BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/HK/2022-23/23302]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 (HEREINAFTER, REFERRED TO AS "SEBI ACT") READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 (HEREINAFTER, REFERRED TO AS "SEBI ADJUDICATION RULES 1995")

IN RESPECT OF:

Mr. S.A. Amudan [PAN: ABRPA8654L]

In the matter of Varun Global Limited and Varun Resources Limited

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BACKGROUND

1. The Securities and Exchange Board of India (hereinafter, referred to as "SEBI") had initiated adjudication proceedings in respect of Mr. S.A. Amudan (**"Noticee"**), who was director of Varun Resources Limited (hereinafter referred to as **"VRL"**) during the period of alleged violation, for allotment of equity shares to the promoters of VRL which was not covered under the scheme of arrangement approved by the Hon'ble Bombay High Court *vide* order dated May 9, 2014 and for various other acts which have led to the alleged contravention of various provisions of SEBI Circular No. SEBI/CFD/SCRR/01/2009/03/09 dated September 3, 2009 (hereinafter referred to as **"relevant SEBI Circular"**).

APPOINTMENT OF THE AJUDICATING OFFICER

2. In this regard, the undersigned was appointed as the Adjudicating Officer ("**AO**") by SEBI, *vide* order dated November 14, 2022 (conveyed by communique dated November 15, 2022) under Section 19 read with Section 15-I (1) of SEBI Act and Rule 3 of SEBI Adjudication Rules 1995 to conduct adjudication proceedings in respect of the Noticee, in the manner specified under Rule 4 of the SEBI Adjudication Rules, 1995 read with Section 15-I (1) and (2) of the SEBI Act, and if satisfied that the Noticee is liable, to impose such penalty as deemed fit in terms of Rule 5 of the SEBI Adjudication Rules, 1995 under section 15HB of the SEBI Act.

FACTS OF THE CASE

3. The scheme of arrangement between Varun Shipping Company Limited ("VSCL"), Tarun Shipping and Industries Limited ("TSIL"), Varun Gas Infrastructure Limited ("VGIL"), Varun Global Limited, ("VGL") Varun Maritime Limited ("VML") and Varun Resources Limited ("VRL") was approved by the Hon'ble Bombay High Court on May 9, 2014.

4. The scheme of arrangement, *inter alia* provided for the following:
   a. demerger of ship management and shipping investment business of VSCL into VGL;

b. demerger of offshore shipping and shipping investment business of TSIL into VML;

c. Merger of VGIL, residual VSCL and residual TSIL into VRL.

5. Pursuant to the scheme, VRL and VGL have issued and allotted equity shares to shareholders of VSCL and TSIL. VRL had thereafter applied to BSE for listing of VRL and VGL vide letter dated June 10, 2015. VRL had also been restructured under the Joint Lenders Forum Scheme ("**JLF Scheme**") and the same was signed on September 5, 2014.

6. It was prima facie observed by SEBI that subsequent to the scheme of arrangement, VRL had allotted 75,86,00,000 equity shares to their promoters, increasing their stake from 44.82% to 72.57% in VRL pursuant to the scheme of restructuring under the Joint Lending forum. It has been alleged that such allotment of equity shares to their promoters pursuant to JLF on September 10, 2015 which are not covered under the Court approved scheme of arrangement, is in contravention of paragraph no. 1(d) of Part A in the annexure to the SEBI Circular dated September 3, 2009. It has been further alleged that despite SEBI advising VRL to either (a) comply with Regulation 76(2) and (3) of the SEBI (ICDR) Regulations, 2009 pertaining to pricing requirements or (b) to give the present non-promoter public shareholders an option to subscribe to additional shares at the same conditions at which they have been allotted to promoter so

that they do not get an undue advantage over the shareholders of the said companies, the companies failed to do so. This happened allegedly despite the fact that the SEBI vide letter dated November 23, 2016, had sought the opinion of the Joint Lenders Forum to which the JLF had agreed with the proposal at point (b) mentioned above and vide letter dated December 30, 2016, advised the companies to carry out such issue of shares in order to expedite the resolution of the issue.

7. It has been further alleged that the following acts of VRL have amounted to the contravention of the relevant SEBI Circular:

   a. VRL has not taken steps for listing its equity shares within 30 days of the date of the order of the High Court sanctioning the scheme of arrangement. In this regard it is noted that the certified copy of the order sanctioning the scheme of arrangement was issued by the Bombay High Court on November 20, 2014. The same was filed with the Registrar of Companies ("**RoC**") on December 8, 2014. RoC took on record applicable form filed by Varun Shipping Company Limited and other applicable companies for giving effect to the order passed by the Bombay High Court on April 25 and 28, 2015. However, the application for listing was filed on June 10, 2015, i.e., well beyond the period of 30 days from the date of the order of the Hon'ble

High Court, thereby violating paragraph no. 2 of Part A in the annexure to the relevant SEBI Circular.

b. VRL did not commence the formalities for trading within 45 days from May 9, 2014, i.e., the date of the final order of the Hon'ble High Court, thereby violating paragraph no. 5 of Part A in the annexure to the aforesaid Circular.

SHOW CAUSE NOTICE, REPLY AND HEARING

10. With respect to above alleged violations, the Noticee was therefore, called upon vide a Show Cause Notice (**'SCN'**) dated December 07, 2022, as to why an inquiry should not be held against him in terms of Rule 4 of the SEBI Adjudication Rules, 1995 read with section 15-I of the SEBI Act, and penalty should not be imposed in terms of Rule 5 of the said Rules and the provisions of Section 15HB of SEBI Act. The SCN was successfully served upon the Noticee through e-mail and SPAD at the address and email ID available in the record. Thus, the said SCN was served upon the Noticee in terms of Rule 7 of the SEBI Adjudication Rules, 1995. However, no reply to the SCN was received.

11. Further, *vide* Hearing Notice No. EAD-4/ADJ/GR/HK/OW/63975/1/2022 (**'HN'**) dated December 26, 2022, it was communicated to the Noticee that an

opportunity of personal hearing on January 18, 2023 was being granted to the Noticee in accordance with rule 4 (3) of the SEBI Adjudication Rules, 1995. The HN was sent through e-mail and SPAD to the Noticee and was duly delivered. Thus, the said HN was served upon the Noticee in terms of Rule 7 of the SEBI Adjudication Rules, 1995.

12. Thus, it is relevant to note that the SCN and HN were both duly served on the Noticee. No response has been received from the Noticee, and the Noticee has also not availed the opportunity of hearing granted.

13. I further note that as the Noticee was also informed through the SCN and HN that if no appearance is made or no reply is furnished by the Noticee, the matter would be decided on the basis of evidence available on record in terms of Rule 4(7) of the SEBI Adjudication Rules, 1995. The same is reproduced below:

4. Holding of inquiry.

…

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

14. As observed in pre-paras that despite service of SCN and HN through by SPAD / email, the Noticee neither submitted any reply towards the SCN nor appeared for hearing. It is well settled position of law as well as held by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Sanjay Kumar Tayal & Ors. Vs. SEBI* (Appeal No. 68/2013) decided on February 11, 2014 viz.

> *"29. ……………., appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices".*

15. I therefore hold that sufficient compliance of the principles of natural justice has been done with respect to Mr. S.A. Amudan and the present proceedings can be continued with respect to him on the basis of the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

16. I have carefully perused the charges levelled against the Noticee and the documents / material available on record. The issues that arise for consideration in the present case are:

I. Whether the Noticee is in violation of the provisions of paragraphs no. 1(d), 2 and 5 of Part A in the annexure to the SEBI Circular dated September 3, 2009?

II. If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act?

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. The contents of the aforesaid provisions of the SEBI Circular are reproduced herein below:

1. An unlisted issuer may make an application to the Board under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "the SCRR"), seeking relaxation from the strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof for listing of its equity shares on a recognised stock exchange without making an initial public offer if it satisfies the following conditions:

(a) *******

(b) *******

(c) *******

(d) The transferee entity has not issued/ reissued any shares, not covered under the Scheme;

2. The transferee entity shall also confirm that it has taken steps for listing of its equity shares, within thirty days of the date of the order of the High Court sanctioning the Scheme, simultaneously on all the stock exchanges where the equity shares of the transferor entity are/were listed.

5. The formalities for commencing of trading shall be completed within forty-five days of the date of final order of the High Court. Before commencement of trading, the transferee entity shall give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity is situated, giving following details:

(a) Name and address of its registered office.

(b) Details of change of name and/or object clause.

(c) Capital structure - pre and post scheme of amalgamation. This shall provide details of the authorized, issued, subscribed and paid up capital (Number of instruments, description, and aggregate nominal value). (d) Shareholding pattern giving details of its promoter group shareholding, group companies.

(e) Names of its ten largest shareholders - number and percentage of shares held by each of them, their interest, if any.

(f) Details of its promoters - educational qualifications, experience, address.

(g) Business and its management.

(h) Reason for the amalgamation.

(i) Financial statements for the previous three years prior to the date of listing.

(j) Latest audited financial statements along with notes to accounts and any audit qualifications. Change in accounting policies in the last three years and their effect on profits and reserves (Financial statements should not be later than six months prior to the date of listing).

(k) Details of its other group companies including their capital structure and financial statements.

(l) Outstanding litigations and defaults of the transferee entity, promoters, directors or any of the group companies.

(m) Particulars of high, low and average prices of the shares of the listed transferor entity during the preceding three years.

(n) Any material development after the date of the balance sheet.

(o) Such other information as may be specified by the Board from time to time.

ISSUES

ISSUE I. Whether the Noticee is in violation of the provisions of paragraphs no. 1(d), 2 and 5 of Part A in the annexure to the SEBI Circular dated September 3, 2009?

17. It was alleged in the SCN that subsequent to the scheme of arrangement, VRL had allotted 75,86,00,000 equity shares to their promoters, increasing their stake from 44.82% to 72.57% in VRL pursuant to the scheme of restructuring under the Joint Lending forum. It has been alleged that such allotment of equity shares to their promoters pursuant to JLF on September 10, 2015 which are not covered under the Court approved scheme of arrangement, is in contravention of paragraph no. 1(d) of Part A in the annexure to the SEBI Circular dated September 3, 2009.

18. It was further alleged that despite SEBI advising VRL to either (a) comply with Regulation 76(2) and (3) of the SEBI (ICDR) Regulations, 2009 pertaining to pricing requirements or (b) to give the present non-promoter public shareholders an option to subscribe to additional shares at the same conditions at which they have been allotted to promoter so that they do not get an undue advantage over the shareholders of the said companies, the companies failed to do so. This happened despite the fact that the SEBI vide letter dated November 23, 2016, had sought the opinion of the JLF to which the JLF had

agreed with the proposal at point (b) mentioned above and vide letter dated December 30, 2016, advised the companies to carry out such issue of shares in order to expedite the resolution of the issue.

19. I note that it is an established principle of law [for instance, in *National Organic Chemical vs. State of Maharashtra And Ors*. (2004 118 CompCas 556 Bom)] that an order of a High Court sanctioning a scheme of amalgamation/ arrangement has statutory force which cannot be nullified/altered. In the said judgment it was also held that the order of the High Court under Section 391 of the Companies Act is in the nature of insolvency jurisdiction as contemplated under Section 41 of the Indian Evidence Act and therefore, an order passed under Section 391 of the Companies Act is an order *in rem* binding on all the parties to the scheme as well as authorities including the sales tax authorities. Thus, there is no scope to diverge from any clause/term of an approved scheme of amalgamation by any of the parties. In view of the above I note that, VRL and/or its Directors/Managerial Personnel had entered into a contractual arrangement, in contradiction to any term/clause of the scheme of amalgamation approved by the Hon'ble Court without first seeking an approval for such modification from the competent court, is a violation of the relevant terms of the Companies Act, 1956, leading to a violation of Paragraph No. 1(d) of the Part A of the Annexure to SEBI Circular dated September 3, 2009.

28. Further, I note that Regulation 19(1) to 19(6) of the SCRR, 1957 lays down the detailed requirements that a company desirous of getting its shares listed on a recognized stock exchange must comply with. Regulation 19(7) provides the power to SEBI to create exceptions from the aforesaid mandatory norms for compliance and more specifically from the requirement to make an initial public offering of its shares. It is an established principle of law that any exception from the general requirements of a law can only be provided in exceptional circumstances. In the present context, such exceptional circumstance(s) and the means of availing the said exceptions have been detailed in the aforesaid Circular of SEBI dated September 3, 2009. Nothing is available on record to suggest that the present case falls under any of the exceptions mentioned therein. It was observed that the application to list the equity shares beyond the prescribed thirty days from the date of final order of High Court (May 9, 2014). This delayed application by the then Director (Noticee) for listing further goes against the mandate of the sanctioned scheme approved by the shareholders of VRL. In view of the above, I conclude that VRL had violated paragraph no. 2 of Part A of the SEBI Circular dated September 3, 2009.

29. Further, I note that VRL did not commence the formalities for trading within 45 days from May 9, 2014, i.e., the date of the final order of the Hon'ble High Court, thereby violating paragraph no. 5 of Part A in the annexure to the aforesaid Circular. The aforesaid contravention makes Noticee, being the Director of VRL

at the relevant point in time when the contraventions of the aforesaid SEBI Circular took place, liable and hence have violated paragraphs no. 1(d), 2 and 5 of Part A in the annexure to the SEBI Circular dated September 3, 2009.

30. In this regard, it is pertinent to mention Section 27 of SEBI Act, 1992, which states that:

27. Contravention by companies.

(1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an <u>contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary</u>

<u>*or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.*</u> (emphasis supplied)

ISSUE II. If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act?

31. The aforesaid contravention of the provisions of paragraphs no. 1(d), 2 and 5 of Part A in the annexure to the SEBI Circular dated September 3, 2009, makes Noticee, being the Director of VRL at the relevant point in time when the alleged contraventions of the aforesaid SEBI Circular took place, liable for penalty under Section 15HB of the SEBI Act, the contents whereof are reproduced herein below:

    "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.

ISSUE 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?

32. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the default of the Noticee. Further, from the material made available, the amount of loss caused to an investor or group of investors is not on record. However, it is important to note that VRL and/or its promoters/directors who at the relevant point of time were in charge of the affairs of the said companies did not seek permission of the Hon'ble High Court for amending a clause of the sanctioned scheme of arrangement when a departure from the said clause was decided upon by them. They had also delayed in compliance of the stipulated time period under the Circular of SEBI dated September 3, 2009, which cannot be viewed lightly and the violations is apparent.

ORDER

33. In view of what has been discussed in the preceding paragraphs, I hold the Noticee (PAN: ABRPA8654L), who was the Director of VRL at the relevant point in time, to have violated the provisions of paragraphs no. 1(d), 2 and 5 of Part A in the annexure to the SEBI Circular dated September 3, 2009, which makes him liable for penalty under section 15HB of the SEBI Act.

34. In view of the foregoing, considering the facts and circumstances of the case, the material on record and in exercise of the powers conferred upon the undersigned under Section 15-I of the SEBI Act read with Rule 5 of the

Adjudication Rules,1995, hereby impose a total penalty of **Rs. 5,00,000/- (Rs. Five Lakhs only)** under Section 15HB of the SEBI Act, 1992, on the Noticee.

35. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) 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 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

36. 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 I-DRA-IV, the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid:	
Transaction No.:	
Bank Details in which payment is made:	

37. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, 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.

38. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: January 31, 2023 **G. Ramar**

Place: Mumbai **Adjudicating Officer**