BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AK/BS/2022-23/21470)

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

HANIF KASAMBHAI SHEKH
(PAN - CBEPS9710A)

IN THE MATTER OF PRO FIN CAPITAL SERVICES LIMITED

BACKGROUND OF THE CASE

1. Pro Fin Capital Services Limited (hereinafter also referred to as **"PCSL"** or '**the Company**') was incorporated on July 22, 1991 and got listed at Bombay Stock Exchange Limited **("BSE")** on Oct. 18, 1994. The registered office of the company is situated at 503, Western Edge II, Western Express Highway, Borivali East, Mumbai – 400066. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had received a reference wherein it was, *inter alia*, alleged that certain entities may be manipulating the price of the scrip of the Company and misleading the investors by recommending, through a fake website viz. www.multib.in to buy the said scrip. An email was sent to BSE seeking details of SMSs and other documents relied upon during the examination done by BSE in the scrip of PCSL. BSE submitted a few screen shots of SMSs, charts of Price movement in the scrip of PCSL and list of all the recipients of SMSs who had lodged complaints.

2. Based on the documents and data available on record, SEBI conducted an investigation in the scrip of PCSL to ascertain any possible violation of the

provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'). The period of investigation was taken as January 09, 2019 to March 29, 2019(hereinafter referred to as '**investigation period/ IP**'), which included the period when SMSs were circulated i.e. February 18, 2019 to March 15, 2019 as alleged by the complainants.

3. During the course of investigation, as the name of Mr. Hanif Kasambhai Sheikh (hereinafter referred to as '**Noticee'**) appeared as end user for sending bulk SMSs through SMS ID 'MD MULTIB' as well as for creation of website www.multib.in for sending recommendation for the scrip of PCSL, the Investigating Authority (hereinafter referred to as '**IA'**) appointed by SEBI in the matter, issued summons dated August 26, 2021 to the Noticee to furnish certain documents/information. Two reminder summons dated September 16, 2021 and September 29, 2021 were also sent to the Noticee. Vide the aforementioned summons, it was mentioned to the Noticee that in case he fail, without reasonable cause or refuse to furnish information, as sought through the summons, SEBI may initiate prosecution/ adjudication proceedings against him under the provisions of the SEBI Act.

4. It was observed that the Noticee failed to provide the information/ documents sought by IA. In view of non-compliance to the summons, the Noticee was alleged to have violated the provisions of Section 11C (3) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. Upon being satisfied that there were sufficient grounds to inquire and adjudicate upon the violation of provisions of the SEBI Act by the Noticee, SEBI, in exercise of powers u/s 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**"), r/w section 19 of the SEBI Act appointed Ms. Geetha G., as the Adjudicating Officer **(**hereinafter referred to as the "**AO"),** vide order dated January 31, 2022, to inquire into and adjudge u/s 15-I r/w

section 15 A(a) of SEBI Act, the alleged violation of section 11 (C) (3) of the SEBI Act by the Noticee. Pursuant to transfer of Ms. Geetha G., SEBI appointed undersigned as AO, vide order dated August 29, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Show Cause Notice ref. no. EAD-6/AK/BS/47749/1-2/2022 dated September 08, 2022 (hereafter referred to as **SCN**) was issued to the Noticee in terms of the provisions of rule 4(1) of the SEBI Adjudication Rules, 1995 r/w Section 15-I of SEBI Act, requiring the Noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under the provision of Section 15A(a) of the SEBI Act for the alleged violation. I note that SCN's issued to the Noticee was duly served by Speed Post Acknowledgement Due and by e-mail.

7. Vide Hearing Notice dated September 12, 2022, Noticee was granted an opportunity of hearing on September 27, 2022. In the meanwhile, the Noticee was granted an opportunity of hearing on September 16, 2022 by the undersigned in another matter i.e. Leading Leasing Finance & Investment Company Limited, wherein the undersigned was appointed as AO, for the same violation in the said matter. The Noticee appeared before me for hearing on September 16, 2022 and gave his submissions and stated that his submissions were common for both the matters i.e. the instant matter and in the matter of Leading Leasing Finance & Investment Company Limited. Noticee also stated that he will file additional submissions and no further hearing was required by him. Accordingly, he filed additional submissions, vide emails dated September 23, 2022 and October 01, 2022.

8. The allegations levelled against Noticee in the SCN are summarized as under:

   a) The details of summons issued to Noticee are given below in the table:

Summon No.	Summon Date	Address	Delivery Status
SEBI/HO/IVD/ID2/ OW/P/2021/ 20981/ 2	26/08/2021	Hanif Kasambhai Shekh Royal Rehmani Complex, Flat No. 102, Sir Pattani Road, Bhavnagar- Gujarat 364001	Delivery confirmed. (vide SPAD Outward No. 20981/2)
SEBI/HO/IVD/ID2/ OW/P/ 2021/24255/1	16/09/2021	Hanif Kasambhai Shekh Royal Rehmani Complex, Flat No. 102, Sir Pattani Road, Bhavnagar- Gujarat 364001	Delivery confirmed. (Delivered on 22/09/2021. Web delivery receipt- EM704464405IN)
SEBI/HO/IVD/ID2/ OW/P/ 2021/26278/1	29/09/2021	Hanif Kasambhai Shekh Royal Rehmani Complex, Flat No. 102, Sir Pattani Road, Bhavnagar- Gujarat 364001	Delivery confirmed. (Delivered on 04/10/2021. Web delivery receipt- EM704476562IN)

(Copy of the summons addressed to Noticee along with delivery proofs were enclosed with SCN)

b) It is alleged that Noticee had not co-operated with the Investigation and repeatedly failed to provide the documents/ information sought by the IA. The information sought from the Noticee was crucial to conclude the investigation and due to non-compliance with summons, connection of suspected entities and PCSL with Noticee or any other entity who would have benefitted out of the bulk SMS circulation and recommendation through website, could not be established. in the scrip of PCSL. Thus, the Noticee, by not producing/ furnishing the documents/ information sought by IA, hampered the process of investigation which led to violation of Section 11C(3) of the SEBI Act.

c) The aforesaid alleged violation of section 11C(3) of SEBI Act, if established, makes the Noticee liable for monetary penalty u/s 15A(a) of the SEBI Act.

9. Noticee during the hearing on September 16, 2022 and vide emails dated September 23, 2022 and October 01, 2022, *inter alia,* submitted as under:

   a) At the time when the summons was issued to him, he had personal problems, that his father had expired, his mother also had to undergo two surgeries and they travelled to Mumbai and Ahmedabad multiple times for the same. He had shifted from his given residential address and that he was in Dubai for 6 months.

   b) He had around 1,63,000 (app.) e-mails in his given email inbox and that certain summons sent by emails could have been missed.

   c) Due to the given reasons, he received certain summons and had not received certain summons issued by SEBI in the matter.

   d) He moved to a new home and his address was not updated in SEBI records so all summons were also going to the wrong address.

   e) He missed compliance of summons because of the abovementioned reasons and apologizes for the same but it was not at all intentional.

   f) He was sorry for non-compliance of summons.

   g) The reasons for non-compliance of summons were the same in both matters i.e. Leading Leasing Finance & Investment Company Limited and Pro Fin Capital Services Ltd.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:

I. Whether the Noticee has violated Section 11C(3) of the SEBI Act?

II. Does the violation, if any, attract monetary penalty u/s 15A(a) 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 r/w Rule 5(2) of the Adjudication Rules?

Issue I. Whether the Noticee has violated Section 11C(3) of the SEBI Act?

11. Before moving forward, it is pertinent to refer to the relevant provision which is alleged to have been violated. The said provision is provided hereunder:

SEBI Act

Investigation.

11C(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.*

12. I observe that during the investigation conducted by SEBI, as the name of Noticee appeared as end user for sending bulk SMSs through SMS ID MD MULTIB as well as for creation of website www.multib.in for sending recommendation for the scrip of PCSL, summons dated August 26, 2021 were issued to the Noticee. Two reminders dated September 16, 2021 and September 29, 2021 were also sent to the Noticee and the said summons were duly delivered to the Noticee. I note that the proof of service of the said

summons was also annexed to the SCN. I note that vide the said summons, the IA had sought crucial information to conclude the investigation and due to his non-compliance, connection of suspected entities and company with him or any other entity who would have benefitted out of the bulk SMS circulation and recommendation through website could not be established.

13. Thus, I hold that Noticee had not co-operated with the investigations and by not producing / furnishing the documents/ information sought by IA, hampered the process of investigation.

14. In this regard, it is pertinent to note that Section 11C(3) of SEBI Act empowers the IA of SEBI to require any intermediary or any person associated with the 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 authorized by him in this behalf as it may consider necessary if the furnishing of such records/ information/ documents are necessary. In this regard, I note that it was obligatory on the Noticee to provide any information sought by the IA, if the IA deemed such information relevant or necessary for purpose of investigation.

15. In this context, I note that Hon'ble SAT, in its order dated October 22, 2013 in the matter of **Rich Capital & Financial Services Limited & Ans vs SEBI**, observed that:

> *"10. We may pertinently note that the SEBI is basically constituted to promote orderly and healthy growth of securities market apart from protecting investors' interest. For discharging this onerous job, and with a view to achieve the underlined object, SEBI as a regulator is required to conduct investigation and enquiries in the affairs of various parties from time to time. For this purpose, first and the foremost thing is co-operation from the concerned officers of the companies not only to produce the relevant records as and when required by an investigating officer or enquiring authority or by any person authorised by the*

SEBI in this behalf but to appear in person as and when called upon. Section 11C (2) mandates every manager, managing director, officer or other employees of the company to preserve and produce such documents which are in their custody or power. Similar is the tone and texture of Section 11C (3).

11. In case of failure on the part of the concerned person to furnish such records/information, heavy monetary penalty is prescribed in Section 15A(a) of the SEBI Act, 1992. In fact such an act on the part of a company or its concerned officers is not only contemptuous but also a hindrance in the way of conducting smooth investigation and enquiry by the regulator to arrive at a just and fair conclusion as per the provisions of SEBI Act, 1992. Such an increasing tendency on the part of the companies needs to be curbed at the threshold."

16. From the foregoing paragraphs, it is conclusively established that Noticee had failed to comply with the summons dated August 26, 2021 and reminder summons dated September 16, 2021 and September 29, 2021 issued to him by the IA. Therefore, I hold that the Noticee has violated the provisions of Sections 11C (3) SEBI Act.

Issue II. Does the violation, if any, attract monetary penalty u/s 15A(a) of the SEBI Act?

17. In light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated the provisions of Section 11C(3) of SEBI Act.

18. As regards the imposition of monetary penalty for non-compliance of summons, I note that the Hon'ble SAT had the occasion to deal with this issue in the matter of DKG Buildcon Pvt. Ltd.(supra), wherein it observed:

"The power to require a person to furnish any information or record or documents includes the power to require such person to make a statement and give

clarifications with regard to the information and documents produced by him. In the absence of such a power the purpose of the legislature in introducing section 11C would be frustrated and the Board will not be able to investigate properly the market irregularities and offences. In order to advance the object of Parliament the language used in sub-section (3) of section 11C has to be given a wider meaning. We are, therefore, of the considered opinion that section 11C (3) gives the power to the investigating authority to call upon any person to make a statement while furnishing any information, document or record."

19. Thus, it is clear that the information sought vide summons, issued under section 11C (3) of the SEBI Act, is crucial and the person from whom the information is sought is obligated to provide the same. Hence, failure to comply with the summons of IA, attracts penalty u/s 15A(a) of SEBI Act. As the violation of provisions of section 11C (3) of the SEBI Act by the Noticee is established and is serious in nature, I find that Noticee is liable for monetary penalty u/s 15A(a) of SEBI Act. The contents of the said provisions of law is reproduced herein below:

<u>Penalties and Adjudication</u>

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Board, fails to furnish the same, or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of 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 r/w Rule 5(2) of the Adjudication Rules?

20. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act which reads as under:-

15J – Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or 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. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the non-compliance of the summons is not available. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violation by the Noticee. The conduct of the Noticee in not paying heed to the summons issued by SEBI and resultant non-cooperation with the process of investigation cannot be taken lightly. I note that penalty has been imposed against the Noticee in the past for the same violation in two other matters also.

ORDER

22. Considering all the facts and circumstances of the case and exercising the powers conferred upon me u/s 15-I of the SEBI Act r/w rule 5 of the SEBI Adjudication Rules, I hereby impose the following penalty on the Noticee u/s 15A(a) of the SEBI Act, for not complying with the summons issued on August 26, 2021 and subsequently reminder summons issued on September 16, 2021 and September 29, 2021:

Name of the Noticee	Provisions Violated	Penalty
Mr. Hanif Kasambhai Shekh (PAN - CBEPS9710A)	Section 11C (3) of the SEBI Act	Rs. 7,00,000/- (Rupees Seven Lakhs only)

I find that the said penalty is commensurate with the violation committed by the Noticee in this case.

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 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

24. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department-1 DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." 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

25. 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.

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

Place: Mumbai **AMIT KAPOOR**

Date: November 28, 2022 **ADJUDICATING OFFICER**