

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/DD/2021-22/14129]**

**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

Fourth Dimension Solution Limited (PAN – AABCF7508A)

In the matter of Ricoh India Limited

BRIEF FACTS OF THE CASE

1. Securities and Exchange Board of India ("SEBI") conducted investigation in the matter of Ricoh India Limited (herein after referred to as "**Ricoh/Company**") during the period from August 14, 2014 to November 17, 2015 (hereinafter referred to as "**investigation period**") to ascertain whether Fourth Dimension Solutions Limited (hereinafter referred to as "**FDSL**" or "**Noticee**") traded in the scrip of Ricoh on the basis of unpublished price sensitive information (hereinafter referred as "**UPSI**") in contravention of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred as "**PIT Regulations, 1992**") and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred as "**PIT Regulations, 2015**"). During investigation, SEBI observed certain violations of the aforesaid SEBI Act as well as PIT Regulations by Noticee and therefore, SEBI initiated adjudication proceedings against Noticee under the provisions of Section 15G of SEBI Act for the alleged violations observed to have been committed by Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated December 07, 2020, SEBI appointed the undersigned as Adjudicating Officer under Section 15I of the SEBI Act read with Section 19 of the SEBI Act and

Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of Section 15G of SEBI Act, the alleged violation of Section 12A(d) and (e) of the SEBI Act, Regulations 3(i), 3A and 4 of PIT Regulations, 1992 and Regulations 4(1) and 12 of PIT Regulations, 2015 by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated July 07, 2021 (hereinafter referred to as '**SCN**') was issued to Noticee under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against Noticee and why penalty, if any, should not be imposed on Noticee under Section 15G of the SEBI Act for the aforesaid alleged violations by Noticee.

4. The allegations levelled against Noticee in the SCN are as under:-

a. *SEBI appointed Pipara & Co. LLP (herein after referred to as "**Forensic Auditor**") to conduct forensic audit into the books of accounts of Ricoh as well as FDSL. Based on the forensic audit report dated October 25, 2019, submitted by the Forensic Auditor, SEBI observed that the financial statements of Ricoh were misstated from Financial Year 2012-13 onwards. Therefore, it was observed that the UPSI came into existence during Financial Year 2012-13 and the investigation period falls within the period of UPSI. Vide letter dated April 20, 2016, Ricoh disclosed that its financial statements did not reflect true and fair view of its state of affairs and the same was disseminated by BSE on April 22, 2016. Thus, SEBI considered that the period of UPSI to be from April 01, 2012 to April 22, 2016, i.e., from Financial Year 2012-13 till the date of dissemination of announcement on BSE.*

b. *Kotak Securities Ltd., vide its email dated October 23, 2019, informed SEBI that FDSL had authorized Amalendu Mukherjee, who was the Managing Director and promoter of FDSL, to place orders on its behalf vide Board Resolution of FDSL dated June 21, 2014. It was observed by SEBI that Amalendu Mukherjee traded in the scrip of Ricoh while in possession of UPSI. Therefore, FDSL and Amalendu Mukherjee were considered as suspected entities. Further, considering the fact that Amalendu Mukherjee had access to UPSI and being in know that the financial*

statements of Ricoh were untrue, he placed orders on behalf of FDSL to trade in the scrip of Ricoh while in the possession of UPSI.

- c. The profit made from trading in the scrip of Ricoh by FDSL while in possession of UPSI is detailed below:

Transaction	Buy Qty	Wt Avg Buy Price	Buy Value (INR)	Sell Qty	Wt Avg Sell Price	Sell Value (INR)	Unlawful gains made (INR)
Market	8,16,907	379.17	30,97,49,007	816,407	392.77	32,06,60,499	
Off market	-	-	-	500	889.25*	4,44,625	
Total	8,16,907	379.17	30,97,49,007	8,16,907	393.07	32,11,05,124	1,13,56,118

*The closing price of the date of off-market transaction, i.e. June 4, 2015, has been considered as the sale price.

- d. Further, it was observed in investigation that Amalendu Mukherjee sold FDSL's entire shareholding of 22,828 shares in Ricoh at price of INR 831.86 per share on November 17, 2015, i.e., two days after the announcement dated November 15, 2015, by Ricoh adjourning the Audit Committee and Board of Directors Meetings of Ricoh for consideration of quarterly financial results for the quarter ended September 30, 2015.
- e. The corporate announcement pertaining to financial statements being untrue was made on April 22, 2016 at 19:13:40 at BSE. The closing price on April 25, 2019 (the next trading day) was Rs. 320.3. It was alleged that by offloading its entire shareholding on November 17, 2015, FDSL avoided a notional loss of Rs. 1,16,77,892/-, the details of which are as under:

Sell Qty.	Wt Avg Sell Price	Closing price on April 25, 2016	Loss avoided (INR)
22,828	831.86	320.3	1,16,77,892

- f. Thus, it is alleged that the total of unlawful gains (a) and loss avoided (b) by FDSL while in possession of UPSI is INR 2,30,34,010/- (Rupees 1,13,56,118 plus Rupees 1,16,77,892).

5. In view of the above, it is alleged that Noticee has violated :

- Section 12A(d) and (e) of the SEBI Act;
- Regulations 3(i), 3A and 4 of PIT Regulations, 1992;
- Regulations 4(1) and 12 of PIT Regulations, 2015

6. The SCN was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') and digitally signed email dated on July 07, 2021. The SCN sent through SPAD returned undelivered. However, the SCN sent through digitally signed email was duly served upon Noticee and Noticee was given fourteen (14) days' time to make its submissions in respect of the allegations made in the SCN. Noticee submitted its reply to the SCN vide letter dated July 16, 2021.
7. Vide hearing notice dated September 06, 2021, served on Noticee through email dated September 06, 2021, Noticee was granted an opportunity of personal hearing on September 24, 2021. The personal hearing was availed by Noticee on September 24, 2021, through its Authorized Representative ("**AR**") namely, Advocate Mr. Atul Sharma and C.S. Mr. Ashish Thakur. During the hearing, AR reiterated the contents of the reply submitted in the matter on July 16, 2021. Due to difficulties in view of Covid-19 pandemic, hearing was conducted through video conferencing.
8. The reply/submissions of Noticee is summarized as under:-
 - i. Company was admitted into Corporate Insolvency Resolution Process (**CIRP**) vide Hon'ble NCLT order dated July 25, 2019. Thereafter, the Hon'ble NCLT, New Delhi Bench, vide order dated September 25, 2020, approved the Resolution Plan submitted by the Resolution Applicant, i.e., Linkstar Infosys Pvt Ltd. jointly with Mr. Dhaval Mistry (**RA**).
 - ii. The aforesaid approved Resolution Plan is binding on SEBI and SEBI shall not be allowed to enforce its order dated March 17, 2020 read with addendum dated March 30, 2020. The relevant para of the aforesaid plan is as under:-

"Declare that upon approval of the Resolution Plan by this Hon'ble Adjudicating Authority, the provisions of the Resolution Plan shall be binding on Securities Exchange Board of India(SEBI) and SEBI shall not be allowed to enforce orders dated 17th March , 2020 read with its Addendum dated 30th March 2020) against the Corporate Debtor."
 - iii. FDSL has further drawn attention to para 25 of the aforesaid NCLT order, which states as under:-

“ That during the course of hearing, the Ld. Counsel for the RP had placed emphases on Section 32A of the IBC 2016 and submitted that the SEBI cannot proceed against the new management of the Corporate Debtor on approval of the Resolution plan. It was further argued that new management is immune from all the proceedings arising out of the corporate debtor before the CIRP Process.”

- iv. As per Section D (Approvals/ Waivers/ extinguishment) of the approved Resolution Plan, relevant government authorities shall not initiate any investigations, actions or proceedings in relation to any non-compliance with applicable law by the company during the period prior to the closing date. The extract of point 11 is reproduced as under:

“The relevant Governmental Authorities shall not initiate any investigations, actions or proceedings in relation to any non-compliances with Applicable Law by the Company during the period prior to the closing date. Neither shall the Resolution Applicant, nor the Company, nor their respective directors, officers and employee appointed on and as of the Closing date be liable for any violations, liabilities penalties or fines with respect to or pursuant to the Company not having in place requisite licenses and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Company. Further, the relevant Governmental Authorities will provide a reasonable period of time after the Completion Date, for the Resolution Applicant to assess the status of any non-compliances under the Applicable Law(including with respect to applicable environmental laws, directions or orders by the Ministry of Environment and Forest, permits clearances and forest related clearances) and to procure that the Company regularizes such non- compliances under the Applicable Law existing prior to the Completion Date.”

- v. In their reply, FDSL has quoted the judgements of Hon'ble Supreme Court in the matter of Ghanshaym Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Limited (Civil Appeal No.8129/2019) and Hon'ble High Court of Rajasthan in D.B. Civil Writ Petition No. 9480/2019 in the matter of Ultra Tech Nathdwara Cement Ltd/ v/s. Union of India& Ors.

- vi. FDSL has also quoted Section 238 of Insolvency & Bankruptcy Code, 2016 (herein after referred to as “**IBC**”) to emphasise that IBC has overriding effect and requested that SCN may be withdrawn on this ground.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have considered the allegations levelled against the Noticee, reply/submission by Noticee and the relevant material available on record. From the submissions made by the Noticee, I note that Noticee had been admitted into Corporate Insolvency Resolution Process filed by American Express Bank, under Section 7 of the **IBC** vide the order of the Hon’ble National Company Law Tribunal, New Delhi Bench dated July 25, 2019. Thereafter, Resolution Plan submitted by the RA was approved by the Hon’ble NCLT, New Delhi Bench, vide their order dated September 25, 2020.
10. From the available record, it is noted that in the instant adjudication proceedings, the SCN has been issued to Noticee on July 07, 2021, i.e. subsequent to approval of Resolution Plan i.e. after September 25, 2020. I note that Noticee in its reply has contended that as per the direction of NCLT, the Resolution Plan shall be binding on Company, its creditors, guarantors, members, employees and other stakeholders in accordance with Section 31 of IBC.
11. In this regard, I note that Hon’ble NCLT, Delhi Bench, vide order dated September 25, 2020, approved the Resolution Plan in the matter of Noticee under Section 31 of the IBC and the moratorium under Section 14 of the IBC ceased from the date of the NCLT order, i.e., September 25, 2020. The relevant extracted portion of the Resolution Plan approved by the NCLT is reproduced hereunder:

“In view of the above, this Bench approves the Resolution Plan of the Applicants duly recommended by the CoC and further allows the prayers made by the Applicant from clause (a) to (e) of the Petition.

.....

The order of the moratorium passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order.

.....

The approved Resolution Plan shall become effective from the date of passing of this Order.”

12. The above mentioned clause i.e. Clauses (a) to (e) of the petition as submitted by RA are reproduced as under:-

- (a) “Allow the present application;*
- (b) Approve and accept the revised resolution plan of Resolution Applicant Linkstar Infosys Pvt. Ltd. and Mr. Dhaval Mistry along with Addendum dated 24.04.2020 as approved by the Committee of Creditors by 100% as submitted in respect of the Corporate Debtor i.e. Fourth Dimension Solution Limited;*
- (c) Declare that upon approval of the Resolution Plan by this Hon’ble Adjudicating Authority , the provisions of the Resolution Plan shall be binding on the Company, its creditors, guarantors, members, employees and other stakeholders in accordance with Section 31 of the Code, and shall be given effect to and implemented pursuant to the order of this Hon’ble Adjudicating Authority;*
- (d) Declare that upon approval of the Resolution Plan by this Hon’ble Adjudicating Authority, the provisions of the Resolution Plan shall be binding on Securities Exchange Board of India(SEBI) and SEBI shall not be allowed to enforce orders dated 17th March 2020(read with its Addendum dated 30th March 2020) against the Corporate Debtor;*
- (e) Approve the appointment of the monitoring agency as approved by the Committee of Creditors.”*

13. I note that the aforesaid Resolution Plan has been approved under Section 31 of IBC which is reproduced as follows:-

31. Approval of resolution plan. –

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

14. The bare reading of Section 31 of the IBC makes it abundantly clear that once the resolution plan is approved by the Adjudicating Authority(NCLT), the resolution plan is binding not only on all the creditors but also on the Central Government, State Government or Local Authority to whom statutory dues are owed.

15. Further, the immunities applicable to Noticee will be in accordance with the approved Resolution Plan. From the perusal of aforesaid Resolution Plan, it is noted that the following has been stated under the head “*Liability for Past Action and Omission*”:

“9.16.2 In light of this resolution applicant and the corporate debtor shall have immunity from any action and penalties (of any nature) under any laws for any non-compliance of laws in relation to the corporate debtor or by the corporate debtor..... which was existing as on the completion date and which continues for A period upto 12 months after acquisition of control by the RA.....”. Such a provision is necessitated since one of the dominant purposes of the IBC is revival of the Corporate Debtor and to make it a running concern.

16. I have also perused the judgements of Hon’ble Supreme Court in the matter of Ghanshyam Mishra and Sons Pvt. Ltd. v/s. Edelweiss Asset Reconstruction Company Limited and that of Hon’ble High Court of Rajasthan in D.B. Civil Writ Petition No. 9480/2019 in the matter of Ultra Tech Nathdwara Cement Ltd/ v/s. Union of India& Ors., quoted by Noticee in their submissions. I note that the judgements quoted by Noticee also state a similar position.

17. In the judgement in the matter of Ghanshyam Mishra and Sons Pvt. Ltd. v/s. Edelweiss Asset Reconstruction Company Limited, Hon’ble Supreme Court has held that “..... *The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in subsection (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution*

applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.” It is also clear that no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

18. I further note that in para 9.17 at Section C of the approved Resolution Plan, under the heading “Inquiries, Investigations etc.”, it is stated as under:-

“9.17 Inquiries, Investigations etc.

Upon approval of this resolution plan by the Adjudicating Authority all inquiries , investigation and proceedings , whether civil or criminal , notices....., other judicial, regulatory or administrative proceedings against or in relation to or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future (including without limitation, any investigation, action, proceeding, prosecution whether civil or criminal..... by any other regulatory or enforcement agency) in relation to any period prior to the completion date or arising on account of the acquisition of control by the RA over the Corporate Debtor pursuant to this Resolution Plan shall stand withdrawn or dismissed.”

19. I find that, Noticee in its submissions has also drawn attention to para 11 of Section D of approved Resolution Plan where it is stated that relevant government authorities shall not initiate any investigation, actions or proceedings in relation to any non-compliance with applicable law by the company during the period prior to the closing date.

20. In view of the foregoing, I find that once a Resolution Plan has been approved, it becomes binding on all stakeholders including the Central Government, State Government and Local Authorities and no proceedings can be initiated or proceeded against the Corporate Debtor. Therefore, the present proceedings cannot be continued against Noticee, since the Resolution Plan in respect of Noticee has already been approved by the Hon’ble NCLT, vide order dated September 25, 2020.

21. In this regard, I also note that in a similar matter of transaction of the shares held by Dewan Housing Finance Corporation Limited (**DHFL**) in DHFL Pramerica Life Insurance Company Ltd. and related matters thereof, Adjudication Officer of SEBI vide

his Order Order/PM/AN/2021-22/12776 dated July 29, 2021, has placed reliance on Sections 14, 31, and 238 of IBC and accordingly disposed-of the Adjudication proceedings on this ground.

22. In the facts and circumstances of the instant matter, and in view of the terms of the approved Resolution plan as well as the above quoted judgments and the relevant provisions of IBC as deliberated in the preceding paragraphs, I find that the present proceedings are not maintainable and therefore, cannot be proceeded with.

ORDER

23. In view of the above observations/findings and in exercise of the power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings initiated against Noticee viz. Fourth Dimension Solutions Ltd. vide SCN dated July 07, 2021.

24. In terms of Rule 6 of the Adjudication Rules, copies of this order is sent to Noticee viz. Fourth Dimension Solutions Ltd. and also to SEBI.

Date: November 08, 2021

Place: Mumbai

SOMA MAJUMDER

Adjudicating Officer