BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER No.: Order/SS/VS/2019-20/4515-4521]

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:

1. **Mr. Bhavik Bhimjyani (PAN No.: AABPB4736F)**
2. **Mr. Rashmi Bhimjyani (PAN No.: AGGPB9612F)**
3. **Ms. Rekha Bhimjyani (PAN NO.: AADPB8686L)**
4. **Rashmi C. Bhimjyani HUF (PAN No.: AAAHR1160E)**
5. **Mr. N. H. Popat (PAN No.: ADFPP0268F)**
6. **R T Agro Private Limited (PAN No.: AACCR3014Q)**
7. **Neelkanth Realtors Private Limited (PAN No.: Not Available)**

In the matter of
R. T. Exports Limited

1. R. T. Exports Limited (hereinafter referred to as 'RTEL'/'company') is a listed company having its shares listed on Bombay Stock Exchange Limited (hereinafter referred to as 'BSE'). Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received a complaint vide letter dated November 28, 2016 from Mansukhlal Hiralal and Company, Advocates on behalf of their client Harmony Holding Limited (hereinafter referred to as 'Harmony') against RTEL *inter alia* alleging the following:
   a. No notice was received by Harmony for the 34^{th} Annual General Meeting (AGM) purported to have been held on July 15, 2014, where the resolution no. 5 was discussed and passed as a special resolution to enter into contract with Neelkanth Realtors Private Limited for the purchase of un identified 40,000 sq. ft. of saleable area for a consideration of ₹40/- crore.
   b. RTEL proposed to convene an Extraordinary General Meeting (EGM) on December 16, 2016 wherein a resolution regarding rescinding of the earlier resolution passed at 34^{th} AGM of the RTEL held on July 15, 2014 was to be passed.
   c. RTEL had stated in the EGM notice that Mr. Bhavik Bhimjyani (Chairman & Managing Director of RTEL), Mr. Rashmi Bhimjyani (Director & Chief Financial Officer of the RTEL), Ms. Asha Dawda (Non-Executive Director of RTEL) and their relatives were interested in the resolution, sought to be passed at the EGM dated December 16, 2016. However, RTEL had refrained from categorically stating in the EGM notice that all promoter-shareholders would be obliged not to vote at this EGM by virtue of section 188 of the Companies Act, 2013.

2. On December 17, 2016 RTEL had made disclosure to BSE that the resolution considered at the EGM held on December 16, 2016 failed as requisite majority was not available. Thus, it was noted

that in the EGM of RTEL held on December 16, 2016 the resolution proposed therein was rejected, thereby continuing to operationalise the resolution passed earlier in July 2014.

3. The aforesaid complaint was later withdrawn. However, SEBI undertook examination and sought explanation and clarification from RTEL. RTEL vide its letters dated January 13, 2017, March 16, 2017 and December 22, 2017 *inter alia* replied as under:

   a. RTEL had entered into a Memorandum of Understanding (MoU) with Neelkanth Realtors Private Limited pursuant to a special resolution that was approved by RTEL's shareholders and adopted at the AGM of the RTEL held on July 15, 2014.

   b. The related parties had abstained from voting on the special resolution at the time when the transaction was approved by the shareholders of RTEL in 2014.

   c. It is Harmony's contention that the related parties should have also abstained from voting at the EGM requisitioned by it. At the requisitioned EGM, there was no proposal for approving any related party transaction. On the contrary the requisitioned meeting was for rescinding a resolution that had been validly adopted by the RTEL previously.

   d. Section 188 of the Companies Act requires a related party to abstain from voting on a resolution "*to approve any contract or arrangement which may be entered into by the company, if such member is a related party*". Similarly 23(4) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, (hereinafter referred to as 'LODR Regulations') stipulate that material related party transactions "*shall require approval of shareholders*". Thereby making it explicitly clear that the bar on participation by related parties is only for approval of a transaction with a related party. There is no provision either under the Companies Act or under LODR Regulations that require a related party to abstain from voting in case of rescission of a contract.

   e. RTEL sought legal opinion from Dr. K.R Chandratre, legal expert who opined that under the provisions of the Companies Act, 2013, there is no bar on for a related party to vote in case of recession of an earlier resolution and that the bar applied only in case where a contract with a related party was proposed to be entered. Further, if the Board were to convene an EGM as per the requisition received, the related parties could vote at such EGM under Companies Act, 2013.

   f. The results of the aforesaid EGM were reported to the stock exchanges by RTEL. The summary of the voting results is as follows:

Table 1: Results of voting by Equity Shareholders at the EGM held on December 16, 2016

Category	No. of shares held	No. of votes polled	Against	In favour
Promoter	2882287	2882287	2882287	Nil
Public	1476713	603708	53549	550025
Total Shares	4359000	3485995	2935836	550159

Table 2: Results of voting by Preference Shareholders at the AGM held on December 16, 2016

Category	No. of shares held	No. of votes polled	Against	In favour
Harmony	7954150	7954150	0	7954150
Neelkanth	7000000	7000000	7000000	0
Total Shares	14954150	14954150	7000000	7954150

g. Regulation 23(4) of LODR Regulations stipulate that material related party transactions "*shall require approval of shareholders*" thereby making it explicitly clear that the bar on participation by related parties is only for approval of a material transaction with related party.

h. In the present case, in the requisitioned EGM, Harmony had proposed rescinding of a related party transaction. There is no provision in LODR Regulations that require a related party to abstain from voting in case of rescission of a contract.

4. SEBI did not find RTEL comments/explanation satisfactory in view of the following:

a. As per regulation 23(1) of SEBI LODR Regulations, a '*material related party transaction*' is defined as a transaction individually or taken together with previous transactions during a financial year, *exceeds 10%* of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

b. Given the above context, 10% of the annual consolidated turnover for FY2015-16 is ₹2.378/- Crore as per the last audited annual financial statement of the company.

c. The transaction that was being voted upon at the EGM held on December 16, 2016 was worth ₹40.00/- Crore which is almost twice its turnover of FY 2015-16 (i.e. ₹23.78/- Crore) and hence, is indeed material.

d. RTEL has submitted that, at the requisitioned EGM there was no proposal for approving any related party transaction. On the contrary the requisitioned meeting was for rescinding a resolution that had been validly adopted by the company previously. Further, as per the opinion of Dr. K R Chandratre, related parties can participate and vote in the resolution for recession of an earlier resolution and the bar applied only in case where a contract with a related party was proposed to be entered.

e. It is observed that at the EGM of RTEL held on December 16, 2016, the entire promoter and promoter group voted on the agenda to rescind the resolution no. 5 passed at the AGM of the company held on July 15, 2014. Shareholding pattern as available on BSE website, of the promoter and promoter group of RTEL for quarter ending December 2016 is mentioned in the following table:

Table 3: Shareholding pattern of the Promoter and Promoter Group for Quarter ending December 2016

Category	No. of shares held	Shareholding as a % of total no. of shares
Rashmi C Bhimjyani	17,56,527	40.30
Rekha R Bhimjyani	4,39,169	10.07
Bhavik R Bhimjyani	4,16,460	9.55
Rashmi C. Bhimjyani HUF	1,58,750	3.64
N H Popat	11,200	0.26
R T Agro Private Limited	1,00,181	2.30
Total	28,82,287	66.12

f. However, it is pertinent to note that as per table no. 1, 2 and 3, the promoter and promoter group by voting against the resolution ensured the continuation of the related party transaction with Neelkanth Realtors Private Limited.

g. Even a cursory reading of, regulation 23(7) of LODR Regulations reveals that all entities falling under the definition of related party are barred from voting on an agenda involving a related party transaction irrespective of whether the entity is a party to the particular transaction or not.

5. In view of the above, it has been alleged that Mr. Bhavik Bhimjyani (Noticee No. 1), Mr. Rashmi Bhimjyani (Noticee No. 2), Ms. Rekha Bhimjyani (Noticee No. 3), Rashmi C. Bhimjyani HUF (Noticee No. 4), Mr. N. H. Popat (Noticee No. 5), R T Agro Private Limited (Noticee No. 6) (who are part of promoter and promoter group) and Neelkanth Realtors Private Limited (Noticee No. 7) (hereinafter collectively referred to as "the Noticees") have violated the provision of regulation 23(4) read with 23(1) and regulation 23(7) of LODR Regulations. The relevant provision of LODR Regulations are as follows:

Related party transactions.

23. *(1)The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions:*

Explanation.- A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.

(7) For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.

6. SEBI felt satisfied that there are sufficient grounds to inquire and adjudicate upon the alleged violations of the provisions of the LODR Regulations by the Noticees. By a *communication-order* dated June 11, 2019, the undersigned has been appointed as Adjudicating Officer to inquire into and adjudge under section 15HB of the SEBI Act for the alleged violations by the Noticees.

7. After receipt of records, the notice to show cause no. EAD-2/SS/VS/17470/1-7/2019 dated July 11, 2019 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') read with section 15I of the SEBI Act, with regards to the alleged violations of provision of regulation 23(4) read with 23(1) and regulation 23(7) of LODR Regulations by the Noticees.

8. The Noticee No. 1 on behalf of all the Noticees submitted the reply dated August 05, 2019 and also avail the opportunity of personal hearing on August 14, 2019 when the authorised representative (AR) Ms. Shailashri Bhaskar reiterated the reply of the Noticees. Learned AR also raised objection to invoking the provisions of regulation 23(1) of the LODR Regulations under the facts and circumstances of this case and submitted that the obligation on the RTEL under regulation 23(1) is to formulate a policy on materiality of related party transactions and on dealing with related party transactions. Such charge is not made out in the allegations and facts of the case. The submission of the Noticees on merits of the case are *inter alia* as follows:

   a. *RTEL proposed to enter into a transaction with Neelkanth, a group company for the purchase of 40,000 sq.ft. residential space. The same was treated as a material related party transaction and as per the provisions of clause 49 of the Listing Agreement, required the approval of the shareholders. This item was included as a special resolution in the Notice for the 34th AGM held on July 15, 2014. Notice of the AGM which included the Special Resolution and the Explanatory Statement was included in the Annual Report which was dispatched to all the shareholders, including the complainant by June 19, 2014 and tendered the copy of proof of dispatch from the Courier.*

   b. *The Complainant however did not vote using the e-voting facility and also did not attend the AGM and therefore chose not to participate in the discussions or the voting process for the resolution approving the related party transaction.*

   c. *The promoters / promoters group / Noticees abstained from voting on the resolution at this AGM. The resolution was approved unanimously by the other /public shareholders and thereafter RTEL entered into the related party transaction. The scrutinizer submitted her report on the voting process and the same was filed with the BSE in accordance with the requirements stipulated under Listing Agreement.*

   d. *The complainant, thereafter in 2016, requisitioned an EGM to rescind the resolution passed on July 15, 2014 approving the related party transaction. In response to request, RTEL proposed to hold the requisitioned EGM on December 16, 2016.*

e. *Since the transaction to be rescinded was a related party transaction necessary opinion was taken from a Company Law expert Dr. K. R. Chandratre, who opined that the related parties could cast their vote as section 188 of the Companies Act, 2013 prescribes that related party shall not participate in the voting process only for entering into a transaction and not for rescinding a related party transaction. Further, explanation to regulation 23(1) of the LODR, states that, "Explanation – A transaction with a related party shall be considered material of the transaction(s) to be entered into individually or taken together with previous transactions during the financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity". The Noticee No. 1 tendered the copy of opinion given by Dr. Chnadratre in the matter.*

f. *Explanatory statement itself mentions about the interest of the shareholders who were related party to transaction. A stated above, since there was no explicit prohibition on the related parties voting on a resolution to rescind a contract, and based on the legal advice, the related parties voted on the resolution.*

g. *The voting results were filed with BSE on the basis of scrutinizer's report on December 17, 2016 as per which the proposed resolution was defeated. BSE also did not raise any objection to the voting pattern/ results filed with them and have not raised any objection till date.*

h. *Since regulation 23 of the LODR Regulations, discuss the requirement of approvals from Audit Committee and the shareholders only for entering into a transaction and not for any modification thereto or cancellation thereof, the related parties need not abstain from voting. Further, section 188 also discuss the approvals are required only for entering into a related party transaction and based on the opinion of Dr. K. R. Chandratre, who is considered a leading luminary and expert in the field of the Company law, the Noticees had voted on the resolution.*

9. I have considered the allegation levelled in terms of reference, the aforesaid submissions of the Noticees and the relevant material on record. In this case, the charge upon the Noticees is that they have voted during the EGM on December 16, 2016, wherein the decision on related party transaction was taken at the 34th AGM of RTEL held on July 15, 2014. In my view, under such facts and circumstances this charge could fall within the ambit of regulations 23(4) and 23(7) of the LODR Regulations but not under regulation 23(1) which lays down obligation on the listed entity to formulate a policy on materiality of related party transactions and on dealing with related party transactions. To this extent, I find merit in the submission of learned AR of the Noticees in this regard.

10. Noticees No. 1 to 6 are the promoters and promoter group of the RTEL and Noticee No. 7 is a shareholder. In respect of the special resolution no.5 to enter into contract with Noticee No. 7 for the purchase of unidentified 40,000 sq. ft. of saleable area for a consideration of ₹40/- crore the Noticees had admittedly abstained from voting. Thus, it is admitted position that the transaction involved in the said special resolution was a material related party transaction. However, the

Noticees voted during the EGM on December 16, 2016 in respect of the proposal to rescind the special resolution no. 5 passed at the AGM of the company held on July 15, 2014. In this regard, the Noticees have contended that the transaction to be rescinded was a related party transaction and as per the provisions of section 188 of the Companies Act, 2013, the related party shall not participate in the voting process only for entering into a transaction and not for rescinding a related party transaction. Further, if the Board were to convene an EGM as per the requisition received, the related parties could vote at such EGM under Companies Act. It is noted that as per the second proviso to section 188 of the Companies Act, no member of the company can vote on a resolution to approve any contract or arrangement entered into by the company, if such member is a related party. This provision does not exempt from the abstinence from voting on a resolution to rescind the contract involving related party transactions.

11. Further, the obligation under regulation 23 of the LODR Regulations prescribe independent and additional obligations as regards listed companies. In terms of provisions of regulations 23(4) and (7) of the LODR Regulations, the related parties are obligated to abstain from voting on resolutions involving related party transactions. As a corollary to this obligation, the approval of resolution rescinding a contract involving related party transaction would naturally fall in the ambit of regulations 23(4) and (7) of the LODR Regulations. In view of the fact that the transaction that was being voted upon at the EGM held on December 16, 2016 was worth ₹40.00/- Crore which is almost twice its turnover of FY 2015-16 (i.e. ₹23.78/- Crore), the same is a material related party transaction within the definition in Explanation to regulation 23(1) of the LODR Regulations.

12. If the arguments of the Noticee were to be accepted the purpose of the obligation under the said regulation would be defeated. It is pertinent to mention that the LODR Regulations were framed keeping in view that the related party transactions may pose potential or actual conflicts of interest and may raise questions whether such transactions are in the larger interest of the company as well as the stakeholders. Such allowance as resorted to by the Noticees would put related parties in position to influence the approval and vote against the resolution on rescinding the contract to ensure the continuation of the related party transaction in their favour. In this case, from the voting pattern noted hereinabove that the Noticees had dominance in voting against the resolution proposed in EGM on December 16, 2016 to rescind the earlier resolution dated July 15, 2014, thereby continuing the earlier resolution involving related party transaction. Had they abstained from voting on the resolution on December 16, 2016, the resolution dated July 15, 2014 could have been rescinded. I, therefore, find that by voting on the resolution dated December 16, 2016 the Noticees have violated the provision of regulations of 23(4) and 2(7) of the LODR Regulations. Considering the facts and circumstance of the case I am of the view that the case

deserves the imposition penalty under section 15HB of the SEBI Act. The provisions of section 15HB of the SEBI Act are reproduced 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.

13. In the facts and circumstances of the case, the obligations under regulation 23(4) of the LODR Regulations are overlapping as the transaction in question attracted same obligation under both the regulations. As per *ratio decidendi* in the judgement and order dated September 04, 2013 passed by the Hon'ble SAT in the matter of *Vitro Commodities Private Limited Vs. SEBI,* I am of the view that the violation of the provisions of regulation 23(4) of the LODR Regulations and regulation 23(7) of the LODR Regulations can be considered as a single violation by the Noticees for the purpose of adjudication in the matter for aforesaid voting at EGM on December 16, 2016 which attracted overlapping obligation under the aforesaid regulations of LODR Regulations.

14. For the purpose of adjudication of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J of the SEBI Act. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. The factors stipulated in section 15J, which reads as follows:-

"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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

15. In this case, from the material available on record, any quantifiable amount of disproportionate gain or unfair advantage, if any, made by the Noticees or the extent of loss suffered by the investors as a result of the default by the Noticees cannot be computed. The failure is also not repetitive. However, in this case, the failures by the Noticees are blameworthy and have also occurred due to

lethargic indifference and needless procrastination as the Noticees selectively chose to abstain themselves from voting during the EGM held on December 16, 2016.

16. I also note that the obligation under regulations 23(4) and (7) of the LODR Regulations is cast upon individual related party. Further, abstaining from voting during approval on the related party transaction as required under the LODR Regulations are of significant importance insofar as the requirements are aimed at ensuring corporate governance by avoidance of conflict of interests. It is important to mention here that Noticee No. 1 to 6 are the promoter/promoter group and /or directors of RTEL as such they owe fiduciary duties towards the company and its shareholders. Noticee No. 7 a shareholder is main beneficiary of the aforesaid related party transaction and has a conflicting interests *vis- a- vis* interests of other shareholders. Their statutory responsibility of abstaining from voting on resolutions involving related party transaction is more important and crucial from the point of such duty of acting in good faith to promote the objects of the company and interests of all shareholders/stakeholders and not to compromise such duty and obligation for possible personal benefits and gains of the promoters/ directors and a particular shareholder. As the prohibitions provided in regulation 23(4) and (7) of the LODR Regulations have such specific and important purpose, the penalty provisions for enforcing the regulations need to be given effect to safeguard the integrity of the securities market.

17. Considering all the facts and circumstances of the case and factors as above and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I, hereby impose the monetary penalty upon Noticees as per following table under section 15HB of the SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticees in this case.

Noticee No.	**Name of Noticee**	**Amount of Penalty (₹)**
1	Mr. Bhavik Bhimjyani	₹5,00,000/- (Rupees Five Lakh only)
2	Mr. Rashmi Bhimjyani	₹5,00,000/- (Rupees Five Lakh only)
3	Ms. Rekha Bhimjyani	₹5,00,000/- (Rupees Five Lakh only)
4	Rashmi C. Bhimjyani HUF	₹5,00,000/- (Rupees Five Lakh only)
5	Mr. N. H. Popat	₹5,00,000/- (Rupees Five Lakh only)
6	R T Agro Private Limited	₹5,00,000/- (Rupees Five Lakh only)
7	Neelkanth Realors Private Limited	₹5,00,000/- (Rupees Five Lakh only)

18. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of the penalty, the Noticees may contact the support at portalhelp@sebi.gov.in

19. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

1	Case Name	
2	Name of the 'Payer/Noticee'	
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)	

20. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

21. Copies of this order are sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: September 18, 2019
Place: Mumbai

Santosh Shukla
Adjudicating Officer