BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/S./2023-24/29695]

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) RULES, 1995

In respect of

Gaurav Sarda – Research Analyst
(**PAN**- **EHDPS8859H**)
(**SEBI Registration No.**- **INH000007845**)

In the matter of Gaurav Sarda – Research Analyst

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted inspection of Gaurav Sarda, a SEBI registered Research Analyst **(**hereinafter referred to as **"RA/RA-Gaurav/Noticee")** during January 09, 2023 to January 10, 2023. The period of inspection was 01st April 2021 to 31st October 2022. The area of the inspection was to look into the compliance with respect to Securities and Exchange Board of India Act, 1992 (**"SEBI Act"**), RA Regulations and circulars issued in this regard till date. Pursuant to the inspection, the findings of inspection were communicated to Noticee vide letter/email dated February 12, 2023 an June 22, 2023 and Noticee submitted his reply to same vide letter dated February 20, 2023 and email dated June 26, 2023. On analysis of the findings of inspection vis-à-vis the replies submitted by Noticee, SEBI observed certain non-compliances of provisions of SEBI (Research Analysts) Regulations, 2014 ("**RA Regulations**") by Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated vide order dated August 25, 2023, SEBI appointed the undersigned as Adjudicating Officer under Section 15(I) of Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') read with Section 19 of SEBI Act to inquire into and adjudge under:

   2.1. Section 15EB of SEBI Act, the alleged violation of Regulations 7(2) and 24(5) of RA Regulations;

   2.2. Section 15EB of SEBI Act and Section 15A(c) of SEBI Act, the alleged violation of Regulations 25(1) & (2) of RA Regulations;

   2.3. Section 15EB of SEBI Act and Section 15A(a) of SEBI Act, the alleged violation of Regulations 29(1) & (2) of RA Regulations,

   by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated September 26, 2023 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon him under the aforementioned provisions of SEBI Act for the alleged violations as specified in paragraph 2 above.

4. The allegations against the Noticee in the SCN are summarised as under:-
   a) *It has been alleged in the SCN that Noticee did not have a valid NISM certification as applicable to Research Analysts and thereby, it violated Regulation 7 (2) & Regulation 24 (5) of the RA Regulations.*
   b) *It has been alleged in the SCN that Noticee failed to maintain requisite records in respect of its activities as a research analyst in terms of Regulation 25 of the RA Regulations and thus, violated Regulation 25 of the RA Regulations*.
   c) *It has been alleged in the SCN that Noticee failed in providing all such assistance and co-operation as required in connection with the inspection. In view of the above, it has*

been alleged that Noticee violated the provisions of Regulations 29(1) and 29(2) of RA Regulations.

5. The SCN was despatched to Noticee by Speed Post Acknowledgement Due ('**SPAD**') and through Digitally Signed Email dated September 26, 2023 which was duly served on Noticee. Subsequently, vide email and letter dated October 10, 2023 Noticee submitted his reply to the SCN. Thereafter, vide Hearing Notice dated October 11, 2023, Noticee was granted an opportunity of hearing on October 16, 2023. The said Hearing Notice was despatched by SPAD and Digitally Signed Email dated October 11, 2023, which was duly served on Noticee. Noticee attended the hearing on the scheduled date and reiterated his reply vide email and letter dated October 10, 2023.

6. In regard to the allegations made in the SCN, the relevant extracts of the Noticee's submissions in his reply vide email and letter dated October 10, 2023, are reproduced as under:

   i. *"Noticee's NISM Certificate was valid till April 15, 2022 and the Noticee had stopped taking new payments with effect from 14.01.2022 which is also verified and confirmed by the SEBI Officers. Hence, it clarifies that the Noticee has neither provided any services nor collected any fees while representing himself as a Research Analyst after his NISM certificate got expired."*

   ii. *"After stopping his operations in January, 2022, the Noticee didn't had any intention to further carry out research services and hence the Noticee didn't renewed his certificate. Moreover, the Noticee's SEBI certificate was also lost as a result of which he could not apply for surrender of certificate of registration."*

   iii. *"The Noticee would like to state that he had duly maintained all the requisite records as per the Regulation 25(1) & (2) of the RA Regulations viz. records of research recommendations provided and its rationales in his laptop. However, due to an unforeseen and uncontrollable event on 07.01.2022, wherein the Noticee's laptop bag was stolen, he lost all the records which were stored in it…."*

   iv. *"The Noticee had filed an F.I.R with the police authorities, wherein he was informed that lost of bag is very common and they cannot take any action upon it. Thereafter the Noticee informed the Police Authorities that the said bag contained an original certificate of registration provided by the SEBI and then the Authorities were slightly concerned to register a F.I.R and despite that the Noticee was repeatedly asked by the authorities that which was the utmost important document, for which the*

Noticee had stated that 'SEBI Certificate' and the Policeman had just mentioned regarding the Certificate instead of mentioning each and every document in detail."

v. *"The only mistake the Noticee did was that he was not having the backup of the all the data stored in his laptop. Moreover, none of the investors did ever file a complaint that services were not provided to them, which does evidences that the Noticee was providing proper research services and its records were also maintained."*

vi. *"Noticee would like to state that he has cooperated with the SEBI Officers and have provided them the requisite information to the best of his capacity. The Noticee had submitted duly filled Pre-Inspection Questionnaire in a timely manner and during the Inspection also the Noticee had provided all the available documents/information to the Officers. Also, post the said inspection, SEBI had sought various replies/information from the Noticee and the Noticee had duly replied upon it. Thereafter SEBI had issued its inspection report, which was also timely replied upon by the Noticee. Hence, it does evidences that the Noticee has cooperated with the SEBI in his best capacity, however he was unable to provide those documents/information which were not available with him due to the said unforeseen event, apart from it, the Noticee had provided every information/ document to the SEBI."*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

7. I have carefully perused the charges levelled against the Noticee, reply filed by Noticee, and other documents/evidence available on record. The issues that arise for consideration in the present case are:

I) Whether Noticee has violated the provisions of law as specified in paragraph 2 above?

II) Do the violations, if any, attract a monetary penalty under Sections 15EB, 15A(a) and 15A(c) of SEBI Act of SEBI Act?

III) If the answer to the aforesaid issues is in the affirmative, then what should be the quantum of monetary penalty?

8. Before proceeding to examine the matter, I find it pertinent to reproduce the aforesaid regulatory provisions, which are as under:

RA Regulations

*"**<u>Obligation of research analyst on inspection.</u>***

29. ***(1)*** *It shall be the duty of every research analyst or research entity in respect of whom an inspection has been ordered under the regulation 27 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such research analyst or research entity including their representative, if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.*

(2) *It shall be the duty of research analyst or research entity and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the research analyst to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.*

<u>Maintenance of records</u>.

25. *(1) Research analyst or research entity shall maintain the following records:*

(i) research report duly signed and dated;

(ii) research recommendation provided;

(iii) rationale for arriving at research recommendation; (iv)record of public appearance.

(iv) record of public appearance.

(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:

Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

General responsibility

24(5) *It shall be the responsibility of the research analyst or research entity to ensure that its employees or partners, as may be applicable, comply with the certification and qualification requirements under regulation 7 at all times.*

Qualification and certification requirement

7(2) *An individual registered as research analyst under these regulations, individuals employed as research analyst and partners of a research analyst, if any, shall have, at all times, a NISM certification for research analysts as specified by the Board or other certification recognized by the Board from time to time: Provided that research analyst or research entity already engaged in issuance of research report or research analysis seeking registration under these regulations shall ensure that it or the individuals employed by it as research analyst and/or its partners obtain such certification within two years from the date of commencement of these regulations: Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements."*

Issue No. I - Whether Noticee has violated the provisions of law as specified in paragraph 2 above?

9. It has been alleged in the SCN that Noticee did not have a valid NISM certification as applicable to Research Analysts and thereby, it violated Regulation 7 (2) & Regulation 24 (5) of the RA Regulations.

10. I note that in terms of Regulation 7(2) of RA Regulations, every registered research analyst shall have, at all times, an NISM certification for research analysts and that fresh certification must be obtained by a research analyst before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements. I also note that in terms of Regulation 24(5) of RA Regulations, a research analyst is required to ensure that its employees or partners, as may be applicable, comply with

the certification and qualification requirements under Regulation 7 of RA Regulations at all times.

11. I have perused the findings of the Inspection Report communicated to the Noticee vide letter and email dated February 12, 2023 and June 22, 2023 and Noticee's reply to the said findings in his letter dated February 20, 2023 and email dated June 26, 2023. I have also perused the Noticee's replies dated January 09, 2023 and December 06, 2022 to the Inspection Questionnaire sent by SEBI to Noticee. From the aforesaid records, I find that Noticee was having an NISM certificate, namely, "NISM-Series-XV: Research Analyst Certification Examination" ("**NISM certificate**") which was applicable to research analysts and the said NISM certificate was valid till April 15, 2022.

12. I also note from Noticee's reply to the SCN that his NISM Certificate was valid till April 15, 2022 and that Noticee had stopped taking new payments with effect from 14.01.2022. Noticee has contended that SEBI inspection team had verified and confirmed the aforesaid facts. Noticee has also contended that he didn't have any intention to further carry out research services and hence, he didn't renew his certificate. Noticee has contended that he was duly in compliance with the NISM certification requirement till the time period he was providing services to the investors/clients.

13. I note that Noticee has admitted that his NISM certificate had expired on April 15, 2022 and that he did not renew his NISM certificate. As per Regulation 7(2) of RA Regulations, Noticee is under an obligation to have a valid NISM certification for Research Analysts and that fresh certification must be obtained by a research analyst before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements. Therefore, in view of the foregoing admission by Noticee, I find that Noticee has failed to comply with Regulation 7(2) of RA Regulations. Hence, I find that the allegation that Noticee has violated Regulation 7(2) of RA Regulations stands established.

14. It has also been alleged that Noticee has contravened Regulation 24(5) of the RA Regulations. In this regard, I note that no observation has been made in the Inspection Report and the Post-Inspection Analysis regarding the non-compliance of the certification requirement with respect to Noticee's employees or partners, which is stipulated under Regulation 24(5) of the RA Regulations. Thus, I find it difficult to determine whether

Noticee had failed to ensure compliance with the NISM certification requirement with respect to his employees, as required under Regulation 24(5) of RA Regulations. Thus, I find that the allegation that Noticee has violated Regulation 24(5) of the RA Regulations does not stand established.

15. It has been alleged in the SCN that Noticee failed to maintain requisite records in respect of its activities as a research analyst in terms of Regulation 25 of the RA Regulations and thus, violated Regulation 25 of the RA Regulations. It has also been alleged in the SCN that Noticee has failed to provide to the inspecting authority, the relevant information, books, accounts and other documents available with him pertaining to his conduct and affairs as a research analyst under the pretext that he is not soliciting clients and does not charge any fees for his research analyst services. It has also been alleged that by refusing to provide the aforesaid information and records, Noticee failed in providing all such assistance and co-operation as required in connection with the inspection. In view of the above, it has been alleged that Noticee violated the provisions of Regulations 29(1) and 29(2) of RA Regulations.

16. I note that in terms of Regulation 25 of the RA Regulations, Noticee was required to maintain records w.r.t. research reports (duly signed and dated), research recommendations and rationales for arriving at research recommendations, and records of public appearances and such records are required to be maintained in physical/electronic form and preserved for a minimum period of five years. I further note that in terms of Regulations 29(1) and 29(2) of RA Regulations, Noticee is required to produce to the inspecting authority such books, accounts and other documents in his possession or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.

17. On perusal of the records of inspection, I observe that Noticee failed to produce the aforementioned requisite records w.r.t. its activities as a research analyst during the inspection period before the inspecting authority. In his reply to the SCN, Noticee has admitted that it was not able to furnish the aforesaid requisite records. As per Noticee's reply to the SCN, the Noticee's laptop and his documents including his SEBI registration Certificate were lost due to theft, which occurred on January 07, 2022. In this regard, available records show that Noticee had, during inspection, submitted a copy of the FIR

dated February 09, 2022 regarding the loss of Noticee's bag containing documents including his SEBI registration certificate, which was filed by him at Police Station, Gangapur, Aurangabad, Maharashtra along with his affidavit dated February 10, 2022. In his reply to the SCN, Noticee has contended that the police did not record the loss of his laptop and other records which were kept in the aforementioned bag. I note that the FIR filed by the Noticee only mentions the loss of his SEBI registration certificate and does not mention the loss of laptop or any other documents. In his reply, Noticee has accepted that he had failed to maintain backup of the requisite records and that the said failure was a mistake on his part. I find it very improbable that both electronic as well as physical records of Noticee have been stolen. In any case, no backup has been retained by Noticee for such eventuality. Therefore, I am not inclined to accept the aforesaid contentions of Noticee. Thus, it follows that Noticee failed to maintain the records as stipulated in Regulations 25(1) and 25(2) of RA Regulations and so it failed to produce the same before the inspecting authority. Thus, I find that the allegation that Noticee has violated Regulations 25(1) and 25(2) & Regulations 29(1) and 29(2) of RA Regulations stands established.

<u>Issue No. II- Do the violations, if any, attract a monetary penalty under Sections 15HA and 15EB of SEBI Act?</u>

18. It has been established in the foregoing paragraphs that the Noticee has violated the provisions of RA Regulations as specified in paragraph 2 above. In the context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established..…..*"

19. Therefore, in view of the foregoing findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violations will attract monetary penalty under Sections 15EB, 15A(a), and 15A(c) of SEBI Act as specified in paragraph 2 of the order. The respective provisions, as applicable at the time of the violations, are reproduced as under:

Penalty for default in case of investment adviser and research analyst.

15EB. *Where an investment adviser or a research analyst fails to comply with the regulations made by SEBI or directions issued by SEBI, such investment adviser or research analyst shall be liable to penalty 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.*

Penalty for failure to furnish information, return, etc.
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 SEBI, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty 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.

…

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty 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

Issue No. III - What should be the quantum of monetary penalty?

20. While determining the quantum of penalty under Sections 15EB, 15A(a), and 15A(c) of SEBI Act, it is important to consider the factors as stipulated in Section 15J of SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- 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 investors as a result of the default;
(c) the repetitive nature of the default.

21. In the present matter, it is noted from available records do not demonstrate any quantifiable gain or unfair advantage accrued to the Noticee. I also note that the material available on record does not sufficiently quantify the amount of loss caused to investors as a result of the aforementioned violations by Noticee. As regards the repetitive nature of the default, I do not find the inspection having brought on record any regulatory action taken by SEBI in the past against Noticee for the same violations as those observed in the instant inspection. However, as a SEBI registered Research Analyst, Noticee was under a statutory obligation to abide by the provisions of RA Regulations, which it failed to do and such default calls for an appropriate penalty.

ORDER

22. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee, and also the factors mentioned in Section 15J of SEBI Act, as enumerated above, I, in the exercise of the powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalties on Noticee for the violations established above:

Name of Noticee	Penalty under Section 15EB of SEBI Act	Penalty under Section 15A(c) of SEBI Act	Penalty under Section 15A(a) of SEBI Act
Gaurav Sarda – Research Analyst	Rs. 1,00,000 /- (Rupees One Lakh only)	Rs. 1,00,000 /- (Rupees One Lakh only)	Rs. 1,00,000 /- (Rupees One Lakh only)

23. Noticee 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. In case of any difficulties in payment of penalties, said Noticee may contact the support at portalhelp@sebi.gov.in.

24. The Noticee shall forward the said confirmation of e-payment made in the format as given in the table below which should be sent to "The Division Chief, EFD – DRA - III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	

2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

25. 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 SEBI Act for the realisation of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

26. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee and also to SEBI.

PLACE: Mumbai **SOMA MAJUMDER**

DATE: October 26, 2023 **ADJUDICATING OFFICER**