BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: Order/AS/RM-AK/2023-24/29759

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:
Suresh Kotian
PAN:AMLPK3367P

In the matter of **Sharepro Services (I) Pvt. Ltd.**

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**), pursuant to an anonymous complaint dated October 20, 2015, conducted an investigation to examine in detail the records of the company **Sharepro Services (I) Pvt. Ltd**. **("Sharepro")** Meanwhile, Whole Time Member, SEBI passed an interim order dated March 22, 2016 against Sharepro and 15 other entities. Subsequently, vide confirmatory order dated November 03, 2017 the directions issued vide abovementioned interim order were confirmed, against all but one entities.

2. During the course of investigation SEBI had issued summons to **Mr.Suresh**

Kotian (**'Noticee'**), however, it was alleged that the summons issued were not complied with by the Noticee, and the Noticee also attempted to mislead the investigation, thereby violating the provisions of Section 11 C(2) and 11 C(3) of the Securities and Exchange Board of India Act, 1992 **("SEBI Act").** In view of the above observations, SEBI, initiated adjudication proceedings under Section 15A(a) and 15HB of the SEBI Act, against the Noticee for the alleged violation of the above-mentioned provisions of law.

APPOINTMENT OF ADJUDICATING OFFICER

3. Mr. K Saravanan was appointed as Adjudicating Officer vide communique dated July 12, 2019 under Section 15-I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) to inquire into and adjudge under 15A(a) and 15HB of SEBI Act, 1992 for the aforesaid alleged violation for the alleged violation of provisions of Section 11C(2) and 11C(3) of Sebi Act 1992 by the Noticee. Subsequently the matter was transferred to Shri Prasanta Mahapatra vide communique dated July 14, 2021, and then to the undersigned vide communique dated June 07, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice no. SEBI/HO/EAD-8/PM/NS/10702/1/2022 dated March 14, 2022 (hereinafter referred to as **"SCN"**) was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty, if any, should not be imposed against Noticee under Sections 15A(a) and 15HB of SEBI Act, 1992 for the aforesaid alleged violations. The SCN, *inter-alia*, stated as follows:

i. SEBI had issued summons to the Noticee as detailed hereunder

Transactions in the matter of Suresh Kotian (Folio Number- 31787777, G1G1-The Great Eastern Shipping Limited)

a. As per back office system records of Sharepro, Folio Number 31787777 (Code-G1G1-The Great Eastern Shipping Limited), (Suresh Kotian) dematerialized 9 shares (certificate no-61427; distinctive no 36022331 to 36022339) received from Folio no-31382319 of Sudhakar Anchan and 11 shares (certificate no 60796; distinctive Nos. 35854557 to 35854567) received from Folio Number: 31365473 in demat account number IN302679-32547247on 27/01/2004.

b. Various information/documents were sought from Suresh Kotian w.r.t the above transactions vide summons no-MIRSD2/LS/2016/10990 dated April 12, 2016 . Suresh Kotian replied vide letter dated April 22, 2016 and June 01, 2016 respectively through his advocate Arun Panickar. He stated that he does not know or have any kind of dealing or relationships or financial transactions with Sudhakar Anchan, Sadashiv Poojary, Indira Karkera, Govind Raj Rao and Prashant Karkera. He further stated that, he got the said shares as normal market mechanism and sold the share after dematerializing the same. Further he does not have any record for the same. He has also stated in the letter dated April 22, 2016 that all documents w.r.t. Sharepro is seized by EOW therefore he is unable to reply.

ii. Another Summon to Suresh Kotian was issued through his Advocate Arun Panicker:

Date	***Name***	***Summon No***	***Remarks***
10/05/2016	*Arun Panicker*	*MIRSD2/DB/SD/ SSIL/13677/2016*	*Advocate Arun Panicker vide letter dated April 22, 2016 informed that all records at*
10/05/2016	*Suresh*	*MIRSD2/DB/SD/*	

	Kotian	*SSIL/13678/2016*	*Sharepro are Seized by EOW because of which his client cannot reply.* *Vide Letter No 13677/2016 informed that citing non-availability of doc/info with third party will not be accepted. Reply should be provided from own records. CC sent to clients*

iii. *It was observed that the information sought from Suresh Kotian is w.r.t. his transactions and documents viz. consideration paid to buy the shares, demat transaction, consideration received on sale is in his custody and does not pertain to Sharepro. Suresh Kotian has not only failed to comply with the SEBI summons but attempted to mislead the investigation.*

iv. *In view of the same, it was alleged that the Noticee has failed to comply with the following SEBI summons:*

Table 1

Date	***Summon No***	***Annexure No***	***Remarks***
12/04/2016	*MIRSD2/LS/ 2016/10990*	*Annexure-SSK3*	*w.r.t. the transactions of The Great Eastern Shipping Limited and Mahindra Lifespace Developers Limited*
10/05/2016	*MIRSD2/DB /SD/SSIL/13*		*Advocate Arun Panicker vide letter dated April 22, 2016 informed that*

	677/2016 issued to his Advocate Arun Panicker		*all records at Sharepro are Seized by EOW because of which his client cannot reply. Vide Letter No 13677/2016 informed that citing non-availability of doc/info with third party will not be accepted. Reply should be provided from own records. CC sent to clients*
10/05/2016	*MIRSD2/DB/SD/SSIL/13678/2016*	*Annexure-SSK2*	

v. *Therefore, the Noticee was called upon to called upon to show cause as to why an inquiry should not be held against him in terms of Rule 4 of Adjudication Rules read with Section 15-I of the SEBI Act and why penalty, if any, should not be imposed on him under the provisions of Sections 15A(a) and 15HB of the SEBI Act for the aforesaid violations.*

5. SCN dated March 14, 2022 was served on the Noticee through speed post at his address 32/637 MBPT Quarter, Nadkarni Park, New Colony, Wadala East, Mumbai -37. In response to the SCN, Noticee vide letter dated April 01, 2022 submitted his reply, wherein he *interalia* made the following submissions:
   i. I am a small investor and I bought the shares as per market mechanism in a normal course of business. The said shares demated and sold out in secondary market. As the matter is very old I don't have any record supporting these transactions.
   ii. I have already indicated that the transfer deed in which the said shares were transferred to me is available on sharepro records.
   iii. I do not have any financial transactions other than the above stated transactions with Sudhakar Anchan and Mr. Sadashiv Poojary.

6. Thereafter, in the interest of natural justice, an opportunity for personal hearing was granted to the Noticee on September 29, 2022 vide letter dated September 14, 2022, which was served upon him through speed post at his abovementioned address. I note that, the Noticee submitted his response vide email dated November 11, 2022 reiterating the submission dated April 01, 2022 and requested to take a lenient view. The Noticee did not appear for the scheduled hearing.

7. I note that sufficient opportunities of filing reply to the SCN and hearing have been given to the Noticee, however, the Noticee did not appear for scheduled hearing. Accordingly, the matter is proceeded with respect to the Noticee on the basis of the replies, documents and information available on record.

CONSIDERATION OF ISSUES AND FINDINGS

8. After perusal of the material available in record, the following issues are for consideration viz.

A. Whether Noticee failed to comply with Section 11C(2) and 11C(3) of SEBI Act, 1992.

B. Do the violations, if any, on the part of the Noticee attract any penalty under SEBI Act?

C. If yes, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

9. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI Act:

SEBI Act, 1992

Investigation.

11C. (2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

A. Whether Noticee failed to comply with Section 11C(2) and 11C(3) of SEBI Act, 1992.

10. Based on the observations regarding the instances in the SCN, it is noted that, following summons were issued to the Noticee:

Table 2

Date	Summon No	Remarks
12/04/2016	MIRSD2/LS/2016/10990	w.r.t. the transactions of The Great Eastern Shipping Limited and Mahindra Lifespace Developers Limited
10/05/2016	MIRSD2/DB/SD/SSIL/13677/2016 issued to his Advocate Arun Panicker	Advocate Arun Panicker vide letter dated April 22, 2016 informed that all records at Sharepro are Seized by EOW because of which his client cannot reply. Vide Letter No 13677/2016 informed that citing non-availability of doc/info with third party will not be accepted. Reply should be provided from own records. CC sent to clients
10/05/2016	MIRSD2/DB/SD/SSIL/13678/2016	

11. It is noted that, these summons where duly served on the Noticee, and sufficient opportunity was granted to the Noticee for responding and submitting the desired information, either in writing or personally as directed in the respective summons.

12. It is noted that, Noticee replied vide letter(s) dated April 22, 2016 and June 01, 2016 respectively though his advocate Arun Panickar. He stated that he does not know or have any kind of dealing or relationships or financial transactions with Sudhakar Anchan, Indira Karkera, Govind Raj Rao and Prashant Karkera. He further stated that he transferred the shares as internal transfer in normal course and sold them after dematerializing the same. Further, he had received consideration but failed to produce any record for the same. He has also stated in the letter dated April 22, 2016 that all documents w.r.t. Sharepro is seized by EOW, therefore he is not able to reply.

13. It is further noted that, SCN also alleges that the basis on which Noticee arrived at conclusion that EOW has seized all record is not informed. The Noticee also failed to show any effort he has made to secure other documents from Sharepro. SCN also states that even in the absence of some of Management personnel of Sharepro (viz. G.R.Rao and Indira Karkera) functioning of the Sharepro as organization was continuing as on the date of the summons and even numerous companies are carrying out audit of their books (as per SEBI order dated March 22, 2016), client were transacting in share transfer related work etc. Further, though Noticee has transferred the shares to Suresh Kotian he has falsely denied knowing or dealing or having any financial transaction with him. It is also noted from SCN that, EOW in their reply (vide letter No OW No 1866/EOW/UNIT-V/2016 dated July 25, 2016; to SEBI submitted the list of documents seized from the office of Sharepro and the said list does not contain any document related to the above mentioned transactions. Further, vide his reply dated April 1, 2022 to the SCN, Noticee has stated that he does not have any financial transaction other than these transactions with Mr. Sudhakar Anchan and Sadashiv Poojary. Based on the abovementioned discussions I note that, the Noticee failed to submit any credible evidence/records to substantiate his claims. The Noticee further, failed to offer any explanation regarding what efforts he has taken to procure the requisite documents for submitting reply to the summons. I further note that, despite the fact of transfer of shares being on record the Noticee has submitted false information in response to the summons. Thus, I do not find any merit in the contention of the Noticee.

14. 11(C) (2) of the SEBI Act enjoins upon every person to whom the summons has been issued to produce the documents as sought by the Investigating Authority. It is pertinent to mention that the provisions under Section 11C(3) of

the SEBI Act, grant powers to Investigation authority to seek such information or record evidences/ statement which are relevant or necessary for the purpose of investigations, from any person associated with securities market in any manner.

15. In this context, it is also important to refer to the judgment of the Hon'ble SAT in the matter of Mr. Jalaj Batra vs. SEBI (Appeal no. 184 of 2010, date of decision dated December 06, 2010) wherein it observed: *"......We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non co-operation with the market regulator has to be viewed seriously. We do not know what else would have come to light if the appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him."*

16. Further, the Hon'ble SAT in Appeal No.95/04 in Mayfair Paper & Board Pvt. Ltd. Vs SEBI dated August 09, 2004, observed that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under section 15A of the SEBI Act 1992.

17. I also note that, Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (Civil Appeal No(S).11311 Of 2013) dated February 28, 2019, held that:*"......Adjudicating Officer had, therefore, rightly recorded that non-*

compliance of summons had hampered the further course of investigation. The failure was without any justification. Agreeing with the said findings, the Appellate Tribunal has observed that details were withheld with a view to delay the investigation being conducted by SEBI to the detriment of investors from whom funds were collected by the appellants in contravention of CIS Regulations. We do not find any fault with the reasoning given. We are of the opinion that the fault squarely lied with the appellants and, thus, penalty of Rs.1,00,00,000/-(Rupees one crore only) for violation of Section 11C(3) under Section 15A(a) of the SEBI Act does not call for any interference"

18. In this regard, it is noted that, it is the responsibility of every person from whom information is sought vide summons to fully co-operate with investigating authority and promptly produce all documents, records, information, etc., to the Investigating authority. The Noticee to whom summons were issued was required to respond to summons and provide complete and correct information, however, the Noticee failed to submit the complete and correct information, rather he submitted wrong information in order to mislead the investigation. If Noticee is allowed to flout the summons issued to him during the course of the investigation, SEBI, as the watchdog of the securities market, will not be able to discharge its statutory obligations in protecting the interests of the investors and safeguarding the integrity of the securities market. The information as per **Table 2** were sought from the Noticee against the background of serious irregularities. From the above discussions regarding Non Compliance with summons, I note that, I have no hesitation to hold that the Noticee has violated the respective provisions of 11C (2) and 11 C (3) of the SEBI Act as specified at **Table 2** by not complying with the summons issued.

B: Do the violations, if any, on the part of the Noticee attract any penalty under SEBI Act?

19. As regards the imposition of monetary penalty for non-compliance of summons, it is noted that the Hon'ble SAT had the occasion to deal with this issue in the matter of DKG Buildcon Pvt. Ltd.(supra), wherein it observed: *"It was then argued on behalf of DKG that section 15A(a) of the Act does not apply as the Act, Rules or Regulations made thereunder do not per se require the production of documents or furnishing of information and that it was only a direction of the Board contained in the summons that the appellant was required to comply with. The argument indeed is that non-compliance with the directions of the Board would not attract section 15A(a) and that the penalty could be levied under the residuary provision contained in section 15HB. The argument is being noticed only to be rejected. Section 11C of the Act was introduced with effect from 29.10.2002 and sub-section (3) thereof provided that the investigating authority may require any person associated with the securities market "to furnish such information, or produce such books, or registers, or other documents, or record before him…". The power to require a person to furnish any information or record or documents includes the power to require such person to make a statement and give clarifications with regard to the information and documents produced by him. In the absence of such a power the purpose of the legislature in introducing section 11C would be frustrated and the Board will not be able to investigate properly the market irregularities and offences. In order to advance the object of Parliament the language used in sub-section (3) of section 11C has to be given a wider meaning. We are, therefore, of the considered opinion that section 11C (3) gives the power to the investigating authority to call upon any person to make a statement while furnishing any information, document or record."*

20. It is clear from the above finding that, if a person fails to comply with the summons of IA he is liable for penalty under Sec. 15A(a) of SEBI Act. As the violation of provisions of section 11C(2) and 11C(3) of SEBI Act, 1992 by the Noticee has been established, it is held that Noticee is liable for monetary penalty under section 15A(a) of SEBI Act.

21. The SCN dated March 14, 2022 states that aforesaid alleged non-compliance, if proved, shall makes the Noticee liable for penalty under Section 15A(a) and 15HB of the SEBI Act. The text of the said provision is reproduced below:

<u>Penalty for failure to furnish information, return, etc.</u>

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a) to furnish any document, return or report to the Board, fails to furnish the same [1][or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to [2][a penalty [3][which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees];

<u>Penalty for contravention where no separate penalty has been provided.</u>

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be [4](liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.)*

[1] *Inserted by the Finance Act, 2018 w.e.f. 08-03-2019.*

22. Regarding applicability of Section 15 HB for the violations discussed above, I note that, when one section of a statute grants general powers, as opposed to another section of the same statute which grants specific powers, the general provisions cannot be utilised where a specific provision has been enacted with a specific purpose in mind. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. The rule is, that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply. In the instant matter, 15A(a) provides for specific provisions covering the violations discussed in the foregoing paragraphs, in view of the same, I shall not be applying the generic provision of 15 HB in the instant matter.

C. If so, what would be the monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15 J of the SEBI Act?

23. For the purpose of adjudication of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective

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[2] Substituted for "a penalty not exceeding one lakh and fifty thousand rupees for each such failure" by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002.
[3] Substituted for the words "of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014
[4] Substituted for the words –"liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J of the SEBI Act. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. The factors stipulated in Section 15J, which reads as follows:

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investor/+s as a result of the default;

(c) the repetitive nature of the default.

Explanation-

For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

24. Having regard to the factors listed in section 15J, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default in this case cannot be computed.

25. The available records neither reveals any disproportionate gains/ unfair

advantage made by Noticee, the specific loss suffered by the investors due to such violations and nor has such allegations been made against the Noticee. It is difficult, in cases of such nature, to quantify with mathematical precision the disproportionate gains or unfair advantage enjoyed by an entity and the consequent loss suffered by the investors. However, it is pertinent to mention here that by not submitting complete details to the summons despite having received the summons compromises the regulatory framework and hampers the investigation. Therefore, taking into consideration the facts, circumstances of the case and all of the above factors, it is determined that a justifiable penalty needs to be imposed upon the Noticee.

ORDER

26. In view of the discussion in the aforementioned paras, given the role of Noticee, and having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, hereby impose the penalty under Sections 15A(a) of the SEBI Act, 1992 as given in the following table:

Name of the Noticee	**Violations**	**Penalty (in Rs.)**
Suresh Kotian	Section 11C(2), 11C (3) of SEBI Act	Rs.3,00,000 (Three lakhs only) under Section 15 A(a) of SEBI Act

I am of the view that the said penalty is commensurate with the default committed by the Noticee.

27. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

28. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

29. In terms of rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Place: Mumbai	**ASHA SHETTY**
Date: November 17, 2023	**ADJUDICATING OFFICER**