BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/JR/2020-21/8581]

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

In respect of:
Siddarth Businesses Limited
(currently known as Shivamshree Businesses Limited)
(PAN: AAACS0442F)

In the matter of Siddarth Businesses Limited (currently known as Shivamshree Businesses Limited)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of Siddarth Businesses Limited (currently known as Shivamshree Businesses Limited) (hereinafter referred to as "**SBL/ company/ Noticee**") observed that the Noticee submitted incorrect and misleading documents with respect to pre-clearance of trades which is allegedly in violation of sections 11C(2) and 11C(3) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act").

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI vide order dated February 7, 2019 appointed Shri Jeevan Sonparote as the Adjudicating Officer under section 15 I of Securities Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**AO Rules**") to inquire into and adjudge the aforesaid allegations under section 15HB of SEBI Act. Pursuant to the transfer of the case, the undersigned was appointed as the Adjudicating Officer vide order dated August 13, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice dated September 17, 2019 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on it under section 15HB of SEBI Act for the alleged violations. The SCN returned undelivered. A copy of the SCN along with a notice of personal hearing to be held on January 20, 2020 was sent for affixture to SEBI, Northern Regional Office, New Delhi and the same was affixed at the last known address of the Noticee on December 28, 2019. However, neither anyone appeared on the scheduled date nor any reply was received from the Noticee.

4. In the interest of natural justice, another opportunity of personal hearing was given to the Noticee on July 17, 2020 vide newspaper publication. Accordingly, an intimation of the same was published in Times of India, New Delhi edition on June 18, 2020 and Dainik Jagran, New Delhi edition on June 18, 2020. Once again, neither did anyone appear on the scheduled date nor any reply was received from the Noticee.

5. Enough opportunities were given to the Noticee to represent their case by way of reply to SCN and also by appearance for personal hearing. In order to complete the proceeding timely, I am constrained to proceed with the matter on the basis of the material available on record.

CONSIDERATION OF ISSUES AND EVIDENCE

6. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

    (a) Whether the Noticee has violated sections 11C(2) and 11C(3) of SEBI Act.

    (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act?;

    (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

7. Before proceeding further, I would like to refer to the relevant provisions of SEBI Act.

SEBI Act 1992
11C Investigation

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

8. Sub-section (2) of section 11 casts duty on the persons mentioned therein to preserve and to produce to the Investigating Authority (hereinafter referred to as "IA") or any person authorized by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, the intermediary or such person, which are in their custody or power. Sub-section (3) authorizes the IA to call for the information, which in his views are relevant or necessary for the purposes of its investigation and furnishing of the information as desired by the IA obligatory.

9. It may be noted that under sub-section (2) of section 11C, the persons/entity mentioned under the provision are mandated with a twin duty i.e. (a) to preserve all the books, registers, other documents and record of, or relating to, the company/ the intermediary and (b) to produce the same to the IA as and when demanded/called for by the IA. Sub-section (3) of section 11C on the one hand empowers the IA to call for records, books or other documents which he views or finds relevant or necessary for the purposes of investigation and on the other hand also imposes a duty on the person/entity concerned to furnish such books, records and/or information to the IA. The language used by the legislature in sub-section (2) imposes duty in clear and unambiguous terms to the concerned to preserve books, records etc., and to produce the same upon been asked by the IA. Similarly, under sub-section (3) of section 11C of the SEBI Act, the Parliament in its wisdom has not restricted the meaning and import of the provision only to empower the IA to call for information and by using phrases as the "to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by it in this behalf," categorically imposes a duty on the persons to co-operate with the IA to enable the IA to perform its duties as assigned to it under the Act.

10. During the Investigation, vide summons dated January 17, 2018, the Noticee was asked to provide the details of pre-clearance obtained by all directors and the Code of Conduct to regulate, monitor and report trading by insiders adopted by the Company (the Noticee herein). In reply, the Noticee vide email dated January 23, 2018

had forwarded copy of the Code of Conduct adopted by the Company. As per the Code of Conduct for prohibition of insider trading adopted by the Noticee:

a) All designated employees and their immediate relatives shall obtain the pre-clearance if they intend to trade in the securities of the company, quantum of which exceeds 10,000 in numbers.
b) All designated employee who buy or sell any number of shares of the company shall not execute a contra trade i.e. sell or buy any number of shares during the next six months following the prior transaction. However, the compliance officer may grant relaxation from strict application of such restriction for reasons to be recorded in writing.

11. During the Investigation, the Noticee vide email dated February 1, 2018 inter alia, provided the documents w.r.t. pre-clearance obtained by the directors. On perusal of these documents, it was observed that except one all pre-clearance approval forms have signature of Mr. Hemant Palanpuri, as Compliance Officer of the company.

12. Thereafter, during the Investigations, upon scrutiny of Annual reports of the company available on BSE website and MCS records, it was found that Mr. Hemant Palanpuri, Company Secretary was appointed as Compliance Officer on August 24, 2015 and he resigned from the post w.e.f. March 17, 2016. However, the company had provided pre-clearance approval forms bearing signature of Mr. Hemant Palanpuri, in the capacity of Compliance Officer for the date after his resignation.

13. Further, during the investigation, vide email dated February 21, 2018, Mr. Hemant Palanpuri, Company Secretary was asked to provide his comments in this regard. He replied vide email dated March 21, 2018 that he had resigned from the company, he was associated with the company as an assistant to company secretary and signed the pre-clearance forms with the consent of compliance officer at that time.

14. The above reply of Mr. Hemant Palanpuri is not found to be tenable, since he had accepted that he resigned from the company on March 17, 2016 and signed the documents after his date of resignation.

15. I note that Noticee has not come forward to offer any reply in respect of the violations alleged in the SCN, though the Noticee has been provided sufficient opportunities to file reply to the SCN and to appear for the personal hearing in the matter.

16. In this regard, it is pertinent to mention here the Order of Hon'ble Securities Appellate Tribunal, in Appeal no. 68 of 2013 in *Sanjay Kumar Tayal and others v SEBI*, vide its order dated February 11, 2014 have stated that "*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*."

17. In this context, the silence on the part of the Noticee in this inquiry clearly indicates that Noticee does not want to answer any inquiry in respect of alleged violations stated in the SCN. In absence of any reply from the Noticee, despite being granted sufficient opportunities to do so, the Noticee is presumed to have admitted the charge against it, that the documents submitted by the Noticee during the Investigation was incorrect and misleading.

18. Hence, on the basis of facts and circumstances of the case the only conclusion that can be drawn in the matter is that the pre-clearance obtained by the directors was not correct as it was not approved by the then Compliance Officer of the Noticee but by erstwhile Compliance Officer. The erstwhile compliance officer had signed the forms after the date of his resignation from the company. Thus, the documents submitted by the Noticee during the Investigation was incorrect and misleading. In my opinion, after taking into account the facts and circumstances of this case, furnishing incorrect or

misleading information amounted to failure to furnish the information sought. In view of the above, I hold that the Noticee did not provide correct information when called upon by the IA and hence the allegation of violation of sections 11C(2) and 11C(3) of the SEBI Act stands established against the Noticee.

19. The above violation of provisions of SEBI Act, make the Noticee liable under section 15HB of SEBI Act, which, *inter-alia* reads as follows:

    15HB. Penalty for contravention where no separate penalty has been provided. *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.*

20. I note that Section 15HB is a residuary provision for imposing the monetary penalty for violation which not covered by any section from 15A to 15HA under chapter VI A of the SEBI Act. I am of the view that at the relevant time of the violation by the Noticee, no separate penalty was provided under SEBI Act for submitting incorrect and misleading documents before the IA and accordingly penalty can be imposed under section 15HB of SEBI Act, 1992.

21. As regards the imposition of monetary penalty, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein it was held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

22. While determining the quantum of penalty under section 15 HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act which read as under:-

Section 15J - Factors to be taken into account by the adjudicating officer *While adjudging quantum of penalty under section 15, 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.

23. I note that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. Also there is no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default. However, I am of the view that submitting incorrect and misleading documents before the IA hampers the investigation. Further, any hurdle in investigation due to non-cooperation by any entity is detrimental to the interest of investors in securities market and the same deserves to be viewed seriously.

ORDER

24. After taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act, read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakh only) on the Noticee under section 15HB of SEBI Act.

PENALTY PAYMENT OPTIONS

25. 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 (DD) in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action - II [**EFD 1-DRA-2**] SEBI Bhavan, Plot No.C4-A,‘ G’ Block, Bandra

Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

OR

26. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

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

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

Date : August 11, 2020
Place : Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER