BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/VS/2021-22/15732]

UNDER SECTION 15-I OF SEBI ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of –

Abhishek Kumar (CTBPK7105G) having address at F-2, CPWD Enquiry Office Flats, Sarojini Nagar, New Delhi - 110023

In the matter of Achal Investments Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings against Abhishek Kumar ("**Noticee**") under Section 15A (a) of the Securities and Exchange Board of India Act, 1992 ("**the SEBI Act**") for alleged violation of Sections 11C (2) and (3) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer ("AO") under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") vide order dated December 21, 2020 to inquire into, and adjudge under Section 15 A(a) of the SEBI Act, the aforesaid alleged violations of the Noticee.

The appointment of the undersigned as AO was communicated vide order dated December 28, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/VS/ 8556/ 3 dated 09.04.2021 was issued to the Noticee for alleged violation of Section 11C (2) and (3) of the SEBI Act by the Noticee.

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

5. Achal Investments Ltd. was incorporated on July 14, 1980 as a public limited company in Delhi. The company is engaged in the business of financing and investment activities. The shares of the Company got listed in BSE on August 07, 2014. Prior to that, the shares of the company were listed in Delhi Stock Exchange. The registered office of AIL is at: Office No. 208, 2nd Floor, Plot No. A-1 Madhuban Tower, Veer Savarkar Block, Shakarpur Delhi (East) - 110092.

6. The directors of AIL during FY 2013-14 are as follows:

Table-1

Sr. No.	DIN	PAN	Name of Director	Residential Address	Designation	Date of appointment	Date of cessation
1	06799487	CTBPK7105G	Abhishek Kumar	F-2, CPWD Enquiry Office Flats, Sarojini Nagar, New Delhi - 110023	Whole-Time Director	*08.01.2014	07.03.2018
2	02668754	AEYPA9352F	Ashok Agrawal	A - 84, Sector – 50, Noida, Uttar Pradesh - 201307	Non-executive & Non-Independent Director	10.09.2010	05.03.2015
3	03091446	APUPM0269E	Parag Mittal	H. No. 108, Moh. Gadariyan, Muzaffer Nagar, Uttar Pradesh - 251002	Non-executive Director & Compliance Officer	31.08.2009	25.11.2013
4	01246412	AAAPA0440N	Prakash Chand Agrawal	A - 84, Sector – 50, Noida, Uttar Pradesh - 201307	Executive Director	31.08.2009	27.12.2013

5	02925387	BEKPS1235N	Gaj Raj Singh	House No. 62, Dhakka Village, GTB Nagar, Delhi-110009	Non-executive & Independent Director	13.03.2013	10.10.2016
6	06799478	CRXPS4672J	Sheetal	37/B, Taimur Nagar, Near New Friend Colony, New Delhi - 110023	Non-executive & Independent Director	16.01.2014	26.03.2018

**Appointed as Whole-time director subsequent to raising of funds through preferential issue.*

7. A preferential issue of 19,06,000 equity shares of Rs. 10/- each at par amounting to Rs. 1.91 crores, was raised by the company while it was listed in the erstwhile Delhi Stock Exchange Ltd. as under:

Table-3

Sno.	Events	Date of event
1	Circulation of notice of EGM	July 19, 2013
2	Date of EGM	Aug 12, 2013
3	Date of allotment	Aug 22, 2013

8. As per the notice of Extra Ordinary General Meeting (EGM) to the members of AIL, the objects of the preferential issue were:

(i) To strengthen the equity base of the Company,

(ii) To arrange the funds required for meeting the enhanced working capital requirements of the company,

(iii) To meet certain capital expenditure, and

(iv) To meet expenditure for general corporate purposes

9. The Special Resolution for preferential issue of shares was passed on August 12, 2013. Accordingly, the Board of Directors of the company allotted 19,06,600 equity shares @ Rs.10/- each, aggregating to Rs.1.91 crores to 47 allottees (entities other than promoter entities) on August 22, 2013. The list of 47 allottees was placed as Annexure-3 to the SCN.

10. The company in its letter dated 07.06.2019 (received through e-mail on 07.06.2019) submitted that in order to invest in securities during ordinary course

of business, its Board of directors had decided to purchase securities from 5 entities *viz*. Nileshaben Bharatbhai Choksi, Mala Raju Choksi, Rekhaben Choksi, Panchsheel Securities Pvt. Ltd. and TCG Stock Broking Pvt. Ltd. ("**TCG**") and thereafter, on repayment of the previous funds, the same was given as loan to Big Boy Toyz Pvt. Ltd., River Park Eden Pvt. Ltd. and Kapil Gupta. The company also submitted that the aforesaid 5 entities to whom the preferential issue proceeds were given as well as the 47 allottees of preferential issue dated 22.08.2013, are not related to the company in any way (Annexure 3 to the SCN).

11. Summons dated 08.08.2019 were issued to the erstwhile directors of the company including Abhishek Kumar. Reminder letters dated 22.08.2019 were also issued as he had not responded to the said Summons. Despite delivery of Summons dated 08.08.2019 on 13.08.2019 and then reminder letter dated 22.08.2019 on 26.08.2019 (as confirmed from India Post website, copy at **Annexure - 4**, Mr. Abhishek Kumar did not respond to the Summons, thus not complying with the said Summons.

12. During the course of the investigation, information was sought from the company vide letter dated 07.05.2019. The company gave only partial information. Therefore, summons was issued to Mr. Abhishek Kumar, the erstwhile non-independent Executive director of the company.

13. In addition to issuance of summons through speed post with acknowledgement due vide Speed Post No. EM915976318IN dated 08.08.2019 which were duly delivered to them, reminder letter dated 22.08.2019 were sent to Mr. Abhishek Kumar. In spite of receipt of the summons, the Noticee Mr. Abhishek Kumar did not respond to the summons.

14. The information pertaining to the utilization of the proceeds of the preferential issue and the details of the company was needed for the investigation purpose but Noticee did not respond to the summons which hampered the investigation in the matter. The Noticee was an authorized signatory in the position of Whole time

director for the filings of disclosures to the Exchange from January 2014 & Annual Report for FY 2013-2014.

15. By failing to furnish the reply to the summons, Noticee Abhishek Kumar was alleged to have violated Section 11C (2) & 11C(3) of the SEBI Act, which made him liable for monetary penalty in terms of Section 15A (a) of the SEBI Act.

16. The SCN was served upon the Noticee by Speed Post on 13.04.2021 as per tracking details obtained from the website of India Post. However, no reply to the SCN was received from the Noticee.

17. Subsequently, vide Hearing Notice dated 06.07.2021, the Noticee was granted an opportunity of hearing by videoconferencing through WebEx on 03.08.2021. The Hearing Notice despatched by SPAD returned undelivered with the comment "Left". An attempt to affix the hearing notice at the address on record of the Noticee, in terms of Rule 7 (c) of the Adjudication Rules failed as the guard available at the gate did not allow affixture and construction work was going on at the premises. Accordingly, the hearing notice was served upon the Noticee through newspaper publication on 08.03.2022 in the Hindustan Times (English – Delhi) and the Navbharat Times (Hindi – Delhi), in respect of opportunity of hearing provided on 22.03.2022. However, the Noticee did not avail the opportunity of hearing provided.

18. I note that, through the SCN and the hearing notices, the Noticee was advised to furnish his reply, if any, within stipulated time, failing which, it shall be presumed that the Noticee had no reply to submit and the matter will be proceeded on the basis of the material available on record. Since the Noticee did not respond to the SCN or Hearing Notice despite sufficient opportunity granted to him to submit a reply and attend hearings, I hereby proceed to adjudicate *ex parte* and on the basis of material on record in respect of the allegations levelled against the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

19. The issues arising for consideration in the instant proceedings are:-
    I. Whether the provisions of Section 11C (2) and (3) of the SEBI Act have been violated by the Noticee
    II. If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15 A(a) of the SEBI Act
    III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

I. Whether the provisions of (Whether the provisions of Section 11C (2) and (3) of the SEBI Act have been violated by the Noticee

20. The Noticee in the present proceedings has been charged as Whole-Time Director of the Company, Achal Investment Ltd., at the time when it carried out preferential allotment of its shares, fraudulently misutilising the proceeds of its preferential issue, in a manner different from the stated objects of the issue. It is alleged that summons dated 08.08.2019 seeking information pertaining to the preferential issue were issued to the Noticee. The Noticee allegedly failed to respond to summons dated 08.08.2019 issued to him and delivered to him as per SPAD acknowledgement. A copy of the duly signed acknowledgement card by Abhishek Kumar was included as Annexure – 17 to the SCN. It is further stated in the SCN that a reminder letter dated 22.08.2019 was also delivered to the Noticee on 26.08.2019, but the Noticee failed to comply with the summons and the reminder letter.

21. Having considered the allegations and supporting material, I note that in respect of summons dated 08.08.2019, a copy of the acknowledgment card of India Post for summons despatched by Speed Post is available on record. Date of despatch noted on the said card is 22.08.19, while date of delivery is not recorded at all, nor is there any India Post stamp which records the date. A

signature is visible at the place where the addressee is supposed to have signed, but it is not possible to verify whether this is the signature of the Noticee. Further, copies of tracking details obtained from the website of India Post are not available on record. Copy of reminder letter dated 22.08.2019 which is supposed to have been delivered on 26.08.2019 or proof of its service is also not available on record.

22. In the absence of sufficient material on record to establish that summons were adequately served upon the Noticee, I find that a charge of violation of Section 11C (2) and (3) of the SEBI Act for failing to furnish information to the investigating authority cannot be upheld in respect of the Noticee.

23. As the alleged violation by the Noticee is not established, Issues II and III do not merit consideration.

ORDER

24. In the light of the findings noted hereinabove, the adjudication proceedings initiated against the Noticee vide SCN dated 09.04.2021 are disposed of.

25. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

MANINDER CHEEMA Digitally signed by MANINDER CHEEMA Date: 2022.03.30 16:30:01 +05'30'

DATE: MARCH 30, 2022 **MANINDER CHEEMA**

PLACE: MUMBAI **ADJUDICATING OFFICER**