BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/UR/2022-23/16564]

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

Sunil D Agarwal

PAN: AFSPA5223J

In the matter of Pyramid Saimira Theatre Ltd.

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") vide ad-interim ex-parte order dated April 23, 2009, inter alia, directed some persons/entities not to buy, sell or deal in the securities market including in Initial Public Offerings, in any manner, either directly or indirectly, till further directions pending investigation in the matter of Pyramid Saimira Theatre Ltd. (hereinafter referred to as "**PSTL**"). Sunil D Agarwal, proprietor of R S Enterprise (hereinafter referred to as "**Noticee**"), was one of the entities who was debarred from buying, selling or dealing in the securities market till further order.

2. National Stock Exchange (hereinafter referred to as "**NSE**") informed SEBI that the Noticee traded in the cash segment of NSE in the scrip of Bajaj Hind on May 4, 2009 allegedly after receiving the SEBI order on April 24, 2009. It was, therefore, alleged that the Noticee had traded despite being restrained from doing so which was in violation of the aforesaid SEBI order.

3. Pursuant to that adjudication proceedings were initiated against the Noticee. The Adjudicating officer (hereinafter referred to as AO) appointed in the above case issued Show case notice (hereinafter referred to as SCN) on January 27, 2012. The SCN could not be delivered and was therefore affixed at the last known address of the Noticee. An opportunity of hearing was also granted to the Noticee and the Hearing Notice (hereinafter referred to as HN) was affixed at the last known address of the Noticee. As the Noticee did not reply to the SCN and also did not appear for the hearing the matter was proceeded exparte and order dated July 30, 2012 was passed imposing penalty of Rs. 2,000,00 for contravening the directions of board as contained in the order dated April 23, 2009.

4. The Noticee appealed before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"). SAT vide Order dated November 16, 2021 remitted the matter to AO with the following observations:

"……2. We find from a perusal of a reply that an attempt was made to serve the show cause notice on January 27, 2012 at the address of the appellant in Mumbai. 'Exhibit A' to the reply shows that it was undelivered and the endorsement remark made by the post office is that the appellant had left the address. In spite of that, the respondent served a show cause notice by affixation at the same address. From the reply, we also find that attempts were made to serve the appellant at two other addresses and the last one is alleged to have been served at the Surat address through notice dated July 4, 2012. We find from the rejoinder affidavit of the appellant is that the appellant had also left Surat which was a rented premises. Consequently, we are satisfied that the appellant was not served with the show cause notice.

3. Thus, all the proceedings were conducted ex-parte in violation of the principles of the natural justice. Consequently, on this short ground, the impugned order cannot be sustained and is set aside. The matter is remitted to the AO to decide the matter afresh after serving the show cause notice."

APPOINTMENT OF ADJUDICATING OFFICER

5. Subsequent to the aforesaid SAT order, the undersigned was appointed as Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the Adjudication Rules vide order dated November 23, 2021 to inquire into and adjudge under section 15HB of the SEBI Act, the aforesaid alleged violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. SAT in its order interalia mentioned as follows:

   "….4. In this regard, we direct the appellant to deposit a sum of Rs. 2 lac within four weeks from today which will be subject to the result of the adjudication proceedings. The appellant will also appear before the AO on December 15, 2021 on which date the AO will serve a show cause notice to the appellant and grant him time to file an appropriate reply. The AO will proceed thereafter in accordance with law. In view of the aforesaid, the impugned order is set aside."

7. Accordingly the Noticee was served notice dated November 25, 2021, bearing reference no. SEBI/EAD-3/ADJ/BM/UR/OW/P/34193/1/2021, whereby he was advised to appear before the AO and collect the SCN on December 15, 2021. The Noticee appeared before the AO on scheduled day, however Noticee had not deposited the Rs. 2 lac amount as mandated by Hon'ble SAT. Hence copy of SCN could not be served on him.

8. Vide E-mail dated February 09, 2022, the AR of the Noticee informed that he had filed an application before Hon'ble SAT and Hon'ble SAT had ordered and given further time of four weeks with effect from order dated January 13, 2022. After the amount of Rs. 2,00,000 was deposited by the Noticee to the concerned department of SEBI, Noticee was advised vide letter dated March 11, 2022 to collect the copy of the SCN. The Noticee vide letter dated March 21, 2022

informed that he had received the letter dated March 11, 2022 on March 19, 2022. Further, he requested to send the SCN to his E-mail ID. In view of the request of the Noticee, vide E-maid dated March 22, 2022 he was sent the SCN dated January 27, 2012 in the matter on his E-mail ID agrsonu21@gmail.com.

The allegations made in the SCN are summarized below:

Vide order dated April 23, 2009, SEBI inter alia directed 230 person/entities including Noticee not to buy, sell or deal in securities market including in Initial Public Offerings, in any manner directly or indirectly, till further directions. Noticee traded in the market, even after passing of SEBI order.

The detail of trade done by Noticee on May 4, 2009 in the cash segment of NSE is as below:

Date	Name of the broker	Scrip Symbol	Buy Volume	Sell Volume	Buy Amount	Sell amount	Name of the exchange	Segment
May 4, 2009	India Infoline Ltd.	BAJAJHIND	0	35	0	2849	NSE	Cash

The order was served to the Noticee on April 24, 2009. The acknowledgement receipt of the delivery of aforesaid order dated April 23, 2009 was submitted as a documentary evidence which was marked as Annexure-2.

9. Noticee filed reply vide letter dated April 14, 2022. The submissions of the Noticee in his reply are summarized as below:

- The notice dated 27.01.2012 is against law and deserves to be quashed and set aside.

- The facts mentioned in para number 2 are matter of record. He has no knowledge regarding this order dated 23.04.2009.
- Noticee admitted the facts mentioned in para number 3. Further he submitted that he had no knowledge regarding the order dated 23.04.2009 and when he traded on May 4 2009, then his broker India Infoline Ltd. informed him that his Demat account did not trade the script on such date.
- Noticee submitted that it is settled principle of law that after passing of the order it is necessary to inform the parties but in the instant case SEBI neither informed regarding ad-interim ex- parte order nor respondent is a party in this matter and therefore the respondent could not have any knowledge regarding this ad-interim order.
- The Noticee submitted that after appointment of adjudicating officer vide order dated 19.07.2011, show cause notice dated January 27, 2012 was issued, the show cause notice returned undelivered. The show cause notice was affixed at the last known residential address of the respondent at Anusuya Co-op Housing Society Ltd., A- 303, 3rd floor,Opp. Bhayandar (East), Mumbai on March 20, 2012. Further he submitted, an opportunity of personal hearing was given to him to appear on June 25, 2012, vide notice dated June 19, 2012. The same was affixed at the aforesaid address. Noticee contended that since he was not residing at the aforementioned address the SCN and hearing notice were not received by him. To substantiate his claim he enclosed copy of some court proceedings.
- Noticee submitted that a copy of the show cause notice along with a notice of hearing for appearing on July 9, 2012 was sent to his office at R.S. Enterprises, 11, Ashray building, 40, JSS Road, Opera House, Mumbai 400004. The same was affixed at the above mentioned address. He further submitted that the aforementioned premises was also vacated by him in 2007 and he had shifted to Surat. The premise at Surat was also vacated and he already had closed his firm in the year 2009. In this regards, he enclosed copy of Income Tax returns where the address was shown as R S Enterprise, 5/1582, First Floor, Limda Sheri, Haripura, Surat, Gujrat-395003.

- Noticee contended that from perusal of the order dated 31.03.2015 in the matter of Pyramid Saimira Theatre Limited SEBI finally decided the matter and held that:-

  "15. Under the facts and circumstances detailed above and also considering that the entities have undergone various periods of prohibition since April 23, 2009 (ranging from two-and-a-half to more than five years) I am of the view that the prohibition against these 217 entities listed in Table A of para 5above, need not continue.

  16. Accordingly, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act,1992 read with Sections 11, 11B and 11(4) thereof, do hereby dispose of the proceedings against the 217 entities mentioned in Table A without any further orders."

  As per the above order SEBI finally disposed of the proceeding against the Noticee. Hence, this notice is liable to be quashed and set aside.

- Noticee submitted that he was a tenant in the residential address at "Anusuya Co-op Housing SocietyLtd., A-303, 3rd Floor, Opp. Bhayander RailwayStation, Bhayander (East), Mumbai" and also a tenant in the commercial addresses of "R S Enterprises, 11, Ashray Building, 40, JSS Road, Opera House, Mumbai 400004." and "5/1582, 1st Floor, Limda Sheri, Haripura, Surat 395003" which were all vacated by him much prior to this proceedings.
- He had been residing at Beawar since 2013 due to the illness of his parents. He had also renovated his parental house at Beawar and since then he had not resided in Mumbai.
- SEBI had deducted the amount of Rs. 3,422/-from the his bank account under recovery, which he is entitled to receive the back with interest.

10. Hearing Notice dated March 14, 2022 was issued to the Noticee, advising him to appear for the hearing on April 18, 2022. The personal hearing was conducted on scheduled date and time through video conferencing mode. During the course of hearing following information was sought from the Noticee-

i. When did the Noticee change the address.
ii. Where did the Noticee inform about the change in the address.
iii. When did the Noticee come to know that his account was frozen.
iv. What steps did the Noticee take after it came to knowledge that his accounts were frozen.

He was advised to submit the aforesaid information by April 25, 2022.

11. Vide E-mail dated May 09, 2022 Noticee submitted his reply to the aforementioned information sought. The reply is summarized as follows:
    i. When did the Noticee change the address:- The Noticee did not change the address of R.S. Enterprises, Shop No. 11, Ashray Building, 40, J.S.S. Road, Near Kennedy Bridge, Opera House, Mumbai-400004 but Noticee had already closed his firm in the year 2009, which clearly shows with the Income Tax Returns of the Firm. (Annexure-R/2).
    ii. Where did the Noticee inform about the change in Address:- Noticee submitted that when he had closed the firm, so there was no need to inform about the change in address.
    iii. When did the Noticee came Account was frozen:- The Noticee came to know that his Account was frozen when recovery proceeding were initiated against the noticee and his bank account were frozen to recover the penalty amount.
    iv. What steps did Noticee take after it came to knowledge that his accounts were frozen:- After receiving the copy of order on dated 28.01.2021, Noticee submitted the he immediately contacted to the counsel to do the needful and the counsel filed the appeal as soon as possible in the Hon'ble Securities Appellate Tribunal, Mumbai.
    v. Noticee submitted that when he traded in the script of Bajaj Hind on 04.05.2009 then his broker India Infoline Ltd.'s executive informed him that trading through his account could not be done due to some error. The Executive did not tell that due to his account being frozen trading could not be done. Further he submitted that it is also clear from the statement given by the India Infoline Ltd.

vi. Noticee submitted that in the Demat account he gave address of Anusuya Co-Operative Housing Ltd. (Annexure-R/5) which is also vacated in 2008 and shifted to Yashoda Sadan but due to matrimonial dispute between Noticee and his wife and due to loss in business Noticee shifted to Beawar in 2012 and since then notice is residing at Beawar. Due to all situation Noticee did not check the same from the India Infoline Ltd. but he has taken a statement of holding on 08.05.2013 in which no details regarding frozen has been mention. Thus it clear no information had been received by him regarding the order dated 23.04.2009.

vii. That the proof of delivery is not eligible as his signature is not visible on it and no one else's signature is visible.

viii. Noticee reproduced Order 5 Rule 12 of Civil Procedure Code, 1980 (here an after called the act):- 12. SERVICE TO BE ON DEFENDANT ON PERSON WHEN PRACTICABLE, OR ON HIS AGENT. Wherever it is practicable service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

ix. Noticee reproduced Order 5 Rule 20 of Civil Procedure Code, 1980 (here an after called the act) :- 20. Substituted service. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit. (1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain. (2) Effect of substituted service: Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally. (3) Where service substituted, time for appearance to be fixed- Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

x. Noticee submitted that as per the Order 5 rule 12 and Order 5 rule 20 CPC, it is clear that the service has been made on the Noticee personally at his business place and in the residential place, the service may be made on an adult member of the Noticee's family but it is not clear whom the notice dated 24.04.2009 received. Hence, no proceeding against notice could be initiated against Noticee on which order which is not in knowledge of Noticee.

xi. Noticee submitted that in the interest of Natural Justice proceeding may be dismissed because if in case it assumes that Notice regarding order dated 23.04.2009 has been received by the Noticee (which is not happen), then to Noticee only traded 35 shares to sell of Bajaj Hind which amounts to Rs. 2849 which is small amount and no one is doing contempt of any order for such a small amount.

xii. Noticee submitted that from perusal of the order dated 31.03.2015 in the matter of Pyramid Saimira Theatre Limited SEBI finally decided the matter and held that:-

"15. Under the facts and circumstances detailed above and also considering that the entities have undergone various periods of prohibition since April 23, 2009 (ranging From two-and-a-half to more than five years) I am of the view that the prohibition against these 217 entities listed in Table A of para 5 Above, need not continue.

16. Accordingly, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act,1992 read with Sections 11, 11B and 11(4) thereof, do hereby dispose of the proceedings against the 217 entities mentioned in Table A Without any further orders."

Notcee further submitted that as per the above order SEBI finally disposed of the proceeding against him and before that no details regarding frozen of account was shown in the Statement given by the India Infoline Ltd. 08.05.2013. Hence, this notice is liable to be quashed and set aside.

12. I shall now proceed to decide the matter 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. 1: Whether the Noticee violated SEBI order dated April 23, 2009?
Issue no. 2: Does the non-compliance, if any, on the part of the Noticee attract monetary penalty under section 15 HB of SEBI Act?
Issue no. 3: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

14. Before I proceed with the matter, it is pertinent to mention the relevant part of the order dated April 23, 2009 in respect of the Noticee:

"…..9.The following persons/ entities and their proprietors/ partners/ directors who, as per the investigation carried out so far, prima facie appear to have carried out suspicious banking transactions and have channelled these funds either directly or indirectly in the stock markets, are directed not to buy, sell or deal in the securities market including in Initial Public Offerings, in any manner, either directly or indirectly, till further directions:

SR No	*NAME*	*BANK*	*Branch*	*BANK ACCOUNT NO.*	*NAME OF PROPRIETOR/ DIRECTOR*	*PAN NO.*
151	*R.S*	*AXIS BANK*	*NEW*	*233010200007634*	*Ratankumar Agarwal &*	*AFSPA5223J*

	ENTERPRISES		*MARINE LINES*		*Sunil Kumar Agarwal*	

15. I observe from the records that subsequent to the passing of the order a copy of the order was served to the Noticee through letter dated April 24, 2009 at the address R.S. Enterprises, Shop No. 11, Ashray Building, 40, J.S.S. Road, Near Kennedy Bridge, Opera House, Mumbai-400004 As proof of delivery the acknowledgment copy attached with the letter shows signature however the signature is not legible and thus cannot be ascertained.

16. The Noticee in its reply submitted that he did not receive any such order. The Noticee closed his firm in 2007 from the address to which the order was delivered in 2009 and shifted to Surat. There have been series of changes in address thereon. It is a matter of records that the SCNs issued were pasted at the last known address. However the Noticee had already shifted in 2007. Given the above credence can be given to the submission of the Noticee that he was not aware of the SEBI Order.

17. In view of the above, I do not find it to be a fit case for imposition of penalty under section 15HB of the SEBI Act.

18. In view of the above, the SCN dated January 27, 2012 is disposed of, without imposition of penalty.

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

Date: May 27, 2022 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**