**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER Ref. No. ORDER/NH/RJ/2022-23/20865-20867]**

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**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

**1. Mobonair Wireless Pvt. Ltd.**
**(PAN: AAICM5611Q)**

**2. Mr. Sandeep Pandey**
**(PAN: AYGPP6773R)**

**3. Mr. Sandesh Pandey**
**(PAN: BRDPS2906J)**

In the matter of **Sreshta Finvest Limited**

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## FACTS OF THE CASE

1. Securities and Exchange Board of India ("**SEBI**") conducted an investigation into the trading activities of certain suspected entities in the scrip of Sreshta Finvest Limited ("**SFL"/ "Sreshta"**) for the period from February 05, 2018 to February 27, 2018 ("**relevant period"/ "Investigation period"**). From the findings of the investigation, it was noted that, the price of the scrip of SFL at BSE Limited ("**BSE**") moved from Rs. 12.25 to a high of Rs. 15.93 and closed at Rs. 12.72 during the relevant period. It was also noted, from the price volume data, that just before the investigation period, the SFL scrip was almost illiquid with an average trading of 6,024 shares per day, whereas, it

increased to an average trading of 1,59,299 shares per day during the investigation period. In this context, it was alleged that bulk Short Message Services (**"SMS"**) were circulated during the investigation period giving 'buy' recommendation to the scrip of SFL from February 05, 2018 onwards. The said SMS were circulated in the format as HPVALUPK with message:

*"SRESTHA (539217) Buy @Upper circuit 14.82 Today & Sell Tomorrow Upper Circuit @ 16.80 Stop Loss 14.50 Qty Buy 250000 Profit= 50000 Rs"*

2. In this regard, vide letter dated June 27, 2018, SEBI asked the relevant telecommunication provider to provide details of the registered client, who had sent the aforementioned SMS to different entities during the investigation period. The said telecommunication provider, in its reply, vide email dated July 21, 2018, submitted that the said number was registered in the name of telemarketer viz. Mobonair Wireless Private Limited ("**Mobonair/Noticee No.1**"). Accordingly, Investigating Authority ("**IA"**) issued summons and emails to Noticee No. 1 and its directors viz. Mr. Sandeep Kumar Pandey (**"Mr. Sandeep"/ "Noticee No.2"**) and Mr. Sandesh Kumar Pandey (**"Mr. Sandesh"/ "Noticee No.3"**) specifically seeking the information pertaining to the circulation of such bulk SMS and whether they had any connection (personal, professional, business, etc.) with SFL and its directors. Noticee No.1, Noticee No.2 and Noticee No.3 are hereinafter collectively referred to as '**the Noticees**'.

3. It is alleged that the Noticees have failed to respond to the aforementioned summons issued by the IA. It is also alleged that the Noticees failed to provide complete information/produce documents or records to the IA and also submitted false and misleading information to the IA. In view of the above, it is alleged that the Noticees have violated the provisions of Section 11C (2) read with Section 11C (3) of the SEBI Act, 1992 and adjudication proceedings were initiated against them.

## APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Suresh B Menon was appointed as the Adjudicating Officer ("**AO**") in the matter vide communique dated September 07, 2021 under Section 19 of the SEBI Act, 1992 read with Section 15I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("**Adjudication Rules"**), to inquire into and adjudge the aforementioned alleged violations of the provisions of law by the Noticees, under the provisions of Section 15A(a) of the SEBI Act, 1992. Pursuant to the superannuation of Shri Suresh B Menon, the undersigned was appointed as AO in the instant matter vide communique dated June 07, 2022.

## SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice bearing reference no. SCN/SEBI/EAD1/SBM/KL/5603/2022 dated February 10, 2022 (**"SCN"**) was issued to the Noticees in terms of Rule 4(1) of the Adjudication Rules read with Section 15I of the SEBI Act, 1992, by the then AO, to show cause as to why an inquiry should not be held against the Noticees and why penalty be not imposed on them in terms of the provisions of Section 15A(a) of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticees. The relevant extract of the SCN is reproduced *in verbatim* below:

    i. *An email dated September 18, 2018 was sent to Mobonair/Noticee no.1, specifically seeking reason behind circulation of such SMSs and whether it has any connection (personal, professional, business, etc.) with the company/SFL and its directors.*

    ii. *The Noticee no.1 vide its email dated September 19, 2018 submitted that it acts as a telemarketer platform for bulk SMS circulation and the SMSs regarding the scrip of SFL were circulated during the investigation period on behalf of its client viz. 'Capital Life Market Research' ('CLMR'). Thereafter, necessary details were sought from CLMR, however, CLMR vide its email dated October 09, 2018 denied circulating the SMSs pertaining to the scrip of SFL and submitted that they do not know any such information pertaining to SFL or trading in the scrip of SFL. Further, CLMR vide email dated November 19, 2018, also submitted that the Logo in letter of understanding (LOU) provided by Noticee no.1 does not pertain to them and* *also the documents provided by Noticee no.1 does not bear any signature/ stamp of CLMR.*

iii. *Therefore, email dated October 15, 2018 was sent to Noticee no.1, seeking clarification and complete information in this regard and w.r.t their communications with CLMR. However, it is alleged that the Noticee no.1 failed to submit necessary information despite SEBI reminder emails dated October 22, 2018, November 12, 2018, November 15, 2018 and January 18, 2019 and also several telephonic follow ups by the concerned department of SEBI. As the Noticee no.1 failed to submit necessary information, summons dated December 24, 2019 were issued to Mobonair Wireless Private Limited/Noticee no.1 under section 11 (2) (i) and 11 C (3) of the SEBI Act, at its address i.e. Flat no. S3 C2 40, Pandav nagar, Delhi 110092 seeking various information/production of the documents before the Investigating Authority, related to the aforesaid bulk SMS circulation in the instant matter. The scanned copy of the summons was also sent to its email id viz. sXXXXXXXXX@gmail.com.*

iv. *It is observed that in reply to the summons, Noticee no. 1 vide its email dated February 10, 2020, stated "We had already replied before for this matter. We do not have any link with Srestha or its directors. We do not trade in any kind of shares." As the Noticee no.1 failed to submit complete information sought through the summons, reminder summons dated February 05, 2020, February 17, 2020 and February 27, 2020 were issued to the directors of Noticee no.1 viz. Mr. Sandesh Kumar Pandey/Noticee no.2 and Mr. Sandeep Kumar Pandey/Noticee no.3 under section 11 C (3) of the SEBI Act seeking various information/production of the documents before the Investigating Authority. However, it is alleged that Noticee nos. 2 & 3 also failed to submit the necessary information sought from them.*

v. *The queries, which were sought from the Noticees through various summons (as mentioned in the table above) regarding the circulation of bulk SMSs giving 'buy' recommendation in the scrip of SFL during the IP are summarized and reproduced hereunder:*

*a) Nature of your Occupation/business and details of your income tax returns (as filed, along with Annexures, if any) for financial years – 2016-17 and 2017-18.*

*b) What was the basis or reasoning behind circulation of such SMSs.*

*c) Who contacted you for sending SMSs related to buy recommendation in the scrip of Srestha Finvest Ltd. Provide complete details viz. name, email id, address, PAN number, contact number of the retailer/client.*

*d) Certified copy of all agreements entered into by you with said retailer/client for sending SMSs in the said scrip.*

*e) Details of present association with the said retailer/client along with their current contact details.*

*f) What was the mode of communication between you and the retailer/client? Provide documentary evidences in support of your reply. Provide certified copies of all correspondences with the said retailer/client.*

*g) Who was the point of contact between you and the retailer/client, on behalf of you and on behalf of the retailer/client?*

*h) What were the payment terms between you and the retailer/client? Provide documentary evidences in support of your reply.*

*i) What is the payment mode for the services provided by you to the retailer/client? Provide details w.r.t receipt of payment such as bank name, bank account no. etc. along with a copy of the bank statement in which the payment was received. In case payment was received in cash, you are advised to provide details of the same including the invoices issued in respect of the payments received by you.*

*j) Whether you know/knew and/or is/was ever associated/related/connected etc., in any capacity whatsoever, whether directly and/or indirectly with the promoters/directors/key* *management personnel/employees of Srestha Finvest. If yes, provide relevant details in respect of the same.*

*k) Whether you know/knew and/or is/was ever associated/related/connected etc., in any capacity whatsoever, whether directly and/or indirectly with the entities listed below or their directors/promoters. If yes, provide relevant details in respect of the same.*

*i. Mahaveer Yeswanti Bai.*

*ii. Brij Bhushan*

*iii. Renu Bhushan.*

*l) Any other relevant details/information that company would like to share in this regard.*

vi. *As the Noticees failed to submit reply to the aforementioned reminder, summons dated February 27, 2020, vide SEBI emails dated October 20, 2020 and October 27, 2020, Noticee no.1 was again advised to provide the necessary details sought through the various summons as mentioned above. In this context, the Noticees replied vide email dated October 20, 2020 and submitted that they are not associated with any one related to SFL, however, the Noticees failed to submit complete information sought through the queries in the summons. Pursuant to follow up by SEBI, Noticees vide email dated November 04, 2020, provided the name of the reseller as Mr. Manoj Chaudhary ('Mr. Manoj') and user name as Mr. Karan Talreja ('Mr. Karan') along with their contact numbers w.r.t the bulk SMSs circulated regarding the scrip of SFL during the investigation period. Further, Noticees also submitted the copy of agreement (LoU) i.e. letter of understanding entered into between itself and an entity named 'Bird Messaging' for sending the aforesaid bulk SMSs, however, without any KYC/supporting document.*

vii. *It is observed that in its earlier replies, Noticee no.1 provided the copy of agreement (LoU) with CLMR for sending the bulk SMSs in the instant matter, whereas, vide email dated November 04, 2020, Noticee no.1 submitted the copy of agreement (LoU) with a different entity named 'Bird Messaging'. Further, it is* *also observed that the aforesaid contact numbers of Mr. Manoj and Mr. Karan as submitted by Noticee no. 1 were also not reachable for calls In view of the above, it is alleged that Noticee no.1 provided incorrect/false/misleading information during the course of investigation. It is further alleged that despite giving various opportunities to Noticee no.1 and its directors through various summons and emails, the Noticees failed to provide complete information w.r.t the queries sought in the summons during the course of investigation.*

viii. *It is observed from the website of Noticee no. 1 that its services (sending bulk SMSs) can be availed by making online payments through the payment gateway viz. Instamojo Technologies Pvt. Ltd (herein after to be referred as 'Instamojo'). In this regard, vide SEBI email dated October 28, 2020, Instamojo was advised to submit details of the payments made/received in the name of Noticee no.1 or Mr. Manoj or Mr. Karan (names submitted by Noticee no.1 during the course of investigation) or anyone else on or before February 08, 2018 in respect of the order for Bulk SMSs which were circulated during the investigation period. Based on the details, it is observed that Noticee no.1 accepted and received the payments through Instamojo, however, Noticee no.1 had allegedly stated that it received payments through cash. Therefore, it is alleged that Noticee no.1 provided incorrect information during the course of investigation.*

ix. *It appeared that the bulk SMSs which were circulated giving 'buy' recommendation of SFL during the IP helped create an interest in an otherwise illiquid scrip of SFL prior to the IP. In this regard, it is further observed that the number of entities who traded in the scrip of SFL was minuscule in the trading session prior to the IP, whereas, on the first day of the SMS circulation, the number of entities increased in larger numbers. Further, it also appeared that it is a modus operando to raise up the prices of the scrip of SFL through SMS circulation and help certain entities offload their shares, after creating a buying interest in such scrips, which might otherwise be almost illiquid.*

x. *Based on the discussions above, it is alleged that Noticee no.1 and its directors viz. Noticee nos. 2 & 3 failed to provide complete information/produce documents or records to the Investigating Authority w.r.t the queries sought in the summons.*

*It is further alleged that the Noticees provided false/misleading information and thereby mislead the Investigating Authority during the course of investigation. In this context, it is alleged that due to unavailability of complete information, the bulk SMSs sender could not be identified and the connection of SMSs sender with the company i.e. SFL or its directors or any suspected entities could not be ascertained. This lack of information hampered the progress of the investigation as the Investigating Authority could not ascertain the main persons/entities behind the market manipulation and the creation of artificial interest in an otherwise illiquid scrip of SFL during the IP. In view of the above, it is alleged that the Noticees viz. Noticee no.1 and its directors violated section 11C (2) read with section 11C (3) of the SEBI Act, 1992.*

6. The Noticees vide emails dated July 09, 2022, July 20, 2022 and July 28, 2022 requested for additional time to submit their response to the SCN. In the interest of natural justice, additional time was granted to the Noticees as requested. Thereafter, vide email dated August 19, 2022, the Noticee No.3, on behalf of the Noticees, submitted the following response to the said SCN which is reproduced *in verbatim* under:

   *i. (LoU) i.e. As the Noticees failed to submit reply to the aforementioned reminder summons dated February 27, 2020, vide SEBI emails dated October 20, 2020 and October 27, 2020, Noticee no.1 was again advised to provide the necessary details sought through the various summons as mentioned above. In this context, the Noticees replied vide email dated October 20, 2020 and submitted that they are not associated with any one related to SFL, however, the Noticees failed to submit complete information sought through the queries in the summons. Pursuant to follow up by SEBI, Noticees vide email dated November 04, 2020, provided the name of the reseller as Mr. Manoj Chaudhary ('Mr. Manoj') and user name as Mr. Karan Talreja ('Mr. Karan') along with their contact numbers w.r.t the bulk SMSs circulated regarding the scrip of SFL during the investigation period. Further, Noticees also submitted the copy of* *agreement letter of understanding entered into between itself and an entity named ‘Bird Messaging’ for sending the aforesaid bulk SMSs, however, without any KYC/supporting document.*

*Sir, Mr.Manoj Chaudhary was reseller whose firm name was bird messaging, thus the agreement letter of bird messaging. Kyc supporting document of Rajeev Sharma was shared as the same was provided by Mr.Manoj.*

*ii.* *12-It is observed that in its earlier replies, Noticee no.1 provided the copy of agreement (LoU) with CLMR for sending the bulk SMSs in the instant matter, whereas, vide email dated November 04, 2020, Noticee no.1 submitted the copy of agreement (LoU) with a different entity named ‘Bird Messaging’. Further, it is also observed that the aforesaid contact numbers of Mr. Manoj and Mr. Karan as submitted by Noticee no. 1 were also not reachable for calls (details of the email communications with the Noticees is placed at* ***Annexure 5).*** *In view of the above, it is alleged that Noticee no.1 provided incorrect/false/misleading information during the course of investigation. It is further alleged that despite giving various opportunities to Noticee no.1 and its directors through various summons and emails, the Noticees failed to provide complete information w.r.t the queries sought in the summons during the course of investigation.*

*Sir, the lou with CLMR was share in instant matter cause it was there in my laptop ,and rest document has to be searched in the office and it was closed due to covid which was also informed at that time.*

*About the number being not reachable for calls is not in our hand, how can we be responsible for this? And how is it incorrect/false/misleading information.we provided the details which was there with us.*

*<u>B. Payment platform on the website of Noticee no.1</u>:*

*iii.* *It is observed from the website of Noticee no. 1 that its services (sending bulk SMSs) can be availed by making online payments through the payment gateway viz. Instamojo Technologies Pvt. Ltd (herein after to be referred as* ***‘Instamojo’).*** *In this regard, vide SEBI email dated October*

*28, 2020, Instamojo was advised to submit details of the payments made/received in the name of Noticee no.1 or Mr. Manoj or Mr. Karan (names submitted by Noticee no.1 during the course of investigation) or anyone else on or before February 08, 2018 in respect of the order for Bulk SMSs which were circulated during the investigation period. Based on the details (payments received by Noticee no.1) submitted by Instamojo* ***(Annexure 6),*** *it is observed that Noticee no.1 accepted and received the payments through Instamojo, however, Noticee no.1 had allegedly stated that it received payments through cash. Therefore, it is alleged that Noticee no.1 provided incorrect information during the course of investigation.*

*Sir ,we never said that we received payment online it was a cash deposit in our account, which was informed on call and mail both with screen shot of account slip and the sms was purchased in 2017.*

*We accept payment in various modes, and how is it observed that we accepted payment through Instamojo?even Instamojo has said that they don't have any transaction detail with Manoj Chaudharey and Karan Talreja?*

*How is it alleged that we provided incorrect information during the course of investigation.*

*Dear sir, we have provided the full and correct details available with us and to best of our knowledge,*

*It was also informed that the person who was handling Mr.Manoj Chaudhary(bird messaging) had passed away due to corona virus. We gave the full detail as whatever was available with us.*

*Further we again say that we do not have any kind of direct or indirect relation of any kind with the said company and persons.*

*We do not trade in share market.*

7. In consonance with the Adjudication Rules and in the interest of natural justice, the Noticees were provided with an opportunity of hearing in the present matter on

September 21, 2022 through Cisco webex platform. Noticee No. 3, director of the Noticee No.1, appeared on behalf of the Noticees as their Authorised Representative ("**AR**") on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by Noticees in their reply to the SCN vide email dated August 19, 2022. The AR, on behalf on the Noticees, sought further time to make additional submissions which was granted. The Noticee No. 3 made the following submissions vide email dated September 26, 2022, on behalf of the Noticees, which is reproduced *in verbatim* below:

i. *On the onset my profound apologies for the delay in the response in the matter of Shreshta Finvest Limited. It was never our intention to delay the response in it, just the duration of it as I was not able to reply on time because of my health issue.*

ii. *The details provided in the matter from us are the total details available with us.*

iii. *We are not able to get any more details as the person who was point of contact has passed in corona.*

**CONSIDERATION OF ISSUES AND FINDINGS**

8. I have carefully perused the allegations leveled against the Noticees in the SCN, the replies of the Noticees and also the documents/evidence available on record.

9. The issues that arise for consideration in the present case are:

I. Whether the Noticees violated the provisions of Section 11C (2) read with Section 11C (3) of SEBI Act, 1992?

II. If yes, whether the violations would attract monetary penalty on the Noticees under the provisions of the Section 15A(a) of the SEBI Act, 1992?

III. If yes, what should be the quantum of monetary penalty?

**ISSUE I:- Whether the Noticees violated the provisions of Section 11C (2) read with Section 11C (3) of SEBI Act, 1992?**

10. The relevant extracts of the provisions of law, allegedly violated by the Noticees, are mentioned as under:

***SEBI Act, 1992***

***Section 11C***

***Investigation***

*(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.*

11. I have noted that the IA, in the initial stage of investigation, had asked the Noticee No.1 over emails to furnish certain information regarding the circulation of bulk SMS through its platform wherein recommendation to buy the scrip of SFL was made to the receiver of the said SMS. The details of the said correspondence between the Noticee No. 1 and the IA in this regard are summarized as under:

**Table-1**

| Sl. No. | Details of Email correspondence of the IA with the Noticee No. 1 | Response from the Noticee No. 1 |
|---|---|---|
| 1. | Email dated September 18, 2018 sent to the Noticee No. 1 specifically seeking reason behind circulation of such SMS and whether it has any connection (personal, professional, business, etc.) with the scrip of SFL and its directors. | The Noticee No. 1 via email dated September 19, 2018 submitted that Mobonair acts as a telemarketer platform for bulk SMS circulation and it has no relationship with the scrip of SFL. The SMS regarding the scrip of SFL were circulated by it during the investigation period on behalf of its client viz. '*Capital Life Market Research*' **("CLMR")** and Noticee No. 1 enclosed a LOU allegedly executed between them. |
| 2. | As CLMR denied entering into any sort of business with the Noticee No. 1 w.r.t circulation of bulk SMS and the LOU so enclosed with the trailing mail was unsigned, SEBI vide email dated October 15, 2018 requested the Noticee No. 1 to provide clarification and complete information in this regard. | The Noticee No. 1 failed to submit the necessary information as sought by the IA. |
| 3. | Reminder email dated October 22, 2018 sent to the Noticee No. 1 to submit complete information. | |

12. I have noted that on account of the non-receipt of information from the Noticee No. 1 over the emails, summons were issued to the Noticees by the IA, under Sections 11 (2) (i) and 11 C (3) of the SEBI Act, 1992. The details pertaining to the date of issuance of the summon, the service of summon and the compliance of the Noticees with the said summon are provided in the table below:

**Table-2**

| Sl. no. | Date of Issuance | Summon Particulars | Delivery Status (Yes / No) / Particulars | Compliance (Yes / No) |
|---|---|---|---|---|
| 1. | December 24, 2019 | Summon to Mobonair Wireless Pvt. Ltd./ Noticee No.1 | Yes | No |
| 2. | February 05, 2020 | Summon to Mr. Sandesh Kumar Pandey/Noticee No.2 | Yes | No |
| 3. | February 17, 2020 | First Reminder of Summon to Mr. Sandesh Kumar Pandey/Noticee No.2 | Yes | No |
| 4. | February 27, 2020 | Second reminder of Summon to Mr. Sandesh Kumar Pandey/Noticee No.2 | Yes | No |
| 5. | February 05, 2020 | Summon to Mr. Sandeep Kumar Pandey/Noticee No.3 | Yes | No |
| 6. | February 17, 2020 | First Reminder of Summon Mr. | Yes | No |

| | | | | |
|---|---|---|---|---|
| | | Sandeep Kumar Pandey/Noticee No.3 | | |
| 7. | February 27, 2020 | Second reminder of Summon Mr. Sandeep Kumar Pandey/Noticee No.3 | Yes | No |

13. On perusal of the material on record and the aforesaid Table - 2, it is noted that the Noticee No. 1 on 1 (one) occasion viz. summon dated December 24, 2019, the Noticee No. 2 on 3 (three) occasions, viz. summon dated February 05, 2020, February 17, 2020 and February 27, 2020, and the Noticee No. 3 on 3 (three) occasions viz. summon dated February 05, 2020, February 17, 2020 and February 27, 2020, have failed to comply with directions of the summon issued by the IA despite the said summon being duly served. Further, I noted that nowhere in their course of submission, the Noticees have disputed the service of the abovementioned summons as evident from their response to the SCN dated August 19, 2022.

14. It is also observed that in the interest of proper investigation, the IA sent a reminder vide email dated October 20, 2020 to the Noticees whereby requesting them to furnish necessary information as mentioned in the foresaid summon. The Noticee No. 1, vide email dated October 20, 2020, replied to the said mail and submitted that Noticee No. 1 was not associated in any manner with the scrip of SFL. Further, it was stated in the said mail that the bulk SMS in issue in the present matter were "purchased by a reseller/client named 'Manoj Chaudhary' and circulated by a user named 'Karan Talreja'". Further, the contact details of the said reseller, Mr. Manoj Chaudhary and the alleged user, Mr. Karan Talreja were provided by the Noticee No. 1 in the said email.

15. I have noted that IA has sent another email dated October 27, 2020 to the Noticee No. 1. In the said email, the IA apprised the Noticee No. 1 about the fact that contact numbers of the said reseller, Mr. Manoj Chaudhary and the user, Mr. Karan Talreja which were submitted by the Noticee No. 1 were unreachable. In this context, the

Noticees were advised to submit point wise response to the queries sought in the earlier summon issued to them as mentioned in Table - 2.

16. The Noticee No. 1, thereafter, responded through an email dated November 04, 2020. I have perused the said response of the Noticee No. 1 dated November 04, 2020 and relevant observations in this regard are given below:

**Table-3**

| Sl. No. | Queries | Responses of the Noticee No.1 *in verbatim* received vide email dated November 04, 2020. | Observation |
|---|---|---|---|
| 1. | *Nature of your Occupation/business and details of your income tax returns (as filed, along with Annexures, if any) for financial years – 2016-17 and 2017-18.* | *We are an end-to-end solution provider to digital marketing, bulk SMS services, Bulk voice calling services, website development and branding.* | Details of the Income tax returns for financial years 2016- 17 and 2017-18 were not adduced. |
| 2. | *What was the basis or reasoning behind circulation of such SMSs.?* | *The SMSs were not circulated from our side, it was sent from a user of one reseller* | -- |
| 3. | *Who contacted you for sending SMSs related to buy recommendation in the scrip of Srestha Finvest Ltd. Provide complete details viz. name, email id, address, PAN number, contact number of the retailer/client?* | *It was not in our information that what messages are being sent whether it is Sreshta Finvest or any other. Details of reseller clients are as follows:*<br>*<u>Reseller</u>*<br>*Manoj Chaudhary*<br>*MXXXXXXXXXXX@gmail.com*<br>*9XXXXXXXX1* | -- |

| | | | |
|---|---|---|---|
| | | *Indore*<br>*<u>User</u>*<br>*Karan Talreja*<br>*TXXXXXXXXXX@gmail.com*<br>*7XXXXXXXX6*<br>*Indore, Madhya Pradesh 452001* | |
| 4. | *Certified copy of all agreements entered into by you with said retailer/client for sending SMSs in the said scrip.* | *Documents Attached in email* | -- |
| 5. | *Details of present association with the said retailer/client along with their current contact details.* | *We don't have any contact from the said client for long time.* | Present contact details of the retailer/client were not adduced. |
| 6. | *What was the mode of communication between you and the retailer/client? Provide documentary evidences in support of your reply. Provide certified copies of all correspondences with the said retailer/client.* | | Documentary evidences regarding mode of communication between the Noticee No. 1 and the retailer/client were not adduced. |
| 7. | *Who was the point of contact between you and the retailer/client, on behalf of you and on behalf of the retailer/client?* | *Some tele-caller.* | The point of contact between the Noticees and the retailer/client was not adduced. |

| | | | |
|---|---|---|---|
| 8. | *What were the payment terms between you and the retailer/client? Provide documentary evidences in support of your reply.* | *Payment was paid in cash in our bank account.*<br>*Transaction posting date - September 28, 2017*<br>*Transaction value date - September 28, 2017*<br>*Description - Cash Deposit Branch*<br>*Input Branch – Preet Vihar*<br>*Credit amount – Rs. 1,10,000*<br>*Reconciliation reference M108793* | -- |
| 9. | *What is the payment mode for the services provided by you to the retailer/client? Provide details w.r.t receipt of payment such as bank name, bank account no. etc. along with a copy of the bank statement in which the payment was received. In case payment was received in cash, you are advised to provide details of the same including the invoices issued in respect of the payments received by you.* | | Documentary evidence/bills in respect of the receipt of payment of Rs. 1,10,000/- in cash by the Noticee No. 1 was not adduced. |
| 10. | *Whether you know/knew and/or is/was ever associated/related/connected etc., in any capacity whatsoever, whether directly and/or indirectly with the promoters/directors/key management personnel/employees of SresthaFinvest. If yes,* | *No, we do not have or had any kind of association with Sreshta Finvest* | -- |

| | | | |
|---|---|---|---|
| | *provide relevant details in respect of the same.* | | |
| 11. | *Whether you know/knew and/or is/was ever associated/related/connected etc., in any capacity whatsoever, whether directly and/or indirectly with the entities listed below or their directors/promoters. If yes, provide relevant details in respect of the same.*<br>*a) Mahaveer Yeswanti Bai.*<br>*b)Brij Bhushan*<br>*c)Renu Bhushan.* | | -- |
| 12. | *Any other relevant details/information that company would like to share in this regard.* | *We do not trade in share market. These are all the detail I could sorry for the late response as its old details hard to find with office closed.* | -- |

17. I have noted, as evident from Table 3, that the Noticee No. 1, in its reply dated November 04, 2020, has, *inter alia*, failed to submit the following document/information which was sought by the IA:
    a. Income tax returns for financial years 2016-17 and 2017-18,
    b. documentary evidences in respect of the mode of communication between the Noticees and the retailer/client who were responsible for circulating bulk SMS,
    c. documentary evidences/bills in respect of the receipt of payment of Rs. 1,10,000/- in cash by the Noticee No. 1 which was made by the alleged client,
    d. contact details of the retailer/client during the time of Notice
    e. point of contact between the Noticees and the retailer/client.

18. With regards to allegation of submission of false/incorrect information by the Noticees, I have observed that the Noticee No. 1 has submitted two different clients' name to the IA during the course of investigation. The Noticee No. 1 has initially stated the name of client as one 'CLMR' but later on, it has mentioned the name of client as one 'Bird Messaging'. The Noticee No. 1 has attributed the said inconsistency to the lack of access to office on account of COVID lockdown. Thus, it can be observed that the Noticee No. 1 has submitted incorrect information and the reasoning provided by the Noticee No. 1 does not absolve him from the allegation of submission of incorrect information regarding the name of the client.

19. I have observed that the SCN has alleged that the contact number of the client/reseller, Mr. Manoj Chaudhary and the user, Mr. Karan Talreja furnished by the Noticees were not reachable. It is further alleged in the SCN that no response was received from the email ids of the client viz. Manoj Chaudhary and the user viz. Mr. Karan Talreja which were provided by the Noticees. Therefore, it was alleged in the SCN that the Noticees have not submitted correct contact details of Mr. Manoj Chaudhary and Mr. Karan Talreja. In this regard, I note that apart from the foregoing assertions in the SCN/Investigation Report, there is no material on record such as customer application form of phone numbers, details from the email service provider to show that the contact details of Mr. Manoj Chaudhary and Mr. Karan Talreja so furnished by the Noticees were correct or belonged to some other person (s).

20. Further, it is alleged in the SCN that the Noticee No.1 has submitted to the IA that it received payment in cash for its bulk SMSs services, despite accepting and receiving the payment through Instamojo (online payment gateway). In this context, it is alleged that the Noticee No. 1 has submitted false information regarding the mode through which payment was received for its bulk SMSs services. On perusal of the submissions of the Noticees, I note that the Noticee No.1 has clearly stated that in the instant case w.r.t providing service of bulk SMS, the payment was received in cash. Further, the Noticee No.1 has never denied the fact that it accepts and receives payment through online

mode i.e. Instamojo in its regular course of business. Therefore, the allegation that the Noticees provided false information with regard to the mode of payment received in the instant case does not stand established.

21. In this background, I have noted that sub- section (2) of Section 11C of the SEBI Act, 1992 casts duty on the persons mentioned therein to preserve and to produce to the IA or any person authorized by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, the intermediary or such person, which are in their custody or power. Sub-section (3) of Section 11C of the SEBI Act, 1992 authorizes the IA to call for the information, which in his views is relevant or necessary for the purposes of its investigation and furnishing of the information as desired by the IA is obligatory.

22. It is the duty, responsibility and obligation of every person from whom information is sought to fully co-operate with the IA and promptly produce all documents, records, information, etc., to the IA. If the summons issued by the IA are allowed to be flouted and not taken seriously then SEBI, as the regulator of the securities market, will find it challenging to discharge its statutory obligations effectively in protecting the interests of the investors and safeguarding the integrity of the securities market.

23. In the instant case, it is already established the Noticees have failed to respond to the summon on multiple occasions issued by the IA. Similarly, I note that the Noticees failed to comply with the email reminders in respect of submitting complete information as sought from it by the IA. It was also established that though Noticee No. 1 responded to the summon of the IA via emails dated February 10, 2020 and November 04, 2020, the said responses were delayed and incomplete. In this regard, it is pertinent to mention the judgment of Hon’ble Supreme Court in the case of **DKG Buildcon Private Limited v. The Adjudicating and Enquiry Officer, SEBI, Civil Appeal No.1742 of 2009** dated September 14, 2022 wherein it was held as follows:

*"… The appellant had failed to produce the documents and information as required vide summons dated 01.04.2003 and 09.04.2003 respectively and had, thus, affected the conduct of the investigation. The appellants 'compliance, if any, to one summons dated 02.07.2001 and 26.07.2001 respectively, in no way, absolves the appellants of their responsibility to comply with the summons issued thereafter on 36 multiple dates. The appellants were bound to fully co-operate with the Investigating Authority and promptly produce all documents, records, and information as were required for the investigation from time-to-time. In failing to do so, the appellants clearly obstructed and hindered the investigation. …"*

In light of the foregoing, I note that the Noticee is obliged to reasonably respond to all emails or summons issued by the regulator and promptly produce all documents, records, and information as were required for the investigation from time-to-time. However, the Noticees in the present case have failed to do and thus hampered the investigation.

24. In the light of the foregoing observations, I am of the considered view that the Noticees have violated Sections 11C(2) and 11C(3) of SEBI Act, 1992.

**ISSUE II. If yes, whether the violation would attract monetary penalty on the Noticees under the provisions of the Section 15A(a) of the SEBI Act?**

25. From the discussion in the Issue No. I, it is noted that the Noticees have violated the mandate of Sections 11C (2) and 11C(3) of SEBI Act, 1992. Accordingly, the Noticees are liable for imposition of penalty in terms of Section 15A (a) of the SEBI Act, 1992 for their failure. The applicable provisions are reproduced below for reference:

***15A. Penalty for failure to furnish information, return, etc.—****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 3: If yes, what should be the quantum of monetary penalty?**

26. While determining the quantum of penalty under Section 15A (a) of the SEBI Act, 1992, the following factors stipulated in Section 15J of the SEBI Act, 1992 have to be given due regard:

    i. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
    ii. the amount of loss caused to an investor or group of investors as a result of the default; and
    iii. the repetitive nature of the default.

27. I have taken note of the fact that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees or the loss suffered by investors as a result of the Noticee's default. I have also taken into account that there is nothing on record to show that the Noticees were subjected to any other proceedings by the SEBI prior to the instant proceeding.

28. At this juncture, reference is made to the judgment of the Apex Court in the case of **Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari, (2019) 5 SCC 90** wherein it was held as under:

    *"… we are inclined to take the view that the provisions of clauses (a), (b) and (c) of Section 15-J are illustrative in nature and have to be taken into account whenever such circumstances exist. But this is not to say that there can be no other circumstance(s) beyond those enumerated in clauses (a), (b) and (c) of Section 15-J that the Adjudicating Officer is precluded in law from considering while deciding on the quantum of penalty to be imposed. …"*

29. In this background, I have taken note of the mitigating circumstances submitted by the Noticees in the course of the hearing and written responses. The Noticees have attributed their failure to comply with the summon to the ongoing health issues of Noticee No. 3. Further, they have submitted that Mr. Manoj Chaudhary, the reseller and the person who was handling this matter has died due to Corona which has hampered their ability to provide a complete response to the IA. The Noticees has further mentioned that they have faced difficulty in collecting relevant documents as sought by IA in the light of COVID lockdown. In this regard, I have taken note of the fact that the Noticees have neither produced the medical record of the Noticee No. 3 nor they have submitted the death certificate of Mr. Manoj Chaudhary to substantiate their submissions.

30. Having considered the nature and gravity of the violation established in the preceding paragraphs as well as the submission that due to COVID the Noticees could not provide timely response, I am of the considered view that a penalty of Rs. 2,00,000/- (Two lakhs only) to be paid jointly and severally by the Noticee Nos. 1, 2 and 3 in terms of Section 15 A (a) of the SEBI Act, 1992 for violation of the Section 11C (2) and 11C (3) of SEBI Act, 1992 will be commensurate with the violations committed by the Noticees.

## ORDER

31. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15 I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000/- (Two lakhs only) to be paid jointly and severally by the Noticee No. 1, Noticee No. 2 and Noticee No. 3 in terms of Section 15A (a) of the SEBI Act, 1992 for violating the provisions of Sections 11C (2) and 11C (3) of SEBI Act, 1992**.**

32. Noticees shall remit / pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of "SEBI- *Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website

www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

33. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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|---|---|
| 1. Case Name: | |
| 2. Name of payee: | |
| 3. Date of payment: | |
| 4. Amount paid: | |
| 5. Transaction no.: | |
| 6. Bank details in which payment is made: | |
| 7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details) | |

34. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.'

**Date: October 31, 2022** **N HARIHARAN**

**Place: Mumbai** **ADJUDICATING OFFICER**