BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/SR/2022-23/10-16/21729-21735]

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

In respect of

SrNo	Name of the Entity	CIN/PAN/DIN	Order No.
1	Hum Projects Limited	AACCH5858G	ORDER/SR/22-23/10/21729
2	Sandip Roy	AHIPR2184B	ORDER/SR/22-23/11/21730
3	Chandra Shekhar Sabat	CXKPS4104E	ORDER/SR/22-23/12/21731
4	Nasirul Islam Seikh	03187097	ORDER/SR/22-23/13/21732
5	Subhas Kundu	BBOPK6136M	ORDER/SR/22-23/14/21733
6	Subhasish Pandey	AMNPP2918D	ORDER/SR/22-23/15/21734
7	Suranjan Kar	AFCPK5730L	ORDER/SR/22-23/16/21735

In the matter of Hum Projects Limited

BACKGROUND

1. An office of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) initiated adjudication proceedings under section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) against (1) **Hum Projects Limited** (hereinafter also referred to as **Company/Hum/HPL**), (2) Sandip Roy, (3) Chandra Shekhar Sabat, (4) Nasirul Islam Seikh, (5) Subhas Kundu, (6) Subhasish Pandey and (7) Suranjan Kar, (hereinafter also referred to as **Noticee**

No. 1 to 7 respectively or by their respective names and collectively referred to as **the Noticees**), respectively company and its directors. The Noticees were alleged to have failed to comply with the directions issued under sections 11(1), 11(4), 11A and 11B of the SEBI Act, 1992 by the Whole Time Member (**WTM**) of SEBI, vide an order dated December 11, 2015 in the matter of Hum Projects Limited (hereinafter also referred to as **WTM order**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Upon approval of the said adjudication proceedings, Adjudicating officer was appointed vide order dated February 10, 2017. Shri Nagendraa Parakh was appointed as the Adjudicating Officer (**AO** in short), under section 15-I of the SEBI Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules**, **1995**), to inquire into and adjudge, under section 15HB of the SEBI Act, 1992 the alleged failure on the part of the Noticees to comply with the directions issued vide **WTM Order**. Subsequently, the matter was transferred and undersigned was appointed **AO** vide order dated July 10, 2017 in this matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common Show Cause Notice through individual letters no. EAD/AO-NP/SJ/4XXX/1/2017 dated February 22, 2017 (hereinafter referred to as 'SCN') was issued to the Noticees under rule 4(1) of Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them under section 15HB of the SEBI Act, 1992 for their alleged failure to comply with the directions issued by the WTM of SEBI vide order dated December 11, 2015. Details of the SCN are as follows:
   a) *SEBI vide an ex-parte interim order dated March 20, 2015 had observed that the company, Hum Projects Limited (hereinafter referred to as Hum or the Company) is prima facie engaged in fund mobilizing activity from the public, by making offer and issuing Redeemable Preference Shares (hereinafter referred to as RPS) and had allegedly violated the provisions of sections 56, 60 read with section 2(36), 73 of the Companies Act, 1956.*

b) *Thereafter, WTM, SEBI vide final order dated December 11, 2015 issued directions to the Noticees which reads as follows:*

c) *The Company, namely, Hum Projects Limited and its Directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, and Shri Suranjan Kar, shall forthwith refund the money collected by the Company through the issuance of RPS, including the money collected from investors, till date, pending allotment, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.*

d) *The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order.*

e) *Hum Projects Limited and its present management is permitted to sell the assets of the Company only for the sole purpose of making the repayments including interest, as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank.*

f) *Hum Projects Limited and its Directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, Shri Suranjan Kar, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.*

g) *After completing the aforesaid repayments, Hum Projects Limited and its Directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, Shri Suranjan Kar, shall file a report of such completion of repayment with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Page 28 of 29 Accountant shall mean a Chartered Accountant, who has been categorized so by the institute of Chartered Accountants of India ("ICAI").*

h) *Hum Projects Limited and its directors namely, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, Shri Suranjan Kar are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.*

i) *In case of failure of Hum Projects Limited and its Directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, and Shri Suranjan Kar, to comply with the aforesaid directions, SEBI, on the expiry of the three months period from the date of this order,-*

   i. *shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.*

   ii. *may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.*

   iii. *would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and*

   iv. *would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.*

j) *Hum Projects Limited and its Directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, and Shri Suranjan Kar, are directed not to, directly or indirectly, Page 29 of 29 access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which* *intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 years from the date of completion of refunds to investors.*

k) The above directions shall come into force with immediate effect.

2. *It is observed that the Noticees had failed to refund the investor's money and comply with aforesaid directions issued by the Whole Time Member, SEBI vide the final order dated December 11, 2015 and therefore it is alleged that the Noticees by failing to comply with the directions issued by SEB are liable to monetary penalty under section 15HB of the SEBI Act…*

3. Delivery of SCNs: The said SCNs were sent to the Noticees through speed post acknowledgement due (SPAD). Upon receiving record of the instant case, the SCNs which were undelivered through SPAD, were attempted to be delivered through other modes. SCNs have been uploaded on SEBI website under the head "Home>>Enforcement>>Unserved Summons/Notices." SCNs sent by SPAD which were undelivered, it was attempted to serve the SCN through hand delivery, affixture, and finally through Newspaper publication in terms of the Adjudication Rules, 1995. Delivery status as per records available are given in the following table:

No. and Name of the Noticee	Address at which delivery attempted	Status of delivery of the SCN for which proof of delivery is on record
1. Hum Projects Limited	Uttarayan, M.S. 1/3, Bengal Ambuja City Center, Durgapur, Burdwan, West Bengal, India - 713216	SPAD undelivered. Hand delivery and Affixture was not possible as informed by delivery official. Delivered through Public Notice issued in newspapers.
2. Sandip Roy	Galsi, Burdwan, West Bengal, India - 713406	SPAD Delivered as seen from AD card.
3. Chandra Shekhar Sabat	104, Bank Colony, 4th Lane, Banerjee Para Kundghat, Kolkata, West Bengal India - 700041	SPAD undelivered. Hand delivery and Affixture was not possible as informed by delivery official. Delivered through Public Notice issued in newspapers
4. Nasirul Islam Seikh	Vill Golsi, Anchal PS Golsi, Near Kalitala More Barddhaman, Dist Burdwan West Bengal India - 713406	SPAD undelivered. Affixture attempted by ERO office of SEBI. Affixture was attempted on December 28, 2017, but it could be delivered through hand delivery at the said address. Receiver

No. and Name of the Noticee	Address at which delivery attempted	Status of delivery of the SCN for which proof of delivery is on record
		telephone no. available in acknowledgement copy.
5. Subhas Kundu	Vill. PO. Galsi, Kaibartyapara Burdwan, West Bengal, India - 713406	SPAD Delivered as seen from AD card.
6. Subhasish Pandey	Galsi, Burdwan, West Bengal, India - 713406	SPAD Delivered as seen from AD card.
7. Suranjan Kar	4/2, Central Park, 1st Floor, City Center Durgapur, West Bengal, India - 713216	SPAD undelivered. Affixture attempted by ERO office of SEBI. Affixture done on December 28, 2017 as seen from Affixture report on record.

4. Delivery of Hearing Notices: An opportunity of hearing to all the Noticees. Individual hearing notices were served to the Noticees enclosing the SCN and also advising the Noticees to submit reply to the SCN. The said hearing notices were attempted to be served by SPAD or affixture and in some cases by publication in Newspapers to ensure serving of notices as per the provisions of Adjudication Rules, 1995. The details of date of hearing notices, hearing dates, status of service of the hearing notices and proof of delivery is available on record is as follows:

No. and Name of the Noticee	Date of hearing notice	Hearing date (whether attended– Y/N)	Status of delivery of the hearing notice for which proof of delivery is on record. Hearing minutes.
1. Hum Projects Limited	December 06, 2017	January 23, 2018(N)	SPAD undelivered. Delivered through Hand Delivery and Affixture Notice received by Swarup Ghosh.
2. Sandip Roy	October 05, 2018	November 15, 2018(Y)	Notices delivered. Hearing conducted. Hearing minutes on record
3. Chandra Shekhar Sabat	December 06, 2017	January 23, 2018(N)	SPAD undelivered. Delivered through newspaper publication
4. Nasirul Islam Seikh	December 14, 2017	January 23, 2018(Y)	Notices delivered through Hand Delivery and Affixture. Hearing conducted. Hearing minutes on record

No. and Name of the Noticee	Date of hearing notice	Hearing date (whether attended– Y/N)	Status of delivery of the hearing notice for which proof of delivery is on record. Hearing minutes.
5. Subhas Kundu	October 05, 2018	November 15, 2018(Y)	Notices delivered. Hearing conducted. Hearing minutes on record
6. Subhasish Pandey	October 05, 2018	November 15, 2018(Y)	Notices delivered. Hearing conducted. Hearing minutes on record
7. Suranjan Kar	October 05, 2018	November 15, 2018(Y)	Notices delivered. Hearing conducted. Hearing minutes on record

5. Replies sent by various Noticees and Hearing proceedings which are on record are as follows:

   Email dated January 10, 2018 from Suranjan Kar acknowledging hearing notice and confirming attendance for the hearing scheduled.

   Letter dated January 18, 2018 from Suranjan Kar authorising one Adv Soumen Chatterjee for hearing and related proceedings.

   Letter dated January 18, 2018 from Nasirul Islam authorising one Adv Soumen Chatterjee for hearing and related proceedings.

   Letter dated March 04, 2017 from one Adv Neha Chaurasia, Singhania and co., on **behalf of Mr Sandip Roy, Subhasish Pandey and Subhas Kundu** informing that proceedings filed against the WTM order are pending with Hon'ble SAT in three different appeals**.** Letter read as,*"This is to state that you have issued the letter dated February 22, 2017 on the basis of the order dated December 15, 2015. However in this regard, it is pertinent to mention that three separate appeals have been filed by my clients from such order before the Securities Appellate Tribunal, which are numbered as Appeal No. 55 of 2017, Appeal No. 45 of 2017 and Appeal No. 46 of 2017, which are still pending adjudication before the Learned Securities Appellate Tribunal. As such, unless the said appeals are finally adjudicated by the Securities Tribunal you are requested not to take any further steps for the purpose of overreaching the powers of the Securities Appellate Tribunal."*

   Letter dated October 29, 2018 from one Adv Shubhendu Roy for Mr Sandip Roy, stating the following:

"…1. In your said letter at the first paragraph you have referred to the Appeal pending before the Hon'ble Securities Appellate Tribunal at Mumbai. Pertinent that the Appeal was numbered as Appeal No. 55 of 2017 titled as Sandip Roy vs Securities and Exchange Board of India along with 2 other connected Appeals being Appeal No. 46 of 2017 titled as Subhasis Pandey vs Securities and Exchange Board of India and Appeal No. 46 of 2017 tiled as Subhas Kundu vs Securities and Exchange Board of India. All the 3 Appeals were against the Order dt. December 11, 2015 passed by the Whole Time Member, Securities and Exchange Board of India. The Hon'ble Securities Appellate Tribunal, Mumbai disposed of all the 3 Appeal being Appeal No. 55 of 2017 titled as Sandip Roy vs Securities and Exchange Board of India along with 2 other connected Appeals being Appeal No. 46 of 2017 titled as Subhasis Pandey vs Securities and Exchange Board of India and Appeal No. 46 of 2017 titled to Subhas Kundu vs Securities and Exchange Board of India vide its common Order dt. 15.09.2017. 2. That being aggrieved thereby and dissatisfied therewith my client preferred Appeal before the Hon'ble Supreme Court of India against the said impugned Order dt. 18.03.2017 passed by the Hon'ble Securities Appellate Tribunal at Mumbai in Appeal No. 55 of 2017 titled as Sandip Roy vs Securities and Exchange Board of India. The said Appeal before the Hon'ble Supreme Court of India is numbered as Civil Appeal No. 2605 of 2018 titled as Sandip Roy vs Securities and Exchange Board of India. The said Civil Appeal No. 2605 of 2018 was taken up for hearing by the Hon'ble Supreme Court of India on 19.08.3018 and upon hearing the Ld. Counsel appearing for the Petitioner (My Client), notice was issued. Copy of the Order dt. 19.03.2018 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 2005 of 2018 is annexed herewith and marked as Annexure A. 3. That thereafter, the said Civil Appeal No. 2605 of 2018 was also listed before the Hon'ble Supreme Court of India twice i. e: 16.05.2018 and 31.07.2018. In both there occasions you have been represented through your Ld. Counsels, as matters of record and time to file your Counter Affidavit has been granted. Copy of the Order dt. 16.05.2018 and Order dt. 31.07.2018 in the said Civil Appeal No. 2605 of 2018 are annexed herewith and marked as Annexure B and Annexure C, respectively. 4. That in view of above, it appears that the statement in your said letter at first paragraph that no information has been provided about the current status is erroneous. However, in turn to your request in the said letter, it is requested to your good office that the Orders referred and

annexed above along with the contents herein be taken on record and be appreciated that the matter is sub-judice before the Hon'ble Supreme Court of India. Hence, in view of above, it is requested that kindly take note of the above and do the needful accordingly.

Court Order dated March 19, 2018 states, *Heard the learned counsel for the appellant and perused the relevant material. Application for exemption from filing official translation is allowed. Issue notice.*

Court Order dated May 16, 2018 states, *Four weeks time is granted to the sole respondent for filing counter affidavit. List again on 31.7.2018.*

Court Order dated July 31, 2018 states, *Last and final opportunity is granted to the respondent for filing counter affidavit within four weeks. Registry to process the matter for listing before the Hon'ble Court after completion of period of four weeks whether counter affidavit is filed or not as further opportunity stands declined.*

Hearing Proceedings: January 23, 2018 hearing was conducted as scheduled. AR for Suranjan Kar and Nasirul Islam, during hearing proceedings sought additional time of a month for additional responses. Request was acceded to by AO. Hearing minutes are on record. Letter dated January 23, 2018 by Authorised Representative (AR) of Suranjan Kar and Nasirul Islam stating that**,** ….."*That unfortunately and due to certain unavoidable circumstances the other director of the above said company namely Mr. Suranjan Kar & Mr. Nasirul Islam Seikh did not appeared before the SEBI, but my above, paid clients are ready to agree and cooperated with SEBI. I am the representing on behalf of my above name client, and my humble submission before your esteemed office are as under;*

1) My above named clients are ready to appear before your good office preferable at will be helpful Kolkata, because it is near to them and for their financial inabilities.

2) No such sufficient papers and information is in the hands of my above said clients at present/of late because Mr. C. S. Sabat disappeared and escaped with a relevant papers, information, audit reports, bank statements and a huge amount of cash, which was bagged by Mr. C. S. Sabat since August 2011 till date 3) That the 5 directors became tools and victims by the deed of Mr. C. S. Sabat did not get information regarding the fund funded and collected by Mr. C. S. Sabat and Associates…..

4) That my above said clients are very much sorry due to the known compliance of the earlier proceeding, you are cordially requested to pardon them for the same and they

Le. my above said clients, stated through me that they will appear in the next proceedings by the SEBI positively…….

8) The apparent panorama, I am trying to explain before your office as per instruction and knowledge from my clients. Except Mr. C. S. Sabat other & directors was the sleeping directors who has no such power to operate, enforce accounts, financial activities and many other statutory or major function of the above said company. And became victim and they are always available to corporate with SEBI and other statutory agencies of the Union of India and during the tenure C. S. Sabat they has no opportunity to complain in any manner against Mr. C. S. Sabat and my dents was forced to sign on blank papers and there was chances to adduced the same against the directors and in favour of C. S. Sabat

9) I therefore make my appeal and pledging before your esteemed office to fix a dale to proceedings of SEBI any time after one month since today as per your connivance as deemed fit…..”

Hearing Proceedings Dated November 15, 2018 was conducted as scheduled for Sandip Roy, Subhasish Pandey and Subhas Kundu. One Kulkarni Manjiri Srinivas was authroised by the said three Noticees as AR. Minutes are as follows: *The Noticees have received the Show-Cause Notice and understood the charges leveled against them. The AR reiterated the submissions made by Sandip Roy in his reply dated October 25, 2018 that he had appealed before the Hon’ble Supreme Court. The AR stated that the other two Noticees will abide by the directions of WTM SEBI vide order dated December 11, 2015.*

Letter from Sandip Roy dated March 10, 2022, read as, “….With regard to the subject captioned notice, it is stated that L.A. Nos. 28363/2022 and 28364/2022 has been filed in pending Civil Appeal No. 2605/2018 praying for directions in relation to the subsequent letter of your as mentioned in the subject, upon serving advance copy of the same on your Ld. Advocate-on-Record. Further, as matters of records despite last and final opportunity granted by the Hon'ble Court on 31.07.2018 till date no Counter Affidavit has been filed on your behalf, rather this subject captioned notice has been issued surprisingly. Hence, in this backdrop, you are requested to wait till further orders are passed by the Hon'ble Court.

CONSIDERATION OF ISSUES

6. The issues that arise for consideration in the present case are:

(a) Whether the Noticees have failed to comply with the directions issued by the WTM, SEBI vide order dated December 11, 2015?

(b) If yes, does the failure on the part of the Noticees attract any monetary penalty under section 15HB of the SEBI Act, 1992?

(c) If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 read with rule 5(2) of the Adjudication Rules, 1995?

Before I proceed further to consider each issue in light of material made available on record, I refer to the issue of whether the instant adjudication proceedings against Sandip Roy, Subhasish Pandey and Subhas Kundu were to be kept in abeyance till the outcome of the three appeals filed one each by the said Noticee to the Hon'ble Securities Appellate Tribunal (SAT) and later on appeal by Sandip Roy to the Hon'ble Supreme Court of India, a proceeding which is currently pending. Upon receiving all the record of the instant case, it was noticed that the WTM Order has been challenged by the said three Noticees and proceedings at Hon'ble SAT were underway. However, hearing notices were sent to all Notices and hearings were conducted for all the Noticees and after all hearing proceedings were duly conducted, the matter was kept in abeyance for passing the order. Meanwhile office of AO, kept abreast of the said proceedings by seeking updation from dealing offices of SEBI for those proceedings. Vide an email dated April 01, 2021, the dealing office informed that, *With respect to the matter of Hum Projects Ltd., it may be noted that SEBI has passed final order dated December 11, 2015 inter alia directing the company and its directors to refund the money collected by the Company through the issuance of RPS. Subsequently, 3 directors of the company, namely, Shri Subhasish Pandey, Shri Subhas Kundu and Shri Sandeep Roy appealed against the SEBI order dated December 11, 2015 before Hon'ble SAT and Hon'ble SAT vide its order dated September 15, 2017, while upholding the said SEBI order, disposed of the appeals filed by them. Subsequently, one of the director, namely, Shri Sandeep Roy has filed an appeal before Hon'ble Supreme Court in the said matter and proceedings in the matter are currently ongoing before Hon'ble Supreme Court. As per the status available on the website of the Hon'ble Supreme Court, there is no stay on the SEBI order U/s 11B of the SEBI Act,* *1992.* In this regard, vide letter dated February 10, 2022 to Sandip Roy following was advised to the Noticee: *In the captioned matter with respect to the matter of Hum Projects Ltd. it may be noted that SEBI has passed final order dated December 11, 2015 inter alia directing the company and its directors to refund the money collected by the Company through the issuance of RPS. Subsequently, 3 directors of the company, namely, Shri Subhasish Pandey, Shri Subhas Kundu and Shri Sandip Roy appealed against the SEBI order dated December 11,2015 before Hon'ble SAT and Hon'ble SAT vide its order dated September 15, 2017, while upholding the said SEBI order, disposed of the appeals filed by them. Subsequently, one of the director, namely, Shri Sandip Roy filed an appeal before Hon'ble Supreme Court in the said matter and proceedings in the matter are currently ongoing before Hon'ble Supreme Court. As per the status available on the website of the Hon'ble Supreme Court, there is no stay on the SEBI order U/s 11B of the SEBI Act, 1992.In this regard Noticee is advised to inform the undersigned whether Hon'ble Supreme Court has granted a stay on the captioned SCN. You are advised to reply in 15 days failing which the matter shall be proceeded upon the basis of material on record.* In this regard, Noticee replied regarding no counter being filed by SEBI mentioned above. The dealing office of SEBI has put on record a reply dated April 25, 2022 that Counter Affidavit has been filed by SEBI on 01.04.2022.

It is my considered view in light of following facts a) the outcome of the matter lying before Hon'ble Supreme Court is regarding the WTM order, b) so far no stay has been received by the Noticee and c) there is nothing on record that prohibits undersigned AO that, undersigned can proceed with passing of the instant order. In my opinion it is not proper to wait any further for the outcome of matter, which does not have direct bearing on the outcome of these proceedings, therefore I proceed now with concluding the adjudication proceedings by issuance of this order.

EVIDENCES AND FINDINGS

(a) Whether the Noticees have failed to comply with the directions issued by the WTM, SEBI vide order dated December 11, 2015?

7. On perusal of the materials available on record and giving regard to the facts and circumstances of the case, I record my findings as under:

a. From the material available on record, it is noted that WTM of SEBI passed an order under sections 11, 11(4), 11A and 11B of the SEBI Act, 1992 against the Noticees on December 11, 2015 and the Noticees were directed to refund the money collected by the Company through RPS to the investors and after completion of repayments, Noticees were required to file a report of completion of repayment with SEBI within a period of three months from the date of the said WTM Order. As per the SCN, it is alleged that the Noticees failed to comply with the directions issued vide WTM order dated December 11, 2015.

b. I note that no reply has been received from Noticee 1 and 3 have not replied to the SCN and also did not avail of opportunity of hearings granted to them. As regards, no reply received to the SCN issued, I refer to the judgment of Hon'ble Securities Appellate Tribunal (SAT) dated December 08, 2006 in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed that, *"… the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".* I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that, *"...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

   In view of the above, I find that the allegations levelled in the SCN and the evidences enclosed therewith are not in dispute in absence of any reply from Noticee 1, and Noticee 3 and by not submitting any reply to SCN, said Noticees have admitted the charges levelled against them in the said SCN. I would like to rely on decision of the Hon'ble SAT Order in the matter of *Ritedeal Trading Co. Pvt. Ltd v SEBI (Appeal No. 158 of 2007 and Order dated October 26, 2007)* wherein it observed that *"We are also of the view that if market players are allowed to flout with impunity the orders of the regulator it would be difficult for the latter to carry out its statutory duties".* In totality of the above, I find the Noticees 1 and 3 have violated the directions of SEBI WTM Order.

c. I note from the replies of the Noticees 2,4,5,6, and 7 the various contentions of the Noticee which are paraphrased or verbatim reproduced herein above in the instant order, that no evidence has been adduced by any Noticee of having complied with the WTM order, non-compliance of which is the subject matter of the instant proceedings. From the various contentions of the Noticees, it is noted that it is an admitted position that till the issuance of the SCN in the instant proceedings, the WTM order was not yet complied with said Noticees.

d. In light of the same, allegations levelled against the Noticees 1 to 7 stand established for the non-compliance of the WTM Order dated December 11, 2015 and that have failed to comply with the directions of SEBI issued vide WTM Order dated December 11, 2015 under the provisions of sections 11, 11(4), 11A and 11B of the SEBI Act, 1992 in the matter of Hum Projects Ltd.

Issue (b) If yes, does the failure on the part of the Noticees attract any monetary penalty under Section 15HB of the SEBI Act, 1992?

e. In respect of imposition of monetary penalty, I cannot ignore the historical case of Hon'ble Supreme Court of India in the matter of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was 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 and hence the intention of the parties committing such violation becomes wholly irrelevant".*

f. It is relevant to mention here that said case of Shri Ram Mutual Fund (supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to Income Tax Act. It was held by the Hon'ble Supreme Court that penalty under the provision for breach of civil obligation is mandatory and the mens rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives.

g. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, submissions of the Noticees and analysing the aforesaid case laws, I am of the view that the said failure on the part of the Noticees to comply with the directions issued by WTM of SEBI vide order dated December 11, 2015 attracts the imposition of monetary penalty under Section 15HB of the SEBI Act, 1992 which is reproduced below:

Penalties and Adjudication

Penalty for contravention where no separate penalty has been provided.

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 liable to a penalty which may extend to one crore rupees.

Issue (c) If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?

h. While determining the quantum of penalty under section 15J of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act read with Rule 5 (2) of the Adjudication Rules, which reads as under:-

SEBI Act, 1992

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

While adjudging quantum of penalty under section 23 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."

i. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors due to such failure on the part of the Noticees to comply with the directions issued by WTM of SEBI vide order dated December 11, 2015. There are no documents available on record, showing that the failure is repetitive. However, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014 *"…penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*

j. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticees are liable for monetary penalty for their failure to comply with the directions discussed above and issued by WTM of SEBI vide order dated December 11, 2015.

ORDER

8. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and Rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) on the Noticees under section 15HB of the SEBI Act.,1992 for violation of non-compliance of WTM order dated December 11, 2015. The Noticees are jointly and severally liable to pay the penalty. I am of the view that the said penalty is commensurate with the defaults committed by the Noticees.

9. The Noticee shall remit/ pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of "SEBI- Penalties Remittable to Government of India ", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT>Orders>Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/ RTA /AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in The said confirmation of e – payment made in the format as given below should be sent to "The Division Chief, EFD1 – DRA - I, 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 made
7. Payment made for: penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)

In terms of the Rule 6 of the Adjudication Rules, 1995, a copy of each of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Date: November 30, 2022 **SANGEETA RATHOD**
Place: Mumbai **ADJUDICATING OFFICER**