BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/UR/2022-23/17225]

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

In respect of

Yadunath Singh

ECLPS1036K

In the matter of Covidh Technologies Ltd.

BACKGROUND OF THE CASE

1. SEBI conducted an investigation into the alleged circulation of SMS in the scrip of Covidh Technologies Limited (hereinafter referred to as '**Covidh/ Company'**) and increasing the volume of the scrip for the period February 16, 2017 to February 21, 2017 (hereinafter referred to as "**IP/ Investigation Period**").

2. During the course of investigation, manipulative, fraudulent or unfair trade practices in the securities market were observed, i.e. involved in disseminating of misleading SMS, which influenced the investors to deal in the scrip of Covidh. This resulted into spurt in trading volume of the scrip and enabled net sellers to exit in the scrip which was not very liquid. In this regards Investigation Authority (hereinafter referred to as "**IA**") appointed by SEBI sought information from Yadunath Singh (hereinafter referred to as "**Noticee/ you**") and to examine on oath vide summons dated July 30, 2021 under Section 11 C (3) and 11 C (5) of the SEBI Act, however no reply was received from the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO"**) under Sub-section 1 of Section 15-I of SEBI Act, 1992 and Rule 3 of SEBI

(Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') vide order dated September 20, 2021 to inquire into and adjudge under Section 15A(a) and 15 HB of SEBI act for the alleged violation of the provisions of Section 11C(3) and 11C(5) of the SEBI act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice (hereinafter referred to as '**SCN**') bearing reference no. SEBI/EAD-3/BM/UR/28716/2021 dated October 08, 2021 was issued to Noticee in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'the Adjudication Rules') read with section 15-I of the SEBI Act. The said SCN was issued at the last known address of the Noticee through Speed Post Acknowledgement Due ("**SPAD**") and through Digitally signed e-mail which was returned "undelivered". In the said SCN, the Noticee was asked to reply within a period of 21 days, however, no reply was received from the Noticee. Further in this regard affixture was done however the service through affixture also could not be completed. Subsequently SCN cum hearing notice was published in newspapers - The Times of India & Nai Dunia dated January 14, 2022. Through the publication, Noticee was advised to appear for hearing on February 03, 2022, despite the same, it was noted that the Noticee had neither filed any reply nor had availed the opportunity of personal hearing on February 03, 2022.

5. From the above, I am of the view that the principles of natural justice in regards to Noticee have been adhered to, as he was given ample opportunity to reply to the SCN as also appear for the hearing. In view of the same, the matter is being proceeded ex-parte in terms of Rule 4(7) of AO Rules 1995.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

6. After perusal of the material available on record, I have the following issues for consideration :

ISSUE I : Whether Noticee has violated the provisions of Section 11C(3) and 11C(5) of SEBI Act, 1992 by its non-compliance of summons issued by the Investigating Authority (IA), SEBI ?

ISSUE II : Does the violation, if any, on part of the Noticee attract penalty under Section 15A(a) and 15HB of the SEBI Act ?

ISSUE III : If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

7. Before proceeding, I would like to refer to the relevant provisions of the SEBI Act which reads as under :

Securities and Exchange Board of India Act, 1992
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.*

(5) *Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.*

Issue No. I: Whether Noticee has violated the provisions of Section 11C(3) and 11C(5) of SEBI Act, 1992

8. SEBI conducted an investigation in the matter after it received the complaint that SMSs may have been circulated to enable exit to entities from the scrip of Covidh and thus creating artificial volume. During the course of investigation it was observed that SMS were sent by Noticee through reseller SSV Technologies and RP Infotech.

9. During the investigation period, the price of the scrip opened at Rs. 3.65 and closed at Rs.3.67. It was observed that the average number of shares traded daily during the investigation period was 4,38,007 which was much higher than the average number of shares traded before IP (3,276 shares) and after IP (12, 484 shares). Whereas the average shares traded daily during the period Nov 17, 2016-Feb 15, 2017 was just 3,276.

10. Further it was observed from the bank statement of Noticee that he had fund transfers with other connected entities and with SMS aggregators. Further it was observed that Apex Global which was proprietorship of Noticee had also fund transfers with the connected entities.

11. It was observed that suspected entities had net sold shares in the scrip which constitutes 75.82 % of total market volume.

12. In this regards IA was appointed by SEBI to investigate into the fraudulent and manipulative practices employed by the entities. Vide e-mail dated July 27, 2021, information was sought from the Noticee by the IA. The details of information sought by the IA vide e-mail dated July 27, 2021 is as follows:

    a) Details (including the business details, address, phone number & email id) of your firm, the Apex Global.
    b) Details (Name, PAN, Email id & Phone number) of promoter/director/KMPs/proprietor etc. of your firm.
    c) Details of SEBI Registration of Apex Global.
    d) Details/List of employees of the Apex Global during Jan 2017 – March 2017.

    Vide e-mail dated July 29, 2021 reminder was sent to the Noticee for the information as sought vide e-mail dated July 27, 2021. Further another reminder dated July 30, 2021 was sent to the Noticee, however no reply was received.

    As no reply was received, Summons dated July 30, 2021 bearing reference no. SEBI/HO/IVD/ID17/OW/P/2021/17298/1 was issued to the Noticee for production of the aforementioned documents and for personal appearance before the IA under Section 11 C (3) an 11 C (5) of SEBI act. Since the Noticee did not appear for the aforesaid summons neither did he submit the information as sought, another summons dated August 12, 2021 bearing reference no. SEBI/HO/IVD/ID17/OW/P/2021/19162/1 was issued to the Noticee. Noticee again did not appear for the aforesaid summons neither did he submit the information as sought. The details of summons issued and information sought to the Noticee are given below:

Date of Summons/E-mail & Sections under which Summons/E-mail were sent	**Date of delivery of e-mails/ date of appearance vide summons**	**Reply received/ appeared (Yes/No)**
Information sought vide email dated July 27, 2021 from webdloy@gmail.com	Email delivery: July 27, 2021	No
Reminder email sent to webdloy@gmail.com on July 29, 2021	Email delivery: July 29, 2021	No
Reminder email sent to webdloy@gmail.com and yadunike@gmail.com on July 30, 2021	Email delivery: July 30, 2021	No
July 30, 2021- Summons bearing ref no. SEBI/HO/IVD/ID17/OW/P/2021/17298/1 for production of documents and personal appearance before the IA u/s 11C(3) and 11 C(5) of the SEBI Act, 1992. The delivery of summons was completed through email on the same day.	Date of appearance: August 09, 2021	No
August 12, 2021 – Summons bearing ref no.SEBI/HO/IVD/ID17/OW/P/2021/19162/1 for production of documents and personal appearance before the IA u/s 11C(3) and 11 C(5) of the SEBI Act, 1992. The delivery of summons was completed through email on the same day.	Date of appearance: August 23, 2021	No

13. As stated in table above, it is on record that the summons were delivered to the Noticee. The IA vide summons issued at July 30, 2021 and August 12, 2021 called upon the Noticee to appear and produce the information as stated in paragraph 12 above.

14. The nature of the information suggests that this information was available only with the Noticee and that such information could not have been procured from any other source. This has delayed the investigation and its subsequent process which was detrimental to the investigation in general.

15. It is pertinent to mention here that it is the responsibility of every person from whom information is sought vide summons to fully co-operate with Investigating Authority and promptly produce all documents, records, information, etc., to the Investigating Authority. If persons are allowed to flout the summons issued to them during the course of the investigation, SEBI, as the watchdog of the securities market, will not be able to discharge its statutory obligations in protecting the interests of the investors and safeguarding the integrity of the securities market. The information was sought from the Noticee against the background of serious irregularities.

16. Non submission of the requisite information has adversely affected the investigation process. The Hon'ble Securities Appellate Tribunal in its Order dated 22.10.2013, in the matter of **Rich Capital & Financial Services Limited and Mr. Shashwat Agarwal vs. SEBI** observed that-

> *"We note that requisite information and relevant records are pre-requites for a meaningful investigation. In the absence of cooperation by the concerned company, the SEBI cannot move an inch. Therefore, every company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If*

companies are allowed to take the statutory summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins."

In this context, it is also important to refer to the judgment of the Hon'ble SAT in the matter of **Mr. Jalaj Batra vs. SEBI** (Appeal no. 184 of 2010, date of decision dated December 06, 2010) wherein it observed:

"......We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non co-operation with the market regulator has to be viewed seriously. We do not know what else would have come to light if the appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him."

Further, The Hon'ble SAT in Appeal No.95/04 in **Mayfair Paper & Board Pvt. Ltd. V SEBI** observed that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under section 15A of the SEBI Act 1992.

Hon'ble Supreme Court in **SEBI vs. Bhavesh Pabari (**CIVIL APPEAL NO(S).11311 OF 2013) held that:

"……Adjudicating Officer had, therefore, rightly recorded that non-compliance of summons had hampered the further course of investigation. The failure was without any justification. Agreeing with the said findings, the Appellate Tribunal has observed that details were withheld with a view to delay the investigation being conducted by SEBI

to the detriment of investors from whom funds were collected by the appellants in contravention of CIS Regulations.

51. We do not find any fault with the reasoning given. We are of the opinion that the fault squarely lied with the appellants and, thus, penalty of Rs.1,00,00,000/- (Rupees one crore only) for violation of Section 11C(3) under Section 15A(a) of the SEBI Act does not call for any interference"

Hon'ble SAT in **Concord Realty Private Limited Vs. SEBI** (Appeal No. 22 of 2016)observed:

"….9. As regards the penalty of Rs. 2,00,000 imposed for violating section 11C(3) and Rs. 2,00,000 for violating section 11C(5) of the SEBI Act it is not in dispute that the appellant had failed to furnish all particulars sought in the summons issued against the appellant and that the appellant had failed to appear inspite of receiving the summons. Counsel for the appellant, however, submitted that in the present case, inadvertently the date of summoning was mistaken to be the date before which the letters, documents were to be filed with SEBI and accordingly it is submitted that it is not a fit case for imposing penalty on the ground the appellant has violated section 11C(3) and section 11C(5) of the SEBI Act. 10. Once it is established that there is failure to furnish requisite particulars called for and there is failure to appear before the concerned officer of SEBI as per the summons issued to the appellant, it obviously means that there is violation of section 11C(3) and section 11C(5) of SEBI Act. Penalty for such violations under section 15A(b) of the SEBI Act is Rs. 1 lakh per day subject to a maximum of Rs. 1 crore. Thus as against the penalty of Rs. 1 crore imposable for violating section 11C(3) and penalty of Rs. 1 crore imposable for violating section 11C(5), the AO of SEBI after considering all mitigating factors has imposed penalty of Rs. 2 lakh for violating section 11C(3) and Rs. 2 lakh for violating section 11C(5) of SEBI Act which cannot be said to be unreasonable and excessive. Accordingly, the penalty imposed for violating section 11C(3) and 11C(5) is upheld."

Given the above, there is no hesitation to hold that the Noticees has violated the provisions of 11C (3) and 11(5) of the SEBI Act by not complying with the summons issued thereunder

ISSUE II : Does the violation, if any, on part of the Noticees attract penalty under Section 15A(a) and 15HB of the SEBI Act

17. The provisions of Section 15A (a) and 15HB of SEBI Act, as prevailing at the relevant time are reproduced hereunder :

"Penalty for failure to furnish information, return, etc.

15 A. 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, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less".

Penalty for contravention where no separate penalty has been provided.-

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.]

18. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund *interalia* held " *once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."*

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

19. While imposing monetary penalty it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under :

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

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."

20. I find that the investigation did not bring out the disproportionate gain or unfair advantage to the Noticee or the loss caused to the investors as a result of the failure on the part of the Noticee to honour the summonses. The failure on the part of the Noticees to furnish the required information to the IA reflects the Noticees disregard for the investigation process of SEBI and the same needs to be view seriously.

<u>ORDER</u>

21. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act as enumerated above, I in exercise of powers conferred upon me under section 15-I of the SEBI Act, 1992, I hereby impose following penalty under section 15A(a) and 15HB of the SEBI Act, 1992 on the Noticees:

Name of the Noticee	Provisions violated	Penalty
Yadunath singh PAN: ECLPS1036K	Section 11C(3) and 11 C(5) of SEBI Act, 1992	Rs. 10,00,000 (Rupees Ten Lakhs only)

22. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

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

24. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticees shall also provide the following details while forwarding DD / payment information:
    - Name and PAN of the Noticee
    - Name of the case / matter
    - Purpose of Payment – Payment of penalty under AO proceedings
    - Bank Name and Account Number
    - Transaction Number

25. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

26. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. and also to the Securities and Exchange Board of India.

Date: June 22, 2022 | **BARNALI MUKHERJEE**
Place: Mumbai | **ADJUDICATING OFFICER**