BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/HP/2021-22/15592]

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 –

Kanaiyalal Baldevbhai Patel (PAN: AEWPP1442H) having address at - 01, Shivnagar Society, Bhavpura, Kadi - 382 715, Gujarat

In the matter of Passport India Investment (Mauritius) Limited

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BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, **'SEBI'**) initiated adjudication proceedings under Section 15HB of the SEBI Act, 1992 (hereinafter referred to as, **'SEBI Act'**), against Kanaiyalal Baldevbhai Patel (**Noticee**) for not complying with the directions issued under SEBI order dated June 07, 2016.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed Ms. Rachna Anand as Adjudicating Officer under Section15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the **'Adjudication Rules'**), vide order dated March 28, 2018 to inquire into and adjudge under section 15HB of the SEBI Act, the aforesaid non-compliance/violation of SEBI Order by the Noticee. Subsequently, the

undersigned was appointed as Adjudicating Officer (hereinafter referred to as "AO") vide an order dated May 10, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAO/RA/JP/11564/2018 dated April 13, 2018 (hereinafter be referred to as, the **'SCN'**) was served upon the Noticee under Rule 4(1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15HB of SEBI Act for the aforesaid alleged non-compliance / violation.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

5. The Whole Time Member of SEBI had passed an order bearing No. WTM/PS/49/EFD-DRA1/JUN/2016 dated June 07, 2016 under section 11 (4) and 11B of the SEBI Act read with regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter be referred to as, the **'PFUTP Regulations'**) against the Noticee *inter-alia* with following directions having immediate effect;

> *"24.In view of the foregoing observations and findings, I, in exercise of powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1), 11(4) and 11B thereof and regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, hereby issue the following directions:*
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> *(a) The noticees, Mr. Kanaiyalal Baldevbhai Patel, Mr. Dipak Patel, Mr. Anandkumar Baldevbhai Patel and M/s. Bhoomi Industries shall be*

restrained from accessing the securities market and prohibited from buying, selling or dealing in securities, directly or indirectly, for a period of 5 years.

The period of such restraint already undergone by the noticees vide the interim order dated May 28, 2009 read with Orders dated February 09, 2010 and March 17, 2011 shall be taken into consideration while computing the period of restraint as directed above.

(b) ……………………………….

(c) Mr. Kanaiyalal Baldevbhai Patel shall disgorge an amount of Rs.85,18,043.34/- within a period of 45 days from the date of this Order. The amount, as directed above, shall be paid to SEBI by way of a Demand Draft favouring "Securities and Exchange Board of India" payable at Mumbai.

In case, Mr. Kanaiyalal Baldevbhai Patel fails to comply with the above direction, he shall be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, for a further period of 3 years, over and above the period mentioned at sub-paragraph (a) above, without prejudice to any other action including action for recovery of such amounts from him that may be initiated by SEBI".

6. It was alleged in the SCN that the Noticee had failed to disgorge / pay an amount of Rs. 85,18,043.34/- as per direction issued under the said SEBI order dated June 07, 2016 and thereby allegedly violated the directions issued under the aforesaid Order.

7. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 15HB of the SEBI Act.

8. SCN was duly served to the Noticee. Noticee vide his letter dated May 08, 2018 submitted that he filed an appeal before Hon'ble SAT bearing appeal No. 114/2018 challenging the aforesaid Order/directions dated June 07, 2016. He further requested to keep instant proceedings in abeyance till disposal of the appeal by the Hon'ble SAT. Subsequently, *vide* Order dated March 15, 2019, Hon'ble SAT has dismissed the said appeal on the ground that there is a delay of 594 days in filing an appeal.

9. Opportunity of hearing was provided to the Noticee on June 24, 2019 *vide* hearing notice dated June 07, 2019. Noticee vide his letter dated June 20, 2019 submitted that he filed an appeal before Hon'ble Supreme Court against the Order dated March 15, 2019 passed by Hon'ble SAT. He further requested to keep instant proceedings in abeyance till disposal of the appeal by the Hon'ble Supreme Court.

10. No stay was granted by the Supreme Court against the SAT order dismissing his appeal, and since ample time has lapsed since appeal was filed, Noticee *Vide* hearing notice dated February 03, 2022, was granted another opportunity of hearing through video conferencing on February 22, 2022. Authorized Representative (AR), Mr. Yogesh K. Jagia, attended the hearing on behalf of Noticee on February 22, 2022 and reiterated the submissions made in the reply dated February 18, 2022.

11. The key submissions of the Noticee are summarised below:

    a) Noticee submitted that the appeal was dismissed by Hon'ble SAT on the sole ground of not allowing the condonation of delay sought in filing the appeal. Hon'ble Supreme Court after taking cognizance of the civil appeal filed by the Noticee, issued notice to SEBI returnable for 03/02/2020. On 03/02/2020, SEBI sought time to file counter affidavit and the Hon'ble Supreme Court granted two weeks' time to file the counter affidavit and listed the matter for hearing on 09/04/2020.

b) Subsequent thereto, due to nationwide lockdown imposed by the Government of India because of unprecedented pandemic of Covid-19 which delayed adjudication of all pending proceedings the appeal was listed for hearing on 30/09/2021 wherein SEBI sought adjournment by circulating letter and Hon'ble Supreme Court acceding to the request of SEBI adjourned the proceedings for next two weeks. Finally, the matter was taken up before Hon'ble Supreme Court on 03/01/2022 wherein after hearing the matter in brief from both sides, the Hon'ble Supreme Court was of the opinion that this appeal should be heard not only on the issue of dismissal of appeal by not granting condonation of delay but also on the merits to bring quietus to the issue, as suggested, both the counsels agreed with suggestions of Hon'ble Supreme Court and after recording the consent, appeal was finally listed for hearing on 25/01/2022.

c) Subsequently, this matter was listed on 25/01/2022 however on preparing the appeal, it was noticed that inadvertently some of the annexures of the other appeal filed by Anand Bhai Patel, his brother were annexed in the civil appeal filed before Hon'ble Supreme Court wherein all the contents were same except the final order/ directions therefore permission was sought from Hon'ble Supreme Court to place on record the correct annexures which was granted by Hon'ble Supreme Court and Hon'ble Supreme Court directed to list the matter after two weeks. Immediately, after passing of the order on 25/01/2022, granting permission to file the correct annexures, on 02/02/2022 an application was filed before Hon'ble Supreme Court along with the correct annexures, copy of which was also served to the counsel of SEBI and just on the very next day the hearing notice was issued asking the Noticee to file the reply by assigning the reasons that Hon'ble Supreme Court has not stayed the order passed by Hon'ble SAT. The reason assigned is *prima facie* contrary to the judicial proprietary as is evident from the order passed by Hon'ble Supreme Court. Since the Hon'ble Supreme Court is seized with the matter and appeal is likely to be heard finally wherein the delay in adjudication of the appeal is caused only because of unprecedented pandemic of COVID-19 and subsequent adjournment sought by the SEBI, Noticee requested to keep the proceeding in abeyance till adjudication of the appeal no. 5929/2019 by Hon'ble Supreme Court which is likely to be listed very soon as directed by Hon'ble Supreme Court by order dated 25/01/2022.

d) Noticee further submitted that there is no willful default in complying to deposit disgorgement amount of Rs. 85,18,043.34/- which is a subject matter of challenge in civil appeal no. 5929/2019 so much so that his demat account has been frozen by the SEBI since long which scuttled all his resources and as on date he is left with almost negligible resources for survival and have no funds to make payment as demanded by SEBI so virtually he is going to be insolvent.

e) Noticee requested to keep the proceedings in abeyance, since the said civil appeal is pending before Hon'ble Supreme Court and the matter is likely to be listed whereas SCN was issued as back as on 13/04/2018.

f) Noticee further submitted that continuing with the proceedings which are quasi criminal in nature to impose penalty in the given facts wherein appeal is pending before Hon'ble Supreme Court and Hon'ble Supreme Court directed to list the matter on merits also will cause irreparable injury to him whereas no prejudice shall be caused to the SEBI by keeping these proceedings in abeyance so much so that SEBI has obliged him to keep the proceedings in abeyance till date. Noticee submitted that proceedings are quasi criminal and any order passed adverse to his interest will further burden him in this precarious financial situation he is dealing with. Noticee further requested that in case SEBI decide to proceed further, in such case two weeks time be granted to approach Hon'ble Supreme Court with request for interim directions.

12. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

13. The issues that arise for consideration in the instant matter are:

Issue No. I	Whether, the Noticee is in non-compliance of SEBI order dated June 07, 2016
Issue No. II	If yes, whether the failure on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act?
Issue No. III	If yes, 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 read with Rule 5(2) of the Adjudication Rules?

Issue No. I Whether, the Noticee is in non-compliance of SEBI order dated June 07, 2016

14. Before proceeding with the case on merit, it is necessary to deal with the preliminary objection raised by the Noticee that since the Hon'ble Supreme Court is seized with the matter and appeal is likely to be heard finally wherein the delay in adjudication of the appeal is caused only because of unprecedented pandemic of COVID-19 and subsequent adjournment sought by the SEBI, Noticee requested to keep the proceeding in abeyance till adjudication of the appeal no. 5929/2019 by Hon'ble Supreme Court.

15. In this regard, I note that no stay was granted by the Hon'ble Supreme Court against the order passed by SAT. Even after the matter came up for hearing before Supreme Court on 25.01.2022, Noticee sought adjournment and matter was to be listed after two weeks. As on date of hearing in the instant matter on 22.02.2022, more than two weeks had passed and matter had still not been listed in the Supreme Court. During the hearing, Noticee reiterated his request to keep matter in abeyance as Supreme Court directed to list the matter, and it was expected to be listed soon. Noticee requested to wait at least for another two weeks for the listing. More than four weeks have passed since the date of hearing on 22.02.2022, and neither has the matter has been listed again nor any relief or stay has been granted to the Noticee by Hon'ble Supreme Court on operation of SEBI's order dated June 07, 2016 or against the SAT order dated March 15, 2019 or the instant adjudication proceedings. In the absence of any stay, I am of the view that the matter can be proceeded with.

16. In the Order passed by WTM, SEBI on June 07, 2016 in the instant matter, it was established that the Noticee has traded in the securities market on the basis of information received from Dipak Patel and has 'front run' the trades of Passport India Investment (Mauritius) Limited. Further, AB Patel had received tips/information from Dipak Patel and received funds from the Noticee from the sale proceed, which were transferred through Bhoomi Industries. Bhoomi Industries is a partnership firm comprising of Noticee and AB Patel. Therefore, it was established in the said Order that the Noticee, Dipak Patel, AB patel and Bhoomi Industries had employed a manipulative scheme to operate as a fraud with respect to dealing in the securities thereby violating regulation 3(a)-(d) of the PFUTP Regulations. Hence, it was directed *inter-alia* that the Noticee shall disgorge an amount of Rs.85,18,043.34/- within a period of 45 days from the date of this Order.

17. I note from the available record that the Noticee has not complied with directions issued by WTM, SEBI *vide* Order dated June 07, 2016. I also note that the non-

compliance of the directions issued by WTM, SEBI *vide* Order dated June 07, 2016 is continuing till date after lapse of more than 5 years. I note from the order passed by Hon'ble SAT that Noticee filed an appeal before SAT on June 06, 2018. While dismissing the appeal, SAT in its order March 15, 2019 noted that

"the impugned order is dated June 7, 2016. The appeal should have been filed within 45 days. The mere fact that an appeal was listed before the Hon'ble Supreme Court cannot be a legal ground for not filing an appeal before the Tribunal. In any case, the Hon'ble Supreme Court was closed for the summer vacations and consequently, there was enough time for the appellant to file an appeal. Even otherwise, the Hon'ble Supreme Court delivered the judgment on September 20, 2017 and the present appeal was filed on June 6, 2018. No explanation has been given as to why the appeal could not be filed soon after the decision of the Hon'ble Supreme Court."

18. I note that the appeal by the Noticee in the same matter of Passport India against adjudication order dated Sep 30, 2011 was dismissed by the Hon'ble Supreme Court on September 20, 2017. Therefore, after dismissal of his appeal, Noticee was obliged to comply with the order of disgorgement dated June 07, 2016 which he failed to do. As noted by Hon'ble SAT, he filed appeal before SAT more than 8 months after the Supreme Court order and was not able to satisfactorily explain the delay to SAT. Hence, I find that the Noticee is in non-compliance of directions issued by SEBI Order dated June 07, 2016.

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

and

Issue No. III If yes, 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 read with Rule 5(2) of the Adjudication Rules?

19. Since it is established that the Notice is in non-compliance of directions issued by SEBI Order dated June 07, 2016, the Noticee is liable for monetary penalty under Section 15HB of 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.*

20. While determining the quantum of penalty under Section 15HB of SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

Factors to be taken into account by the adjudicating officer
15J.*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. I note that the Noticee has failed to disgorge an amount of Rs.85,18,043.34/- which included an interest of Rs.37,61,633.27/- and Rs.3,92,705.06/- as ordered in SEBI order of June 07, 2016. I note that vide Adjudication Order dated September 30, 2011 Noticee was also levied penalty of Rs.5,00,00,000/- for the impugned trades. I further note that unlawful profits made of Rs.1,12,68,659.35/- was already deposited by Noticee with NSE. In view of the above, taking into

account the facts and circumstances of this matter, I find that a penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Noticee under Section 15HB of the SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

22. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of **Rs. 10,00,000/- (Rupees Ten Lakh only)** upon Kanaiyalal Baldevbhai Patel (Noticee) for non-compliance with the directions issued under SEBI order dated June 07, 2016.

23. 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

24. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

25. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: March 25, 2022
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER