BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/UR/2022-23/19549]

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

Vishal Hashmukhbhai Shah

(Driving License no: GJ0120030198259)

In the matter of Bhakti Gems & Jewellery Ltd.

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the alleged circulation of stock tips /recommendations through mediums like website, SMS, Mobile Numbers & Telegram Channel in the scrip of Bhakti Gems & Jewellery Ltd. (hereinafter referred to as "**Bhakti**") for the period December 10, 2020 to April 19, 2021(hereinafter referred to as "**IP/ Investigation Period**").

2. During the course of investigation, there were reasonable ground to believe that transactions in securities were being dealt in a manner detrimental to the investors or securities market, i.e. involved in disseminating of misleading SMS, which influenced the investors to deal in the scrip of Bhakti. In this regard Investigation Authority (hereinafter referred to as "**IA**") appointed by SEBI sought information from Vishal Hashmukhbhai Shah (hereinafter referred to as "**Noticee/ you**") and to examine on oath vide summons dated March 16, 2022 under Section 11 C (3) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**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 May 19, 2022 to inquire into and adjudge under Section 15A(a) of the SEBI Act for the alleged violation of the provisions of Section 11C(3) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice (hereinafter referred to as '**SCN**') bearing reference no. EAD-3/BM/UR/27538/2022 dated July 05, 2022 was issued to the Noticee in terms of Rule 4(1) of 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 were both delivered and the proof of delivery is on record. In the said SCN, the Noticee was asked to reply within a period of 21 days, however, no reply was received from the Noticee. Thereafter Noticee was in the interest of Principles of Natural Justice, given with an opportunity of personal hearing vide Hearing Notice (hereinafter referred to as "**HN**") dated September 02, 2022 on September 14, 2022 through SPAD and Digitally signed e-mail. Since Noticee did not appear for the aforesaid hearing scheduled on September 14, 2022, vide another HN dated September 14, 2022, sent through SPAD and Digitally signed e-mail, the Noticee was given another opportunity of hearing on September 19, 2022 vide HN dated September 14, 2022. I note that both the HN were delivered and the delivery status in this regard is on record.

5. As can be observed sufficient opportunity of hearing was given to the Noticee, however Noticee failed to appear for the hearing, despite of repeated opportunities provided to him. Due delivery of HNs' and rescheduled hearings was done, and is available on record.

6. 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. Thus, I am of the view that he has nothing to submit and in terms of Rule 4(7) of the Adjudication Rules the matter is being proceeded ex-parte on the basis of material available on record. As the Noticee did not file any reply to the SCN, it can be presumed that he has admitted the charges levelled against him.

7. In this regard, it is pertinent to note that the Hon'ble SAT in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed that, *"......the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".*

8. Further, the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that*: "........... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

9. Additionally, the same position has been reiterated by the Hon'ble SAT in the matter of **Dave Harihar Kirtibhai vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under*: "...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non- receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time*

and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."

10. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against Noticee ex parte, based on the material available on record.

<u>ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS</u>

11. I have the following issues for consideration:

ISSUE I : Whether Noticee has violated the provisions of Section 11C(3) of SEBI Act, 1992 by 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) 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?

12. 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.*

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

13. SEBI conducted an investigation in the scrip of Bhakti after it received the complaint pertaining to circulation of stock tips /recommendations through mediums like website, SMS, Mobile Numbers & Telegram Channel in the scrip of Bhakti for the period December 10, 2020 to April 19, 2021. During the course of investigation it was observed that SMS were sent through SMS resellers namely Multibagger Securities Research & Advisory Pvt. Ltd. (hereinafter referred to as "**MSRAL**").

14. During investigation it was observed that Noticee had signed undertaking-cum-indemnity dated May 30, 2020 with SMS reseller MSRAL for availing bulk SMS services.

15. In this regards IA was appointed by SEBI to investigate into the alleged fraudulent and manipulative practices employed by the entities. Vide e-mail dated March 23, 2022, information was sought from the Noticee by the IA. The details of information sought by the IA vide summons dated March 23, 2022 is as follows:

    a) Full name, occupation, all residential addresses, e-mail IDs, contact numbers, mobile numbers and PAN.
    b) Details of all the companies/Partnership Firms/Limited Liability Partnerships that you or your family members are associated with.
    c) Details regarding availing services of Popular SoftTech and Marketing Pvt. Ltd. (PAN - AAHCP2801N) for sending SMSes, giving buy recommendation in the scrip of BGJL from the following numbers:

Mobile Numbers	E-mail id
9537570268 & 9157787756	midcapgains@gmail.com

d) Details regarding availing of services of Popular SoftTech and Marketing Pvt. Ltd. by submitting undertaking cum indemnity on behalf of MSRAL for sending SMSes giving buy recommendation in the scrip of BGJL. In this regard, he was advised to state his association/connection/relation, past/present with MSRAL.

e) Confirmation whether mobile numbers as stated below were ever used whether directly and/or indirectly by hin/his, family members/ employees etc.

Sr. No.	Mobile Numbers
1	9574952743
2	9574952718
3	9574952715
4	9714975395
5	8375017987
6	9978705208

f) Details regarding Noticee's relationship/connection/association with Popular SoftTech and Marketing Pvt. Ltd. and his dealings with them including payment(s) made/ nature of such payments etc.

g) Details of Noticee's relationship/connection/association with website - www.finteller.in.

h) Details of Noticee's relationship/connection/association with Telegram channel — 'marketupdates2019'.

i) Details regarding association/relationship/connection etc., in any capacity whatsoever, whether directly and/or indirectly with Mr. Hanif Kasambhai Shekh (PAN — CBEPS9710A) having addresses as per details as given in below mentioned Table.

Sr. No.	Address
1	Blood bank Pasec, Sardarnagar, Bhavnagar, Gujarat — 364001
2	5871B, Rahemani Royal, Flat 102 Bhilwada Circle, Gariadhar Bhavnagar Gujarat — 364001
3	Partner, Sai Metaltech LLP, Pl. No. 1280, Sh. No. GIF 9, Eva Surbhi Waghwadi Road, Bhavnagar, Gujarat — 364002

j) Details regarding relationship with the company Bhakti, its promoters/directors/KMPs.

k) Details regarding association/relationship/connection etc., in any capacity whatsoever, whether directly and/or indirectly with the entities or their directors/promoters as given in below mentioned Table:

Sr. No.	PAN	Name
1	AACCH1789A	Highgrowth Vincom Pvt. Ltd.
2	AQBPL5563C	Buddhadeb Laha
3	BWHPD4063L	Sanjay Dey
4	AKLPL2832L	Priyankar Laha
5	DGTPM2047B	Minu Mallick
6	CEZPD7390K	Arpan Das
7	AlYPD5217E	Arun Dutta
8	AXJPL4908J	Sumit Laha
9	AJVPL4026B	Dibakar Laha
10	APXPL1814M	Suprabhat Laha
11	ATSPL2483R	Ujjal Laha
12	COXPD8400E	Uma Dutta
13	CVMPD9641 P	Debashish Dutta
14	APWPL5386H	Subrata Laha
15	ANCPL7138F	Tapas Laha
16	APWPL5441 F	Arun Laha
17	CEJPD9809M	Sourav Das
18	AACCL0347G	Linkup Financial Consultants Pvt. Ltd.
19	AAACV71710	Vivid Mercantile Limited
20	AJCPG5897L	Payal Mehulkumar Gandhi
21	AFFPG4404G	Nipa Yagneshkumar Gandhi

22	AFGPG8150G	Divyaben Nitinkumar Gandhi
23	ACUPG7823K	Nitin Sureshkumar Gandhi

16. On March 16, 2022 vide email and vide speed post, IA issued summons to the Noticee under Section 11C(3) of the SEBI Act, and reminder summons were issued against the Noticee vide e-mail dated March 23, 2022 seeking information/documents to be furnished to the questions as aforementioned put to the Noticee by IA. The said summons was delivered to the Noticee as stated below. The details of information sought/summons sent to ythe Noticee are as follows:

Date of Summons/E-mail & Sections under which Summons/E-mail were sent	**Mode of Delivery**	**Delivered (Yes/No)**
Information sought vide Summons dated March 16, 2022	SPAD/Email	Yes (vide speed post on March 21, 2022 and vide email)
Reminder sent on March 23, 2022	Email	Yes

17. As stated in table above, it is on record that the summons and reminder were delivered to the Noticee and the proof is on record. The IA vide summons issued at March 16, 2022 and March 23, 2022 called upon the Noticee to produce the information as stated in paragraph 15 above.

18. 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.

19. 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.

20. Non submission of the requisite information has adversely affected the investigation process. Hon'ble Supreme Court in the matter **of DKG Buildcon Private Ltd. Vs. The Adjudicating & Enquiry Officer, S.E.B.I.** (CIVIL APPEAL NO.5833 OF 2009) dated September 14, 2022, held that:

> *…..45. Furthermore, a bare reading of Section 11C (3) of the 1992 Act makes it clear that an Investigating Authority appointed by SEBI to investigate the affairs of any persons may require such person9 41 "associated with the securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by 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". In the present case, the appellants were under investigation by SEBI for its alleged involvement in aiding and abetting Ketan Parekh and his companies in manipulating the securities market. In view of the same, the appellants would squarely fall under the scope of "persons associated with the securities market in any manner" under Section 11C(3) of the 1992 Act. The authority of the Investigating Authority to direct such persons to appear before him and furnish information or*

produce documents as is required for an investigation is provided in Section 11C (3) of the 1992 Act.

…39…. The appellants were bound to fully co-operate with the Investigating Authority and promptly produce all documents, records, and information as were required for the investigation from time-totime. In failing to do so, the appellants clearly obstructed and hindered the investigation.

…40….. Taking into consideration the severity of offences found to have been committed by the appellants and other entities, and the noncooperative attitude of the appellants during the course of the investigation in attempting to obstruct the same, the quantum of penalty imposed under Section 15A(a) of the 1992 Act is justified and with effective consideration of the factors listed in Section 15J of the 1992 Act.

21. 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"

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

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

22. 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."*

23. In view of the above, I am convinced that it is a fit case for imposition of penalty under Section 15A(a) of the SEBI Act which reads as under:

"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".

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?

24. 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."

25. 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. I also note that no prior default of the Noticee is available on record. 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 viewed seriously.

<u>ORDER</u>

26. 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, and also taking into account judgement of the Hon'ble Supreme Court in **SEBI vs. Bhavesh Pabari** (2019) 5 SCC 90 and 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) of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	Provisions violated	Penalty
Vishal Hashmukhbhai Shah	Section 11C(3)of SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakhs Only)

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

28. 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

29. 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

30. 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.

31. 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: September 22, 2022	**BARNALI MUKHERJEE**
Place: Mumbai	**ADJUDICATING OFFICER**