

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11(4A), 11B (1), 11B (2) and 15I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Sections 12A(1), 12A(2) and 23I of the Securities Contracts (Regulation) Act, 1956 read with Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005.

In respect of –

Name of the Entity	PAN
Mr. Binit Joshi	ACKPJ7454M

In the matter of Sun and Shine Worldwide Limited

1. The present proceedings originate from an investigation conducted by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) into the trading activities of certain entities in the scrip of Sun and Shine Worldwide Limited (hereinafter referred to as “**Company**” now known as “Johnson Pharmacare Limited”). Pursuant to the investigation, it was noted that the company had made overstatement of purchases to the extent of ₹146 cr. in Financial Year (FY) 2012-13 and ₹1,417 cr. in FY 2013-14. Similarly, there was an overstatement of sales to the extent of ₹146 cr. in FY 2012-13 and ₹1,310 cr. in FY 2013-14. Therefore, as alleged, the financial statements for FY 2012-13 and 2013-14 were fraudulently manipulated and the figures contained therein were misstated by the Company.
2. Basis above, a show cause notice dated October 27, 2020 (hereinafter referred to as “**SCN**”) was issued to the Company and 9 other entities, including Mr. Binit Joshi (hereinafter referred to as “**Noticee**”).
3. Pursuant to the issuance of the aforesaid SCN, after providing an opportunity of hearing to the entities and considering the replies filed on record, an order was passed by the Whole Time Member (hereinafter referred to as “**WTM**”) on September 14, 2021 (hereinafter referred to as “**WTM Order**”) wherein the Company was restrained from accessing the securities market for a period of one year and a total penalty of ₹30,00,000/- was also levied on the Company. Directions/penalties were also issued/imposed against 9 other entities including the Noticee. The WTM, while issuing / imposing the directions/ penalty, also noted that

since the Noticee (Mr. Binit Joshi) was an Executive Director of the Company, he was responsible for the day-to-day affairs of the Company. Further, the Noticee was also found to have not complied with the summons issued during the course of investigation. Accordingly, the Noticee was debarred from the market for a period of one year and a penalty of ₹10,00,000/- was also levied on him. It is noted from the material available on record that the said order was passed against the Noticee *ex-parte*, as the Noticee did not reply to the summons issued by SEBI and had also failed to appear before SEBI.

4. Aggrieved by the aforesaid order, the Noticee approached the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") and the Hon'ble SAT set aside the WTM Order *qua* the Noticee vide its order dated October 5, 2023 (hereinafter referred to as "**SAT Order**"). While setting aside the WTM Order, the Hon'ble SAT observed that the delivery to the Noticee, vide email, was not satisfactorily proved and thus, the principles of natural justice were not satisfied in the instant matter. The relevant extract of the SAT Order is produced hereunder:

"5. Considering the aforesaid, prima facie, we find that the assertion that the summons were served through email is not proved and we give the benefit of doubt to the appellant. Consequently, on this short ground that the service was not made, the application for condonation of delay is allowed. The delay is condoned. For the same reason, the impugned and all the proceedings initiated pursuant to the show cause notice are quashed in so far as it relates to the appellant being violative of the principles of natural justice. The appeal is allowed. The matter is remitted to the WTM to pass a fresh order in accordance with law after serving the show cause notice and after providing an opportunity of hearing."

5. In compliance with the aforesaid direction of the Hon'ble SAT, the Noticee was served with the SCN and was advised to file his reply to the SCN, if any, on or before January 8, 2024. Noticee filed his reply, vide email dated January 9, 2024. He was also provided an opportunity of hearing on January 11, 2024. The authorised representative of the noticee appeared on the scheduled date of hearing and made submissions in line with his reply. The Noticee was granted one week's time to file post-hearing submissions in the matter, which were filed vide letter dated January 18, 2024.
6. The reply of the Noticee dated January 9, 2024, oral submissions made during the personal hearing conducted on January 11, 2024 and the post hearing written submissions made vide letter dated January 18, 2024 are summarised hereunder:
 - i. The Noticee denies all the allegations made in the SCN and denies participation in any of the activities observed by SEBI.

- ii. The Noticee was a Non-Executive, Independent Additional Director, for a very short period, i.e., January 1, 2014 to May 13, 2014. Independent Director cannot be liable for the act of the company, unless his active participation has been proved.
- iii. The present SCN has been issued *qua* the Noticee with an inordinate and unreasonable delay of eight years. In this regard, reliance is placed on the following decisions:
 - a) *Rajeev Bhanot Vs. SEBI* (Appeal No. 396 of 2018, decided on 09.07.2021);
 - b) *Libord Finance Limited Vs. SEBI* (2008 86 SCL 72 SAT);
 - c) *Ashlesh Gunvantbhai Shah Vs. SEBI* (Appeal No. 169, decided on 31.01.2020);
 - d) *Rakesh Kathotia Vs. SEBI* (Appeal No. 7 of 2016, decided on 27.05.2019).
- iv. SEBI has wrongly observed that the Noticee acted in violation of Section 27(2) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) as the Noticee was not an Executive Director, rather, the Noticee was a Non-Executive/ Independent Additional Director.
- v. The Noticee was appointed as an Additional Director under the category of Independent, Non-Executive Director and the same is evident from the FORM-32 filed by the Company. Being an Independent Director, the Noticee was never in-charge of the operations and decision-making process of the Company. Further, the alleged transactions were never brought to the notice of the Noticee. In this regard, reliance is placed on the decision of the Hon’ble SAT in the matter of ***Prafulla Anubhai Shah Vs. SEBI*** (Appeal No. 389 of 2021).
- vi. As regards the allegation pertaining to the Noticee being a member of the Audit Committee, the Noticee never attended any meeting of the Audit Committee during his tenure. The Noticee was never informed about any Audit Committee meetings during his tenure. Only one Audit Committee meeting took place during the tenure of the Noticee (on February 14, 2014) which was not attended by the Noticee.
- vii. Independent Directors are not managers of a company, rather, they are fiduciaries who perform wider oversight functions over management and Executive Directors. The alleged financial statements were not brought before the Noticee for review and hence, the Noticee cannot be held liable for the same. In this regard reliance is placed upon the following judgments:
 - a) *V.B. Industries Limited and Ors. Vs. SEBI* (Appeal No. 750 of 2021), Decided on July 29, 2022;
 - b) *Dalmia Industrial Development Limited Vs. SEBI* (Appeal no. 471 of 2022), Decided on September 1, 2022;

- c) *SVAM Software Limited & Ors. Vs. SEBI* (Appeal No. 801 of 2021), Decided on October 13, 2022;
 - d) *Tatia Global Venture Limited & Ors. Vs. SEBI* (Decided on August 24, 2022).
- viii. Further, reliance is placed on the Circular dated March 2, 2020 of Ministry of Corporate Affairs which indicates that civil or criminal proceedings should not be unnecessarily initiated against the independent directors.
 - ix. Summons were not delivered to the Noticee and the same has also been observed by the Hon'ble SAT while remanding the present matter. Accordingly, the charge pertaining to non-reply to the summons is not tenable in law.
 - x. The Noticee has already undergone debarment for one year which has caused prejudice to the Noticee.
7. Having perused the SCN issued to the Noticee, the written and oral submissions made by the Noticee and other material available on record, I am of the view that the issue for consideration in the present proceedings is whether the Noticee was an Executive Director of the Company and therefore, liable for the violations committed by the Company.
8. Before proceeding further with the matter, I deem it fit to reproduce the extract of the provisions relevant for the purpose of present proceedings:

Relevant extract of the provisions of SEBI Act:

Investigation

11C (1)...

(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.

(4) ...

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly-

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Offences by companies.

27. (1) Where an offence has been committed by a company, every person who at the time the offence 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 offence 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 offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,- (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm...

Relevant extract of provisions of Securities Contracts (Regulation) Act, 1956 :

Conditions for listing.

21. Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.”

Relevant extract of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) ...
- (b) ...
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) ...
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-
 - ...
 - (f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
 - ...
 - (r) planting false or misleading news which may induce sale or purchase of securities.
 - ...

Relevant extract of the provisions of the Equity Listing Agreement:

Clause 30. The Company will promptly notify the Exchange –

(a) of any change in the Company's directorate by death, resignation, removal or otherwise;

(b)...

Clause 41. The company agrees to comply with the following provisions:

(I) Preparation and Submission of Financial Results

a. The financial results filed and published in compliance with this clause shall be prepared on the basis of accrual accounting policy and in accordance with uniform accounting practices adopted for all the periods.

...

c. The company has an option either to submit audited or unaudited quarterly and year to date financial results to the stock exchange within forty-five days of end of each quarter (other than the last quarter), subject to the following:

i. In case the company opts to submit unaudited financial results, they shall be subjected to limited review by the statutory auditors of the issuer (or in case of public sector undertakings, by any practicing Chartered Accountant) and such limited reviewed results (financial results accompanied by the limited review report) shall be submitted within forty-five days from the end of the quarter.

ii In case the company opts to submit audited financial results, they shall be accompanied by the audit report.

9. At this juncture, I deem it fit to note that the charges/violations levelled against the Company were duly established and appropriate directions were issued vide WTM Order dated September 14, 2021. I further note that the said order has not been stayed/ quashed by any appellate authority (except *qua* the Noticee by the Hon'ble SAT). Accordingly, the limited purpose of the present proceedings is to adjudge whether the Noticee herein can be held liable for the violations committed by the Company, which have already been established by the WTM Order. For the sake of clarity, the violations, as established in the aforesaid WTM Order and relevant for the purposes of the present proceedings, are noted hereunder in brief:

a) Overstatement of purchases to the extent of ₹146 cr. in FY 2012-13 and ₹1417 cr. in FY 2013-14 as well as sales to the extent of ₹146 cr. in FY 2012-13 and ₹1,310 cr. in FY 2013-14 in the profit and loss statements by the Company. The same was in violation of Section 12A(c) of SEBI Act and Regulations 3(d), 4(2)(f), 4(2)(r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003;

- b) Quarterly financial statements submitted by the Company to the stock exchange were neither audited nor limited reviewed. The same resulted in violation of Clause 41(I)(C) of the erstwhile Equity Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “SCRA”);
- c) The Company failed to promptly notify the stock exchange(s) about change in its directors due to resignation of its director Mr. Hitesh Patel in May 2013. The same resulted in violation of Clause 30(a) of the erstwhile Equity Listing Agreement read with Section 21 of SCRA.

10. In addition to the aforesaid, the WTM Order also noted that the Noticee failed to comply with the summons issued to him during the course of investigation which was in violation of Section 11C(2) read with 11C(3) and 11C(5) of SEBI Act. In this regard, the Noticee has submitted that summons were not served upon him and the Hon’ble SAT has also noted the same in its order dated October 5, 2023. From the perusal of the material on record, it is observed that the Noticee got to know about the summons and the entire proceedings when he was contacted by the Recovery Officer of SEBI in August 2023. Pursuant to the same, the Noticee approached the Hon’ble SAT to set aside the *ex-parte* proceedings on the ground that the summons/ SCN were not served upon him. I note that the Hon’ble SAT accepted the submissions of the Noticee and remanded the matter for fresh proceedings *qua* the Noticee. In this regard, I note that the summons issued to the Noticee via the *registered post acknowledgement due* could not be delivered, as he had already left the premises in question. Further, the email ID, which was taken from FORM 32 was same as given to another director, Mr. Umeshbhai Mahashankar Purohit and thus, the delivery of the summons on the said email ID cannot be taken as conclusive proof of the fact of delivery. Therefore, the allegation pertaining to failure to furnish information and appear in person, as already held by the Hon’ble SAT, is not tenable. Accordingly, the said allegation does not merit further consideration.

11. Having contextualized the present proceedings, vis-à-vis, the WTM Order, I deem it fit to proceed with the matter in light of the submissions made by the Noticee.

12. The issue for consideration in the present proceedings is to determine the position/nature of directorship of the Noticee in the Company. The SCN issued to the Company and the Noticee, *inter alia*, proceeds on the basis that the Noticee was an Executive Director in the Company. The relevant excerpt of the WTM Order is produced hereunder:

“I further note that Noticee no. 3 was also an Executive Director of the company from January 01, 2014 to May 13, 2014, being responsible for the day to day

affairs of the company and he had also attended a Board meeting of SSWL during the said period, as mentioned in the Annual Report of SSWL pertaining to the FY 2013-14.”

13. It is observed from the above that the Noticee in the present case has been considered as an Executive Director involved in the day-to-day functioning of the Company. Accordingly, the Noticee was levied with a penalty of ₹10,00,000/- and was also debarred from the market for a period of one year for being liable for the violations committed by the Company.
14. In this regard, the Noticee has submitted that he was a Non-Executive/ Independent Director of the Company for a very short period (i.e., January 1, 2014 - May 13, 2014) and except for participation, as an Independent Director, he cannot be held liable for the wrongs of the Company. In this regard, the Noticee has, *inter alia*, also placed reliance on the decision of the Hon'ble SAT in *SVAM Software Limited & Ors. Vs. SEBI*.
15. I have perused the allegation levelled against the Noticee and the submissions made by him. On perusal of FORM 32 which contains the '*Particulars of appointment of Managing Director, directors, manager...*' of the Company, the designation of the Noticee can be seen to be Additional Independent Director / Non-Executive Director. The relevant excerpt of FORM 32 is produced hereunder for ready reference:

5. Details of the Managing Director, directors of the company

| Details of the Managing Director or director of the company

Director identification number (DIN)

Name

Father's name

Present residential address

Nationality Date of birth

☒ Appointment ☐ Cessation ☐ Change in designation

Designation Date of appointment or change in designation (DD/MM/YYYY)

Category

Whether chairman, executive director, non-executive director

☐ Chairman ☐ Executive director ☒ Non-executive director

16. In addition to the above, I note that although in the SCN, the Noticee has been referred to as an Executive Director, there is nothing on record to substantiate the said fact as regards the Noticee being an Executive Director. The only reason for such a reference of the Noticee as an Executive Director appears to have arisen out of incomplete description of the Noticee's designation by the Company in its annual report.
17. Having noted that the Noticee was an Independent Director, I deem it fit to consider the liability of the Noticee for violations committed by the Company, in his capacity as an Independent Director. In this regard, I note from the material available on record that other Independent Directors of the Company at the relevant point of time have not been charged for being responsible for the violations established against the Company. In the SCN, the Independent Directors were charged only for the violations pertaining to the non-compliance by the Audit Committee. It is noted from the submissions of the Noticee and the Company's Annual Report for FY 2013-14 that only one Audit Committee meeting (on February 14, 2014) took place during the tenure of the Noticee and the same was not attended by the Noticee.
18. Further, as regards the law surrounding the liability of a Non-Executive/Independent Director, I note that it is a settled position that *"...A non-executive/independent director should be held liable only in respect of any contravention of any provisions of the Act which had taken place with his knowledge (attributable through Board processes) and where he has not acted diligently, or with his consent or connivance...."¹*. Further, the Hon'ble Bombay High Court in the matter of *Satvinder Jeet Singh Sodhi and Ors. Vs. State of Maharashtra and Ors.*² has also observed that *"...the independent director or non executive director not being a promoter of or key managerial persons shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently..."* and that *"...Non-executive director is no doubt a custodian of the governance of the company but does not involve in the day to day affairs of the company for running of its business and observing/monitoring the activities..."*.
19. Considering the above, as regards the Noticee's involvement in the violations committed by the Company, I note that the Noticee was an Independent Director from January 1, 2014 to May 13, 2014. During the said tenure, the Noticee did not attend any meeting of the Audit Committee and only attended one Board Meeting.

¹ Management and Board Governance, Report of the Expert Committee on Company Law, Ministry of Corporate Affairs

² MANU/MH/2364/2022

Nothing has been brought on record, through Board processes, to show that the Noticee was involved in the violations committed by the Company, which have been established in the WTM Order. Since only Executive Directors have been held liable for violations committed by the Company and the Noticee was not involved in the day to day affairs of the Company in his capacity as Independent Director, I am of the view that none of the violations committed by the Company can be attributed to the Noticee.

Order

20. In view of the above discussion, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11B (1), 11B (2) of the SEBI Act read with Section 19 of the SEBI Act and Section 12A of the SCRA, hereby dispose of the present proceedings against the Noticee without issuance of any direction or imposition of penalty.
21. This Order shall come into force with immediate effect.
22. A copy of this Order shall be forwarded to the Noticee, recognized stock exchanges and depositories for their information.

DATE: February 16, 2024
PLACE: MUMBAI

Sd/-
AMARJEET SINGH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA