BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : ORDER/VKV/HKS/2019-20/5678-5680]

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

SL. NO.	NAME OF THE ENTITY	PAN
1.	SHRI SANJAY JETHALAL SONI	[PAN: BVSPS9741N]
2.	SMT. KRUPA SANJAY SONI	[PAN: BVSPS9740P]
3.	M/S. J M SONI CONSULTANCY	[PAN: AAGFJ2939P]

IN RESPECT OF NON-COMPLIANCE OF SEBI ORDER DATED NOVEMBER 30, 2018 IN THE MATTER OF OREGON COMMERCIAL LIMITED (NOW KNOWN AS SAIANAND COMMERCIAL LIMITED).

BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) had conducted the Investigation in the matter relating to the trading activity of certain entities, in the scrip of Oregon Commercial Limited (hereinafter referred to as **"OCL or Scrip"**) for the period from January 04, 2010 to January 10, 2011. During the relevant time the shares of OCL was listed on BSE Limited (hereinafter referred to as **"BSE"**).

2. Pursuant to the Investigation the Whole Time Member (**"WTM"**) of SEBI, had passed Order dated November 30, 2018 against Shri Sanjay Jethalal Soni, his

wife Smt. Krupa Sanjay Soni and his proprietary concern M/s. J M Soni Consultancy (hereinafter collectively referred to as **"Noticees"**) under Section 11 and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992, (hereinafter referred to as **"SEBI Act"**) and Regulation 32 read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **"SAST Regulations 2011"**) and found that the Noticees have breached the provisions of Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **"SAST Regulations 1997"**) on August 16, 2010 and September 02, 2010 and provisions of Regulation 11(1) of SAST Regulations, 1997 on August 19, 2010 and September 06, 2010.

3. In view of the aforesaid findings, the WTM of SEBI, in exercise of powers conferred upon him under Sections 11, 11B read with Section 19 of the SEBI Act, 1992 and Regulation 32 read with Regulation 35 of the SAST Regulations, 2011 and in order to protect the interest of investors and the integrity of the securities market, vide the aforesaid Order dated November 30, 2018, issued the following directions against the Noticees.

"(a) Noticees shall jointly and severally make a public announcement to acquire shares of the target company, in accordance with the provisions of the Takeover Regulations, 2011, within a period of 45 days from the date of this order. The offer price shall be the highest of the price calculated in terms of the takeover regulations with reference to the trigger dates.

(b) Noticees shall along with the consideration amount, pay interest at the rate of 10% per annum from the date on which the payment would have fallen due had the acquirers made an open offer till the date of payment of consideration to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in the process, after adjustment of dividend paid, if any."

4. It was alleged that the Noticees have failed to comply with the said directions issued by SEBI vide its Order dated November 30, 2018 and thus the Noticees alleged to have been violated the aforesaid directions of SEBI issued under the provisions of SEBI Act, 1992 and SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

5. Shri Sahil Malik was appointed as the Adjudicating Officer **(AO)** by SEBI, under Section 19 of the SEBI Act, read with Section 15-I 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 conduct adjudication proceedings *inter-alia* in respect of the Noticees, in the manner specified under Rule 4 of the Adjudication Rules read with Section 15-I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and in terms of Section 15HB of the SEBI Act. Subsequently, in the matter the undersigned has been appointed as AO by SEBI, on August 13, 2019, in the place of Shri Sahil Malik to inquire into and adjudge, the violation alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice dated June 10, 2019 (hereinafter referred to as **"SCN"**) was issued to the Noticees in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15HB of the SEBI Act, on the Noticees for their alleged failure to comply with the directions of SEBI issued to them vide Order dated November 30, 2018.

7. The Noticees did not file reply to the SCN within the time as specified in the SCN. Thereafter, in the interest of natural justice and in terms of Rule 4 of the

Adjudication Rules, the Noticee was granted an opportunity of personal hearing on July 22, 2019, vide the Hearing Notice dated July 15, 2019.

8. Consequently, the Authorised Representative **(AR)** of the Noticees appeared for personal Hearing on July 22, 2019 and made written submissions dated July 19, 2019. Further, AR had sought time to file additional submissions in the matter on or before August 05, 2019. However, no additional submissions were made by the Noticees.

9. The relevant contents of aforesaid written submissions dated July 19, 2019 made by the Noticees are *inter-alia* reproduced hereunder:-

    1. *The Noticees have submitted that they are in process of filing appeal before the Hon'ble Securities Appellate Tribunal (SAT) and requested to wait for outcome of appeal before the Hon'ble SAT. It is further submitted that the Noticees shall arrange to submit the acknowledgement of submission of Appeal before SAT.*

    2. *It is submitted that, in computation of holding as on the date of trigger, the element of Self Trades and Inter-se Trades executed between the group has not been considered, therefore, the computation of holding and percentages as on the date of alleged triggers needs reconsideration.*

    3. *Without prejudice to above, it is admitted position that, Sanjay Soni was registered as Sub-Broker with Prabhudas Lilladher Pvt Ltd. As per regulation 3(1)(f) of SEBI Takeover Regulations, the provisions of regulation 10, 11 and 12 are not applicable to Stock Brokers.*

    4. *Without generality to above in the event the Ld. Adjudicating Officer records a finding that, we have not complied with the provisions of regulation 10*

and 11(1) of SEBI Takeover Regulations, 1997 and proceeds to levy penalty, it is urged that , following grounds be also considered u/s 15J of SEBI Act, 1992. In terms of Apex Court Judgement dated February 28, 2019 in Bhavesh Pabari V s. SEBI, the Honorable Apex Court has held that:

> *"Therefore, to understand the conditions stipulated in clauses (a), (b) and (c) of Section 15 J to be exhaustive and admitting of no exception or vesting any discretion in the Adjudicating Officer would be virtually to admit/concede that in adjudications involving penalties under Sections 15 A, 15 B and 15 C, Section 15 J will have no application. Such a result could not have been intended by the legislature. We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15 J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15 J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty."*

5. *It is a matter of record that, there are more than 7 separate Adjudication Order are passed against us thereby levying penalty of Rs.2.98 Crores. Our income levels are very less and it is impossible to pay up these penalties.*

6. *It is matter of record that, there is more than 7 years' delay in issuance of Show Cause Notice. There is substantial delay in the opening up of proceedings against the Appellant as it is evident that, there is 7 years' delay in issuance of instant Show Cause Notice by the Respondent upon the Noticee. Hon'ble SAT in its Judgement in SEBI Appeal No: 164 of 2012 in Bankim Shah vs. SEBI dated September 18,2012 has held as follows:*

   "Para 15. In the appeal relating to Bankim J. Shah one of the grounds advanced is the long delay in finalization of proceedings. We have dealt

with this issue in several cases decided by this Tribunal. We fully appreciate the fact that no time limit is provided for finalization of proceedings in the Act and regulations. ***However, delay defeats justice and causes undue hardship to the delinquent in putting forth timely defense.*** *It is to be noted that in the present case the investigation of 1999-2000 was concluded by the impugned proceedings in May, 2012. Considerable time has passed after the beginning of the investigation. Show cause notice was also issued in April 2009, but the proceedings culminated in May 2012."*

7. We state that, we have incurred losses in our trades executed in Oregon Commercial Limited during the investigation period. Therefore, no profit has been made by us out of our trades executed in Oregon Commercial Limited.

8. No intention to make any substantial acquisition of shares of Oregon Commercial Limited.

9. We equivocally state that, we had no understanding of provisions of concept of Persons acting in concert as provided in SEBI Takeover Regulations, 1997. The concept of PAC we came to understand in the year 2017-2018, when our lawyer made us understanding the provisions governing relationship of Persons acting in concert.

10. Subsequent to my appointment as the Adjudicating Officer in the matter, vide Hearing Notice dated August 19, 2019, the Noticees were provided an opportunity of personal hearing on August 29, 2019. However, vide email dated August 29, 2019, AR of the Noticees sought adjournment of the said hearing and requested for another opportunity of personal hearing. Therefore, in the interest of natural justice vide Hearing Notice dated August 29, 2019, the Noticees were provided one more opportunity of hearing on September 11, 2019. However, the Noticees have failed to attend the said hearing scheduled on September 11, 2019.

11. Thereafter, vide email dated September 12, 2019 the Noticees requested for time to file written submissions without availing opportunity of personal hearing. Considering the said request, the Noticees have been provided additional time to file written submissions in the matter. Consequently, vide letter dated September 19, 2019 the Noticees have made the following submissions in the matter.

1. *We rely upon judgement of Hon'ble "Securities Appellate Tribunal, Mumbai in following cases:* ***Appeal No: 417 of 2018, 440 of 2018- Ashok Shivlal Rupani Vs. SEBI (Dated August 22, 2019). In Mr. Rakesh Kathotia & Ors.*** *vs.* ***SEBI (Appeal No. 07 of 2016 decided on May 27, 2019)*** *proceedings were quashed on account of inordinate delay in issuing of Show Cause Notice.*
2. *As per the above judgements, it is mandatory for SEBI to explain the delay in issuance of Show Cause Notice in the Notice itself. It is admitted fact that, all allegations are of the year 2010 as such the investigation period January 04, 2010 to January 10, 2011. The first SCN is dated July 24, 2017 and second SCN is dated June 10, 2019. It is not in dispute the SCN is issued after 7-8 years of relevant investigation period and the both SCN do not provide any reasons for this inordinate delay in issuance of SCN. Since, no reasons are specified in the SCN for the delay, the SCN itself becomes infructuous as per the Hon'ble SAT Judgement Appeal No: 417 of 2018, 440 of 2018- Ashok Shivlal Rupani Vs. SEBI (Dated August 22, 20 19). In Mr. Rakesh Kathotia & Ors. Vs. SEBI (Appeal No. 07 of 2016 decided on May 27, 2019).*
3. *If the Ld. AO still proceeds to adjudicate basis of these SCN upon us, it will be held as deliberate contempt of judgements of Hon'ble SAT, wherein the judgement of SAT is absolutely clear that, if the delay is inordinate and the reasons for such delay is not provided in the SCN, the SCN itself is bad in law and any resultant adjudication proceedings will be void-ab-initio. Therefore this instant adjudication proceedings as per the Hon'ble SAT Judgement in Ashok Rupani case and Rakesh Kathothia case is bad in law.*

ISSUES FOR CONSIDERATION AND FINDINGS

12. I have carefully perused the SCN, the documents / material available on record and submissions of the Noticees. The issues that arise for consideration in the present case are:

    1) Whether the Noticees have failed to comply with the directions issued by SEBI vide its Order Dated November 30, 2018?

    2) Whether the Noticees is liable for imposition of monetary penalty under Section 15HB of the SEBI Act?

    3) If yes, then what should be the quantum of monetary penalty?

13. I note that the allegations against the Noticees in the instant matter mainly to the effect that the Noticees have failed to comply with the directions of SEBI issued vide its Order dated November 30, 2018 under the provisions of SEBI Act, 1992 and SAST Regulations, 2011.

14. It is noted that vide Order dated November 30, 2018 the WTM of SEBI has *inter-alia* found that the Noticees together cumulatively had acquired 10.05% of paid up equity of OCL on July 28, 2010. Thereafter, the Noticees acquired and sold shares on various dates and their shareholding in OCL exceeded 15.00% of the paid up equity shares on August 16, 2010. It is also noted from the trading details of the Noticees that they have continued to trade in the scrip and by August 31, 2010 their shareholding in the Target Company had fallen to 11.85%. Thereafter, they again started acquiring shares of OCL and their acquisition once again crossed the threshold of 15.00% on September 02, 2010. The Noticees have not made any public announcement for open offer for this breach either. Thus, the Noticees have repeatedly breached the provisions of Regulation 10 of SAST Regulations 1997 on August 16, 2010 and September 02, 2010.

15. Further, the WTM SEBI has found that on August 16, 2010, the Noticees had acquired 15.20% shares in the target company and by trading further in the scrip on August 18 and 19, 2010, they have increased their shareholdings in the target company to 20.63% on August 19, 2010. Thus, the acquisition of shares/voting rights on August 19, 2010 crossed the creeping acquisition limit of 5% prescribed under Regulation 11(1) of SAST Regulations, 1997 however, the Noticees did not make any public announcement for open offer. Subsequently, the Noticees continued to trade in the said scrip and their shareholding in the Target Company fell below 15% on August 27, 2010. The shareholding of the Noticees in the Target Company once again crossed 15.00% on September 02, 2010 when they again reached acquisition of 15.20% shares/voting rights in the Target Company. Further, the Noticees acquired additional shares on September 03, 2010 and on September 06, 2010 thereby again breaching the creeping acquisition limit of 5%, as their shareholding in the target company on September 06, 2010 stood at 20.63%. There is nothing on record to show that the Noticees have made any public announcement for open offer in terms of regulation 11(1) of SAST Regulations on these occasions. In sum, the Noticees have breached the provision of regulation 10 of SAST Regulations 1997 on August 16, 2010 and September 02, 2010 and provisions of Regulation 11(1) of SAST Regulations 1997 on August 19, 2010 and September 06, 2010.

16. Pursuant to aforesaid findings the WTM SEBI issued following directions to the Noticees under Sections 11, 11B read with Section 19 of the SEBI Act, 1992 and Regulation 32 read with Regulation 35 of the SAST Regulations, 2011:-

"(a) Noticees shall jointly and severally make a public announcement to acquire shares of the target company, in accordance with the provisions of the Takeover Regulations, 2011, within a period of 45 days from the date of this order. The offer price shall be the highest of the price calculated in terms of the takeover regulations with reference to the trigger dates.

(b) *Noticees shall along with the consideration amount, pay interest at the rate of 10% per annum from the date on which the payment would have fallen due had the acquirers made an open offer till the date of payment of consideration to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in the process, after adjustment of dividend paid, if any."*

17. There is nothing on record to show that the Noticees have complied with the aforesaid directions of SEBI issued vide its dated November 30, 2018. Further, the Noticees have also not claimed that they have complied with the said directions of SEBI. Therefore, there is no dispute that the Noticees have failed to comply with the aforesaid directions issued by SEBI vide its Order dated November 30, 2018.

18. The Noticees have submitted that they are in process of filing appeal before the Hon'ble Securities Appellate Tribunal (**"SAT"**) and requested to wait for outcome of appeal before the Hon'ble SAT. In this regard, I note that this the case of the Noticees where they have failed to comply with the directions issued to them by SEBI vide its Order dated November 30, 2018. Further, it is the fact that till date after lapse of almost 1-year from the said Order, the Noticees have not produced any document showing that they have filed appeal against the SEBI Order dated November 30, 2018 before the Hon'ble SAT. I note that the Noticees have not updated status of appeal, if any, in this regard. Therefore, I do not find merit in the said submission of the Noticees.

19. The Noticees have contended that in the said SEBI Order dated November 30, 2018 while calculating shareholding as on the trigger date, the element of Self-Trades and Inter-se Trades executed between the group has not been considered, therefore, the computation of holding and percentages as on the date of alleged triggers needs reconsideration. In this regard, I note that the instant

case against the Noticees is that they have failed to comply with the directions issued to them by SEBI vide its Order dated November 30, 2018. Further, the change in collective shareholdings of the Noticees as mentioned in the said Order of SEBI is net of Noticees's buy and sell of shares after taking into account the effect of self-trades and inter-se transfers amongst them. Therefore, the said contention of the Noticees is not tenable.

20. The Noticees have further submitted that there was inordinate delay in the issuance of SCN and therefore the SCN become infructuous as per the Hon'ble SAT judgement in the matter of *Ashok Shivlal Rupani Vs. SEBI* (Order dated August 22, 2019) and in *Rakesh Kathotia & Ors. Vs. SEBI* (Order dated May 27, 2019). In this regard, it is pertinent to note here that the instant adjudication proceedings were initiated against the Noticees for their failure to comply with the directions issued by SEBI vide its Order dated November 30, 2018. Consequently, the instant SCN was issued to the Noticees on June 10, 2019. Therefore, I find that the SEBI initiated the present matter as soon as information regarding malafide actions came to its notice and there was no delay of 7-8 years in issuance of the SCN as claimed by the Noticees. Further, the Noticees have also made several correspondences and also sought extensions to make submissions in the matter. In the interest of natural justice the Noticees have been provided several opportunities to make their submissions in the instant proceeding. Considering the aforesaid, I note that in the instant adjudication proceedings there was no inordinate delay on the part of SEBI. Hence, the aforesaid claim of the Noticees that there was delay in issuance of the SCN is unfounded and without any merit.

21. I note that SEBI has been entrusted with the duty to protect the interests of the investors and to protect the integrity of the securities market. In view of the seriousness of the matter, SEBI had issued appropriate directions to the Noticees vide its Order dated November 30, 2018 in respect of making Open offer in terms

of SAST Regulations 2011. The purpose of Regulation 10 and 11(1) of the SAST Regulations 1997, was to ensure that the public gets an exit opportunity once there is a breach of the threshold. The directions were issued by SEBI in order to provide exit opportunity to the general investors. The Noticees were under an obligation to comply with the directions issued by SEBI. However, the Noticees blatantly failed to comply with the directions issued to them by SEBI vide its Order dated November 30, 2018. Thus, from the facts and circumstances of the case and the observations made above, I am convinced that Noticees have failed to comply with the directions of SEBI issued vide its Order dated November 30, 2018 passed under the provisions of Sections 11 and 11B read with Section 19 of the SEBI Act, 1992 and Regulation 32 read with Regulation 35 of the SAST Regulations 2011.

22. In view of the violation of the provisions of law by the Noticees, as established above, the Noticees are liable for monetary penalty under the provisions of Section 15HB of the SEBI Act, which reads as follows:

"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 shall not be less than one lakh rupees but which may extend to one crore rupees."*

23. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under:-

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

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

(a) the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default
(b) the amount of loss caused to an investor or group of investors as a result of the default
(c) the repetitive nature of the default"

24. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*** – where the Hon'ble Supreme Court of India 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….."

25. In the instant matter, I note that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by investors as a result of the default committed by the Noticees. I note that the Noticees were obliged to comply with the directions issued by SEBI vide its Order dated November 30, 2018. It is observed from the said Order that if the offer price determined under the SAST Regulations at the relevant time when the requirement to make open offer was triggered, would be higher than the present price of shares of OCL. Thus, an open offer would be beneficial for the investors. In the circumstances, it is noted that existing investors lost to avail valuable opportunities to exit from the scrip due to failure by the Noticees to make public announcement at the four

occasions, they were required to do so, in terms of the Regulations applicable in this regard. It is the fact that till date the Noticees have not complied with the obligation to make public announcement to acquire shares of OCL despite the directions issued by SEBI vide its Order dated November 30, 2018.

26. I am of the view that the entities violating the directions issued by SEBI seriously compromise the regulatory framework and are detrimental to the interest of the investors in the securities market. The interest of the investors and the orderly development of the securities market requires that perpetrators of such activities should be suitably penalized. Such stark defiance displayed by the Noticees towards regulatory directions cannot be viewed lightly. The non-compliance of the Noticees with the SEBI directions have jeopardized the interests of the gullible investors. The Noticees have thus deprived the public shareholders from their valuable right therefore, I am of the view that this is a fit case to impose such penalty that commensurate with the gravity of the violations committed by the Noticees.

ORDER

27. After Taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the Adjudication Rules, I hereby impose penalty of Rs.3,00,000/- (Rupees Three Lakh Only) payable jointly or severally by the Noticees viz. Shri Sanjay Jethalal Soni, his wife Smt. Krupa Sanjay Soni and his proprietary concern M/s. J M Soni Consultancy in terms of Section 15HB of the SEBI Act, for their failure to comply with the directions issued to them by SEBI vide its Order dated November 30, 2018.

28. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

29. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-DRA-I), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

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)	

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

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

Date : November 22, 2019
Place : Mumbai

Vijayant Kumar Verma
Adjudicating Officer