BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/AN/SM/2022-23/25492-25494

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

In respect of

Noticees No.	Noticee Name	PAN
1	Himalayan Mineral Waters Pvt. Ltd.	AABCH7505D
2	Perfect Radiators and Oil Coolers Pvt. Ltd.	AADCP0752E
3	CA Pankaj Shah	AOAPS3968P

In the matter of

LEEL Electricals Limited

A. BRIEF BACKGROUND

1. An investigation was initiated by Securities and Exchange Board of India (hereinafter also referred to as "**SEBI**") in the matter of the LEEL Electricals Limited (hereinafter also referred to as **"Company" / "LEEL"**) on basis of various complaints /references received against the company, to *inter-alia* examine possible violation of the provisions of the SEBI Act, 1992, SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 **("SEBI PFUTP Regulations, 2003 / "PFUTP Regulations")** and SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 **("SEBI LODR Regulations, 2015" / "LODR Regulations").**

2. The focus of the investigation was to ascertain whether the books of accounts of LEEL (hereinafter also referred to as "Company"/ "LEEL Electricals Ltd.") were manipulated or there was wrongful diversion/siphoning of company funds

by promoters/directors/ key managerial persons, for the financial years FY 2017-18 and FY 2018-19 and to ascertain whether there was any violation of the provisions of SEBI Act, SEBI (PFUTP) Regulations, 2003 and SEBI (LODR) Regulations, 2015 during the period between April 01, 2017 to March 31, 2019 ('Investigation Period' / 'IP').

3. Pursuant to the investigation, SEBI had initiated adjudication proceedings under Section 15A(a) of the SEBI Act, 1992 (hereinafter also referred to as **"SEBI Act"**) against Himalayan Mineral Waters Pvt. Ltd (hereinafter also referred to as "**Noticee 1"/ "HMWPL"**), Perfect Radiators and Oil Coolers Pvt. Ltd (hereinafter also referred to as **"Noticee 2" / "PROC"**) and CA Pankaj Shah (hereinafter also referred to as **"Noticee 3"**) (**hereinafter collectively also referred to as "Noticees")** for the alleged violation of Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992 in the matter of LEEL Electricals Ltd.:

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Upon being satisfied that there are sufficient grounds to inquire and adjudicate upon the alleged violations of provisions of Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992, by the Noitcees, SEBI, in exercise of powers under Section 19 of the SEBI Act, read with Sub-section (1) of Section of Section 15-I of the SEBI Act, and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("***Adjudication Rules***") appointed Dr. Anitha Anoop, Chief General Manager, SEBI as the Adjudicating Officer ("**AO**") vide communique dated July 28, 2022, to inquire into and adjudicate upon the alleged violations by the Noticees. Pursuant to transfer of Dr. Anitha Anoop, SEBI appointed the undersigned as AO in the instant matter vide Communique dated September 05, 2022.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. A common Show Cause Notice No. SEBI/HO/EAD/EAD5/P/OW/2023/9595/1-3/4-5/6-7 dated March 04, 2023 (**"SCN"**) was issued to Noticee 1, Noticee 2 and Noticee 3 respectively, in terms of Section 15-I of the SEBI Act, 1992, rule 4 of SEBI Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them and why penalty, if any, under section 15(A)a of SEBI Act, 1992 be not imposed on the Noticees.

6. The summary of allegations brought out in the SCN dated March 04, 2023 is given below:

"……

Pursuant to the investigation by SEBI, the following was inter-alia observed and alleged in respect of the Noticees:

1.1. Noticee 1 (Himalayan Mineral Waters Pvt. Ltd. / HMWPL)
1.2. Noticee 2 (Perfect Radiators and Oil Coolers Pvt. Ltd / PROC)

Failed to furnish the documents/ information as required under Section 11(2)(ia) and 11C(3) of SEBI Act 1992 vide summons dated 16/02/2022, 02/03/2022 and 16/03/2022.

Summons for production of documents/ information were inter alia sent to Noticee 1 and Noticee 2. However, Noticee 1 and Noticee 2 failed to furnish their responses even after reminder summons.

It is alleged that Noticee 1 and Noticee 2 had failed to furnish the documents/ information as required under Section 11 (2) (ia) and 11C (3) of SEBI Act 1992 vide summons dated 16/02/2022, 02/03/2022 and 16/03/2022 and thereby, violated section 11 (2) (ia) and 11C (3) of SEBI Act, 1992.

{Copy of summons and reminder summons send to the Noticee 1 and Noticee 2 and copy of speed post-delivery receipts from India Post are enclosed as ***Annexure BB (i) and BB(ii)****}.*

1.3. Noticee 3 - CA Pankaj Shah

Failed to furnish the documents/ information as required under Section 11(2)(ia) and 11C(3) of SEBI Act 1992 vide summons dated 14/02/2022, 02/03/2022 and 16/03/2022.

The Forensic Auditor was provided with a CA certificate by Mr. Pankaj Shah dated April 26, 2018 for end utilization of Rs. 1457 crores received from Havells India against the CD deal (proceeds from disinvestment).

Summons were issued to CA Pankaj Shah (Noticee 3) seeking details of the above certificate. However, no response was received from Noticee 3 even after two reminder summons. (Copy of summons and reminder summons sent to Noticee 3 and copy of speed post-delivery receipt from India Post is enclosed as ***Annexure CC****).*

It is alleged that Noticee 3 failed to furnish the documents/ information as required under Section 11 (2) (ia) and 11C (3) of SEBI Act 1992 for summons summons issued dated 14/02/2022, 02/03/2022 and 16/03/2022 and thereby, violated Section 11 (2)(ia) and 11C (3) of SEBI Act, 1992.

….."

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7. The SCN was served upon the Noticees through SPAD at their respective addresses available and also by email at their respective email IDs.

Noticee 1 (HMWPL)

8. The receipt of SCN dated March 04, 2023 was acknowledged by Noticee 1 (HMWPL) though its email id- punj_mca@yahoo.co.in vide its email dated March 13, 2023 and stated that the Noticee 1 will submit its response to the SCN latest by March 18, 2023 and requested to provide it an opportunity of personal hearing before taking any final decision in the matter. Accordingly, vide email dated March 14, 2023, the Noticee 1 was granted an opportunity of hearing on March 20, 2023. Vide its email dated March 17, 2023, Noticee 1 submitted its response to the SCN. Vide email dated March 20, 2023, Noticee 1 sought adjournment of the said hearing and requested to re-schedule the hearing after April 01, 2023. Vide email dated March 20, 2023, Noticee 1 was granted another opportunity of hearing on March 23, 2023. Vide email dated March 21, 2023, Noticee 1 again sought adjournment of the said hearing citing medical grounds and inter alia also citing that hearing may be kept either on March 27, 2023 or March 28, 2023. Accordingly, vide email dated March 21, 2023, Noticee 1 was granted last opportunity of hearing on March 27, 2023.

9. On the Scheduled hearing date, Noticee 1 appeared through its Authorised Representatives (ARs) for the hearing held through online mode viz. video conferencing. During the hearing the ARs for Noticee 1 relied upon and reiterated the submissions made by Noticee 1 vide letter and email dated March 17, 2023. During the hearing, ARs also confirmed that there were no additional/further submissions to be made in the matter and that the submissions dated March 17, 2023 be treated as their final and complete submissions, in the matter. As regards, documents in support of contentions, the ARs stated that the same shall be furnished by them within one day. Vide email dated March 28, 2023, Noticee 1 submitted documents in support of their contentions.

Noticee 2 (PROC)

10. The receipt of SCN dated March 04, 2023 was acknowledged by Noticee 2 (PROC) though its email id- punj_mca@yahoo.co.in vide its email dated March 13, 2023 and stated that the Noticee 2 will submit its response to the SCN latest by March 18, 2023 and requested to provide it an opportunity of personal hearing before taking any final decision in the matter. Accordingly, vide email dated March 14, 2023, the Noticee 2 was granted an opportunity of hearing on March 20, 2023. Vide its email dated March 17, 2023, Noticee 2 submitted its response to the SCN. Vide email dated March 20, 2023, Noticee 2 sought adjournment of the said hearing and requested to re-schedule the hearing after April 01, 2023. Vide email dated March 20, 2023, Noticee 2 was granted another opportunity of hearing on March 23, 2023. Vide email dated March 21, 2023, Noticee 2 again sought adjournment of the said hearing citing medical grounds and inter alia also citing that hearing may be kept either on March 27, 2023 or March 28, 2023. Accordingly, vide email dated March 21, 2023, Noticee 2 was granted last opportunity of hearing on March 27, 2023.

11. On the Scheduled hearing date, Noticee 2 appeared through its Authorised Representatives (ARs) for the hearing held through online mode viz. video conferencing. During the hearing the ARs for Noticee 2 relied upon and reiterated the submissions made by Noticee 2 vide letter and email dated March 17, 2023. During the hearing, ARs also confirmed that there were no additional/further submissions to be made in the matter and that the submissions dated March 17, 2023 be treated as their final and complete submissions, in the matter. As regards, documents in support of contentions, the ARs stated that the same shall be furnished by them within one day. Vide email dated March 28, 2023, Noticee 2 submitted documents in support of their contentions.

Noticee 3 (CA Pankaj Shah)

12. The receipt of SCN dated March 04, 2023 was acknowledged by Noticee 3 (CA Pankaj Shah) through its email id- pankajshahca@gmail.com vide its email dated March 10, 2023.

Relevant extracts of the email are reproduced below:

"*I received your mail dated 04/03/2023 regarding SCN, In SCN there was a mention of previous summons letters from the SEBI office. In this regard please accept my apology as I could not receive any such letters."*

13. Vide email dated March 14, 2023, Noticee 3 was granted an opportunity of hearing on March 20, 2023. Vide letter and email dated March 15, 2023, Noticee 3 submitted his response to the SCN. On the Scheduled hearing date Noticee 3 appeared for the hearing held through online mode viz. video conferencing. Noticee 3 relied upon and reiterated his reply submitted vide email / letter dated March 15, 2023. During the hearing, Noticee 3 also stated orally that he did not receive the summons dated 14/02/2022, 02/03/2022 and 16/03/3022 and accordingly, time till March 21, 2023 was given to Noticee 3 to file additional submissions.

14. The submissions made by the Noticee 1 and 2 *vide* letter dated March 17, 2023 are as summarized below:

Noticee 1

"…..

*1.1. Please refer to the common Show Cause Notice as mentioned herein above, issued in the matter of LEEL Electricals Limited **("LEEL")**, to various persons/entities, including the Company and received to it **on March 4 , 2023 ("Notice"),**. In the said Notice it has inter alia been alleged that the Company has failed to comply with the summons issued on 16/02/2022 (bearing Ref. No. SEBI/HO/CFID/CFID-1/OW/P/2022/6433/1), summon dated 02/03/2022 (bearing reference number SEBI/HO/CFID/CFID-1/OW/P/2022/8910/1) and summon dated 16/03/2022 (bearing reference number SEBI/HO/CFID/CFID-1/OW/P/2022/11138/6) and thereby defaulted in furnishing the documents/information as required under Section 11(2)(ia) and 11C(3) of Securities and Exchange Board of India Act, 1992 (**"SEBI Act"**).*

2. Please note that our correspondence address and contact details are as follows:

B-10/1, Okhla Industrial Area Phase – II
New Delhi-110020

Email id: punj_mca@yahoo.co.in
Contact No. : 882XXX18XX

*Copy of PAN card of the Company is attached herewith as **Annexure-1***

3. *Further, vide the said Notice you have called upon the Company to show cause as to why an inquiry should not be held against it in terms of Rule 4(1) of the SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995, **("Adjudication Rules")** and why penalty should not be imposed under sections 15A(a) of SEBI Act for the alleged violations.*

4. *At the outset we submit that, save and except the contents of the said Notice which are specifically admitted herein, all other averments, observations, allegations made by SEBI in the said Notice are specifically and individually denied. Nothing contained in the said Notice shall be deemed to be admitted on the basis of non-traversement of specific allegations or findings, unless the same is specifically admitted by us in this reply.*

5. *That we deny in to-to all the allegations in the said Show Cause Notice that the Company had failed to submit the required information asked by SEBI in Summons. All the documents and information as required by SEBI under the aforesaid Summons, were submitted vide our reply dated July 27 2022 and July 30, 2022 to SEBI. A Copy of the said reply along with the proof of submission (India Post POD EU9188516315IN dated August 3, 2022 and India Post POD EU918506914IN dated July 30, 2022) and delivery of such documents at your office are respectively attached herewith as **Annexure-2 and 2A Colly.***

6. *We further submit that the aforesaid documents and information could not be submitted with in the given time in the summons. Such delay in submission was completely unintentional and for the reasons beyond the control of the company. In our previous reply, we had also taken a liberty to explain you the factual situation of the Company and why the information could not be submitted in time, also we had sought an apology for the said unintentional delay. .*

7. *With this letter we do hereby re-iterate that the said delay in submission of information/documents as required to be submitted as per the summons, were unintentionally made due to the reasons which inter-alia include that:*

   (a) the information sought in the summons was being very old (i.e. pertaining to financial years 2010-11 to 2017-18) and collating the same took some time;

   (b) the situation of the Company had deteriorated in due course and it was not doing any business and operations, all the employees who were associated with the Company had left the Company for one reasons or other and there are no human resources available with the Company to support in locating the documents, verify its authenticity etc. Collating the information and documents for all the years as mentioned in the summons was a mammoth work to do with the limited resources;.

   (c) the Company is currently being non-operational for last 5 years. Further, due to pandemic situation at the time when Summons were issued, also impeded our efforts in gathering information.

   However, despite the aforesaid impediments, we collated the information to the best of our efforts, from the available records, as sought by SEBI and submitted the same.

8. *You may please note that the Company hasn't done any business and operations since long. Please also take note that most of the Punj group companies are not carrying out any business activities since year 2017-18 i.e. after death of Mr. Brij Lal Punj, one of the promoters of LEEL as this Company has gone into liquidation. Accordingly, the business operations of the group companies (including our Company) have been substantially scaled-down since last few years.*

9. *Due to the reasons as aforesaid, the Company doesn't have any employees as on date who can take care of compliances and assist in collating the data. Most of the employees of company/group company have left the organisation long back for one reasons or another..*

10. *Now, in light to the aforesaid submissions, it is respectfully submitted that the said delay in submission of the documents and information was for the reasons which were genuine, true and justified, and also beyond the Company's control and hence we humbly request SEBI to please take a lenient view and avoid any punitive action for such delay.*

11. *It is respectfully submitted that there is no disproportionate gain or unfair advantage occurred to the Company due to such delayed submission of information. We again reiterate that such delay was completely unintentional and under a situation which was beyond the control.*

12. *Please kindly note that no loss has occurred to any investor due to such delayed submission of information.*

13. *The Company has not received any notice from SEBI in past. This was the first time when the Company has*

received notice from the Company and for the reasons explained above, there was slight delay in submitting the information.

14. *It is respectfully submitted that in the true and correct facts and circumstances, as stated hereinbefore, any issuance of punitive directions or imposition of monetary penalty under section15A(a) of SEBI Act, would be totally unjustified and unwarranted and put a financial burden on the Company and its Directors/Officers. In the circumstances, considering our aforesaid submissions we earnestly and humbly pray, that a lenient view be taken, and charges in the Notice be dropped and no punitive directions/ monetary penalty be issued/imposed.*

15. *We take liberty to modify and add additional grounds in our reply. we request that an opportunity for the personal hearing be also given to us before taking any final decision in my matter.*

….."

.

Noticee 2

15. The submissions made by the Noticee 2 *vide* letter dated March 17, 2023 are as summarized below:

"….

1. *Please refer to the common Show Cause Notice as mentioned herein above, issued in the matter of LEEL Electricals Limited **("LEEL")**, to various persons/entities, including the Company and received to it on March 4 , 2023 **("Notice"),**. In the said Notice it has inter alia been alleged that the Company has failed to comply with the summons issued on 16/02/2022 (bearing Ref. No. SEBI/HO/CFID/CFID-1/OW/P/2022/6462-63/1), summon dated 02/03/2022 (bearing reference number SEBI/HO/CFID/CFID-1/OW/P/2022/8916/1) and summon dated 16/03/2022 (bearing reference number SEBI/HO/CFID/CFID-1/OW/P/2022/11138/8) and thereby defaulted in furnishing the documents/information as required under Section 11(2)(ia) and 11C(3) of Securities and Exchange Board of India Act, 1992 (**"SEBI Act"**).*

2. *Please note that our correspondence address and contact details are as follows:*

B-10/1, Okhla Industrial Area Phase – II
New Delhi-110020
Email id: punj_mca@yahoo.co.in
Contact No. : 0882XXX18XX

*Copy of PAN card of the Company is attached herewith as **Annexure-1***

3. *Further, vide the said Notice you have called upon the Company to show cause as to why an inquiry should not be held against it in terms of Rule 4(1) of the SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995, **("Adjudication Rules")** and why penalty should not be imposed under sections 15A(a) of SEBI Act for the alleged violations.*

4. *At the outset we submit that, save and except the contents of the said Notice which are specifically admitted herein, all other averments, observations, allegations made by SEBI in the said Notice are specifically and individually denied. Nothing contained in the said Notice shall be deemed to be admitted on the basis of non-traversement of specific allegations or findings, unless the same is specifically admitted by us in this reply.*

5. *That we deny in to-to all the allegations in the said Show Cause Notice that the Company had failed to submit the required information asked by SEBI in Summons. All the documents and information as required by SEBI under the aforesaid Summons, were submitted vide our reply dated July 30, 2022 to SEBI. A Copy of the said reply along with the proof of submission (India Post POD no. EU756879641IN dated August 11, 2022) and delivery of such documents at your office are respectively attached herewith as **Annexure-2 and 2A Colly.***

6. *We further submit that the aforesaid documents and information could not be submitted with in the given time in the summons. Such delay in submission was completely unintentional and for the reasons beyond the control of the company. In our previous reply, we had also taken a liberty to explain you the factual situation of the Company and why the information could not be submitted in time, also we had sought an apology for the said unintentional delay. .*

7. *With this letter we do hereby re-iterate that the said delay in submission of information/documents as required to be submitted as per the summons, were unintentionally made due to the reasons which inter-alia include that:*

(a) the information sought in the summons was being very old (i.e. pertaining to financial years 2010-11 to 2017-18) and collating the same took some time;

(b) the situation of the Company had deteriorated in due course and it was not doing any business and operations, all the employees who were associated with the Company had left the Company for one reasons or other and there are no human resources available with the Company to support in locating the documents, verify its authenticity etc. Collating the information and documents for all the years as mentioned in the summons was a mammoth work to do with the limited resources;.

(c) the Company is currently being non-operational for last 5 years. Further, due to pandemic situation at the time when Summons were issued, also impeded our efforts in gathering information.

However, despite the aforesaid impediments, we collated the information to the best of our efforts, from the available records, as sought by SEBI and submitted the same.

8. *You may please note that the Company hasn't done any business and operations since long. Please also take note that most of the Punj group companies are not carrying out any business activities since year 2017-18 i.e. after death of Mr. Brij Lal Punj, one of the promoters of LEEL as this Company has gone into liquidation. Accordingly, the business operations of the group companies (including our Company) have been substantially scaled-down since last few years.*

9. *Further, post resignation of erstwhile Directors in early 2019, the Company had no proper Board from February 2019 to August 2019 and accordingly, the Directors were appointed with approval of shareholders in August 2019 in order to comply with the applicable laws and to complete the overdue filing of the Company. Post appointment of directors on the Board, the Company has been undertaking necessary actions to complete the compliances.*

10. *Due to the reasons as aforesaid, the Company doesn't have any employees as on date who can take care of compliances and assist in collating the data. Most of the employees of company/group company have left the organisation long back for one reasons or another..*

11. *Now, in light to the aforesaid submissions, it is respectfully submitted that the said delay in submission of the documents and information was for the reasons which were genuine, true and justified, and also beyond the Company's control and hence we humbly request SEBI to please take a lenient view and avoid any punitive action for such delay.*

12. *It is respectfully submitted that there is no disproportionate gain or unfair advantage occurred to the Company due to such delayed submission of information. We again reiterate that such delay was completely unintentional and under a situation which was beyond the control.*

13. *Please kindly note that no loss has occurred to any investor due to such delayed submission of information.*

14. *The Company has not received any notice from SEBI in past. This was the first time when the Company has received notice from the Company and for the reasons explained above, there was slight delay in submitting the information.*

15. *It is respectfully submitted that in the true and correct facts and circumstances, as stated hereinbefore, any issuance of punitive directions or imposition of monetary penalty under section15A(a) of SEBI Act, would be totally unjustified and unwarranted and put a financial burden on the Company and its Directors/Officers. In the circumstances, considering our aforesaid submissions we earnestly and humbly pray, that a lenient view be taken, and charges in the Notice be dropped and no punitive directions/ monetary penalty be issued/imposed.*

16. *We take liberty to modify and add additional grounds in our reply. we request that an opportunity for the personal hearing be also given to us before taking any final decision in my matter.*

….."

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Notice 3

16. The submissions made by the Noticee 3 *vide* letter dated March 15, 2023 and March 21, 2023 are as summarized below:

"…..

Please accept my apology for not responding to your earlier communication as office in Hathras is in residential place and the person could not be found who received your letter.

I have duly received your email dated 04.03.2023 and my submission to the same is given hereunder:

1. I was not the Auditor of LEEL Electricals Limited (LEEL)

2. I was approached by the then CFO of LEEL Mr Sushil Kabra, (Mobile No: 8408938445) Mrs Anita Kakkar Sharma (Mobile No: 9599443362), Company Secretary, and Mr Mukut Sharma (Mobile No: 9540930475) Director of LEEL.

3. I was engaged by LEEL to issued Fund Utilization Certificate based on the Bank statement of Escrow Account with State Bank of India of LEEL, Cash Credit account statement and relevant ledgers maintained by LEEL at their office.

4. I have examined and verified the Bank statement of Escrow Account with State Bank of India of LEEL, Cash Credit account statement and relevant ledgers maintained by LEEL at their office and produced by LEEL before me at their office during the course of my examination and verification.

5. Based on the examination and verification of Bank statement of Escrow Account with State Bank of India of LEEL, Cash Credit account statement and relevant ledgers maintained by LEEL at their office, I have issued certificate for limited purpose only for fund utilization by LEEL which were received by LEEL from Havells into the escrow account with State Bank of India of LEEL.

6. In last 4-5 days I was trying to search the back-up papers however could not find. As I recall that during 1st wave of Covid-19 in 2020 in lockdown our office was closed for more than two months from 22nd March 2020 to end of May 2020. After more than two months when office opened we found that there was a termite and rat attack in office Almirah where the files of many clients were kept, in which the many of the record of clients destroyed including the copy of the Bank Statement of Escrow Account with State Bank of India of LEEL, Cash credit account statement and copy of relevant ledgers of LEEL kept as backup paper.

7. Hence I do not have any record in my possession of the Bank Statement of Escrow Account with State Bank of India of LEEL, Cash Credit account statement and relevant ledgers maintained by LEEL at their office.

8. The aforementioned documents are in the possession of LEEL

9. My updated current Address are as follows:
a. Pankaj Shah , Flat no 406, Tower 28, Paras Tierea, Sector-137, Noida (U.P.)-201304.
b. Shah Pankaj and Associates, Naya Ganj, Near Jama Masjid, Kila Gate Hathras.U.P.)-204101.

10. I hereby also attached my ID proof (Copy of PAN Card) with reference to para 10 of SCN no. SEBI/HO/EAD/EAD5/P/OW/2023/9595/6-7 dated March 04, 2023.

Hope the aforesaid information would be satisfactory, I remain available for any further information required and known to me. I request to kindly revoke the subject SCN against me.

….."

Noticee 3's reply dated March 21, 2023

"…..

1. *I hereby submit that the summons dated 14/02/2022, 02/03/2022 and 16/03/2022 mentioned in MOM dated 20/03/2023 was not received by me.*
2. *Although speed post tracking showed delivery the subject summons, however to whom it was delivered could not be found.*
3. *I received your mail dated 04/03/2023 regarding SCN which I acknowledged and replied instantly.*
4. *If I could have received the mentioned summons also, I would not have any hindrance to reply the same.*

I pray for removal of the allegation against me. I remain available for any information required and known to me.

…."
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D. CONSIDERATION OF ISSUES AND FINDINGS

The issues that arise for consideration in the present matter are as following:

ISSUE I - Whether the Noticees have violated the provisions of SEBI Act, 1992?

ISSUE II - Do the violations, if any, attract penalty under Section 15A(a) of 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, 1992?

17. I now proceed to deal with the matter on merits with respect to the allegations made against the Noticees vide SCN dated March 04, 2023.

ISSUE I - Whether the Noticees have violated the provisions of SEBI Act, 1992?

Notice 1

It was inter alia alleged in the SCN that Noticee 1 failed to furnish the documents/ information as required under Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992 vide summons dated 16/02/2022, 02/03/2022 and 16/03/2022.

The relevant provisions alleged to have been violated, which are reproduced as under:

SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

"….

Functions of Board.

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

[21][(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. (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.

…."

(Note: For complete /extant text, relevant Act / Regulations / Circular etc., may please be referred)

18. It is noted that Noticee 1 has not disputed the receipt of Summons dated 16/02/2022, 02/03/2022 and 16/03/2022. Noticee 1 in its reply to the SCN submitted that all the documents and information sought by SEBI vide the aforesaid Summons, were furnished by Noticee 1 vide its reply dated July 27, 2022 and July 30, 2022 sent to SEBI on August 03, 2022 and July 30, 2022. Copy of said replies were also submitted by Noticee 1 as part of its reply to the SCN.

19. From the material available on record, it is noted that summons were issued to Noticee 1 three times viz., 16/02/2022, 02/03/2022 and 16/03/2022 by SEBI. All the summons specifically indicated the timeline within which Noticee 1 was required to furnish the information/document as sought in the said summons. The Noticee 1 was required to furnish the information/ documents as sought in the summons by February 28, 2022, March 10, 2022 and March 24, 2022, respectively as indicated in the summons. However, as per material available on record, it is noted that Noticee 1 did not furnish any information/document sought in the stated summons within the time line stipulated in the summons. Noticee 1 itself had submitted that it had replied to the summons for the first time on August 03, 2022 and July 30, 2022 vide its letters dated July 27, 2022 and July 30, 2022.

20. Further, Noticee 1 as part of its submissions to the SCN stated the following reasons for the aforesaid delay:

> *"……*
> *(a) the information sought in the summons was being very old (i.e. pertaining to financial years 2010-11 to 2017-18) and collating the same took some time;*
>
> *(b) the situation of the Company had deteriorated in due course and it was not doing any business and operations, all the employees who were associated with the Company had left the Company for one reasons or other and there are no human resources available with the Company to support in locating the documents, verify its authenticity etc. Collating the information and documents for all the years as mentioned in the summons was a mammoth work to do with the limited resources;.*
>
> *(c) the Company is currently being non-operational for last 5 years. Further, due to pandemic situation at the time when Summons were issued, also impeded our efforts in gathering information.*

……”

21. It is noted that Noticee 1 had also submitted the aforesaid reason for delay in its response sent in July and August, 2022 and mentioned it’s constraints to furnish the information/documents sought in the summons. It is noted that it was clearly mentioned in the said summons that “….*if you fail without reasonable cause or refuse to furnish information, produce such books, register, other documents, records as sought in the Annexure, or file false or incorrect or incomplete information, return, report, books or other documents, SEBI may initiate Adjudication proceedings against you in terms of section 15I of the SEBI Act, 1992*…..”. Even considering the same, what has been stated by Noticee 1 ought to have at least responded to the Summons demonstrating the constraints and/or seeking time. However, in the instant matter, as per admission of Noticee 1 itself Noticee 1 remained silent and did not submit its reply to summon within stipulated time.

22. Therefore, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee 1, I hold that the Noticee 1 failed to furnish the documents/ information as required under Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992 within the timeline prescribed in the respective summons dated 16/02/2022, 02/03/2022 and 16/03/2022. Accordingly, violation under Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992stands established against the Noticee 1.

Noticee 2

It was inter alia alleged in the SCN that Noticee 2 failed to furnish the documents/ information as required under Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992 vide summons dated 16/02/2022, 02/03/2022 and 16/03/2022.

The relevant provisions alleged to have been violated, which are reproduced as under:

SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

"….

Functions of Board.

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

[21][(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. (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.

…."

(Note: For complete /extant text, relevant Act / Regulations / Circular etc., may please be referred)

23. It is noted that Noticee 2 has not disputed the receipt of Summons dated 16/02/2022, 02/03/2022 and 16/03/2022. Noticee 2 in its reply to the SCN submitted that all the documents and information sought by SEBI vide the aforesaid Summons, were furnished by Noticee 2 vide its reply dated July 30, 2022 sent to SEBI on August 11, 2022. Copy of said replies were also submitted by Noticee 2 as part of its reply to the SCN.

24. From the material available on record, it is noted that summons were issued to Noticee 2 three times viz., 16/02/2022, 02/03/2022 and 16/03/2022 by SEBI. All the summons specifically indicated the timeline within which Noticee 2 was required to furnish the information/document as sought in the said summons.

The Noticee 2 was required to furnish the information/ documents as sought in the summons by February 28, 2022, March 10, 2022 and March 24, 2022, respectively as indicated in the summons. However, as per material available on record, it is noted that Noticee 2 did not furnish any information/document sought in the stated summons within the time line stipulated in the summons. Noticee 2 itself had submitted that it had replied to the summons for the first time on August 11, 2022 vide its letters dated July 30, 2022.

25. Further, Noticee 2 as part of its submissions to the SCN stated the following reasons for the aforesaid delay:

> *"……*
> *(a) the information sought in the summons was being very old (i.e. pertaining to financial years 2010-11 to 2017-18) and collating the same took some time;*
>
> *(b) the situation of the Company had deteriorated in due course and it was not doing any business and operations, all the employees who were associated with the Company had left the Company for one reasons or other and there are no human resources available with the Company to support in locating the documents, verify its authenticity etc. Collating the information and documents for all the years as mentioned in the summons was a mammoth work to do with the limited resources;.*
>
> *(c) the Company is currently being non-operational for last 5 years. Further, due to pandemic situation at the time when Summons were issued, also impeded our efforts in gathering information.*
> ……"

26. It is noted that Noticee 2 had also submitted the aforesaid reason for delay in its response sent in August, 2022 and mentioned it's constraints to furnish the information/documents sought in the summons. It is noted that it was clearly mentioned in the said summons that "….*if you fail without reasonable cause or refuse to furnish information, produce such books, register, other documents, records as sought in the Annexure, or file false or incorrect or incomplete information, return, report, books or other documents, SEBI may initiate Adjudication proceedings against you in terms of section 15I of the SEBI Act, 1992*…..". Even considering the same, what has been stated by Noticee 2 ought to have at least responded to the Summons demonstrating the constraints and/or seeking time. However, in the instant matter, as per admission of

Noticee 2 itself Noticee 2 remained silent and did not submit its reply to summon within stipulated time.

27. Therefore, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee 2, I find that since the Noticee 2 failed to furnish the documents/ information as required under Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992 within the timeline prescribed in the respective summons dated 16/02/2022, 02/03/2022 and 16/03/2022. Therefore, violations under Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992 stands established against the Noticee 2.

Noticee 3

It was inter alia alleged in the SCN that Noticee 3 failed to furnish the documents/ information as required under Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992 vide summons dated 14/02/2022, 02/03/2022 and 16/03/2022.

The relevant provisions alleged to have been violated, which are reproduced as under:

SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

"….

Functions of Board.

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

[21][(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. (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.

…."

(Note: For complete /extant text, relevant Act / Regulations / Circular etc., may please be referred)

28. It is noted that Noticee 3 in its reply dated March 15, 2023 and March 21, 2023 to the SCN disputed the receipt of Summons dated 14/02/2022, 02/03/2022 and 16/03/2022. Noticee 3 inter alia submitted that summons dated 14/02/2022, 02/03/2022 and 16/03/2022 were not received by him. In this regard, it is noted from the material available on record that the summon dated 14/02/2022, 02/03/2022 and 16/03/2022 were issued to the Noticee 3 on the following address: Mr. Shah Pankaj, Kila Gate Naya Ganj Near Jama Masjid Hathras-204101, Uttar Pradesh, India.

29. From the submissions of Noticee 3 during instant proceedings, it is observed that his postal address is same at which summons were send. As per India Post tracking details, summon dated 02/03/2022 and 16/03/2022 were delivered at the above-mentioned postal address of Noticee 3 on 08/03/2022 and 21/03/2022.

30. In view of the same, I find that the summons dated 02/03/2022 and 16/03/2022 were duly served to Noticee 3. Noticee 3 was required to furnish the information/ documents sought in the summon dated 14/02/2022, 02/03/2022 and 16/03/2022 within the timeline prescribed in the summons.

31. Besides, it was clarified to the Noticee 3 during the hearing and subsequently by email that the instant proceedings were about Noticee 3 having allegedly failed to furnish the documents/ information as required under Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992 vide summons dated 14/02/2022, 02/03/2022 and 16/03/2022, then within the stipulated time as

specified in the respective summons viz. dated 14/02/2022, 02/03/2022 and 16/03/2022.

32. Having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee 3, I hold that the Noticee 3 failed to furnish the documents/ information as required under Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992 within the timeline prescribed in the summons dated 14/02/2022, 02/03/2022 and 16/03/2022. Accordingly, violations under Section 11(2)(ia) read with 11C(3) of SEBI Act,1992 stands established against the Noticee 3.

Issue No. II If yes, whether the failure on the part of the Noticees would attract monetary penalty under Section 15A(a) of the SEBI Act?

33. Since it has been established in the foregoing paragraphs that Noticee 1, Noticee 2, Noticee 3 have violated the provisions of Section 11C (3) read with Section 11 (2) (ia) of SEBI Act, 1992 therefore, the aforesaid violations committed by the Noticee 1, Noticee 2 and Noticee 3 would attract monetary penalty under Section 15A(a) of SEBI Act.

34. In this regard, reliance is placed on the order in the matter of Chairman, **SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}** wherein Hon'ble Supreme Court held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of* *the fact whether contravention must made by the defaulter with guilty intention or not.''*

35. In view of the above, I conclude that the Noticee 1, Noticee 2 and Noticee 3 are liable for monetary penalty under the provisions of Section 15A(a) of the SEBI Act which reads as under:

<u>SEBI Act:</u>

"…..

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 No. III If yes, 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 read with Rule 5(2) of the Adjudication Rules?

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

"…..

Factors to be taken into account by the adjudicating officer

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.

…..”

37. In the instant case, I find that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticees as a result of the violations committed by the Noticees. Further, material available on record has not brought out the impact of non-compliance of summons on the investigation. However, I cannot ignore the fact that the Noticees have failed to comply with provisions of SEBI Act, 1992.

E. ORDER

38. After taking into consideration the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and 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 the following penalty on the Noticees viz; Himalayan Mineral Waters Pvt. Ltd (Noticee1) and Perfect Radiators and Oil Coolers Pvt. Ltd. (Noticee 2) and CA Pankaj Shah (Noticee 3). I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

S.No	Name of the Noticee	Penalty under section	Penalty Amount
1.	Himalayan Mineral Waters Pvt. Ltd (Noticee 1)	Section 15A(a) of the SEBI, Act 1992	Rs. 5,00,000/- (Rupees Five lakh only)
2.	Perfect Radiators and Oil Coolers Pvt. Ltd. (Noticee 2)		Rs. 5,00,000/- (Rupees Five lakh only)
3.	CA Pankaj Shah (Noticee 3)		Rs. 5,00,000/- (Rupees Five lakh only)

39. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order 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

40. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

41. Copy of this Adjudication Order is being sent to the Noticees at their respective last known addresses and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: March 31, 2023
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER