BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/GR/RR/2020-21/10575)

UNDER SECTION 15 - I OF THE 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:

SL. No.	Name of the Entity	PAN
1	Ashish Pandey	BIPPK2228G

In the matter of Ricoh India Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") initiated adjudication proceedings under Section 15A(a) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act") against Ashish Pandey (hereinafter referred to as 'the Noticee") in the matter of Ricoh India Ltd. (hereinafter referred to as "Ricoh/the Company). Adjudication proceeding was initiated against the Noticee for alleged violation of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned has been appointed as Adjudicating Officer vide Order dated March 13, 2020 under Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of Sections 15A(a) of the SEBI Act for the aforesaid alleged violation by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated December 23, 2020 (hereinafter referred to as 'SCN') was issued by the undersigned on the Noticee at its latest known address available on record. The SCN was issued to the Noticee under the provisions of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on the Noticee under the provisions of Sections 15A(a) of the SEBI Act, for the aforesaid alleged violations. However, the SCN returned undelivered. Subsequently, the SCN was served upon the Noticee through public Notice on February 9, 2021 in two newspapers, namely, Hindustan Times (English) and Nav Bharat Times (Hindi), both publications in Delhi Edition/Circulation.

4. The fact of the case and the allegations made in the SCN are summarised below:

    a) SEBI conducted an investigation in Ricoh during the period April 1, 2012 to March 31, 2016 to ascertain whether there was any violation of provisions of SEBI Act, 1992 and/or SEBI (PFUTP) Regulations, 2003.

    b) SEBI observed that the statutory auditors of Ricoh i.e., BSR & Co., LLP conducted limited review of the financial statements of the Company for quarter and half-year ended September 30, 2015 and it had raised suspicions regarding certain transactions between Ricoh and its customers and vendors. Further, the statutory auditor had recommended review of these transactions.

    c) The Audit Committee of Ricoh appointed M/s. Shardul Amarchand Mangaldas & Co., Advocates & Solicitors, who in turn appointed Pricewaterhouse Coopers Private limited, India (PWC) to conduct forensic audit of the books of accounts of Ricoh for the period April 1, 2015 to September 30, 2015. PWC submitted its report on preliminary findings on April 20, 2016, pursuant to which, on the same day, Ricoh informed SEBI that its financial statements for quarters ended June 30, 2015 and September 30, 2015 did not reflect true and fair view of its state of affairs. Ricoh, vide letter dated July 19, 2016, disseminated to BSE that the unaudited estimate of the losses incurred for the financial year 2015-16 was Rs. 1123 crore.

d) Subsequently, SEBI, vide interim Order dated February 12, 2018, restrained seven officials of Ricoh from accessing securities market. In addition, vide corrigendum dated March 6, 2018, SEBI *inter alia* directed BSE to appoint an independent auditor/audit firm for conducting a detailed forensic audit of the books of accounts of Ricoh. BSE appointed CJS Nanda & Co. for conducting the forensic audit of the books of accounts of Ricoh.

e) As the forensic audit report submitted by CJS Nanda & Co was insufficient in terms of evidence, SEBI appointed Pipara & Co. LLP on February 20, 2019 to conduct forensic audit into the books of accounts of Ricoh and Fourth Dimension Solutions Limited (FDSL) for the financial year ending March 31, 2013 to financial year ending March 31, 2018. FDSL was a vendor and customer of Ricoh.

f) Pipara & Co. LLP submitted its final forensic audit report dated October 25, 2019 to SEBI. It was observed that the books of accounts of Ricoh had been manipulated since FY 2012-13. Some of the major observations from the Forensic Audit Report are as stated below:

   i. <u>Sales recorded before receipt of order and subsequent write offs:</u> As per practice followed by Ricoh, on receiving an Order from a customer, an Order Sales Form (OSF) was first created which was entered into system. Subsequently, Sales Order was executed by the Company in accordance with OSF.

It was observed that Ricoh, in 29 instances, had recorded sales amounting to Rs 438.98 crore before the OSF, i.e., sale was recognized before the order was actually received and executed. In addition, it was observed from books of accounts of Ricoh that funds receivable from certain entities (worth Rs 171.59 crore) was written off in FY 2016-17. The said entities were directly or indirectly connected to Mr. Amalendu Mukherjee who was MD of FDSL.

ii. Ricoh IT Services (RITS) partner Program: Ricoh had initiated RITS Partner Program for its IT Services Business under which it registered only 3 partners, namely, Redhex, Vedavaag and FDSL. Redhex and Vedavaag are related to Mr. Amalendu Mukherjee and FDSL. It was observed that RITS Partner Program was designed to unduly benefit FDSL and entities connected with Amalendu Mukherjee.

iii. UID Units: During FY 2013-14, Ricoh purchased 3850 Unique Identification (UID) kits from FDSL on June 13, 2013 for Rs 36.37crore. Out of 3850 UID kits, 2700 kits were rented out to Vedavaag on June 12, 2013 (rental income from Vedavaag was Rs 27.12 crore). Inventories were rented out to Vedavaag one day before the same was purchased from FDSL. Subsequently, Ricoh sold 3850 units for Rs 23.01 crore to AS international and Connect Residuary Private Limited who are connected with FDSL. Thereafter, Ricoh leased 4650 kits from Connect and paid an amount of Rs 65.71 crore towards lease dues. From the above transactions, Ricoh incurred a financial loss of Rs 55.61 crore where the corresponding beneficiaries were FDSL and entities connected to FDSL.

iv. Misrepresentation of the lease transaction to the Board of Ricoh: Ricoh entered into the Master Rental Agreement with Connect on December 6, 2013 which is several months before the approval from the Board was taken in Board meeting held on September 25, 2015. The first rental schedule with Connect was on January 29, 2014 which was eight months before the board approved the matter. From the Board resolution and minutes of meeting dated September 25, 2015, it was observed that the Board was not intimated that Ricoh had already purchased UID kits from FDSL at a cost of Rs. 36.37 crore and that it intended to do sale and lease back transaction from Connect.

v. Preferential treatment to FDSL through Vendor Financing: From the books of accounts of Ricoh, it was observed that FDSL was the sole beneficiary of Vendor Financing facility for the purpose of procurement of goods and services from FDSL. Ricoh made payment to FDSL through vendor financing from Bank of America and HSBC bank amounting to Rs 244 crore and Rs 311 crore respectively during FY 2014-15 and FY 2015-16.

vi. Diversion of funds of Ricoh to RNMT: On September 9, 2014, Ricoh transferred Rs 10 crore to Rudra Enterprises. Out of that, Rudra Enterprises transferred Rs 1 crore to RNM IT Solutions Private Limited (RNMT). From bank statement of RNMT, it was observed that on April 9, 2015, Rs 4 crore was transferred to RNMT from FDSL. Wives of Mr Amalendu Mukherjee, Mr Arvind Singhal and Mr Anil Saini were directors of RNMT and received funds which were diverted from Ricoh.

vii. Instances where sales were made by FDSL without having the requisite inventory: On analyzing stock summary of FDSL from FY 2013-14 to FY 2016-17, many instances of negative stock were observed. Negative inventory can only arise in the books of accounts when sales of products are being made which have not been purchased or which are not actually backed by current inventory. This indicates that the sales made by FDSL were fictitious.

g) From the facts of the case, it is observed that Ashish K. Pandey (Noticee) was company secretary of FDSL and an authorized person to provide the data for the Forensic Audit by Pipara & Co. LLP and CFO in 2017-18. It is alleged that the Noticee, did not provide data and information with respect to FDSL for 2017-2018 to the forensic auditor despite several reminders. Further, SEBI, on April 3, 2019 directed the Noticee to cooperate with the forensic auditor in providing information. However, its alleged that the Noticee did not cooperate with the forensic auditor for sharing information pertaining to FDSL.

h) In view of the above failure of the Noticee to provide information to the forensic auditor appointed by SEBI, it has been alleged that the Noticee has violated Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act, 1992

5. SCN was issued to the Noticee at its latest known address available on record. However, the SCN returned undelivered and the same was served upon the Noticee through public Notice on February 9, 2021 in two newspapers, namely, Hindustan Times (English) and Nav Bharat Times (Hindi), both publications in Delhi Edition/Circulation. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, Noticee was granted an opportunity of personal hearing on February 23, 2021 through the said public Notice. In addition, the Noticee was provided an opportunity for submitting its reply to the SCN. However, Noticee neither submitted any reply to the SCN refuting the allegations made against it in the SCN nor availed the opportunity of personal hearing before me.

6. In view of the above, I am of the view that principles of natural justice have been duly complied with and sufficient opportunity was also granted to the Noticee to reply to the SCN and appear for hearing.

7. In the facts and circumstances of this case, I am of the view that the Noticee has nothing to submit and in terms of Rule 4(7) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 the matter can be proceeded ex-parte on the basis of material available on record.

   In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed that, *"......the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*.

   Further, the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, and observed that: *"........... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

   Additionally, the same position reiterated by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Dave Harihar Kirtibhai Vs SEBI (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:

   "...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say

the least. Hence, this case is being decided on basis of material before this Tribunal..."

8. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly I deem it appropriate to proceed against the Noticee ex-parte, based on the material available on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. I have taken into consideration the facts and material available on record wherein it is alleged that the Noticee has failed to comply with provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act.

I have the following issues for consideration, viz.,

I. *Whether the Noticee has violated the provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act?*
II. *Does the violation, if any, attract monetary penalty under Section 15 A (a) of SEBI Act.?*
III. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

Issue I: Whether the Noticee has violated the provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act?

10. Before moving forward, it is pertinent to refer to the relevant provisions which reads as under:

Relevant provisions of SEBI Act, 1992

Functions of Board.

11.(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;]

Investigation

11C.(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.

11C.(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

Power to adjudicate.

15-I.

(1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G,15H, 15HA and 15HB, the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

11. From the fact of the case, I find that during February 2019, SEBI had appointed Pipara & Co LLP as the forensic auditor with respect to the financial statements of Ricoh India Limited and Fourth Dimension Solutions Limited (FDSL) for the financial years ending March 31, 2014 to march 31, 2018.

12. It is observed that FDSL was a vendor and customer of Ricoh. Ashish K. Pandey (Noticee) was company secretary of FDSL and CFO in 2017-18. He was an authorized person to provide the data for the Forensic Audit by Pipara & Co. LLP.

13. The allegation made against the Noticee is that he failed to provide information to the forensic auditor appointed by SEBI. From the material available on record, it is observed that the forensic auditor sought various information from Noticee including the following:

    a) Service Invoices pertaining to year FY 2013-14 & 2014-15
    b) Invoices, Delivery Challans, Purchase Orders received from customers, Sales Order Form, purchase order from the vendor, etc.
    c) all files related to purchase documents
    d) Tally data pertaining to FY 2017-18
    e) financial statements of the group companies (individually, duly signed by the auditors & management)

f) the access/ clone of the computer system of the director and KMPs
g) Shareholding pattern of the company during the period of scope of Audit
h) Bank accounts details of the directors and KMPs of FDSL
i) Copy of Rent Agreements, Board Resolution for signing Rent Agreements & Board Resolution for undertaking the rent premises for FY 2013-14 till FY 2016-17.

14. It is observed that with regard to the information sought, the forensic auditor had sent reminders to the Noticee. In addition, from the material available on record, I find that on March 27, 2019 and April 3, 2019 SEBI advised the Noticee to co-operate in the process of forensic audit and provide all the information sought by the forensic auditor. It was further intimated by SEBI that if the Noticee fails to co-operate and provide relevant information to forensic auditor, appropriate action would be initiated against it. However, despite the above reminders/advisory, the Noticee failed to furnish information/documents sought by the forensic auditor. Further, the Noticee has not produced any reply before me refuting the allegations lavelled against it in the SCN.

15. I also find from the records that the Noticee has been charged for violating the provisions of Section 11C (2), (3) of the SEBI Act. After going through the provisions specified under Section 11C (2) of the SEBI Act, I note that the said provision requires 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 (IA) 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.

    From the provisions of Section 11C (3) of the SEBI Act, I observe that said provisions empowers the Investigating Authority to call for information, details, documents etc. by issuing summons as needed for the purpose of investigation.

From the above, it is clear that under of Section 11C (2), the persons/entity mentioned under the provision are mandated with a twin duty i.e., (a) to preserve all the books, registers, other documents and record of, or relating to, the company/ the intermediary and (b) to produce the same to the IA as and when demanded/called for by the IA. Section 11C (3) on the one hand empowers the IA to call for records, books or other documents which he views or finds relevant or necessary for the purposes of investigation and on the other hand also imposes a duty on the person/entity concerned to furnish such books, records and/or information to the IA.

On a plain reading, it may be observed that Section 11C (2) and (3) are complementary to each other in so far as one sub-section empowers IA to requisition information while the other sub-section creates a liability in the form of duty to preserve, produce and furnish information.

Once information is called for by IA under Section 11C(3), it necessarily commands performance of duty by the persons/entity who has been called upon to furnish such information failing which it results in violation of both Sections 11C(2) as well as 11C(3).

I note that not furnishing the documents/ records/ information requested by SEBI has potential to hamper the investigation. In this regard, in the matter of Gennex Laboratories Ltd. Vs. SEBI (Appeal No. 172/2011), the Hon'ble SAT has held that *"non-compliance to summons and consequent non furnishing of information hampers investigation by statutory authorities and it acts as a severe handicap in arriving at just and reasonable conclusion by the statutory authorities within a reasonable period of time."*

In view of the above observations, I am of the view that by not providing information sought by forensic auditor appointed by SEBI, the Noticee has violated the provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act.

Issue II: Does the violation, if any, attract monetary penalty under Section 15 A (a) of SEBI Act.?

The provisions of Section 15A (a) of the SEBI Act, 1992 read as under:

<u>SEBI Act 15A - "Penalty for failure to furnish information, return, etc. –</u>

If any person, who is required under this Act or any rules or Regulations made there under-
(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*

16. In view of the foregoing, I am convinced that the Noticee is liable for monetary penalty under Section 15A(a) of the SEBI Act, 1992.

Issue III : If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

17. While determining the quantum of penalty under Section 15A(a) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-.

Factors to be taken into account by the adjudicating officer.

Section 15J - While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b) the amount of loss caused to an investor or group of investors as a result of the default;

c) the repetitive nature of the default.

18. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticee. In the present matter, I note that the Noticee has violated the provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act.

ORDER

19. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticee:

Noticee	**Violation**	**Penal Provisions**	**Penalty (Rs.)**
Ashish Pandey (PAN: BIPPK2228G)	Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act	Section 15A(a) of the SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakh Only)

I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

20. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by

e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

21. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

22. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

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	

23. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

24. 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: February 24, 2021	**G RAMAR**
Place: Mumbai	**ADJUDICATING OFFICER**