BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/BS/DS/AO/ 108-114 /2017-18]

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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

Sr. No.	Name of the Entity	PAN No.
1.	Reliance Industries Limited	AAACR5055K
2.	Reliance Utilities and Power Private Limited	AABCR3893B
3.	Reliance Ports and Terminals Limited	AABCR3878B
4.	Uditi Mercantile Private Limited	AAACU3450F
5.	Ekansha Enterprise Private Limited	AABCE4798B
6.	Saumya Finance & Leasing Co. Private Limited	AAACS5558A
7.	Reliance Infocomm Infrastructure Private Limited	AAACT4527E

In the matter of Reliance Industries Limited

FACTS

1. While examining issue of privately placed debentures (PPD-IV) and (PPD-V) by Reliance and its conversion into equity shares in the year 2007, SEBI required Reliance

Industries Limited, Reliance Utilities and Power Private Limited, Reliance Ports and Terminals Limited, Uditi Mercantile Private Limited, Ekansha Enterprise Private Limited, Saumya Finance & Leasing Co. Private Limited and Reliance Infocomm Infrastruture Private Limited (hereinafter collectively referred to as Noticees) to submit information on categorization of Directors i.e. Independent Directors, Nominee Director, Non-Executive Directors etc. It was alleged that the Noticees failed to submit the relevant information. Hence, adjudication proceedings were initiated against the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI vide order dated October 30, 2015 appointed Shri S.V. Krishnamohan to inquire and adjudge under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules'), under Section 15A(a) of the SEBI Act, the alleged failure on the part of the Noticees to furnish information sought by SEBI under Section 11(2)(i) of SEBI Act.

3. Subsequently, vide order dated September 15, 2017, the undersigned was appointed as the Adjudicating Officer in the place of Shri S. V. Krishnamohan.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice dated November 26, 2015 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15I of SEBI Act, 1992 for the violations as specified in the SCN.

5. The SCN stated that the reply shall reach within 15 days from date of receipt of the SCN, failing which it shall be presumed that Noticees have no reply to submit and the matter shall be proceeded on the basis of material available on record. The said SCN was sent via Speed Post and Hand Delivery (wherever applicable) and were served on the Noticees. The proof of service is available on record.

6. Vide separate letters dated December 09, 2015, Noticees sought time to file reply to the SCN. Subsequently, vide letters dated December 11, 2015, Noticees were granted time till December 30, 2015 to submit their replies.

7. Vide separate letters dated December 29, 2015, Noticees sought further time to reply which was acceded to and the Noticees were informed accordingly vide letters dated January 01, 2016. Further vide the same letters, it was also informed Uditi Mercantile Pvt. Ltd., Ekansha Enterprise Pvt. Ltd. and Saumya Finance & Leasing CO. Pvt. Ltd., have amalgamated with Reliance Industries Holding Pvt. Ltd.

8. Vide separate letters dated January 20, 2016, Noticees filed reply to the SCN and made following submissions:

   i. *Noticees were under the bonafide belief that the information requested by SEBI was not immediately required as the investigation had been concluded and hence no information will be required by SEBI for the purpose of investigation in the matter.*

   ii. *The consent application in the matter is still pending.*

   iii. *Further, Hon'ble SAT vide its order dated April 08, 2013 in Appeal No. 16 of 2012 with 22 of 2012 had observed as follows:*

   > *"once the consent proceedings are over, it is for the adjudicating officer to give its ruling on the preliminary objections taken by the appellants… The appeals are disposed of with a direction that once the Board has taken a view on the consent proceedings preferred by the appellants, the adjudicating officer of the Board may decide the preliminary objections taken by the appellants in the adjudication proceedings in accordance with law."*

   iv. *Accordingly, RIIL understood that the proceedings in the form of SEBI's letter dated April 23, 2010 and the Show Cause Notice dated February 24, 2011 stand suspended pursuant to SAT's directions till the Consent Applications are disposed of.*

   v. *The said consent applications are still pending and are being currently heard by the Internal Committee.*

vi. *It is under these circumstances that RIIL has not furnished the information required by SEBI vide its letter dated January 04, 2012.*

9. Vide notice dated February 11, 2016, an opportunity of personal hearing was also granted to the Noticees on February 25, 2016. The Authorized Representatives (ARs) of the Noticees appeared for the hearing and reiterated the submissions made vide letter dated January 20, 2016. The ARs of the Noticees also submitted that Noticees were always willing to provide the information and vide letter dated February 24, 2016 submitted the information sought by SEBI vide letter dated January 04, 2012.

10. Subsequent to my appointment as the Adjudicating Officer, Vide Hearing Notice dated December 11, 2017, Noticees were provided another opportunity of personal hearing on December 19, 2017. However, Noticees requested to adjourn the aforesaid hearing on account of non-availability of the Senior Counsel. Subsequently vide Hearing Notice dated December 18, 2017, the Noticees were granted another opportunity of personal hearing on January 15, 2018. The ARs of the Noticees appeared before me for the hearing and reiterated the submissions made vide letters dated January 20, 2016, February 24 & 25, 2016. Subsequently, vide letter dated February 15, 2018, Noticees also filed written submissions in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

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

   a. Whether Noticees have violated the provisions of Section 11(2)(i) of SEBI Act?
   b. Does the violation, if any, attract monetary penalty under Section 15A(a) of SEBI Act, 1992?

12. It would be appropriate here to refer to the aforesaid provision of the SEBI Act which reads as under:

SEBI Act, 1992

Section 11(2)(i)

Functions of Board.

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

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

Findings

13. The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticees had violated the provisions of Section 11(2)(i) of the SEBI Act?

14. It is submitted by the Noticees that the since the investigation report in the matter of issuance of PPD – IV and PPD V was already submitted to Hon'ble Securities and Appellate Tribunal (SAT), the purpose for which the information was asked for was not clear. Further, the said information was already available in the public on MCA website, therefore, the non-furnishing of the information did not stone-wall any investigation.

15. It is noted from the documents available on record and the chronology of events that the investigation report was submitted before Hon'ble SAT on October 29, 2012. Thus, the contention of the Noticees that they did not stone-wall the investigation assumes credence viewed in the facts and circumstances of the case.

16. Furthermore, it is noted that the Noticees had filed consent applications in respect of the ensuing SCN dated February 24, 2011 issued in respect of the violations found in the investigation conducted by SEBI. This has been cited by the Noticees as the reason for not responding to the letters issued by SEBI. Further, during the course of the hearing on January 15, 2018, the Noticees contended that

"… the investigation in the issuance of PPD – IV and PPD – V by Reliance and its conversion into equity shares, was already over and Show Cause Notices dated 24.02.2011 were already issued by

SEBI. Subsequently, the final investigation report was also duly placed before the Hon'ble SAT.

Furthermore, the Hon'ble SAT vide its order dated April 08, 2013 had directed the Adjudicating Officer to give his ruling on the preliminary objections taken by the appellants (Noticees herein), once the Board has taken a view on the consent proceedings.

Pursuant to the order of Hon'ble SAT dated 08.04.2013, Noticees were under impression that the information sought by the letters as mentioned in the SCN dated 26.11.2015, was no longer needed. As regards the SCNs dated 24.02.2011, consent applications were filed with SEBI and are pending for consideration".

17. The above submissions reiterate the contention of the Noticees that they were under the impression that the information sought for is not required in view of the Settlement Applications pending before SEBI.

18. Though it is emphasised that the Noticees are bound to give relevant information to SEBI as and when required to do so, considering the fact that the investigation was over and the ensuing SCN is pending before SEBI for settlement, I am of the view that the failure to furnish information as alleged in the SCN dated November 26, 2015, has to be viewed in the background of the facts and circumstances pertaining to the present case. This is especially so considering the fact that investigation was concluded and further, the Noticees have filed settlement applications in respect of the Show cause notices issued in the matter. Though, this cannot be an excuse for not answering subsequent queries from SEBI, considering the facts and circumstances of the case I am of the view that such failure on the part of the Noticees in submitting the information sought by SEBI does not warrant imposition of monetary penalty. Accordingly, the adjudication proceedings initiated against the Noticees vide SCN dated November 26, 2015 stands disposed of without imposition of monetary penalty.

19. In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees and to Securities and Exchange Board of India.

Place: Mumbai **BIJU. S**

DATE: 28.02.2018 **ADJUDICATING OFFICER**