BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AS/VC/2022-23/20082-20083)

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Noticee No.	**Name and PAN of the Noticee**
1	Mr. Hanif Kasambhai Shekh (PAN - CBEPS9710A)
2	Mr. Chandraprakash Valchand Parekh (PAN - ASAPP9100C)

In the matter of Agro Phos India Limited (APIL)

BACKGROUND OF THE CASE

1. Agro Phos India Limited (hereinafter also referred to as '**APIL**' or '**the company**') is a company listed on the National Stock Exchange Limited (hereinafter referred to as '**NSE**'). Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received various complaints during December 2019 to February 2020 on the SCORES portal alleging that one website **midcapgains.in** was giving buy recommendations in certain scrips including APIL. It was also alleged in the complaint that SMSes through SMS headers viz. BT-ZROHDA, BZ-MGAINS and BH-MGAINS etc. were being circulated, giving buy recommendation in the scrip of APIL. Further, complainants have also alleged that they have received calls from various

mobile numbers recommending to buy in scrip of APIL and mentioned Telegram Group namely ‘Midcap Gains’.

2. **SEBI** conducted an investigation in the scrip of **APIL**, to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act, 1992**’) during January 01, 2019 to December 26, 2019 (hereinafter referred to as ‘**investigation period**’). During the course of investigation, the Investigating Authority (hereinafter referred to as ‘**IA’**) appointed by SEBI in the matter called upon Mr. Hanif Kasambhai Sheikh (hereinafter referred to as ‘**Noticee No. 1’**) and Mr. Chandraprakash Valchand Parekh (hereinafter referred to as ‘**Noticee No. 2**’) (Noticee No. 1 and 2 hereinafter collectively referred to as ‘**the Noticees**’) vide summonses dated January 17, 2022 and reminder summonses dated January 24, 2022, to provide certain information/details/documents. Vide the aforementioned summonses, it was also mentioned to the Noticees that in case they intentionally fail or omit to produce the records/ documents/ details sought through the summonses, SEBI may initiate prosecution/ adjudication proceedings against them under the provisions of the SEBI Act, 1992.

3. It was observed that Noticee No.1 failed to provide certain information/ details/ documents as sought by IA and Noticee No. 2 had provided false/ incorrect/ incomplete information as sought by IA. In view of non-compliance to the summonses, the Noticees were alleged to have violated the provisions of Section 11C(3) of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI felt satisfied that there were sufficient grounds to inquire and adjudicate upon the violation of provisions of the SEBI Act, 1992 by the Noticees. SEBI vide *communiqué* dated March 11, 2022, appointed Mr. Prasanta Mahapatra, Chief General Manger as Adjudicating Officer to conduct the adjudication proceedings in the manner specified under Rule 4 of SEBI (Procedure for

Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules'**) and impose such penalty on the Noticees, as deemed fit, in terms of Rule 5 of the SEBI Adjudication Rules and Section 15A(a) of the SEBI Act, 1992. Pursuant to transfer of Mr. Prasanta Mahapatra, the undersigned was appointed as the Adjudicating Officer in the matter vide *communiqué* dated June 07, 2022 to inquire into and adjudge under section 15A(a) of the SEBI Act, 1992 for the alleged violations of aforesaid SEBI Act, 1992 by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notices ref. no. EAD-8/AS/VS/28235/1-2/2022 and EAD-8/AS/VS/28236/2022 dated July 12, 2022, (hereinafter referred to as '**SCN'**) were served on Noticee No. 1 and 2 respectively in terms of the provisions of rule 4(1) of the SEBI Adjudication Rules, 1995 read with Section 15-I of SEBI Act, 1992, requiring the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under the provision of Section 15A(a) of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules for the alleged violations. I note that SCN's issued to the Noticees were duly served by Speed Post Acknowledgement Due and by e-mails.

6. Noticee No. 1 submitted reply to the SCN *vide* email dated July 23, 2022. Vide Hearing Notice dated August 11, 2022, Noticee No. 1, was granted an opportunity of hearing on August 24, 2022. Noticee No. 1 appeared for hearing on August 24, 2022 and reiterated the submissions made by him in reply dated July 23, 2022, to the SCN. He also forwarded some additional submissions vide email dated August 25, 2022.

7. Noticee No. 2 did not submit reply to the SCN within the time stipulated in the SCN. Vide Hearing Notice dated August 11, 2022, Noticee No. 2, was granted an opportunity of hearing on August 24, 2022. Thereafter, Noticee No. 2 submitted reply to the SCN *vide* letter dated August 23, 2022 and sought

adjournment of the hearing. Accordingly, he was granted hearing on August 29, 2022. However, since Noticee No. 2 failed to avail the said opportunity of hearing, he was again granted final opportunity of personal hearing on September 08, 2022, vide e-mail dated August 30, 2022. Noticee No. 2 did not appear for personal hearing on September 08, 2022 also.

8. The allegations levelled against Noticee No. 1 in the SCN are summarised as under:

   a) *The detail of summonses issued to Noticee No. 1 is given below in the table:*

Table No. 1

Sr. No.	***Summons No.***	***Summons Date***	***Address***	***Delivery Status***
1	*SEBI/HO/IVD/ID10/P/OW/2022/2150/1*	*January 17, 2022*	*Mr. Hanif Shekh 587/b, Bhavnagar Rahemant Royal Flat 102 Gariadhar Bhavnagar, Gujarat – 364001*	*Delivered on 22/01/2022 (India Post web-delivery receipt-EM895231445IN)*
2	*SEBI/HO/IVD/ID10/P/OW/2022/2153/1*	*January 17, 2022*	*Mr. Hanif Shekh Partner, Sai Metaltech LLP Pl. No. 1280, Sh. No. G/F 9, Eva Surbhi Waghwadi Road, Bhavnagar, Gujarat – 364002*	*Delivered on 22/01/2022 (India Post web-delivery receipt-EM8952231437N)*
3	*SEBI/HO/IVD/ID10/P/OW/2022/2156/1*	*January 17, 2022*	*Mr. Hanif Shekh Blood bank Pasec Sardarnagar Bhavnagar Gujarat – 364001*	*Returned undelivered with remark "Insufficient Address".*
4	*SEBI/HO/IVD/ID10/P/OW/2022/2746/1 (Reminder Summons)*	*January 24, 2022*	*Mr. Hanif Shekh 587/b, Bhavnagar Rahemant Royal Flat 102 Gariadhar Bhavnagar, Gujarat – 364001*	*Delivered on 28/01/2022 (India Post web-delivery receipt-EM895234478IN)*
5	*SEBI/HO/IVD/ID10/P/OW/2022/2747/1 (Reminder Summons)*	*January 24, 2022*	*Mr. Hanif Shekh Partner, Sai Metaltech LLP Pl. No. 1280, Sh. No. G/F 9, Eva Surbhi Waghwadi Road, Bhavnagar, Gujarat – 364002*	*Delivered on 28/01/2022 (India Post web-delivery receipt-EM895234464IN)*

Sr. No.	Summons No.	Summons Date	Address	Delivery Status
6	*SEBI/HO/IVD/ID10/ P/OW/2022/2748/1* *(Reminder Summons)*	*January 24, 2022*	*Mr. Hanif Shekh* *Blood bank Pasec* *Sardarnagar* *Bhavnagar* *Gujarat – 364001*	*Returned undelivered with remark "Insufficient Address".*

(Copy of the summonses addressed to Noticee No. 1 along with delivery proofs were enclosed with SCN)

b) It was observed from above Table that, the summons dated January 17, 2022 and reminder summons dated January 24, 2022 were delivered (on aforesaid 2 addresses stated at Sr. No. 1 & 2 and 4 & 5 of the table No. 1) to Noticee No. 1, however, no reply was received from him.

c) Therefore, it is alleged that Noticee No. 1 had not co-operated with the Investigations and has repeatedly failed to provide the documents/ information requisitioned by the IA. The information being sought from Noticee No. 1 was crucial for further investigation to determine his/other entities' role with regard to the issue of circulation of misleading messages in the scrip of APIL and connection if any with other entities. Thus, Noticee No. 1, did not produce/furnish the documents/information sought by IA, thereby, hampered the process of investigation and it lead to violation of Section 11C(3) of the SEBI Act, 1992.

d) The aforesaid alleged violations of section 11C(3) of SEBI Act, 1992, if established, make Noticee No. 1 liable for monetary penalty under section 15A(a) of the SEBI Act, 1992.

9. Noticee No. 1 submitted reply to the SCN *vide* emails dated July 23, 2022 and August 25, 2022, *inter alia* as under:

a) “Please see the attached screenshot of my response to a similar case investigation of the stock of Leading Leasing Finance & Investment Company Limited.

b) I was the first one who reported that scam to BSE with my other email id "helpingyouindia@yahoo.com", but the investigation was going against me because the same SMS provider gave false information to save the real culprits and frame me.

c) I am providing details and information sought in the attached summons. I will start with number 3 as you already have my details sought in first two.

d) I have not entered into an agreement with Awadh Info for sending SMSs to give buy recommendation in the script of Agro Phos India Ltd. My phone number is 9067584982, and my email address is hkshekh@yahoo.com.

e) I know Mr. Rehan as the SMS provider, but I have not used his services for giving buy recommendations on any stock.

f) I did not use Spark TG's missed call service.

g) I am not related/connected with Spark TG.

h) I am not related/connected with Multibagger Securities.

i) I am not related/connected with both websites.

j) I am not related/connected with mentioned Telegram channel.

k) I am not related/connected with M/S. Sambhavanath Traders & Mr. Chandraprakash.

l) I have not transferred funds to Awadh Info.

m) I have not transferred funds to Spark TG.

n) I have not transferred funds to M/S. Sambhavanath Traders & Mr. Chandraprakash.

o) I am not related/ connected with Agro Phos and its promoters/ directors/ KMPs.

p) *I don't know anyone personally, but there could be indirect contact, such as the name Globe Capital on the list, which is a well-known stock market name.*

q) *I am extremely sorry that I did not respond to the summons I received in the past due to some personal issues, but I will be available and ready to cooperate whenever you need me in the investigation.*

r) *After my dad's passing, I have to do a lot of traveling and apart from me, only my mother stays at home. She is also not well and facing health issues as she went through two surgeries. All the summons were either undelivered because we moved to another place or received by the maid of the house, so I did not reply to them, but now I have provided all the information sought in the summons in my previous email."*

10. The allegations levelled against Noticee No. 2 in the SCN are summarised as under:

a) The *detail of summonses issued to Noticee No. 2 is given below in the table:*

Table No. 2

Sr. No.	***Summons No.***	***Summons Date***	***Address***	***Delivery Status***
1	*SEBI/HO/IVD/ID10/P/OW/2022/2149/1*	*January 17, 2022*	*Mr. Chandraprakash V Parekh C/o Sambhavanath Traders 4A 1st Flr Plot 29/31 2nd Bhoiwada Next to Satkar Jewelers, Bhuleshwar, Mumbai-400002*	*Returned undelivered*
2	*SEBI/HO/IVD/ID10/P/OW/2022/2750/1 (Reminder Summons)*	*January 24, 2022*	*Mr. Chandraprakash V Parekh C/o Sambhavanath Traders 4A 1st Flr Plot 29/31 2nd Bhoiwada Next to Satkar Jewelers, Bhuleshwar, Mumbai-400002*	*Returned undelivered*

b) *It was observed that both the summonses returned undelivered.*

c) *Both the summonses were also sent on e-mail id sambhavanathtraders@gmail.com as obtained from Account opening form (hereinafter referred to as **'AOF'**) and bank statement obtained from HDFC bank. Subsequently, the matter was telephonically discussed with Noticee No. 2 on his mobile number and pursuant to that Noticee No. 2 visited SEBI office and received both the summonses personally on February 01, 2022 (Copy of the summonses addressed to Noticee No. 2 along with delivery proofs were enclosed with SCN).*

d) *SEBI received an e-mail dated February 01, 2022 from e-mail id sambhavanathtraders@gmail.com wherein it was mentioned that he is not aware/ connected to the website (www.midcapgains.in) and Telegram Channel (Mid Capgains). Further, he denied his association with SMS aggregators, Mr. Hanif Kasambhai Sheikh, APIL and its promoters/ directors/ KMPs. Moreover, it was mentioned that he had started women fancy bangle business and advanced amount of ₹19,20,000/- (overall project cost - ₹25,00,000/-) was paid to First Economy Pvt. Ltd. (hereinafter referred to as '**FEPL**') for website development as well as mobile app and social media marketing. However, due to unfair situation in market, he had to cancel the project and said advanced amount was forfeited by FEPL (Copy of email dated February 01, 2022 was enclosed with SCN).*

e) *It was observed that the above mentioned submission were not supported by any documents. SEBI, vide e-mail dated February 01, 2022, inter-alia, advised Noticee to provide supporting documents in this regard viz. copy of an agreement or contract, e-mail communications, SMS records, WhatsApp chats, call recordings etc. Noticee in his reply, vide e-mail dated February 02, 2022, mentioned that all dealings were made based upon oral communications and without any formal agreement (Copy of email dated February 02, 2022 was enclosed with SCN).*

f) *Noticee No. 2 vide his letter dated February 02, 2022 submitted that he was not aware/ connected to the website (www.midcapgains.in) and*

Telegram Channel (Mid Capgains). Noticee also denied his association with SMS aggregators, Mr. Hanif Kasambhai Sheikh, APIL and its promoters/ directors/ KMPs. Further, it was mentioned that he did not open any account with HDFC Bank and that he was not related to aforesaid transactions. It was also mentioned that he was not related to proprietary firm 'Sambhavanath Traders' and e-mail id - sambhavanathtraders@gmail.com. With respect to association of Noticee No. 2 with e-mail id- sambhavanathtraders@gmail.com, Noticee vide email dated February 04, 2022 confirmed that the said e-mail id does not belongs to him (Copy of letter dated February 02, 2022 and email dated February 04, 2022 were enclosed with SCN).

g) *The following factual inconsistencies were observed when comparing the information / reply received from FEPL, e-mail id - sambhavanathtraders@gmail.com and Noticee No. 2:*

   (i) *FEPL did not verify the details of Client 'Sambhavnath Traders' in respect of inward remittance of ₹19,20,000/-. Moreover, Noticee denied opening of said bank account with HDFC Bank and the aforementioned transactions executed from the said bank account as discussed before.*

   (ii) *Noticee No. 2 denied his association with 'Sambhavanath Traders' (name appearing in narration of bank transactions in bank statement of FEPL) and e-mail id - sambhavanathtraders@gmail.com.*

   (iii) *Further FEPL had informed SEBI that the receipt of payment from HDFC Bank account no. 50200027909681 was towards hosting of website – www.midcapgains.in. However, Noticee No. 2 in his reply dated February 01, 2022 mentioned that the same was in respect of advance payment towards website development as well as mobile app and social media marketing in connection with their proposed women fancy bangle business. Subsequently, vide his reply dated*

February 02, 2022, Noticee while revising his earlier responses, denied his connection / association with the stated transactions.

h) In light of the above, AOF of said HDFC Bank account (HDFC Bank account no. 50200027909681) supported by KYC documents of Noticee No. 2 such as copies of PAN card and registration certificate of proprietary firm 'Sambhavanath Traders' issued under Maharashtra Shops and Establishments Act, 1948 were perused. It was observed that both these documents included the signature of Noticee and his photos were pasted on both AOF and copy of PAN card. Further, AOF and both the said supporting KYC documents had the stamp of HDFC stating that – 'ORIGINAL SEEN AND VERIFIED', 'CUSTOMER HAS SIGNED IN MY PRESENCE' and 'SIGNATURE VERIFIED' along with name, employee code and signature of employee of HDFC Bank (Copy of AOF, PAN Card, registration certificate of 'Sambhavanath Traders' and bank statement were enclosed with SCN).

*i) From the AOF, KYC documents and bank statement of aforesaid HDFC bank account, it was evident that said account was opened in the name of Chandraprakash Parekh (PAN: ASAPP9100C) from which payment was made to FEPL to avail hosting services for the website (**www.midcapgains.in)**. Further, as submitted by FEPL, the said website was made live by them from November 2019 to October 2020. The complaints were also received by SEBI during December 2019 to February 2020.*

j) It is, therefore, alleged that the submissions made by Noticee No. 2 are false/ incorrect/ incomplete information. The information being sought from Noticee No. 2 through summons/reminder summons was crucial for further investigation to determine his/other entities' role with regard to the issue of circulation of misleading messages in the scrip of APIL and connection if any with other entities. Noticee No. 2 has not co-operated with the Investigations and has provided the false/ incorrect/ incomplete information *requisitioned by the IA. Therefore, Noticee has hampered the investigation and has violated 11C(3) of the SEBI Act, 1992.*

k) *The aforesaid alleged violations of section 11C(3) of SEBI Act, 1992, if established, make Noticee No. 2 liable for monetary penalty under section 15A(a) of the SEBI Act, 1992.*

11. Noticee No. 2 submitted reply to the SCN *vide* letter dated August 23, 2022 as summarised under:

a) *The present reply is filed by me in response to the Show Cause Notice issued to me whereby, I have been asked to show cause as to why inquiry should not be held against me in terms of Rule 4(1) of the Adjudication Rules r.w. Section 15-I of the SEBI Act and why penalty should not be imposed under Section 15A(a) of the SEBI Act for alleged violation of Section 11C(3) of the SEBI Act, 1992. Further, vide letter dated 11.08.2022, SEBI has granted me an opportunity of personal hearing on 24.08.2022.*

b) *At the outset, I submit that due to certain health reasons, I was not able to file reply within the time frame given in the SCN. I humbly request to grant me condonation of delay in filing the present reply.*

c) *W.r.t. the SCN, at the outset and without prejudice to anything stated hereinafter, I deny all the allegations and findings made against me in the said notice, except to the extent specifically admitted by me. Further, I state that nothing contained in the SCN may be deemed to be admitted by me by reason of non-traverse or otherwise, save and except what is expressly admitted herein. Additionally, I deny all the allegations and averments contained in the SCN that are contrary to and/or inconsistent with what is stated herein below.*

d) *On plain reading of the aforementioned SCN, it is evidently clear that SEBI has made bald and sweeping allegations against me. I submit that the SCN* *is based on surmises, conjectures, probabilities and hypothesis, which is impermissible in law.*

e) Request for inspection of documents and copies thereof:

In view of the nature of the SCN and in order to file our comprehensive reply to captioned SCN, I request your kind selves to provide me with an opportunity of inspection of documents and copies thereof that are referred to and relied upon by SEBI in present matter. An indicative list for same is as under:

Sr. No.	***Particulars***
i.	*Copy of investigation report along with all the Annexures*
ii.	*Copy of complaints received by SEBI on SCORES Portal.*
iii.	*Copy of statement of all person recorded during course of investigation conducted by SEBI in captioned matter.*
iv.	*Details of complaint(s) received by SEBI and stock exchange in the caption subject matter.*
v.	*Any other and additional documents referred to and relied upon by SEBI on subject matter of present proceedings.*

f) Prayer:

In view of peculiar facts/circumstances of my case; I humbly pray that:

(i) The proceedings initiated vide Show Cause Notice dated 12.07.2022 against me be dropped without imposing any penalty on me.

(ii) An opportunity of inspection of documents be granted to me.

g) I crave leave to file further and additional submissions, as and when required, during course of present proceedings."

12. With regard to Noticee No. 2's request for inspection of certain documents and copies thereof, vide email dated August 24, 2022, Noticee No. 2 was intimated that all the relevant and relied upon documents pertaining to him in the matter were already provided to him along with SCN as annexures. As Noticee No. 2

did not avail the multiple opportunities of personal hearings granted to him and therefore, I proceed on the basis of material/facts available on record.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:
    I. Whether the Noticees have violated Section 11C(3) of the SEBI Act, 1992?
    II. Does the violations, if any, attract monetary penalty under section 15A(a) of the SEBI Act, 1992?
    III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

Issue I. Whether the Noticees have violated Section 11C(3) of the SEBI Act, 1992?

14. Before moving forward, it is pertinent to refer to the relevant provision which is alleged to have been violated. The said provision is provided hereunder:

SEBI Act, 1992

Investigation.

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.*

15. I observe from the available records that summonses were issued to the Noticees by SEBI during the process of investigation and the said summonses were duly delivered to the Noticees. IA had sought information from the

Noticees which was required to conduct the investigation in the said matter to ascertain any possible violation of the provisions of the SEBI Act, 1992. In this regard, the proof of service of the said summonses was also annexed to the SCN's.

Noticee No. 1

16. I note that Noticee No. 1 has now attempted to furnish the information that was sought by the IA during the investigation in the summonses as a part of reply to the SCN. Further, Noticee No. 1 has mentioned that summonses were either received by the maid of the house or remained undelivered because he moved to another place, so he did not reply to the summonses. However, as per the records the summonses were duly delivered to Noticee No. 1, hence, contentions made by him that the summonses were received by the maid of the house or remained undelivered and hence, he did not reply to the summonses are untenable.

17. The information sought from Noticee No. 1 was crucial for further investigation to determine his/other entities' role with regard to the issue of circulation of messages in the scrip of APIL and connection, if any, with other entities. Thus, I hold that Noticee No. 1 had not co-operated with the investigations and by not producing / furnishing the documents/ information sought by IA, hampered the process of investigation and therefore, the violation of Section 11C(3) of the SEBI Act, 1992 is established.

Noticee No. 2

18. With regard to Noticee no. 2, I note that the SCN alleges submissions of false/ incorrect/ incomplete information to the IA. The SCN also describes the factual inconsistencies in the information / reply received from FEPL, e-mail id - sambhavanathtraders@gmail.com and Noticee No. 2 and the documents collected by SEBI during the investigation process. SCN indicates that Noticee

No. 2 denied opening of bank account no. 50200027909681 with HDFC Bank and the transactions executed from the said bank account as indicated in para 10. Noticee No. 2 also denied his association with ‘Sambhavanath Traders’ and e-mail id - sambhavanathtraders@gmail.com. Noticee No. 2 in his reply dated February 01, 2022 mentioned that the transactions executed from the said bank account were in respect of advance payment towards website development as well as mobile app & social media marketing in connection with their proposed women fancy bangle business. Subsequently, while revising his earlier responses, Noticee No. 2 denied his connection / association with the stated transactions. However, FEPL had informed SEBI that the receipt of payment from HDFC Bank account no. 50200027909681 was towards hosting of website – www.midcapgains.in and further on verification of the said details from the records available with SEBI, it was observed that AOF of HDFC Bank account no. 50200027909681 was supported with KYC documents of Noticee No. 2 such as copies of PAN card and registration certificate of proprietary firm ‘Sambhavanath Traders’ documents included the signature of Noticee No. 2 and his photos were pasted on both AOF & copy of PAN card.

19. Noticee No. 2 in his response has denied all the allegations, findings and averments made against him in the SCN and requested for inspection of documents and copies thereof like copy of the investigation report, copy of complaints received by SEBI, copy of statements recorded by SEBI during the investigation, any other additional documents referred to and relied upon by SEBI on subject matter of present proceedings.

20. As regards the request for inspection and copies of documents, it is noted the SCN alleges that Noticee No 2 has submitted false/ incorrect/ incomplete information to the IA. SCN indicated the factual inconsistencies in the information / reply received from FEPL, e-mail id - sambhavanathtraders@gmail.com & Noticee No. 2, and information from the records available with SEBI. All the relevant documents with respect to false submissions made by Noticee No. 2 like copies of the summonses along with

delivery proof, copy of email dated February 1, February 2, 2022 from email id sambhavanathtraders@gmail.com, Copy of letter dated February 02, 2022 of Noticee and email dated February 04, 2022, Copy of AOF of HDFC, PAN Card, registration certificate of 'Sambhavanath Traders' and bank statement were already provided to him along with the SCN as Annexure to the SCN. Hence his request for copies of documents relied upon by SEBI in the present proceedings have already been furnished to him. Further, I note that Noticee No. 2 has not given any justification for requesting documents like copy of investigation report, complaints received by SEBI, statement of all persons recorded during investigation. Vide email dated August 24, 2022 it was informed to Noticee no. 2 that all the relevant and relied upon documents pertaining to him in the matter were already provided to him alongwith the SCN.

21. Further I also note that Noticee No. 2 has not given any explanation or submission with regard to the allegations levelled in the SCN about submitting the false/ incorrect/ incomplete information to the IA other than just denying the charges levelled in the SCN. He was also given multiple opportunities of personal hearing to present his case which he has not availed.

22. Thus I note that sufficient opportunities have been provided to Noticee No. 2 to represent its case but Noticee No. 2 has failed to do so and also failed to appear for the personal hearing fixed on the stipulated dates. Therefore, in the absence of reply from Noticee and/or its failure to make personal appearance, I am inclined to presume that the Noticee has nothing further to offer in its defense and therefore, he has admitted to the allegations levelled against Noticee No. 2 in the SCN. In this context, Hon'ble SAT in the matter of Sanjay Kumar Tayal vs SEBI, vide Order dated February 11, 2014 held 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 to the charges levelled against them in the show cause notice."*

23. The information sought from him through summons/ reminder summons was crucial for further investigation to determine his/ other entities' role with regard to the issue of circulation of misleading messages in the scrip of APIL and connection if any with other entities. In view of the above, I hold that Noticee No. 2 had not co-operated with the Investigations and had provided the false/ incorrect/ incomplete information requisitioned by the IA and therefore, the violation of Section 11C(3) of the SEBI Act, 1992 is established.

For both the Noticees

24. In this regard, it is pertinent to note that Section 11C(3) empowers the Investigating Authority of SEBI to require any intermediary or any person associated with the 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 authorized by him in this behalf as it may consider necessary if the furnishing of such records/ information/ documents are necessary. In this regard, I note that it is obligatory on the Noticees to provide any information sought by the IA, if he deems such information relevant or necessary for purpose of investigation.

25. In this context, I note that Hon'ble SAT, in its order dated October 22, 2013 in the matter of **Rich Capital & Financial Services Limited & Ans vs SEBI**, observed that:

"10. We may pertinently note that the SEBI is basically constituted to promote orderly and healthy growth of securities market apart from protecting investors' interest. For discharging this onerous job, and with a view to achieve the underlined object, SEBI as a regulator is required to conduct investigation and enquiries in the affairs of various parties from time to time. For this purpose, first and the foremost thing is co-operation from the concerned officers of the companies not only to produce the relevant records as and when required by an investigating officer or enquiring authority or by any person authorised by the SEBI in this behalf but to appear in person as and when called upon. Section

11C (2) mandates every manager, managing director, officer or other employees of the company to preserve and produce such documents which are in their custody or power. Similar is the tone and texture of Section 11C (3).

11. In case of failure on the part of the concerned person to furnish such records/information, heavy monetary penalty is prescribed in Section 15A(a) of the SEBI Act, 1992. In fact such an act on the part of a company or its concerned officers is not only contemptuous but also a hindrance in the way of conducting smooth investigation and enquiry by the regulator to arrive at a just and fair conclusion as per the provisions of SEBI Act, 1992. Such an increasing tendency on the part of the companies needs to be curbed at the threshold."

26. From the foregoing paragraphs, it is conclusively established that Noticee No. 1 had failed to comply with the summons dated January 17, 2022 and reminder summons dated January 24, 2022 issued to him by the IA. Noticee No. 2 responded to the summonses issued to him, however, he submitted the false/ incorrect/ incomplete information to the IA. Therefore, I hold that the Noticees have violated the provisions of Sections 11C(3) SEBI Act, 1992.

Issue II. Does the violations, if any, attract monetary penalty under section 15A(a) of the SEBI Act, 1992?

27. In the light of findings and observations made against the Noticees brought out in the foregoing paragraphs, it is evident that the Noticees had violated the provisions of Section 11C(3) of SEBI Act, 1992. The above violations, are serious in nature and make the Noticees liable for monetary penalty under the provisions of Section 15A(a) of the SEBI Act, 1992.

28. As regards the imposition of monetary penalty for noncompliance of summonses, I note that the Hon'ble SAT had the occasion to deal with this issue in the matter of **DKG Buildcon Pvt. Ltd.(supra)**, wherein it observed:

"The power to require a person to furnish any information or record or documents includes the power to require such person to make a statement and give clarifications with regard to the information and documents produced by him. In the absence of such a power the purpose of the legislature in introducing section 11C would be frustrated and the Board will not be able to investigate properly the market irregularities and offences. In order to advance the object of Parliament the language used in sub-section (3) of section 11C has to be given a wider meaning. We are, therefore, of the considered opinion that section 11C (3) gives the power to the investigating authority to call upon any person to make a statement while furnishing any information, document or record."

Thus, it is clear that if a person fails to comply with the summons of IA, he is liable for penalty under Section 15A(a) of SEBI Act, 1992. As the violation of provisions of section 11C(3) of the SEBI Act, 1992 by the Noticees have been established, I find that Noticee is liable for monetary penalty under section 15A(a) of SEBI Act, 1992.

29. The aforesaid violations, makes the Noticees liable for penalty under section 15A(a) of the SEBI Act, 1992. The contents of the said provisions of law is reproduced herein below:

Penalties and Adjudication

Penalty for failure to furnish information, return, etc.

15A. 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 III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

30. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:-

15J – Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or 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.

[Explanation.—For the removal of doubts, it is clarified that the power […] to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

31. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the non-compliance of the summonses is not available. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticee. The conduct of the Noticees in not paying heed to the summonses issued by SEBI and resultant non-cooperation with the process of investigation cannot be taken lightly.

ORDER

32. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I of the SEBI Act,1992 read with rule 5 of the SEBI Adjudication Rules, I hereby impose the following penalty on the Noticees under Section 15A(a) of the SEBI Act,1992, for violation of Section 11C(3) of the SEBI Act, 1992, as found hereinabove:

Sr. No.	Name of the Noticee	Penalty
1	Mr. Hanif Kasambhai Shekh (PAN - CBEPS9710A)	₹ 5,00,000/- (Rupees Five Lakhs only)
2	Mr. Chandraprakash Valchand Parekh (PAN - ASAPP9100C)	₹ 5,00,000/- (Rupees Five Lakhs only)

In my view, the said penalty is commensurate with the violation committed by the Noticees in this case.

33. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour 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

34. The Noticees shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	

Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

35. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the SEBI.

Place: Mumbai **ASHA SHETTY**

Date: October 3, 2022 **ADJUDICATING OFFICER**