BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No. Order/BS/KH/2024-25/30558]

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

In respect of:

Norben Tea & Export Ltd

(PAN: AAACN9786H)

In the matter of Norben Tea & Export Ltd

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), received an alert from the National Stock Exchange (hereinafter referred to as "**NSE**") vide email dated December 12, 2023 stating that Norben Tea and Exports Ltd (herein after referred to as the "**Company/ Noticee**"), was prima facie non-compliant with SEBI Circular dated October 18, 2019 pertaining to 'Resignation of statutory auditors from listed entities and their material subsidiaries'. Subsequently, SEBI investigated the matter and the Company was *prima facie* to be in violation of SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 read with Regulation 4(1) (g) of SEBI (LODR) Regulations, 2015. In view of the same, SEBI initiates adjudication proceedings against the Company.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer under Section 19 of SEBI Act read with Section 15I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties), 1995 (hereinafter referred to as "**Rules**") vide communique dated March 4, 2024 to inquire into and adjudge under section 15HB of the SEBI Act, 1992, the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice no. SEBI/EAD-1/BS/10868/1/2024 dated March 18, 2024 (hereinafter referred to as '**SCN'**) was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under section 15HB of SEBI Act for the alleged violation of the provisions of SEBI Act and SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 read with Regulation 4(1)(g) of SEBI (LODR) Regulations, 2015 . The SCN, *inter alia*, alleged the following:

   a. It is observed from the Corporate Announcement dated August 03, 2023 made by the Company that, the outgoing auditor viz. M/s L.K. Bohania & Co had given its limited audit review report for the first quarter ended June 30, 2023 on August 03, 2023.

   b. Subsequently, M/s L.K. Bohania & Co resigned as the statutory auditor of the Company on September 25, 2023. It is also noticed that the Board of the Company in their meeting dated September 25, 2023 has appointed the successor auditor i.e. *M/s P D Rungta & Co* in place of M/s L.K. Bohania & Co.

   c. On account of the resignation of M/s L.K. Bohania & Co on August 25, 2023 i.e. after 45 days from the end of June 2023 quarter –attracts the requirement of Para 6(A)(ii) of the SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019. Therefore, the Company should have ensured that the outgoing auditor, before its resignation, issue the limited review/ audit report for such quarter as well as for the next quarter i.e. September 2023.

d. It is alleged that, as M/s L.K. Bohania & Co did not issue the limited review/ audit report for the quarter ended September 2023, the same is in non-compliance with SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019. The Circular requires every listed entity to ensure that the conditions as mentioned in the clause at Para 6(A) and 6(B) of the Circular are included in the terms of appointment of the statutory auditor at the time of appointing/re-appointing the auditor.

e. However, it is noticed from the terms of appointment obtained from the Noticee with respect to M/s L.K. Bohania & Co and M/s P D Rungta & Co that such clauses/ conditions of the SEBI Circular have not been incorporated by the Noticee.

f. In view of the foregoing, it is alleged that the Noticee had violated the SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 read with Regulation 4(1)(g) of SEBI (LODR) Regulations, 2015 by:

i) Failing to ensure that that the outgoing auditor M/s L.K. Bohania & Co, before such resignation, issue the limited review/ audit report for June 2023 quarter as well as the next quarter i.e. September 2023

ii) Failure to incorporate requisite clauses / conditions of the said SEBI Circular in the terms of appointment of their statutory auditors viz. M/s L.K. Bohania & Co and M/s P D Rungta & Co.

4. In response to the SCN, the Noticee vide its reply dated March 28, 2024, inter alia, submitted the following:

“ We would like to clarify that we have taken due cognizance and ensured compliance with Para 6(A) of the SEBI Circular dated October 18, 2019 in appointment of the new auditor. Our last auditor M/s L.K. Bohania & Co. had issued limited review report for the first quarter ended June 30, 2023.

They have resigned w.e.f. September 25, 2023 i.e. before the end of second quarter September 30, 2023. The Compliance of Para 6 (A) (i), (ii) and (iii) is as under:

> *Compliance of Para 6 (A) (i): As mentioned above M/s. L. K. Bohania & Co. has resigned before the end of second quarter September 30, 2023 therefore not governed under this clause.*
>
> *Compliance of Para 6 (A) (ii): M/s. L. K. Bohania & Co. had already issued limited review report for the first quarter ended June 30, 2023. Hence, they are not required to issue limited review report for the second quarter ended September 30, 2023.*
>
> *Compliance of Para 6 (A) (iii): M/s L.K. Bohania & Co had issued limited review report only for the first quarter ended June 30, 2023. Hence, this clause is not applicable.*

Since the outgoing auditors M/s L.K. Bohania & Co had tendered their resignation on September 25, 2023 with immediate effect i.e. before the end of quarter ended September 30, 2023and before the commencement of the limited review procedure for the quarter ended September 30, 2023, the limited review procedure of the financials for the quarter ended September 30, 2023 was conducted by the new auditors i.e. M/s. P D Rungta & Co. and they had issued an unmodified opinion on the quarterly financials ended September 30, 2023.

Further on plain perusal of the said SEBI circular dated October 18, 2019the requirement of incorporating Para 6(A) and 6(B) as a specific provision in the engagement letter for appointment/re-appointment of auditor is not mentioned. In this regard we would like to highlight Para 3 & 8 of the terms of engagement letter wherein it is inferred that the audit procedure and the conduct of the audit firm shall be in adherence with the SEBI Act, Rules and circulars issued thereunder. The said circular dated October 18, 2019 issued under the SEBI act is also covered along with other statutory provisions as the part of the terms of engagement.

In the show cause notice dated March 18, 2024 the Adjudicating Officer has asked us, inter alia, to show the reason for not imposing any penalty on the Company. In this respect we want to draw your kind attention to the Hon'ble Supreme Court's decision in Hindustan Steel Ltd. Vs. State of Orissa (AIR 1970 SC 253:1969 (2) SCC 627), wherein it was contemplated by the Supreme Court that "an Order imposing penalty for failure to carry· out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is unlawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty will be Justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.

The aforementioned case was also upheld by The Honorable Securities Appellate Tribunal in the case matter of Samrat Holdings Limited Vs SEBI that "On a perusal of section l5I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "he may impose such penalty" is of considerable.' significance, especially in view of the guidelines provided by the legislature in section 15J. "The Adjudicating officer shall have due regard to the factors" stated in the section is a direction and not an option. It is not incumbent on the part of the Adjudicating officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in sub-section 1 of section 15I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case.

Without admitting or denying the alleged violations, we would humbly request your good self to consider the provision of Regulation 15J of the SEBI ACT, 1992 which is r produced herein below;

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 default

Our outgoing auditor M/s. L K Bohania & Co. has vide their letter dated September 25, 2023 has clarified that their resignation is due to their lack of manpower post the COVID period and pre-occupancy with other work and have further mentioned that during the course of their audit they have always received all the requisite information and due co-operation from the Company at all time. Further, our new auditors M/s. P D Rungta & Co. had issued its limited review report for the quarter September 2023 on November 09, 2023 i.e., will within the due date for submission of quarterly financials for September 2023. Hence, there is no question at all of hampering of investor confidence or denying them access to reliable information for taking timely investment decisions."

5. Considering the reply received from the Noticee it was decided to conduct an inquiry in the matter. Accordingly, vide email dated May 10, 2024, hearing notice was issued to the Noticee to provide an opportunity of personal hearing. The Noticee was advised to appear before the undersigned on May 29, 2024. The Noticee appeared for the scheduled hearing through its Authorized Representative (**AR**). The AR primarily reiterated submissions already made vide letter dated March 28, 2024 and also made additional submissions during the course of the hearing. The AR requested for additional time to submit the additional submissions in writing, which was granted by the undersigned. The additional submissions made by the Noticee vide letter dated May 29, 2024 are as summarized below:

"The SEBI Circular dated October 18, 2019 does not direct to incorporate the clause of the said circular in the appointment letters of the statutory auditors. In order to encompass and bound the Company and the Auditors with all the applicable provisions of the SEBI Circular including provisions of the SEBI LODR Regulations and all other applicable regulations, circulars, rules prescribed by SEBI under the SEBI Act, as a universal practice we have mentioned in the appointment letter that the duties and responsibility of the auditors including the plan of audit has to be in adherence with the SEBI Act, regulations, circular and rules issued thereunder.

The absence of a specific provision of the circular in the engagement letter doesn't imply that the provision is not applicable and neither it provide any impunity for any non-compliance. As the circular is issued under the provisions SEBI Act and hence it is applicable in its entirety as the same is covered in Para 3 and 8 of the terms of engagement letters copy of which is already submitted along with our reply dated March 28, 2024.

Similar form of drafting is universally practiced while passing any resolution under the Companies Act or any other act/regulations wherein the resolution always contain the phrase "and all applicable provisions of the Act" implying passing of the resolution in compliance with all applicable provisions of the Act."

CONSIDERATION OF ISSUES AND FINDINGS

6. Considering the allegations made out in the SCN and the submissions made by the Noticee, I find that following issues require consideration in the present case:

ISSUE I - Whether the Noticee is in violation of SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 read with Regulation 4(1) (g) of SEBI (LODR) Regulations, 2015?

ISSUE II - Do the violations, if any, attract penalty under Section 15HB of SEBI Act, 1992?

ISSUE III - If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

7. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions which are reproduced below :

The relevant provisions are reproduced as under:

i. The relevant provisions of SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 is as under:

"5. *Resignation of an auditor of a listed entity / its material subsidiary before completion of the audit of the financial results for the year due to reasons such as pre-occupation may seriously hamper investor confidence and deny them access to reliable information for taking timely investment decisions*

6. *In light of the above, the conditions to be complied with upon resignation of the statutory auditor of a listed entity/material subsidiary w.r.t. limited review / audit report as per SEBI LODR Regulations are as under:*

A. ***All listed entities/material subsidiaries shall ensure compliance with the following conditions while appointing/re-appointing an auditor****:*

(i) If the auditor resigns within 45 days from the end of a quarter of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for such quarter.

(ii) If the auditor resigns after 45 days from the end of a quarter of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for such quarter as well as the next quarter.

…"

"…The listed entity/ material subsidiary shall ensure that the conditions as mentioned in 6(A) and 6(B) above ***are included in the terms of appointment of the statutory***

***auditor** at the time of appointing/re-appointing the auditor. In case the auditor has already been appointed, the terms of appointment shall be suitably modified to give effect to 6(A) and 6(B) above."* [**emphasis added**]

Regulation 4(1)(g) of SEBI (LODR) Regulations, 2015 is reproduced as under:

Principles governing disclosures and obligations.

"4 (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable"

FINDINGS

8. On perusal of the material available on record and considering the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder:

ISSUE I - Whether the Noticee is in violation of SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 read with Regulation 4(1) (g) of SEBI (LODR) Regulations, 2015?

9. From the SCN, I note that Noticee has been alleged for violation of SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 read with Regulation 4(1) (g) of SEBI (LODR) Regulations, 2015.

10. I will now proceed with my findings in each of the alleged violations against Noticee.

11. <u>Failure to comply with the Regulatory requirements at the time of resignation and appointment of the statutory auditor(s)</u>:

    a. It has been alleged that Noticee has violated SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 read with Regulation 4(1) (g) of SEBI (LODR) Regulations, 2015 by not complying with the Regulatory requirements at the time of resignation and appointment of the statutory auditor(s).

b. I note that, from the SCN, it was observed from the Corporate Announcement dated August 03, 2023 made by the Company that, the outgoing auditor viz. M/s L.K. Bohania & Co had given its limited audit review report for the first quarter ended June 30, 2023 on August 03, 2023. Subsequently, M/s L.K. Bohania & Co resigned as the statutory auditor of the Company on September 25, 2023. It is noted that the Board of the Company in their meeting dated September 25, 2023 has appointed the successor auditor i.e. *M/s P D Rungta & Co* in place of M/s L.K. Bohania & Co.

c. The relevant quarter to examine the applicability of said SEBI Circular in this matter is June 2023. Accordingly, as the resignation of M/s L.K. Bohania & Co was on August 25, 2023 i.e. after 45 days from the end of June 2023 quarter –the requirements of Para 6(A)(ii) of the said SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 is attracted in the case. Therefore, the Company should have ensured that the outgoing auditor, before its resignation, issue the limited review/ audit report for quarter ending June 2023 as well as for the next quarter i.e. quarter ending September 2023.

d. Further, I have noticed from the appointment obtained from the Company vide its email dated December 27, 2023 with respect to M/s L.K. Bohania & Co and M/s P D Rungta & Co that clauses/ conditions of the SEBI Circular have not been incorporated by the Company in the terms of appointment of their statutory auditors which stated that, every listed entity to ensure that the conditions as mentioned in Para 6(A) and 6(B) of the said Circular are included in the terms of appointment of the statutory auditor at the time of appointment/ re-appointment of the auditor.

e. In this regard, Noticee has stated in the reply dated March 28, 2024 as below:

"M/s L.K. Bohania & Co have resigned w.e.f. September 25, 2023 i.e. before the end of second quarter September 30, 2023. The Compliance of Para 6 (A) (i), (ii) and (iii) is as under:

Compliance of Para 6 (A) (i): As mentioned above M/s. L. K. Bohania & Co. has resigned before the end of second quarter September 30, 2023 therefore not governed under this clause.

Compliance of Para 6 (A) (ii): M/s. L. K. Bohania & Co. had already issued limited review report for the first quarter ended June 30, 2023. Hence, they are not required to issue limited review report for the second quarter ended September 30, 2023.

Compliance of Para 6 (A) (iii): M/s L.K. Bohania & Co had issued limited review report only for the first quarter ended June 30, 2023. Hence, this clause is not applicable.

Since the outgoing auditors M/s L.K. Bohania & Co had tendered their resignation on September 25, 2023 with immediate effect i.e. before the end of quarter ended September 30, 2023and before the commencement of the limited review procedure for the quarter ended September 30, 2023, the limited review procedure of the financials for the quarter ended September 30, 2023 was conducted by the new auditors i.e. M/s. P D Rungta & Co. and they had issued an unmodified opinion on the quarterly financials ended September 30, 2023"

f. Noticee has further stated in its reply dated March 25, 2023 as below:

"Further on plain perusal of the said SEBI circular dated October 18, 2019 the requirement of incorporating Para 6(A) and 6(B) as a specific provision in the engagement letter for appointment/re-appointment of auditor is not mentioned. In this regard we would like to highlight Para 3 & 8 of the terms of engagement letter wherein it is inferred that the audit procedure and the conduct of the audit firm shall be in adherence with the SEBI Act, Rules and circulars issued thereunder. The said circular dated October 18, 2019 issued under the SEBI act is also

covered along with other statutory provisions as the part of the terms of engagement"

g. In view of the above replies submitted by Noticee, I find that M/s L.K. Bohania & Co. has not issued the limited audit review report for the quarter ended September 30, 2023 and has only issued limited review report for the quarter ending June 30, 2023 as mentioned by the Noticee in its reply dated March 28, 2024. The rationale for insisting on such a limited review for the period by the auditor who is in-charge of the audit is to ensure that the investors are not deprived of the valuable information regarding the Company even in the event of resignation of the auditor. Resignation of an auditor during the course of the financial year before completion of the audit of the financial results may seriously hamper the confidence of the investors. It is in such a scenario that the safeguards provided in the circular provides flow of information in an uninterrupted way. It has also been found from the reply that the limited review procedures of the financials for the quarter ended September 30, 2023 was conducted by the new auditors i.e. M/s P D Rungta & Co. Additionally, I find that as per SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 every listed entity is required to ensure the conditions as mentioned in Para 6(A) and 6(B) of the said circular to be included in the terms of appointment of the statutory auditor at the time of appointing/ re-appointing the auditor. However, I find from the above replies submitted from the Noticee, that in the terms of appointment obtained from the Company with respect to M/s L.K. Bohania & Co. and Ms. P D Rungta & Co such clauses/ conditions of the said SEBI Circular have not been incorporated by the Company.

h. Based on the above findings, I conclude that the allegations against Noticee of the violation of provision of SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 read with Regulation 4(1) (g) of SEBI (LODR) Regulations, 2015 stand established.

ISSUE II - Do the violations, if any, attract penalty under Section 15HB of the SEBI Act, 1992?

12. I note that the above violations make the Noticee liable for monetary penalty under Section 15HB of the SEBI Act, 1992, the text of which is reproduced hereunder:

SEBI Act, 1992

"15HB.Penalty for contravention where no separate penalty has been provided.-

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.]

13. I have considered the judgements cited by the Noticee in support of its contention that no penalty may be imposed in the matter. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: "*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.''*

Considering the above observations of the Hon'ble Court and considering the facts and circumstances of the case, I am of the view that it is a fit case for imposition of monetary penalty.

ISSUE III - If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

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

SEBI Act, 1992

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.

15. Audit of accounts and publishing reports on the true financial status of a Company enable the investors to take well-informed decisions. Timely audit by the statutory auditor(s) are also one of the pillars of good corporate governance. The Hon'ble Securities Appellate Tribunal ('SAT') in the matter of Coimbatore Flavors & Fragrances Ltd. vs SEBI(Appeal No. 209 of 2014 order dated August 11, 2014), has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same*."

16. I note that the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of the violations committed by the Noticee. I also note that no prior default of the Noticee is available on record. Considering the same, I am inclined to take lenient view with regarding to the penalty attracted in respect of the violation.

<u>ORDER</u>

17. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the

powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules 1995, I hereby impose a monetary penalty on the Noticee as given in the table below:

Noticee	**Violations under Section**	**Penalty under Section**	**Penalty Amount (INR)**
Norben Tea & Export Ltd (PAN-AACN9786H)	SEBI Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 read with Regulation 4(1) (g) of SEBI (LODR) Regulations, 2015.	15 HB of SEBI Act, 1992	INR 1,00,000/- (Rupees One Lakh only)

18. Noticee 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. In case of any difficulties in payment of penalties, Noticee may contact the support at ***portalhelp@sebi.gov.in***

19. 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 of Noticee.

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

Place: Mumbai **BIJU S**

Date: June 28, 2024 **Adjudicating Officer**