BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/SM/RG/2022-23/24206

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

In respect of:
Rajesh Estates & Nirman Pvt. Ltd.
(PAN: AAACR7599A)
139, Seksaria Chambers,
2nd Floor, N.M Road, Fort,
Mumbai, Maharashtra - 400023

In the matter of Non-submission of bank details by issuers to Debenture Trustees

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A. FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") issued a Circular SEBI/HO/DDHS/CIR/P/103/2020 dated June 23, 2020 on the operational framework for transactions in defaulted debt securities post maturity date. As per para 3.2 of Annexure A of aforementioned circular, at the time of executing Debenture Trust Deed, issuers are mandated to provide their bank details (from - which it proposes to pay the redemption amount) and pre-authorize Debenture Trustee(s) to seek debt redemption payment related information from the Issuer's bank. It was also mentioned in the Circular that for existing debt securities, the issuer should provide pre-authorization to Debenture Trustee(s), within 60 days from the date of this Circular. Further para 4 of the circular casts responsibility on the issuers/ listed entities to comply with the obligations/ provisions laid down in this circular, which came into effect from July 01, 2020. Subsequently, SEBI observed that **Rajesh Estates & Nirman Pvt. Ltd. (**hereinafter referred to as the "**Noticee")** has failed to comply with the provisions

of the aforementioned Circular even after repeated reminders from the Bombay Stock Exchange Ltd. (hereinafter referred to as "**BSE**") and the Advisory Letter issued by SEBI on June 03, 2022. The SEBI Circular SEBI/HO/DDHS/CIR/P/103/2020 dated June 23, 2020 was superseded by SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. In view of the above, SEBI had appointed the undersigned as the Adjudicating Officer under Section 15I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Enquiry and Imposing Penalties, 1995 (hereinafter referred as "SEBI Adjudication Rules"), vide communique dated December 13, 2022 to enquire into and adjudge under Section 15HB of SEBI Act by the Noticee.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. The show cause notice (hereinafter referred to as "**SCN")** bearing no. SEBI/EAD-1/SM/RG/63415/5/2022, dated December 22, 2022, was served upon the Noticee under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15HB of the SEBI Act for the aforesaid alleged violation. The said SCN was served upon the Noticee through Speed Post Acknowledgement Due and e-mail.

Date	Remark
December 22, 2022	SCN sent through e-mail and duly delivered.
December 24, 2022	Physical delivery of SCN.
January 10, 2023	Hearing Notice sent through e-mail and hearing scheduled for January 20, 2023.
January 16, 2023	Physical delivery of the Hearing Notice.
January 19, 2023	The Noticee, vide an e-mail, submitted its reply to the SCN.
January 20, 2023	The Noticee did not appear for hearing.

February 17, 2023	SEBI, in the interest of natural justice, provided another opportunity of hearing scheduled on February 27, 2023.
February 27, 2023	The Noticee did not appear for hearing.

4. **The allegations levelled against the Noticee in the SCN:**

As per Clause 3.2 of SEBI Circular SEBI/HO/DDHS/CIR/P/103/2020 dated June 23, 2020 read with Clause 4.1 of Chapter XI of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021, issuers are mandated to provide their bank details (from - which it proposes to pay the redemption amount) and pre-authorize Debenture Trustee(s) to seek debt redemption payment related information from the Issuer's bank. However, in the instant case it was observed that the Noticee had not complied with the aforesaid Clauses of aforementioned Circulars. In this regards, information was sought from the Debenture Trustee of the issuer ("Axis Trustee Services Limited" in this case), wherein the Debenture Trustee, vide its mail dated 01 August, 2022 confirmed that the issuer had entered into an Escrow Arrangement pursuant to which Escrow Account and bank details are available with it but the issuer had failed to pre authorize Debenture trustees to seek debt redemption payment related information from the Issuer's bank. Hence a delay of 820 days (22 August 2020 to 20 November 2022) has been observed. Also, BSE vide its emails dated 20.01.2021, 23.09.2021 and 27.01.2022 had sought the information on compliance of the aforesaid provisions by the Noticee, but did not elicit any response from the Noticee. Later, SEBI also issued the Advisory Letter on June 03, 2022 to the Noticee asking it to submit the required information to the Debenture Trustee within 30 days of the receipt of the aforesaid Advisory Letter, but the Noticee failed to act promptly even after receiving the aforesaid Advisory Letter from SEBI. Hence, the Noticee is found to be in contravention of Clause 3.2 of SEBI Circular SEBI/HO/DDHS/CIR/P/103/2020 dated June 23, 2020 read with Clause 4.1 of Chapter XI of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021 read with Regulation 8 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**").

5. The Noticee replied to the allegations levelled in the SCN as follows:

i. *The company could not submit the bank details to Debenture Trustee in accordance with Securities and Exchange Board of India ("SEBI") circulars SEBI/HO/DDHS/CIR/P/103/2020 dated June 23, 2020 and SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.*

ii. *The Company and the Group is into Real Estate Development. Because of many micro and macro economic, financial, market factors, the company could not complete the project for which the company had issued NCDs. In meantime, due to onset of covid–19 pandemic and nationwide lockdown, the company did not have requisite man power to comply properly with the regulations. The various parties filed the suit/petition before the various courts and National Company Law Tribunal (NCLT) under IBC and other applicable laws.*

iii. *Further, on 16th July 2021, in matter of Steel Investments Pvt. Ltd. NCLT passed an order under section 7 of IBC for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s Rajesh Estates and Nirman Private Limited ("Company") and the Board of Directors of the Company were suspended during CIRP and the said CIRP Order was set aside by National Company Law Appellate Tribunal, New Delhi (NCLAT) vide its order dated 08th December, 2021and accordingly on 14th December, 2021NCLT passed an Order for the withdrawn of CIRP against the Company so during that period all management was vested in the Interim Resolution Professional/ Resolution Professional.*

D. CONSIDERATION OF ISSUES AND EVIDENCE

6. I have considered the allegations levelled in the SCN, the relevant material brought on record, and replies/ submissions of the Noticee made during the instant proceedings before the undersigned. In the light of the aforesaid factual position, I proceed to adjudicate the matter, and find that essentially, the following issues arise for determination in the instant matter:

    i. Issue 1: Whether the Noticee has failed to comply with Clause 3.2 of Annexure A of SEBI Circular no. SEBI/HO/DDHS/CIR/P/103/2020 dated June 23, 2020?

ii. *Issue 2: If answer to the aforesaid question is in affirmative, whether the violations would attract monetary penalty on the Noticee under the provisions of Section 15HB of the SEBI Act?*

iii. *Issue 3: If answer to the aforesaid question is in affirmative, what should be the quantum of the monetary penalty?*

7. Before proceeding further, I would like to refer to the relevant regulations:

Clause 3.2 of SEBI Circular SEBI/HO/DDHS/CIR/P/103/2020 dated June 23, 2020

"*At the time of executing Debenture Trust Deed, Issuer shall provide its bank details (from which it proposes to pay the redemption amount) and preauthorise Debenture Trustee(s) to seek debt redemption payment related information from the Issuer's bank. Issuer shall also inform the Debenture Trustee(s) of any change in bank details within 1 working day of such change. For existing debt securities, Issuer shall provide such pre-authorisation to Debenture Trustee(s), within 60 days from the date of this circular*."

Clause 4.1 of Chapter XI of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021

"*At the time of executing debenture trust deed, issuer shall provide its bank details (from which it proposes to pay the redemption amount) and pre-authorise debenture trustee(s) to seek debt redemption payment related information from the issuer's bank. Issuer shall also inform the debenture trustee(s) of any change in bank details within one working day of such change.*"

LODR Regulations

8. Co-operation with intermediaries registered with the Board

"The listed entity, wherever applicable, shall co-operate with and submit correct and adequate information to the intermediaries registered with the Board such as credit rating agencies, registrar to an issue and share transfer agents, debenture trustees etc, within timelines and procedures specified under the Act, regulations and circulars issued there under:

Provided that requirements of this regulation shall not be applicable to the units issued by mutual funds listed on a recognised stock exchange(s) for which the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 shall be applicable."

8. The first issue to be addressed is as follows:

Whether the noticee has failed to comply with Clause 3.2 of Annexure A of SEBI Circular no. SEBI/HO/DDHS/CIR/P/103/2020 dated June 23, 2020?

8.1 The Noticee has admitted to the allegations levelled against it in the SCN. I note that the Noticee has submitted in its reply to the SCN that it was under Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") during 16 July 2021 to 14 December 2021. I am inclined to give the benefit to the Noticee during the period it was under CIRP process i.e. from 16 July, 2021 to 14 December, 2021. Therefore, after making the adjustments, a delay of 669 days is observed in this case.

8.2 However, I note that the Noticee could have complied with the provisions of aforesaid circular even after 14 December, 2021, but the Noticee didn't bother to do so even after repeated reminders from BSE and the Advisory Letter issued by SEBI on June 03, 2022. Further, even after the issuance of SCN, the Noticee did not show any inclination to comply with the provisions of the aforesaid circular as the Noticee has still not submitted the bank details and the required pre-authorisation to the debenture trustee till the date of passing this order. This, in my opinion, raises serious questions on the conduct of the Noticee.

9. The second issue to be addressed is as follows:

If answer to the aforesaid question in first issue is in affirmative, whether the violations would attract monetary penalty on the Noticee under the provisions of Section 15HB of the SEBI Act?

From the discussion in the first issue, it is noted that the violations were established as described above and accordingly, the Noticee is liable for imposition of penalty in terms of Section 15HB of SEBI Act.

Section 15HB of the SEBI Act is reproduced as under:

SEBI ACT

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."

10. The third issue to be addressed is as follows:

If answer to the aforesaid question in second issue is in affirmative, what should be the quantum of the monetary penalty?

In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI which is reproduced as under:

SEBI Act

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."

11. In view of the aforesaid facts and circumstances of the case and the charges being established, the quantum of penalty would depend on the factors referred to under Section 15J of the SEBI Act stated as above. No quantifiable figures are available

to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Also, there was no investor complaint against the Noticee.

E. ORDER

12. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15HB, I hereby impose monetary penalty of **Rs. 1,00,000/-** on the Noticee.

    I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

13. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR 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

14. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief, EFD1 – DRA - 4, Securities and Exchange Board of India, SEBI Bhavan, Plot no.C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051". The Noticee shall also provide the following details while forwarding DD / payment information:

Case Name:	
Name of Payee:	
Date of Payment:	
Amount Paid:	
Transaction No.:	

Bank Details in which payment is made:	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	Penalty

15. 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 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

16. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules, a copy of this order is being sent to Noticee viz. Rajesh Estates & Nirman Pvt. Ltd. and also to SEBI.

Date: February 28, 2023
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER