain a claim for reinstatement or damages for wrongful dismissal, and it will exceed its jurisdiction if it makes an order in such terms, for it has no legal power to give any decision whatsoever on those matters…… (Halsbury's Laws of England, 3rd Edn. Vol. 11 page 59). The characteristic attribute of judicial act or decision is that it binds, whether it be right or wrong. An error of law or fact committed by a judicial or quasi-judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends. These principles govern not only the findings of inferior courts stricto sensu but also the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits, their decisions must be accepted as valid unless set aside on appeal…"*

19. Having seen the relevant case laws on the subject of what constitutes jurisdiction, it is also relevant to quote the observations of the Hon'ble Supreme court in ***Nusli Neville Wadia vs Ivory Properties on 4 October, 2019 ((2020) 6 SCC 557)*** on the **difference between the existence of jurisdiction and the exercise of jurisdiction.**

"*33. There is a difference between the existence of jurisdiction and the exercise of jurisdiction. In case jurisdiction is exercised with material irregularity or with illegality, it would also constitute jurisdictional error. However, if a court has jurisdiction to entertain a suit but in exercise of jurisdiction, a mistake has been committed, though it would be a jurisdictional error but not lack of it. It may be a jurisdictional error open for interference in appellate or revisional jurisdiction.*

20. The legal position established by the aforementioned authorities is that *jurisdictional facts* are foundational pre-requisites to the assumption of authority. Their existence is a condition precedent; without them, an authority lacks the legal competence to act, rendering any resulting decision a nullity. A critical distinction must be maintained

between *an absence of jurisdiction* and *an erroneous exercise of jurisdiction*. While errors of fact or law committed within jurisdiction are correctable on appeal, a wrong assumption of a jurisdictional fact causes the very foundation of authority to collapse, resulting in a total lack of jurisdiction.

21. The Noticees have identified the following facts as 'jurisdictional facts' and contended that the failure to consider the same by the IA has resulted in the lack of jurisdiction of the QJA in the present proceedings:

21.1. In 2017, the Noticee No. 1 underwent loan restructuring with various banks in accordance with Circular dated June 13, 2016 bearing RBI/2015-16/422 (DBR No.BP.BC.103/21.04.132/2015-16), issued by the RBI which is statutory in nature.

21.2. In terms of the said circular, Deloitte was appointed, by lenders which was a consortium of banks, to conduct forensic audit for the period April 01, 2014 to June 30, 2017 wherein the impugned loan transactions/investments were outstanding during that time and were examined by the concerned auditor for its propriety. Upon detailed audit undertaken by the Deloitte, it was *inter alia* concluded that no diversion, or misappropriation, had occurred with regard to the affairs of the Noticee No. 1.

21.3. In 2022, the Noticee No.1 again undertook restructuring of its debt (which was not concluded since the Company cleared its dues). In compliance with the RBI norms, in order to conduct the mandatory forensic audit, including the impugned loan transactions and investments alleged by SEBI, Mazars were appointed, who, vide report dated November 28, 2022 concluded that transactions occurred in the ordinary course of business and no diversion, siphoning or fraudulent transactions were identified.

21.4. The fact about loans to OIPL and BPGPL being squared up and no loss to the public shareholders and BPGPL, to square off its loan, had acquired 13% stake in BPVPL;

21.5. Issue of limitation and non-consideration of defences laid down by the Noticees during examination.

**(i) Finding –Forensic Audit**

22. The essence of the contention of the Noticees that the impugned transactions, namely the loans extended to OIPL during FY 2012–14 and 2014–15 and the investments/loans to BPGPL during FY 2010–11 to 2014–15, were subject to forensic audits conducted in the course of RBI-mandated restructuring. The forensic audits were made in the context of restructuring of Noticee No. 1 undertaken in terms of the RBI Circular dated June 13, 2016 bearing RBI/2015-16/422 (DBR No. BP.BC.103/21.04.132/2015-16), introducing the S4A. According to the Noticees, this circular prohibits restructuring in cases involving malfeasance or diversion of funds.

23. In this context, the Noticees have relied upon the forensic audit conducted by Deloitte for the period April 01, 2014 to June 30, 2017, which, according to the Noticees, examined the impugned transactions and concluded that there was no diversion or misappropriation of funds. Based on the said audit, the lenders approved restructuring and executed the Master Framework Agreement on December 16, 2017, which was disclosed to the stock exchanges on January 01, 2018. The Noticees have further relied upon a second forensic audit conducted by Mazars, culminating in a report dated November 28, 2022, which was submitted to the IA on February 02, 2023. It has been contended that the said audit also concluded that the transactions were undertaken in the ordinary course of business and that no diversion, siphoning or fraudulent activity was identified.

24. On this basis, the Noticees have argued that the existence of two FAR, both examining the impugned transactions and returning findings negating diversion, constitutes a jurisdictionally relevant fact, and that the failure of the IA to consider such material in the Investigation Report and Action Matrix renders the proceedings arbitrary, malafide and without jurisdiction.

25. I note that the entire argument of the Noticees proceeds on the premise that the alleged non-consideration of the FAR constitutes a jurisdictional defect.

26. It is relevant to note here the distinction between lack of jurisdiction and erroneous exercise of jurisdiction. SEBI derives its powers under the SEBI Act, 1992, *inter alia*, Sections 11 and 11C, read with the PFUTP Regulations, to investigate into allegations relating to fund diversion, fraudulent conduct and acts detrimental to the interests of investors or the securities market. The present matter pertains to allegations of fund diversion and related misconduct. Therefore, SEBI has the statutory jurisdiction to investigate such allegations. Once jurisdiction is conferred upon SEBI over the subject matter, the exercise of such jurisdiction, including the conduct of investigation and preparation of the investigation report, is an act done within the framework of such lawful authority. In this context, I find that the investigation report in the present case has been prepared in exercise of SEBI's valid jurisdiction on the subject matter.

27. The Noticees contended that the investigative findings must consider the Audit Reports as relevant materials. This is on account of the fact that these Reports explicitly conclude that BHSL did not engage in any fund diversion and annexed both the Audit Reports which also include scope of the audit to their formal reply in support of their contention. I note that the scope of the audit conducted by Deloitte for the period April 01, 2014 to June 30, 2017 and the audit conducted by Mazars for the period April 01, 2017 to April 30, 2022, *inter-alia*, includes diversion/mis-utlization of bank funds/siphoning of funds. In this context, it is important to note the allegations in the SCN. I note that the allegations in the SCN, about diversion of funds of BHSL, are based on the examination of the bank accounts of not only the Noticee No. 1 but also the bank accounts of OIPL and BPGPL as the said diversion is alleged to have happened through the aforementioned entities. However, from the Audit Reports submitted by the Noticees, it is noted that the same does not cover examination of bank accounts of OIPL and BPGPL. Without that examination the question of whether fund diversion happened through OIPL and BPGPL will not be found. Therefore, the finding in the auditor report, if any, is limited and is without examination of the layer entities such as OIPL and BPGPL.

28. It is important to note further that the investigation findings and the subsequent allegations are based on the relevant facts such as annual reports, MCA documents, analysis of fund trails involving entities outside the purview of Audit Reports.

29. The alleged non-consideration of such reports by the IA does not render the investigation or the SCN dated October 16, 2023 without jurisdiction. The reliance placed by the Noticees on RBI Circular dated June 13, 2016 and the restructuring implemented on December 16, 2017 does not constitute a jurisdictional fact so as to make this proceeding without jurisdiction for the reason that even if the case of the Noticees is accepted, it can at best be argued as resulting into erroneous fact finding and not error of jurisdiction. Further basis of "relevancy" as per the contention of the Noticee does not stand as the said audits reports do not cover examination of fund transfer through OIPL and BPGPL.

30. In the context of the above discussion, it is relevant to note the distinction between 'jurisdictional facts' and 'adjudicatory facts' as has been dwelt upon by the Hon'ble Supreme Court of India in the ***Arun Kumar case (supra) cited in Ramesh Chandra Sankla and Ors. vs. Vikram Cement and Ors. AIR 2009 SC 713*** as follows:

"*58. Drawing the distinction between `jurisdictional fact' and `adjudicatory fact', the Court stated:*
*It is clear that existence of 'jurisdictional fact' is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of `jurisdictional fact', it can decide the `fact in issue' or `adjudicatory fact'. A wrong decision on `fact in issue' or on `adjudicatory fact' would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present*."

31. The Hon'ble Supreme Court in ***Carona Ltd. Vs. Parvathy Swaminathan & Sons AIR 2008 SC 187*** has held that for assumption of jurisdiction by a Court or a Tribunal, existence of jurisdictional fact is a condition precedent and thereafter the authority may decide adjudicatory facts or facts in issue.

32. All such contentions raised by the Noticees are matters to be considered at the stage of determination of adjudicatory facts and not at the threshold as jurisdictional objections.

33. The investigation in the present matter has been conducted based on material collected by the IA, and the SCN dated October 16, 2023 has been issued on the basis of such material, setting out allegations of fund diversion and the provisions of law allegedly violated. The subject matter of fund diversion is within the jurisdiction of SEBI. The adjudicatory proceedings are the stage where such allegations are to be tested. The Noticees have been provided full opportunity to place on record all material, including the FAR relied upon by them, and to demonstrate that the allegations are not sustainable. In this context, I find that the FAR referred to by the Noticees, even if assumed to be relevant, form part of the evidentiary material which can be relied upon by the Noticees in support of their defence. The alleged non-consideration of such material by the IA does not render the investigation without jurisdiction. At best, it may be argued that certain material was not considered or was not given due weight at the stage of investigation. Such an argument pertains to appreciation of evidence and not to existence of jurisdiction. In my view, even if it is assumed that these facts were not taken into account by the IA, such omission, if any, would not amount to absence of jurisdiction. At best, it may amount to an erroneous exercise of jurisdiction.

34. It is a settled principle that where an authority has jurisdiction to act, any error in appreciation of facts, omission to consider certain material, or even an incorrect conclusion reached during such exercise does not render the action void on the ground of lack of jurisdiction. Applying the above principle to the present case, I find that SEBI had the jurisdiction to investigate the allegations of fund diversion. Therefore, even if the IA is assumed to have reached an erroneous conclusion, or failed to consider those facts, such alleged defects would not convert a valid exercise of jurisdiction into a case of lack of jurisdiction.

35. Accordingly, the objections raised by the Noticees on this ground are rejected.

**(ii) Finding – BPGPL investment and alleged non-recovery**

36. I have considered the submissions of the Noticees that BPGPL, a wholly owned subsidiary of Noticee No. 1, had acquired approximately 13% equity stake in BPVPL, which in turn holds majority stake in BEL and LPGPL, both stated to be operational and profitable power generation companies.

37. The Noticees have contended that this fact was not placed before the Hon'ble WTM in the Action Matrix and the Investigation Report, and that such non-disclosure has resulted in a distorted factual basis leading to initiation of proceedings. The Noticees have further contended that the Action Matrix proceeds on the premise that Noticee No. 1 has neither recovered the loan and interest in the last nine years nor taken any steps for recovery from BPGPL over a prolonged period. Action Matrix, noted that 'it is highly unlikely that measures would be taken for recovery of interest or loan' which according to the noticee points out to the malafide nature of the investigation. It has been submitted that this premise is factually incorrect and that the loans were effectively squared off, *inter alia*, through acquisition of equity stake in BPVPL. According to the Noticees, had these facts been placed before the Hon'ble WTM, the decision to initiate enforcement proceedings could have been different, and therefore, such non-consideration vitiates the proceedings on jurisdictional grounds.

38. At the outset, I note that the contention of the Noticees again seeks to characterize alleged non-consideration of certain facts by the IA as a jurisdictional defect. For the reasons already recorded in the preceding findings, I am unable to accept this contention. In this context, I find that the facts now relied upon by the Noticees, namely acquisition of approximately 13% equity stake by BPGPL in BPVPL, the downstream holdings of BPVPL in BEL and LPGPL and the contention that the loans stood effectively squared off through such transactions, are matters which go to the nature, character and commercial substance of the transactions in question. These are issues which require detailed examination on facts, including evaluation of the timing, structure, valuation, and connection of such transactions with the alleged fund flows. Therefore, even if it is assumed that these facts were not specifically recorded in the Action Matrix or in the Investigation Report, such non-consideration does not affect the jurisdiction of SEBI to investigate the subject matter covered in the SCN and adjudicate the same. The test of jurisdiction is whether the IA had the power to investigate the subject matter which is present in this case. The stand of the Noticees that these facts were not considered at the stage of investigation, is a matter falling within the domain of appreciation of evidence and not a jurisdictional defect.

39. I further note that the contention of the Noticees that the loans stood "squared off" through acquisition of equity stake in BPVPL is itself a matter which requires scrutiny. Whether such acquisition constitutes genuine discharge of liability, or whether the structure of such transactions supports or negates the allegation of fund diversion, cannot be determined at the threshold as a jurisdictional issue. The same requires examination in light of the entire chain of transactions, supporting documents, fund flows and surrounding circumstances. Similarly, the reliance placed by the Noticees on the alleged profitability and operational status of BEL and LPGPL, through BPVPL, does not, by itself, establish absence of diversion or impropriety. Such factors may be important in assessing the commercial rationale of the transactions, but they do not, at the threshold, negate the allegations or convert the issue into a jurisdictional question.

40. I also find that the argument of the Noticees that the Action Matrix contains an observation to the effect that recovery of the loan or interest is "highly unlikely" and that such observation indicates malafide, again pertains to the inference drawn at the stage of investigation. Such inference that it is highly unlikely, whether correct or erroneous, does not affect the existence of jurisdiction. The correctness of such inference is a matter to be tested on merits during adjudication. In this context, it is relevant to note that this forum does not have authority to review the decision of the IA on the grounds of alleged "malafide". Contrary to the argument of the Noticee, no such review power has been conferred on this forum by the Hon'ble Bombay High Court in its judgement dated May 08, 2024 for testing the malafides of the IA.

41. In view of the above, I hold that the facts relating to acquisition of equity stake in BPVPL and the alleged squaring off of loans are matters pertaining to the merits of the transactions and require examination on evidence. The alleged non-consideration of such facts in the Action Matrix or the Investigation Report does not render the proceedings without jurisdiction. The contentions of the Noticees relating to recovery of loans and downstream investments are issues to be examined in determination of adjudicatory facts. Such contentions are not jurisdictional facts so as to preclude this forum from proceeding with adjudication.

42. In the instant case, I hold that the SCN has jurisdictional facts in the form of allegations of fund diversion and materials in support of them. The allegations would be determined

as part of adjudicatory facts based on the material including those which would be submitted by the Noticees. The facts identified by Noticee as jurisdictional facts in the Investigation Report or in the SCN are not 'jurisdictional facts' but they are in the nature of 'adjudicatory facts', i.e. facts which may affect the merits of the case and will be decided as part of merits.

43. Accordingly, I find that SEBI had the jurisdiction to issue the instant SCN. The objections raised by the Noticees on this ground are rejected.

**(iii) Finding - Limitation**

44. The Noticees have submitted that the present SCN dated October 16, 2023 has been issued after an inordinate and unexplained delay of approximately 9 years. According to the Noticees, the transactions which form the subject matter of the present proceedings pertain to the period from FY 2011 to FY 2015 and were duly disclosed in the annual reports of Noticee No. 1 during the relevant financial years. It has been contended that such annual reports were mandatorily filed with the stock exchanges in compliance with the applicable disclosure requirements and, therefore, the information relating to the impugned transactions were available in the public domain.

45. The Noticees have further submitted that, as per the SCN itself, SEBI received complaints only in the year 2020 and thereafter undertook investigation during the period 2021 to 2023, whereas the SCN came to be issued only on October 16, 2023. According to the Noticees, even the facts relating to the restructuring of the loans of Noticee No. 1 were placed in public domain much prior to receipt of the complaints in 2020. In this regard, the Noticees have submitted that Noticee No. 1 underwent loan restructuring with various banks in the year 2017 in accordance with RBI Circular dated June 13, 2016 bearing RBI/2015-16/422 (DBR No.BP.BC.103/21.04.132/2015-16). It has been contended that pursuant to the audit conducted by Deloitte, the Noticee No. 1 and the consortium of lenders executed the "Master Framework Agreement on Scheme of Sustainable Structuring of Stressed Assets" on December 16, 2017. The Noticees have submitted that the said restructuring was disclosed to NSE and BSE on January 01, 2018 and, therefore, the said information was also available in the public domain.

46. The essence of submission of the Noticees is that since SEBI had access to the relevant disclosures at the material time, it possessed the requisite information long before these proceedings commenced. Consequently, the issuance of the SCN after a delay of approximately 9 years is contended to be without jurisdiction.

47. The Noticees have contended that the factum of restructuring and the disclosures made in relation thereto had remained in public domain for more than two years' even prior to the receipt of complaints in 2020. Accordingly, the Noticees have questioned the proceedings after an unreasonable lapse of time, despite the relevant information being publicly available through mandatory disclosures made to the stock exchanges.

48. The Noticees have further argued that serious prejudice has been caused to them on account of the delay in initiation of the proceedings. According to the Noticees, due to the lapse of time, they are no longer in possession of various documents, records and materials pertaining to such old period, thereby adversely affecting their ability to effectively defend themselves in the present proceedings.

49. In support of the above submissions, the Noticees relied upon various judgements including the decision of the Hon'ble SAT in the matter of ***Bombay Dyeing and Manufacturing Company Ltd. & Anr. v. SEBI (2026 SCC OnLine SAT 26)***, wherein, according to the Noticees, it has been held inter alia that SEBI acquires knowledge of a fact once such fact is available in the public domain. On the basis of the said judgement, the Noticees have contended that the issue of delay becomes the jurisdictional issue and, therefore, is required to be decided at the threshold and in favour of the Noticees. The Noticees have also relied upon the decisions in ***Yatin Pandya HUF vs SEBI (SAT Appeal No. 719 of 2021), SEBI Order in the matter if Monarch Networth Capital Limited dated December 30, 2021***, etc.

50. I have considered the contention of the Noticees that the transactions in question pertain to the period FY 2011 to FY 2015 and that the relevant financial statements and annual reports containing disclosures regarding such transactions were filed with the stock exchanges during the relevant years itself. The Noticees have further contended that the restructuring undertaken by Noticee No. 1 pursuant to the RBI Circular dated June 13, 2016 bearing RBI/2015-16/422 and the execution of the "Master Framework Agreement

on Scheme of Sustainable Structuring of Stressed Assets" dated December 16, 2017 were disclosed to NSE and BSE on January 01, 2018 and, therefore, according to the Noticees, all material facts were already available in the public domain much prior to initiation of investigation.

51. The above contention proceeds on the assumption that the commencement of reasonable period would automatically arise merely because the relevant financial statements, annual reports or disclosures were available in the public domain.

52. At the inception, I note that there exists a distinction between the existence of a document in the public domain and the existence of facts in the public domain which reasonably disclose the alleged misconduct. A financial statement or annual report may undoubtedly be available in the public domain. However, mere availability of such financial statements does not, by itself, establish that the alleged falsity embedded within such statements or alleged diversion, was also publicly known.

53. In the present matter, the allegations are not founded merely on the existence of inter corporate transactions disclosed in the annual reports of Noticee No. 1. The allegations pertain to the alleged nature, routing, utilization and true nature of the transactions, including the alleged diversion of funds through layered entities and the alleged non-genuine character of the fund movements. These nuances are not self-evident and do not manifest solely through examination of disclosed balance sheets or annual report.

54. For instance, the disclosures made during FY 2011 to FY 2015 merely reflected the existence of loans, advances, investments or related transactions. Similarly, the disclosure dated January 01, 2018 regarding restructuring under the RBI framework merely disclosed the factum of restructuring and execution of the restructuring arrangement. However, the mere existence of restructuring or disclosure thereof did not, by itself, reasonably disclose whether the underlying transactions were allegedly non-genuine, whether funds had allegedly moved through intermediate entities without commercial rationale, whether the transactions involved alleged diversion of funds, or whether the underlying entries are fraudulent or fictitious in nature.

55. Even the statutory principles on limitation itself recognize the distinction between existence of a transaction and discovery of fraud. The statutory principle proceeds on the basis that limitation in matters involving fraud commences only upon discovery of the fraud or when the fraud could reasonably have been discovered through due diligence. Thus, the relevant consideration is not merely whether a document existed in the public domain, but whether the alleged facts constituting the falsity or fund diversion were themselves reasonably discernible from such material.

56. I note that publicly disclosed financial statements may continue to carry an appearance of legitimacy unless tested against underlying records and surrounding circumstances. With no red flags, alleged falsity in accounts and fund diversion may become ascertainable only upon examination of materials such as banking records, analysis of fund movement, counterparty confirmations, forensic examination, supporting documents and other investigative evidence.

57. In the present matter, the Noticees have not demonstrated that the annual reports filed during FY 2011 to FY 2015 or the restructuring disclosure dated January 01, 2018 themselves contained material which reasonably brought out the alleged diversion, alleged non-genuine routing of funds, or the alleged absence of commercial substance in the transactions. Mere disclosure of transactions in financial statements cannot *ipso facto* lead to the conclusion that the alleged falsity and fund diversion underlying such transactions had itself become publicly known. It is relevant to note the judgment of the Hon'ble SAT in ***Bombay Dyeing and Manufacturing Company Ltd. & Anr. v. SEBI (2026 SCC OnLine SAT 26)*** which dealt with a fact situation where there is no allegation of the fund diversion. However, that is not the case in the instant matter.

58. Therefore, the mere publication of annual reports or restructuring disclosures cannot automatically be treated as the commencement point for computation of reasonable period of limitation.

59. I note from the date of complaint, the investigation has been completed and SCN has been issued within reasonable time. Therefore, on these grounds, I observe that delay cannot be jurisdictional issue in the facts and circumstances of the matter. Since the

proceedings are within the reasonable period, the question of prejudice does not arise. Accordingly, I find that SEBI had jurisdiction to issue the SCN in the instant case.

60. In view of the foregoing, I find that the Noticees' challenge to the jurisdiction is legally unsustainable. I observe that there exists jurisdiction to issue the SCN dated October 16, 2023. The findings on the preliminary issue of jurisdiction shall not affect or be construed as a final adjudication on the merits of the allegations contained in the SCN. Further, this Order on the preliminary issues raised may not be construed as a precedent in respect of other proceedings before SEBI.

N. MURUGAN Digitally signed by N. MURUGAN Date: 2026.05.13 17:18:30 +05'30'

**Date: May 13, 2026**
**Place: Mumbai**

**N. MURUGAN**
**QUASI JUDICIAL AUTHORITY**
**SECURITIES AND EXCHANGE BOARD OF INDIA**