BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/DP/2024-25/30909]

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 AND SECTION 23 I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH THE SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Shri P. K. Sundaresan
(PAN : AIZPS7199D)

In the matter of Binny Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as **'SEBI'**) conducted investigation in the matter of Binny Limited (hereinafter referred to as the **'Company'** or **'Binny Limited'**), to examine misrepresentation of financial statements and siphoning/ diversion off of funds under the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act, 1992'**), Securities Contracts (Regulation) Act,1956, (hereinafter referred to as **'SCRA, 1956'**), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **'SEBI (PFUTP) Regulations, 2003'**) and/or SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, (hereinafter referred to as **'SEBI (LODR) Regulations, 2015'**) or any other Rules or Regulations made or directions issued by SEBI thereunder.

2. Based on the findings of investigation, SEBI initiated adjudication proceedings against Mr. P.K. Sundaresan (hereinafter referred to as "**Noticee**") for the alleged violation of Clause 49(V) of the Listing Agreement read with Regulation 103 of the SEBI (LODR) Regulations, 2015 and Section 21 of SCRA, 1956.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the undersigned as the Adjudicating Officer, vide order dated July 04, 2022, under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'SEBI Adjudication Rules') and Section 23 I of the SCRA, 1956 read with rule 3 of the Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as 'SCR Adjudication Rules') to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act and Section 23E of the SCRA, for the violations alleged to have been committed by the Noticee. Pursuant to internal restructuring, Shri Vijayant Verma was appointed as the Adjudicating Officer vide communiqué dated October 06, 2022. Subsequent to his transfer, vide communique dated August 30, 2023, Shri Shashi Kumar Valsakumar was appointed as the Adjudicating Officer. Upon his transfer, vide communique dated July 29, 2024, the undersigned has been appointed as the Adjudicating Officer.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Based on the findings by SEBI, Show Cause Notice dated January 30, 2023 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of the Adjudication Rules and Rule 4(1) of SCR Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under Sections 15 HB of the SEBI Act and Section 23E of the SCRA. The SCN, inter alia, alleged the following:

   a. *SEBI was in receipt of various complaints against Binny Limited. The complaints, inter-alia, included allegations pertaining to siphoning/ diversion off of funds, misstatements in financial statements, undisclosed and unauthorized related party* *transactions (RPTs), etc. In view of the above, preliminary examination in the matter of alleged irregularities in the financial statements of Binny Limited was carried out.*

b. *Based on the findings of the preliminary examination, the matter was taken up for detailed investigation as indicated in Para 1 of this Notice and Ms. Chokshi & Chokshi LLP was appointed as the independent forensic auditor to undertake forensic audit of the books of accounts of the company from Financial Year (hereinafter referred to as 'FY') 2013-14 to FY 2020-21.*

c. *It was observed that funds amounting to ₹329.29 crores were advanced to vendors, of which funds amounting to ₹148.72 Crores were transferred to related parties of promoters and related entities by such vendors on same/ nearby dates. The above advances to the vendors were outstanding. Further the intent of such transfers made within same/ short period to related parties of Binny Limited appeared to be suspicious in nature.*

d. *Out of ₹148.72 crores transferred by the vendors, major portion of the funds viz. ₹ 143 crores have been transferred to MBDL. MBDL is a private limited company owned by Mr. M. Nandagopal, promoter of Binny Limited and is under the same management. Mr. M. Nandagopal was the Whole Time Director ("WTD") and Mr. Arvind Nandagopal was the Managing Director ("MD") in the company. Thus, MBDL and Binny Limited were related parties under Section 2(76) (iv) of the Companies Act, 2013.*

e. The details of transactions between MBDL and Binny Limited, are as follows:

(Amount - ₹ in Crore)

Sr no.	Particulars of Advances to MBDL	Transactions taken place on or before 30.11.2015	Transactions taken place on or after 01.12.2015	Total outstanding (principal) as on 30.09.2021
1	For Purchase of 7.07 acres of land by Binny Limited	140.00 (Period - December 05, 2014 to June 24, 2015)	-	140.00

Sr no.	Particulars of Advances to MBDL	Transactions taken place on or before 30.11.2015	Transactions taken place on or after 01.12.2015	Total outstanding (principal) as on 30.09.2021
2	For Purchase of 37.20 MW Wind Farm Project by Binny Limited	60.00 (Period - October 18, 2013 to January 23, 2015)	-	60.00
3	For Purchase of 12.43 acres of land by Binny Limited	82.65 (Period - June 24, 2015 to November 30, 2015)	100.70 (Period - December 01, 2015 to April 29, 2016)	183.35
	Total	**282.65**	**100.70**	**383.35**

f. *It was observed that ₹4.25 crores were already advanced by the company to MBDL, even before taking in-principle approval from its board of directors on May 03, 2014, regarding the said transaction.*

g. *Noticee was a part of Binny Limited for a period of 9 months i.e. from October 01, 2013 to June 30, 2014. He was a '**key managerial personnel**' in the company, by virtue of his designation as the Chief Financial Officer (CFO). CFO comes under the definition of 'key managerial personnel' in terms of Section 2(51) of the Companies Act, 2013.*

h. *It was observed that around ₹4.25 crores were advanced by Binny Limited to MBDL for purchase of 37.2 MW windmill during the period October 18, 2013 to April 12, 2014, even before taking approval from the board for the said transaction. Mr. P.K. Sundaresan was obliged to examine whether the transactions have been carried out with prudence and in good faith. Further, in the normal course of his duty he failed to identify fraudulent nature of transactions. Therefore, it alleged that Noticee has failed in discharge of his duties as CFO.*

i. *It was further alleged that the Noticee had signed the financial statements as well as CEO/CFO Certification for the financial year 2013-14 as required under Clause 49(V) of the Listing Agreement, certifying to the Board of the Company that the* *financial results of the company do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading and the statements present a true and fair view of the company's affairs. Considering that the financial statements of Binny Limited were found to be misrepresented, Noticee being the CFO of the company was allegedly responsible for furnishing untrue compliance certificate to the board of directors.*

j. *In the view of the above, it was alleged that Noticee had failed in his duty as a member of the Audit Committee specified under Clause 49(V) of the Listing Agreement read with Regulation 103 of the SEBI (LODR) Regulations, 2015 and Section 21 of SCRA, 1956.*

5. Vide letter dated February 10, 2023, Noticee filed his reply to the SCN and inter alia submitted the following:

5.1 I was employed in Binny Limited (BL) for a period of 9 months between 1st October 2013 and 30th June 2014 as CFO & Company Secretary.

5.2 Till September 2013, the Company was under a different Management /Promoter group and all the books of accounts & secretarial records were maintained in a different location. Further, all the accounting records were handled through a legacy accounting software system. All the staff members from Accounting & Secretarial departments remained with the old Management and

5.3 Therefore, my priorities were to :

a) Set up a new team for Finance, Accounts and Secretarial.
b) Migration of the books of accounts & entries from the legacy software to Tally system. This had to be carried out manually as it was not possible to directly transfer or copy the data to Tally software.
c) This was the time when 93 sections of Companies Act 2013 (from 12th September 2013) were notified and accordingly changes as mandated under

these sections were also to be complied with. Further, the remaining sections and new Rules were brought in force along with the plethora of forms w.e.f. 1st April 2014.

5.4 I would like to first state that the entire transaction of Advance payments made towards purchase of 37.2 MW windmill (transaction total Rs. 60 Cr.) took place during the financial year 2014-15 and no advance amount was given during the period 18th October 2013 to 31st March 2014 (falling under FY 2013-14). For your immediate reference and perusal, I have enclosed extracts from the Audited financials for both FY 2014-15 and FY 2013-14 (Annual Reports);

5.4.1 Note: 12- Long term loans & Advances

5.4.2 Note 25.9 (FY 2014-15) and Note 25.11 (FY 2013-14)– Related Party disclosures/transactions. It may be noted that no advance amount was paid for this proposal during 2013-14.

5.4.3 AOC-2 (attached to the board report) for FY 2014-15.

5.5 From the above mentioned extracts of financial statements, it is very clear that the entire transaction with a total payment of advance of Rs. 60 Cr. has been given by the Company to MBDL only during 2014-15.

5.6 I refer to the forensic audit report and Ledger Account for Advance for Purchase of Windmill it can be observed that the bank transactions shown under advance for purchase of Windmill during the period 18th October 2013 to 31st March 2014 (falling within the financial year 2013-14) mainly consist of amounts such as Rs. 56, 62, 114, 119, 124, 146, 12500, 10227, on the payment side (Debit) and there are several Journal Voucher credit entries with narration such as fuel expenses, rates & taxes, CFO, bank charges, written off, filing & licence fee etc. clearly pointing out the nature of the transactions namely day to day running/current account transactions. It is pertinent to note that the total of the debit and credit of *transactions in the Ledger Account for the period ending 31st March 2014 is a net credit amount of Rs. 13,35,586.08 being the net sum of many day to day running/current account transactions. This clearly establishes that the transactions are not at all towards advance payments made for purchase of Windmill. Therefore, during the period 18th October 2013 to 31st March 2014 falling under FY 2013-14 there have been no advance payments made towards the said transaction.*

5.7 There is a net adjustment journal entry passed on 12th April 2014 for Rs 62,01,176.55 as a final entry to close the loan account of MBDL. This entry coupled with the above mentioned credit entry adds up to Rs 75,36,762.63. Since, the first advance payment towards purchase of windmill for Rs. 5 Cr. has been made on 12th April 2014, the aforementioned Rs. 75 lakhs has been netted off and the amount of advance for purchase of windmill has been arrived at as Rs. 4.25 Cr. (that is Rs. 5 Cr.-0.75 Cr.) in the forensic audit report.

5.8 The first component of credit amount Rs. 13.36 Lakhs is a sum of day to day running /current account transactions and are not related to advance towards purchase of windmill.

5.9 As for the second component of credit of Rs. 62.02 Lakhs, this has come through an adjustment journal entry from the Loan account of MBDL while closing the loan account. This entry has been passed on 12th April 2014 after payment of Rs. 5 Cr. advance to MBDL towards purchase of Windmill on the same day. The narration given for this transaction is given as ***"Being MBDL Loan Account transfer to MBDL Current Account"*** *adjustment entry passed. However, the heading for this adjustment entry has been given advance towards purchase of windmill. Therefore, it is clear that this adjustment entry is not for advance for purchase of windmill but an adjustment entry arising out of the Loan Account of MBDL.*

5.10 This windmill transaction appeared to a genuine transaction and Board did take necessary safeguards in the matter at the Board Meeting held on 3rd May 2014, wherein it was mentioned that the approval is only an in-principle approval and that only 25 percent of the price shall be paid as advance. Further, it was decided that Board would take a final approval before proceeding to the members for their approval. It was also decided that the terms and conditions, modalities and valuation would be done before final approval. Along with this, it was also mentioned that the advance payment shall be refunded in case of non-consummation of the transaction. Hence, necessary checks were put in place to ensure that the transaction is carried out in true and fair manner. The financial statements and CEO/CFO certification for the FY 2013-14 signed by me give a true and fair view of the Company's affairs since nothing untoward happened or was found, during my tenure.

5.11 As regards the advance amount paid by the Company to MBDL prior to obtaining approval of the Board, I would like to submit as under.

5.11.1 I remember that during an internal meeting with the Management in April 2014, the matter of proposal to buy a windmill from the related party MBDL was being contemplated and as a diligent dutiful professional I informed the Management any such transaction should be brought to the board of directors for consideration and approval before taking any further steps. Accordingly, a board meeting was called on 3rd May 2014 to consider this proposal. where in as a CFO & Company Secretary I ensured that only an In-principle & conditional approval for the transaction was given and exercised due care in safeguarding the interests of the Company.

5.11.2 As explained in the earlier part of this letter, my focus was primarily on getting the accounts updated, finalised and audited by Mid May 2014 and I was due to retire by 20th May 2014 upon attaining super-annuation as per the Company rules and in order to complete my tasks & duties as the CFO & Company

Secretary without any backlog or issues for the Management, I requested them to be in the Company's services till 30th June 2014. Moreover, I was not one of the authorised signatories for the banks of the Company and did not get any information about the few payments towards this transaction during the period 1st April 2014 to the date of the Board meeting namely 3rd May 2014.

5.11.3 Being only a CS- CFO, I was not a member of the Audit Committee. As per 49 II (A) (vi) of the Listing Agreement, only Directors can be members of the Audit Committee. I had attended Audit Meetings only in a capacity of a Company Secretary as provided in 49 II (A) (vi) of the Listing Agreement.

6. Vide Notice of hearing dated August 02, 2024, Noticee was granted an opportunity of hearing on August 27, 2024. Noticee appeared for the hearing and reiterated the submissions made by him vide reply dated February 10, 2023:

CONSIDERATION OF ISSUES AND EVIDENCE

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

I. **Whether *Noticee has violated Clause 49(V) of the Listing Agreement read with Regulation 103 of the SEBI (LODR) Regulations, 2015 and Section 21 of SCRA, 1956.***

II. Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 23E of the SCRA and Section 15 HB of the SEBI Act?

III. 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 and section 23J of the SCRA?

8. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

*"**SCRA***

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

LODR

Repeal and Savings

103.(1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

Listing Agreement

<u>Clause 49 V CEO/CFO certification</u>

The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:

(a) They have reviewed financial statements and the cash flow statement for

the year and that to the best of their knowledge and belief:

(i) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

(ii) these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

(b) There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company's code of conduct.

(c) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the company pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

(d) They have indicated to the auditors and the Audit committee

(i) significant changes in internal control over financial reporting during the year;

(ii) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

(iii) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the company's internal control system over financial reporting."

9. Broadly, the allegation against the Noticee can be identified in 2 parts:

   9.1 Payment of advance of Rs. 4.25 Crore to MBDL even before taking approval from the Board and failure to examine whether the transactions were carried out in good faith and prudence.

   9.2 Furnishing untrue compliance certificate for the financial year 2013-14 to the board of directors considering the financial statements were found to be misrepresented.

   Therefore, it was alleged that the Noticee failed in discharge of his duties as CFO and as a member of the Audit Committee specified under Clause 49(V) of the Listing Agreement read with Regulation 103 of the SEBI (LODR) Regulations and Section 21 of the SCRA.

10. In his reply, the Noticee has submitted that he worked in the company only for 9 months and retired in June 2014. He further, submitted that there was no payment made to MBDL during Financial Year 2013-14. He further submitted that he was not a part of the audit committee. He also submitted that he ensured that the internal approvals are taken for the transactions with MBDL and accordingly he had put up the proposal during the Board Meeting on May 03, 2014.

11. I have perused the SCN, reply and the documents available on record in the matter. It is observed that the company entered into an agreement with MBDL for the purchase of the windmill in the year 2013. On May 03, 2014, the Board granted In-principle approval for the said acquisition for a consideration of Rs. 120 Crore. On April 12, 2014, the first instalment of Rs. 5 Crore was paid to MBDL by the company as the advance for the said purchase. On November 08, 2016, the Board of the company agreed to cancel the agreement and recall the advance amount of ₹ 60 Crore from MBDL. However, it is observed that MBDL failed to repay the advance amount paid by the company for the wind mill project.

12. There is no denial that the Noticee was the Company Secretary/CFO of the company for mere 9 months.

13. From the details of bank transactions as per the pass book annexed as exhibit to the forensic auditor report, it is noted that several entries of miniscule amount for eg. Rs. 56, Rs. 62, Rs. 124 have been made between October 18, 2013 to March 31, 2014. However, it is observed that all these payments together do not add up to Rs.4,25,00,000. Further, from the exhibits enclosed with the forensic report, it is noted that in the annual report for the Financial Year 2013-14, no short term unsecured loan/advances were shown. Hence, it appears that no advance payment towards purchase of windmills was made in the Financial Year 2013-14. Thus the allegation that the Noticee has furnished untrue compliance certificate to the Board in 2013-14 does not stand established.

14. It is further alleged in the SCN that the Noticee failed in his duty as a member of the Audit Committee. In this regard, it is observed from the Annual report of 2013-14, Audit Committee consisted of two Non-Executive Independent Directors and one Non-Executive Promoter Director. However, the Noticee was not a part of the said committee. Therefore, putting an onus on the Noticee for failure, as member of the Audit Committee in identifying the fraudulent transactions does not seem appropriate in the light of the fact that the Noticee was never a part of the Audit Committee.

15. The fact that first advance payment was made to MBDL on April 12, 2014 has not been denied by the Noticee. As submitted by the Noticee, he had submitted the proposal for in-principle approval of the Board of Binny Ltd. for the Windmill project on May 03, 2014 and disclosed the same to the exchanges on the same day. Further, the disclosure made to the exchanges also states that the Board has directed the company to work out and finalise terms and conditions, modalities and valuation for its consideration and approval. Board had also approved making of advance payment upto 25% to MBDL. Further, as stated earlier, Noticee ceased to be associated with the company from June 2014. In view of these circumstances I am inclined to give

benefit of doubt to the Noticee that he has acted with prudence and good faith with respect to payment of the advance.

16. Therefore, from the discussions above, I am of the opinion that the violation of Clause 49(V) of the Listing Agreement read with Regulation 103 of the SEBI (LODR) Regulations and Section 21 of the SCRA is not established against the Noticee in the given facts of the matter. In view of the same, I am of the view that this is not a fit case for imposition of monetary penalty on the Noticee on the basis of the material available on record.

17. Since, the allegations against the Noticee are not proved, I do not find it necessary to deal with the other issues raised in para 7.

ORDER

18. In view of my findings noted in the preceding paragraphs, I hereby dispose of the adjudication proceedings initiated against the Noticee vide Show Cause Notice dated January 30, 2023 without imposition of any monetary penalty. In terms of the provisions of Rule 6 of the Adjudication Rules and Rule 6 of SCR Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date : October 25, 2024 | **Asha Shetty**
Place : Mumbai | **Adjudicating Officer**