

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10908 / December 21, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20180

In the Matter of

**INDIA GLOBALIZATION
CAPITAL, INC.**

and

**RAMACHANDRA “RAM”
MUKUNDA,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES
ACT OF 1933, MAKING FINDINGS,
AND IMPOSING A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) against India Globalization Capital, Inc. and Ramachandra “Ram” Mukunda (“IGC” and “Mukunda,” respectively, or collectively the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V as to Respondent Mukunda, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of India Globalization Capital's announcement on March 26, 2018, that its first cannabis-based product, called Hyalolex, a formulation aimed at Alzheimer's Disease symptom relief, "will be on the shelves in April [2018]." When it made this announcement, IGC was not ready to begin sales of Hyalolex by the following month. In fact, Hyalolex was not "on the shelves" at any time in 2018. At that time, IGC lacked experience in selling cannabis products, and was not able to meet the significant hurdles that needed to be cleared before sales could begin in such a regulated industry. Since Hyalolex was IGC's self-described "lead product" and its first cannabis-related item expected to produce revenues, the March 2018 announcement was material to investors.

Respondents

2. India Globalization Capital, Inc. ("IGC" or the "Company") is a Maryland corporation headquartered in Potomac, Maryland. IGC was formed in 2005 and went public pursuant to an initial public offering in 2006. Its common stock is registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and trades on the NYSE American stock exchange under the symbol "IGC." The Company files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. On various dates since April 1, 2012, IGC registered offerings of its securities on Form S-1/A, Form S-3 and Form S-3/A filed with the Commission. From April through June 2018, IGC issued stock through "At The Market" offerings that were registered with the Commission. Separately, in September 2018, IGC offered and sold a \$1 million private placement of restricted stock that IGC announced was earmarked to help with the commercialization of Hyalolex.

3. Ramachandra "Ram" Mukunda ("Mukunda") has served as IGC's CEO and president since its formation, and also now serves on its Board of Directors as Executive Chairman. Mukunda resides in Potomac, Maryland.

Background

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. From approximately 2008 through 2016, IGC announced its planned involvement in a series of disparate businesses and joint ventures, most of which did not generate significant revenues and which IGC subsequently discontinued. In fiscal year 2018, IGC generated the vast majority of its revenues from business involving commodities trading and machinery, and IGC also generated cash from the proceeds of various securities offerings.

5. In approximately May 2020, IGC began the marketing of an alcohol-based hand sanitizer under the name Hyalolex related to the COVID-19 pandemic. That product was IGC's second product under the Hyalolex name. IGC's first Hyalolex product is discussed below.

IGC's Hyalolex Alzheimer's Disease Product

6. In 2014, IGC announced its entry into the cannabis industry, disclosing it planned to develop and sell cannabinoid-based alternative therapies for the treatment of various diseases.

7. In December 2017, IGC publicly updated plans to launch its "lead product," called Hyalolex, which the Company described as a formulation for relief of certain symptoms of Alzheimer's Disease. On December 14, 2017, IGC issued a press release disclosing that it expected to begin distributing Hyalolex through licensed cannabis dispensaries in Washington, D.C., and Maryland in "early 2018." The press release noted that the process would include "state-by-state sourcing, formula assembly, packaging and distribution utilizing best practices to ensure quality control" while complying with the laws of each state.

8. In February 2018, IGC further announced that its "Alzheimer's product, Hyalolex, an industry first, is progressing as planned," and that it expected "initial commercialization" through dispensaries in select states "in the near term." At the time of these announcements, IGC had not brought any cannabis-related product to market.

The March 26 Release

9. On March 26, 2018, IGC issued a press release announcing the imminent start of Hyalolex sales in Puerto Rico (the “March 26 Release”). The March 26 Release stated: “Alzheimer’s patients in Puerto Rico will be the first in the United States to obtain Hyalolex, IGC’s proprietary cannabinoid based formulation aimed at relieving many of the symptoms of Alzheimer’s Disease” The March 26 Release announced that Hyalolex “will be on the shelves in April” and available to patients in ten dispensaries in Puerto Rico. IGC thus conveyed to investors that all necessary steps concerning the start of sales would be completed and that Hyalolex would be available in Puerto Rico within the next month. The April timeframe was inserted in the March 26 Release very late in the editing process on March 26.

10. The March 26 Release described Hyalolex as the Company’s “lead product.” Hyalolex sales in Puerto Rico would have marked IGC’s first revenues from its cannabis-based business.

11. Mukunda was involved in the process of editing the March 26 Release and was ultimately responsible for the contents of all IGC press releases, including the March 26 Release. IGC’s 2018 annual report described Mukunda as “the chief-inventor and architect of all patent filings by the Company including the creation of the Company’s lead product Hyalolex.”

12. On April 10, 2018, IGC announced that it had filed a patent for a formulation of Hyalolex. In that announcement, IGC reiterated that, “As previously announced, IGC will start its marketing activities in Puerto Rico” Later in the announcement, IGC added that “The Company is launching Hyalolex in Puerto Rico, as previously reported”

13. The April 10, 2018, press release further stated that “[a]fter launching marketing initiatives for Hyalolex in Puerto Rico, IGC will commence marketing and licensing arrangements in states including Maryland, Washington, D.C and California. By the end of the year, Mukunda says he expects IGC to have its Alzheimer’s product in 10 U.S. states.”

14. IGC issued a Spanish translation of this press release on April 11, 2018.

15. Despite the timeframe presented in its March 26 Release, IGC failed to place Hyalolex in any dispensaries the following month -- or at any time in 2018. As a result of its inexperience in the highly-regulated cannabis industry, IGC failed to clear certain necessary hurdles before distribution could begin. For example, on or about April 23, 2018, Hyalolex failed compositional testing in Puerto Rico designed to certify the percentage of cannabis-related components in the Hyalolex suspension. Although Hyalolex had earlier passed different versions of compositional testing, successful

compositional testing in Puerto Rico was a required step before sales in Puerto Rico could commence. The failed test in late April meant that Hyalolex could not be on dispensary shelves that same month.

16. IGC's plan to commence sales in April was dependent on the agreement of the owner of certain licensed marijuana dispensaries in Puerto Rico to stock the product. IGC had failed to obtain written assurances from the dispensaries' owner that they would carry Hyalolex, and in July 2018, the dispensaries' owner informed IGC that they would not sell the product. IGC was unable to enlist other dispensaries in Puerto Rico to carry Hyalolex. The fact that the dispensaries were not obligated to purchase or stock Hyalolex further shows it was not reasonable for IGC to state that sales would begin in April.

17. Additionally, IGC's plans to distribute Hyalolex in dispensaries in Puerto Rico raised issues with the exchange on which IGC's common stock was listed. Specifically, by approximately July 2018, that exchange had advised IGC to engage additional legal counsel to consider the impact on IGC's listing of IGC's plans to distribute Hyalolex in light of federal drug laws. IGC's efforts to resolve these issues led to further delays.

18. IGC did not correct the March 26 Release or explain to investors that Hyalolex was not on the shelves in ten dispensaries in Puerto Rico in April. Instead, IGC provided a new timeline going forward. For example, in its announcement of its 2018 Financial Results, filed with the SEC on June 21, 2018, IGC said, "The commercialization of Hyalolex through medical dispensaries in selected states is expected to commence in the second half of 2018."

19. From July to September 2018, IGC announced plans to introduce Hyalolex into other markets. In fact, IGC never began distributing Hyalolex anytime in 2018.

20. In issuing its March 26 Release, IGC knew or should have known that it was not in a position to commence distribution and sale of Hyalolex in April 2018. IGC's lack of experience in selling cannabinoid products and the number of hurdles that were not cleared as of the date of the March 26 Release made it objectively unreasonable for IGC to state that Hyalolex "will be on the shelves" the following month.

21. According to IGC's quarterly report, from April through June 2018, the company raised approximately \$135,000 from the issuance of equity stock.

Violations

22. As a result of the conduct described above, IGC violated Section 17(a)(2) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, obtaining money or property by means of any untrue statement of a material fact or any

omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

23. As a result of the conduct described above, IGC violated Section 17(a)(3) of the Securities Act, which makes it unlawful for any person, in the offer or sale of securities, directly or indirectly, to engage in a transaction, practice, or course of business which operates or would operate a fraud or deceit upon the purchaser.

24. As a result of the conduct described above, Mukunda caused the violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act committed by IGC. A violation of these provisions does not require scienter and may rest upon a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685, 701-02 (1980).

Respondents' Remedial Efforts

25. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents.

Undertakings

26. Respondent IGC has undertaken to:

A. Retain, at IGC's expense within 30 days of issuance of this Order, a qualified independent compliance consultant (the "Consultant") with extensive experience in matters of corporate governance and developing, implementing and overseeing organizational compliance programs for publicly reporting issuers, not unacceptable to the staff, to conduct a compliance program assessment related to IGC's internal policies and procedures delineated in item (A.1.) below. IGC shall cause the Consultant to analyze whether the components of IGC's corporate governance structure and internal policies and procedures as they relate to the areas described below have been designed and implemented successfully and are having the desired effects. The analysis shall include a determination of whether the culture of IGC is supportive of ethical and compliant conduct, including strong, explicit, and visible support and commitment by the Board and senior management. In discharging this undertaking, IGC shall cause the Consultant to:

(1) evaluate and assess the effectiveness of IGC's disclosure controls and procedures with an emphasis on IGC's press releases and social media posts, including but not limited to, whether IGC's internal disclosure controls and procedures are sufficient to ensure that material information relating to IGC, including its consolidated subsidiaries, is made known to IGC's President, Chief Executive Officer, Principal Financial Officer,

Disclosure Committee Chairman and Chairman of the Board of Directors to allow for timely decisions regarding required disclosure.

- B. Provide the Consultant with complete access and resources to review key documents (e.g., business principles, Code of Conduct, policies and procedures, social media account logins and passwords, relevant internal training materials and internal communications). In reviewing the creation, administration and implementation of the compliance program as it relates to the areas addressed in paragraph A, the Consultant shall conduct an assessment survey and interview relevant personnel;
- C. Provide a report to Commission staff and IGC's General Counsel and Chief Ethics and Compliance Officer, as described below, regarding the Consultant's findings and recommendations;
- D. Provide a copy of the engagement letter detailing the Consultant's responsibilities to Melissa Hodgman, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5553 within sixty (60) days of the issuance of this Order.
- E. Cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records and personnel as reasonably requested for the above-described review except to the extent such files, books, or records are protected from disclosure by any applicable protection or privilege such as the attorney-client privilege or the attorney work product doctrine. To the extent that the Consultant believes that documents are being withheld unreasonably, IGC shall work cooperatively with the Consultant to resolve the matter, and if they are unable to reach agreement, the Consultant shall promptly notify Commission staff. To ensure the independence of the Consultant, IGC shall not have the authority to terminate the Consultant without prior written approval of Commission staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates;
- F. Require the Consultant to report to Commission staff on his/her activities as the staff shall request;
- G. Permit the Consultant to engage such assistance, clerical, legal or expert, as necessary and at reasonable cost, to carry out his/her activities, and the cost, if any, of such assistance shall be borne exclusively by IGC;
- H. Require, within 120 days of the issuance of this Order (unless otherwise extended by Commission staff for good cause), the Consultant to complete the

review and report to Commission staff and IGC's General Counsel and Chief Ethics and Compliance Officer concerning:

- (1) the scope and methodologies used by the Consultant in order to complete the review;
- (2) IGC's compliance with the review;
- (3) the adequacy of IGC's existing policies;
- (4) practices and procedures regarding the matters assessed; and
- (5) the Consultant's recommendations, if necessary, regarding modification or supplementation of IGC's policies, practices and procedures related to the matters assessed (the "Recommendations").

- I. Adopt and implement, within 120 days of IGC's receipt of the Recommendations, all of the Recommendations; provided, however, that as to any Recommendation that IGC considers to be, in whole or in part, unduly burdensome or impractical, IGC may submit in writing to the Consultant and Commission staff (at the address set forth above), within 60 days of receiving the Recommendations, an alternative policy, practice or procedure designed to achieve the same objective or purpose. IGC and the Consultant shall then attempt in good faith to reach an agreement relating to each Recommendation that IGC considers to be unduly burdensome or impractical and the Consultant shall reasonably evaluate any alternative policy, practice or procedure proposed by IGC. Such discussion and evaluation shall conclude within 90 days after IGC's receipt of the Recommendations, whether or not IGC and the Consultant have reached an agreement. Within 14 days after the conclusion of the discussion and evaluation by IGC and the Consultant, IGC shall require that the Consultant inform IGC and Commission staff (at the address set forth above) of his/her final determination concerning any Recommendation that IGC considers to be unduly burdensome or impractical. IGC shall abide by the determinations of the Consultant and, within 60 days after final agreement between IGC and the Consultant or final determination by the Consultant, whichever occurs first, IGC shall adopt and implement all of the Recommendations that the Consultant deems appropriate;
- J. Require the Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with IGC or any of its present or former affiliates, directors, officers, employees or agents acting in their capacity as such. The agreement will also provide that the Consultant will

require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in the performance of his/her duties under this Order shall not, without the prior written consent of Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with IGC, or any of its present or former affiliates, directors, officers, employees or agents acting in their capacity as such, for the period of the engagement and for a period of two years after the engagement;

- K. The reports by the Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.
- L. Certify, in writing, compliance with the undertakings set forth above, including implementation of all Recommendations. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Melissa Hodgman, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings. IGC may apply to Commission staff for an extension of the deadlines described above before their expiration, and upon a showing of good cause by IGC, Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' IGC's and Mukunda's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents IGC and Mukunda cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act.

B. Respondent IGC shall comply with the undertakings enumerated in Paragraph 26 above.

C. Respondents IGC and Mukunda shall, within 15 days of the entry of this Order, pay a civil money penalty in the respective amounts of \$175,000 and \$35,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

D. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying India Globalization Capital, Inc. and Ramachandra Mukunda as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Melissa Hodgman, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a

Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent Mukunda, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Mukunda under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Mukunda of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary