BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No. Order/BM/RK/2024-25/31047]

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:

Name of the Entity	PAN
Mr. Gaurav Jain	AEYPJ4410R

*In the matter of " **Expert Global Consultants Private Limited**"*

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1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted an examination in the matter of Expert Global Consultants Private Limited (hereinafter referred to as the "**Merchant Banker/ MB**"), registered with SEBI as a Merchant Banker (MB), bearing registration no. INM000012874. The examination was to understand the due-diligence carried out by it with respect to an open offer and ascertain whether there was any violation of the provisions of SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as the "**MB Regulations**") and provisions of various SEBI Circulars by it. During the examination, it was observed that Mr Gaurav Jain (**Noticee**), Director and Compliance officer of the MB had allegedly failed to discharge responsibilities cast on Compliance Officer of the MB under Regulation 28A of the MB Regulations which included monitoring the compliance of the Act, Rules and Regulations, Notifications, Guidelines, instructions, etc., issued by the Board or the Central Government and independently report to the Board any non-compliances observed by him.

2. SEBI had therefore initiated adjudication proceedings against the Noticee to inquire into and adjudge the alleged violations of the provisions of MB Regulations as tabulated in table 1 below and to impose penalty under Section 15HB of the SEBI Act for the alleged violation by Noticee:

Table 1:

Sr No.	Alleged Violation	Provisions Violated
1.	Failure to discharge responsibilities cast on Compliance Officer.	Regulation 28A of the MB Regulations.

APPOINTMENT OF THE ADJUDICATING OFFICER

3. SEBI appointed undersigned as the Adjudicating Officer (AO) vide Order dated February 15, 2024, communicated vide communique dated February 23, 2024 under Section 15-I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") to inquire into and adjudge under Section 15HB of the SEBI Act for the alleged violations of the provisions of MB Regulations as mentioned in table 1 above.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. SCN No SEBI/HO/EAD/EAD3/P/OW/2024/0000015937 dated May 03, 2024 was issued to the Noticee under Rule 4 of the SEBI Adjudication Rules, to show cause as to why an inquiry should not be held and penalty be not imposed upon him under Section 15HB of the SEBI Act for the violation of provision of MB Regulations as mentioned at table 1 above.

5. The SCN was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and through digitally signed email dated May 05, 2024. The proof of service is on record. In response, Noticee vide letter dated May 24, 2024, received by SEBI on May 27, 2024 apprised that he was in the process of filing Settlement application in the matter in terms of (Settlement Proceedings) Regulations, 2018 and also sought additional time to file reply in the matter. Accordingly, vide email dated May 29, 2024, the Noticee was advised to submit reply till June 21, 2024. Further, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on July 11, 2024 vide Hearing Notice dated June 24, 2024 served through email on the same day. Vide the said hearing notice, the Noticee was also advised to submit reply in the matter by June 30, 2024. In the absence of any reply from the Noticee, vide reminder email dated July 08, 2024, Noticee was advised to submit his reply in the matter by July 09, 2024. However, Noticee vide email dated July 10, 2024 requested to keep the instant proceedings in abeyance since he had filed the said Settlement application in the matter and sought further extension of time to file reply to the SCN. Vide email dated July 10, 2024, Noticee was informed that the instant proceedings are distinct and different from the proceedings emanating from filing of Settlement application and was advised to submit his reply in the matter by August 02, 2024. Vide the said email, Noticee was advised that it was the last and final opportunity to file his reply. Despite this, Noticee vide his email dated August 02, 2024 again requested for additional time to file reply in the matter and accordingly, vide email dated August 14, 2024, Noticee was advised to file reply in the matter without any further delay. However, Noticee didn’t submit his reply despite the ample opportunities granted to him to file the same. Vide hearing Notice dated August 28,

2024, Noticee was given an opportunity of hearing in the matter on September 16, 2024 with an advise to file his reply in the matter by September 01, 2024. Vide email dated September 03, 2024, the said hearing was preponed to September 06, 2024 owing to the public holiday declared on September 16, 2024. It is observed that vide email dated September 06, 2024, Noticee again sought additional time to file reply in the matter and also requested to reschedule the hearing.

6. Accordingly, vide email dated September 09, 2024, the said request was acceded to and the Noticee was advised to file his reply in the matter by September 16, 2024. Noticee vide email dated September 25, 2024 submitted some documents and an undertaking in the matter and accordingly, vide email dated November 14, 2024, Noticee was given another opportunity of hearing in the matter. Vide the said email, Noticee was advised to confirm whether the undertaking submitted by him was his reply or not. However, Noticee did not reply to the same and also didn't avail the opportunity of hearing. As confirmed by the Settlement division, the settlement application filed by the Noticee was rejected by SEBI and accordingly, the instant proceedings was resumed in respect of him. Subsequently, vide email dated, Noticee was given a last and final opportunity of hearing in the matter on November 27, 2024 vide email dated November 21, 2024 and was again advised to confirm whether the undertaking given by him was his reply or not. Noticee didn't comment on the same. Vide email dated November 27, 2024, noticee submitted his reply in the matter. The submissions made by the Noticee are summarized hereunder:

Reply of the Noticee

a) Noticee denied the allegation w.r.t failure to exercise proper due diligence in the open offer of Diggi Multitrade Limited.

b) W.r.t allegation of misleading disclosure/statement on MB's website, Noticee submitted that the same was an inadvertent error and was rectified without any delay.

c) He submitted that Mr Vijay Darji was appointed for one transaction and was representing in the capacity of intermediary /marketing between MB and the company Evergreen and display of his name as Consultant Vice President-Marketing on MB's website was an inadvertent error.

d) He submitted that Mr Harish Gupta and he himself have applied for NISM Series IX and NISM Series III certifications respectively which would be completed shortly.

e) He has applied for Series III A Certification and Mr Shobhit Aggarwal has been appointed as the Compliance officer w.e.f July 01, 2024 and provided with a copy of appointment letter and acceptance of the same by Mr Shobhit Aggarwal.

f) As regards allegation on MB's failure to make the investor charter available on its website, Noticee termed the allegations as incorrect and submitted that the same has been made part of MB's website in November 2023 and provided with a screenshot of the website to substantiate his said claim.

g) As regards allegation of failure to intimate the change in Directors and KMPs to SEBI, Noticee submitted that the same was duly intimated vide periodic report and provided with a copy of email dated September 12, 2023, addressed to SEBI.

h) With respect to allegation on MB's failure to comply with various regulatory requirements for intermediaries under PIT Regulations, Noticee submitted that one Mr Shobhit Aggarwal has been appointed as the Compliance officer to monitor compliances in terms of PIT Regulations.

i) On allegation of failure to submit the periodic reports to SEBI, Noticee submitted that the periodic reports for the half-year ended on March 2024 had been filed on August 27, 2024 and provided with a copy of email.

j) As regards allegation of failure to monitor compliance of the Act, Rules and Regulations, Notifications, Circulars, etc., issued by the Board, Noticee submitted that MB had appointed Compliance officer for monitoring of the Acts, Rules and Regulations.

CONSIDERATION OF ISSUES AND FINDINGS: -

7. The charges against the Noticee, his reply and the documents/material available on record have been carefully perused. The issues that arise for consideration in the present case are:

Issue No. I: Whether Noticee has violated the following provisions of MB Regulations as mentioned in table 1 above?

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act for the alleged violations?

Issue No. III: If so, 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?

8. Before proceeding further with the matter, it is pertinent to mention the relevant provisions of the MB Regulations alleged to have been violated by the Noticee. The same is reproduced below:

Relevant provisions of SEBI (Merchant Bankers) Regulations, 1992

Appointment of compliance officer

28A. (1) *Every merchant banker shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications,* *guidelines, instructions, etc., issued by the Board or the Central Government and for redressal of investors' grievances.*

(2) *The compliance officer shall immediately and independently report to the Board any non-compliance observed by him and ensure that the observations made or deficiencies pointed out by the Board on/in the draft prospectus or the letter of offer as the case may be, do not recur.*

Issue No. I: Whether Noticee is in violation of following provisions of MB Regulations as mentioned in table 1 above?

<u>Failure to discharge responsibilities cast on Compliance Officer</u>

9. With respect to the captioned allegation, it is observed that the Noticee on behalf of MB, vide his email dated August 21, 2023 made submissions to SEBI in the matter of an open offer with respect to Diggi Multitrade Limited, which was post his meeting on the same day at SEBI.

10. In this regard, the point no. 8 of the said email read as mentioned herein below:

"I have nominated myself as a compliance officer but have not adhered to the compliances mentioned in Regulation 28A of the MB Regulations i.e. monitoring the compliance of the Act, Rules, and Regulations, Notifications, Guidelines, instructions, etc. issued by the board. I will hire and dedicated person for compliance officer as soon as possible."

11. W.r.t the aforesaid submission of the Noticee, it is observed that the following were the alleged non-compliances on the part of Noticee observed during the examination:

Failure to exercise proper due diligence

11.1 In Diggi Multitrade Limited, capital buildup of the promoter and promoter group, Acquirer and PAC, the disclosure and status of compliance was allegedly not proper and proper due diligence was not done by the MB as per SEBI Circular-SEBI/HO/CFD/DCR1/CIR/P/2017/22 dated March 15, 2017.

11.2 Noticee denied the allegation w.r.t failure to exercise proper due diligence in the open offer of Diggi Multitrade Limited. In this regard, it is noted that in terms of SEBI Circular No. SEBI/CFD/DCR/SAST/3/2011/11/222 dated November 22, 2011 as amended by SEBI Circular No. SEBI/HO/CFD/DCR1/CIR/P/2017/22 dated March 15, 2017, MB was required to submit details w.r.t buildup of capital of target company in the format as per the said circular and was under an obligation to exercise proper due diligence with respect to capital buildup of the promoter and promoter group, Acquirer and PAC, and also responsible for disclosure and status of compliance in the open offer of Diggi Multitrade Limited. It was observed from the submission of the Noticee dated August 21, 2023 wherein he had mentioned as below:

"In Diggi Multitrade Limited, capital buildup of the promoter and promoter group, Acquirer and PAC, the disclosures and status of compliance was not proper and proper due diligence was not done by the merchant banker and Mr Sanchit Agarwal handling the transaction as per SEBI Circular-SEBI/HO/CFD/DCR1/CIR/P/2017/22 dated March 15, 2017."

11.3 Noticee in reply to the SCN merely denied the allegation and provided documents viz, post offer advertisement under Regulation 18(12) of SEBI SAST Regulations, change in holding of promoter/promoter group of the target company, details of public announcement made in the said open offer, which nowhere shows that MB had complied with the provisions of the said circular. Noticee has therefore made contradictory submissions. Further, he has not substantiated his claim that there was no failure on his part in exercising proper due diligence. Therefore, Noticee being a Compliance officer has failed to ensure that MB adhered to the provisions of SEBI Regulations, Circulars, etc.

Failure to comply with requirement of having mandatory NISM Series IX Certificate by KMPs

11.4 It was observed that there were directors/KMPs namely, Mr Harish Gupta, Sanchit Agarwal (working since October 2021) and Ms Anu Mittal working with MB as per submission of the Noticee, who allegedly did not obtain valid Series IX Merchant Banking Certification for KMPs and that Mr Harish Gupta was not actively participating in the merchant banking activities whereas Mr Sanchit Agarwal was allegedly handling all the merchant banking activities of the MB. In this regard, it is observed that the said non-compliance persisted despite declaration dated July 27, 2021 provided by the MB to SEBI that all its designated KMPs would obtain the said NISM Certification within one year from the date of grant and obtaining the License of MB.

11.5 Noticeee submitted that Mr Harish Gupta and he himself have applied for NISM Series IX certifications, which would be completed shortly.

11.6 From the above, submission of the Noticee, it is noted that admittedly KMPs of the MB viz Mr Harish Gupta, Mr Sanchit Agarwal and Ms Anu Mittal were not holding valid NISM Series IX certification, which it being an MB should have ensured at all times that atleast its two KMPs have the requisite certification in terms of SEBI notification no. LAD-NOR/GN/2013-14/15/6319 dated August 02, 2013. Thus, the MB was required to have atleast two KMPs with the requisite NISM Certification, which the MB is still not having and Noticee being a Compliance officer of the MB should have ensured compliance of the rules/ Regulations/Notification, which it failed to do.

Failure to comply with requirement of having mandatory NISM Series III-A Certificate by Noticee being a Designated Compliance Officer

11.7 Noticee, who was Director and designated as compliance officer of the MB allegedly did not have NISM-Series III A Certificate from the date of registration of MB to the date of confirmation email received by SEBI from NISM, vide email dated August 28, 2023. However, it is observed that the said non-compliance persisted despite the MB providing declaration dated July 28, 2021 to SEBI that the Noticee would obtain the said NISM Certification within one year from the date of grant and obtaining the License of MB.

11.8 Noticee submitted that he has applied for Series III A Certification.

11.9 From the above submission of the Noticee, it is noted that admittedly Noticee, who had designated himself as the Compliance officer of the MB was not holding a valid NISM-Series III A Certificate from the date of registration of the MB to the date of confirmation email received by SEBI from NISM dated August 28, 2023. It is observed that he had applied for the certification exam recently, which is after the issuance of SCN. While that the new compliance officer, with the requisite qualification has been appointed now as a corrective action by the MB, Noticee was non-compliant w.r.t not having the requisite qualification required for a Compliance officer during the examination of the matter in terms of SEBI Notification no. LAD-NRO/GN/202-13/33/1103 March 11, 2013 dated March 11, 2013, the extract of which reads as mentioned herein below:

"Accordingly, it is notified that with effect from the date of this notification, the associated persons functioning as compliance officers of intermediaries registered with the Board as stock brokers, or depository participants, or merchant bankers, or underwriters, or bankers to the Issue, or debenture trustees or credit rating agencies, shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as "NISM") by passing the NISM-Series-III A: Securities Intermediaries Compliance (Non-Fund) Certification Examination (hereinafter referred to as "SICCE") as mentioned in the NISM communiqué No. NISM/Certification/Series-III A: SIC/2013/01 dated January 7, 2013. All such intermediaries shall ensure that associated persons functioning as compliance officers as on the date of this notification obtain certification by passing SICCE within two years from the date of this notification:

Provided that an intermediary, who engages or employs any such associated persons functioning as compliance officer after the date of this notification, shall ensure that such person obtains certification by passing SICCE within one year from the date of his employment."

11.10 Thus, in view of the above, Noticee as a compliance officer failed to comply with the requirement of having mandatory NISM Certification for compliance officers.

<u>Failure to submit periodic reports to SEBI</u>

11.11 It is observed that the MB had allegedly not filed the periodic report for the half year ended March 2022, September 2022 and March 2023 since its registration as an MB.

11.12 Noticee submitted that the periodic reports for the half-year ended on March 2024 had been filed on August 27, 2024 and provided with a copy of email.

11.13 It is noted that the Noticee has not denied that periodic reports were not filed for the half year ended March 2022, September 2022 and March 2023 since inception of MB, which was required to be filed with SEBI in terms of SEBI Circular SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 02, 2017 within three months of the expiry of the half year.

11.14 Thus, admittedly periodic reports were not filed by the MB.

<u>Failure to intimate to SEBI change in directors and KMPs</u>

11.15 MB had allegedly failed to intimate the change in directors and KMP viz. appointment and resignation of Mr. Neeraj Jain (Director) and Ms. Nimisha Vikas Joshi (KMP) which was required to have been done vide its periodic reports.

11.16 Noticee submitted that he had duly intimated the change in Directors and KMPs vide periodic report and provided with a copy of email dated September 12, 2023, addressed to SEBI.

11.17 It is noted that admittedly Noticee in his submission to SEBI vide email dated August 21, 2023 had submitted that he had failed to submit the information on change in Directors. Further, as regards his submission to the SCN that he had intimated to SEBI regarding the change in Directors vide email dated September 12, 2023, it is noted that the Noticee had responded to SEBI query w.r.t the status of appointment/cessation of the KMPs of the MB during the examination and the same was not an intimation as submitted by the Noticee rather was a clarification/response to SEBI query. Thus, submission of the Noticee is bereft of merits.

Failure to comply with various regulatory requirements for intermediaries under SEBI (PIT) Regulations, 2015

11.18 It is observed that the MB had allegedly not done any compliances required to be done by intermediaries in terms of SEBI (Prohibition of Insider Trading) Regulations, 2015 viz, Adoption of Code of Conduct, Maintenance of Structural Digital Database (SDD) and Designating any compliance officer to monitor compliances under said PIT Regulations.

11.19 Noticee submitted that Mr Shobhit Aggarwal has been appointed as the Compliance officer to monitor compliances in terms of PIT Regulations and also provided a copy of invoice dated August 06, 2024 paid towards the professional fees for procuring Structural Digital database for the period from August 02, 2024 to August 01, 2025.

11.20 From the above submission of the Noticee, it is noted that admittedly, no compliance was made by MB with the provisions of PIT Regulations, had no code of conduct, was not maintaining any SDD and did not designate any compliance officer to administer the code of conduct, which was mandatorily required to be complied by it in terms of Regulation 3(5), 9(1) and 9(3) of the PIT Regulations, which read as mentioned below:

> ***<u>SEBI (PIT) REGULATIONS, 2015</u>***
>
> ***<u>Communication or procurement of unpublished price sensitive information.</u>***
>
> ***3(5)*** *The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.*
>
> ***<u>Code of Conduct</u>***
>
> ***9. (1)*** *The board of directors of every listed company and 42[the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct 43[with their approval] to regulate, monitor and report trading by its 44[designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B 45[(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner.*
>
> ***9(3)*** *Every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.*

11.21 Thus, in view of the above, the Noticee failed to ensure that MB complied with respect to the various Regulatory requirements for intermediaries under PIT Regulations mentioned above.

<u>Misleading disclosures/statement on the website</u>

11.22 It was observed that MB had mentioned the qualification of the Noticee as CFA (Chartered Financial Analyst) which is a globally recognized qualification in the field of finance, investment and wealth management, instead of mentioning the Noticee’s qualification as FCA (Fellow Chartered Accountant) on its website https://www.expertglobal.in/, which was allegedly a misleading statement by the MB.

11.23 It is observed that one Mr Vijay Darji was hired as a consultant for handling merchant banking activity in relation to an open offer of Evergreen wherein he did not continue with the said activity and that he was never employed with MB. However, his name was still appearing on the website of MB which was evident from “Our Team” section of its website that mentioned his designation as “Consultant Vice President- Marketing”, which was allegedly misleading.

11.24 MB had mentioned itself as a SEBI registered MB and Stock Broker on its website. However, MB was not holding any SEBI registration as a Stock Broker, which was allegedly misleading statement by the MB.

11.25 Noticee submitted that the alleged designation as CFA instead of FCA and MB’s status as Stock Broker on its website despite not being a registered stock broker was an inadvertent error and the same were rectified without any delay.

11.26 He submitted that Mr Vijay Darji was appointed for one transaction and was representing in the capacity of intermediary /marketing between MB and the company Evergreen and display of his name as Consultant Vice President-Marketing on its website was also an inadvertent error.

11.27 From the above submissions of the Noticee, it is noted that admittedly Noticee’s designation was being displayed as CFA instead of he being a FCA and claim by MB of being a SEBI registered stock broker despite not having SEBI Registration, in addition to mentioning Mr Vijay Darji as Consultant Vice President.- Marketing who was not an employee of the MB, was misleading. Further, MB was representing itself in contrary to its profile as a Merchant Banker, which it being a professional MB should have refrained from in terms of Clause 10 under Schedule III of Code of conduct for merchant bankers read with Regulation 13 of MB Regulations, which reads as mentioned below:

***10**. A merchant banker shall not make any statement, either oral or written, which would misrepresent the services that the merchant banker is capable of performing for any client or has rendered to any client.*

11.28 Thus, Noticee as a Compliance Officer failed to ensure that correct disclosures were made by the MB.

Failure to make available Investor Charter on the website of MB

11.29 The investor charter as required under SEBI Circular had allegedly not been made part of MBs website.

11.30 Noticee termed the allegations as incorrect and submitted that the same has been made part of its website in November 2023 and provided with a screenshot of the website to substantiate his said claim.

11.31 From the material available on record, it is noted that the MB had not displayed the investor charter on its website when it was examined by SEBI and the same was updated on its website after the same was pointed out by SEBI, which is also evident from the submission of the Noticee that the said charter has been made available since November 2023, which is after the examination in the matter. Further, Noticee had himself admitted in his email submission dated August 21, 2023 that the website of the MB was devoid of investor charter. Thus, submission of the Noticee to the SCN is not tenable.

Failure to monitor compliance of the Act, Rules and Regulations , Notifications, Circulars, etc., issued by the Board

11.32 The following non-compliances were observed during the examination in the matter:

a) Failure to exercise proper due diligence.
b) Failure to comply with requirement of having mandatory NISM Series IX Certificate by KMPs.

c) Failure to comply with requirement of having mandatory NISM Series III-A Certificate be Noticee, a Designated Compliance Officer.
d) Failure to submit periodic reports to SEBI.
e) Failure to intimate to SEBI change in directors and KMPs.
f) Failure to comply with various regulatory requirements for intermediaries under SEBI (PIT) Regulations, 2015.
g) Misleading disclosures/statement on the website of MB.
h) Failure to make available Investor Charter on its website by MB.

12. Noticee had nominated himself as the "Director and Compliance Officer" since April 21, 2021 and had allegedly failed to discharge responsibility cast on the compliance officer by not complying with the Act, Rules and Regulations, Notifications, Circulars, etc., issued by the Board and therefore, Noticee was alleged to have violated Regulation 28A of the MB Regulations.

13. In this regard, Regulation 28A of the MB Regulations reads as mentioned below:

<u>Appointment of compliance officer</u>

28A. (1) *Every merchant banker shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the Board or the Central Government and for redressal of investors' grievances.*

28(2) *The Compliance officer shall immediately and independently report to the Board any non-compliance observed by him and ensure that the observations made or deficiencies pointed out by the Board on/in the draft prospectus or the letter of offer as the case may be, do not occur.*

14. Noticee in reply to the SCN had submitted that he had complied with the various Acts, Rules and Regulations, Notifications, circulars, etc and has now appointed a Compliance officer for monitoring of the Acts, Rules and Regulations.

15. As established under pre-paragraphs 11.2 to 11.31, there were non-compliances by the MB. Noticee who had designated himself as the Compliance officer was entrusted with the responsibilities of monitoring of the Act, Rules and Regulations, Notifications, Circulars, etc., issued by the Board. It is observed that the Noticee did not monitor the compliance and also did not report to the Board independently of the non-compliances as already established.

16. Thus, Noticee has violated Regulation 28A of the MB Regulations by not having complied with Act, Rules and Regulations, Notifications, Guidelines, instructions, etc issued by the Board or Central Government and having failed to independently report to the board of the non-compliances observed by him.

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act?

17. As it has been established Noticee has violated following provisions of the MB Regulations.

    a) Regulation 28A of the MB Regulations.

18. In the context of the above, observations of Hon'ble Supreme Court in the matter of Chairman, ***SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361}*** is referred to wherein the Hon'ble Court had held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established.......*"

19. Therefore, in view of the foregoing and placing reliance on the above judgement of Hon'ble Apex Court, Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act, which is reproduced hereunder:

<u>SEBI Act, 1992:</u>

<u>Penalty for contravention where no separate penalty has been provided</u>

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.*

Issue No. III: If so, 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?

20. 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, 1992 which reads as under:

<u>SEBI Act, 1992</u>

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.

21. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure, nor the same has been alleged by SEBI. As regard to the repetitive nature of the default, it is noted that the Noticee has not been penalized by SEBI in the past.

22. Compliance officer being one of the key personnel, has an important role to play in the company viz, monitoring adherence to SEBI regulations, maintaining SDD, administering code of conduct, timely submission of periodic reports to SEBI, ensuring that all the KMPs have the requisite NISM Certification including himself, investor charter being displayed on the website of the company and all the disclosures made by the company are not misleading. In the instant case, as established in the pre-paragraphs, Noticee being a compliance officer failed in his duties and the said failures on the part of the Noticee deserve to be adequately penalized.

23. Although the Noticee has stated that various corrective steps have been taken, irregularities were committed by the Noticee as detailed above. The Noticee being a Key Managerial Personnel of the MB was expected to adhere to fair practices and maintain a high degree of professionalism in the conduct of the business.

ORDER

24. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, and also taking into account judgment of the Hon'ble *Supreme Court in* ***SEBI vs. Bhavesh Pabari (2019)*** 5 SCC 90 and in exercise of power conferred under section 15-I of the SEBI Act, 1992

read with Rule 5 of the Adjudication Rules, 1995, following penalty under section 15HB of the SEBI Act is imposed on the Noticee:

Name of the Noticee	**Penal provisions**	**Penalty**
Mr Gaurav Jain	Under Section 15HB of the SEBI Act	Rs 7,00,000/- (Rupees Seven Lakhs Only)

25. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

26. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

27. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

BARNALI MUKHERJEE

Digitally signed by BARNALI MUKHERJEE
Date: 2024.12.17 17:16:07 +05'30'

Date: December 17, 2024 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**