BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AN/HP/2022-23/24246-24248]

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:

1) **Bluewaves Media [Prop: Ashish Kalanoria] (PAN: AYCPK7151N)**
2) **Smart Technology (PAN: ACWFS1476Q)**
3) **Hanif Kasambhai Shekh (PAN: CBEPS9710A)**

In the matter of Greencrest Financial Services Limited

BRIEF BACKGROUND

1. Securities and Exchange Board of India ("**SEBI**") initiated Adjudication Proceedings under Section 15A(a) of the SEBI Act, 1992 ("**SEBI Act**"), against Bluewaves Media [Prop: Ashish Kalanoria] (**Noticee 1**), Smart Technology (**Noticee 2**) and Hanif Kasambhai Shekh (**Noticee 3**) (hereinafter collectively also referred to as, '**Noticees/You**') for alleged violation of provisions of Section 11C (3) read with Section 11C (2) of the SEBI Act pursuant to investigation in the matter of Greencrest Financial Services Limited (**GFSL**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Ms. Maninder Cheema, CGM, SEBI was appointed as Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("**Adjudication Rules**"), vide communique dated March 24, 2022 to inquire into and adjudge under section

15A(a) of SEBI Act, the aforesaid alleged violations by the Noticees. Pursuant to transfer of Ms. Maninder Cheema, Dr. Anitha Anoop, CGM, SEBI was appointed as Adjudicating Officer vide Communique dated June 07, 2022. Pursuant to transfer of Dr. Anitha Anoop, undersigned was appointed as Adjudicating Officer ("**AO**") vide communique dated September 05, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A common Show Cause Notice No. EAD5/AN/HP/53538/1-4/2022 dated October 20, 2022 ("**SCN**") was served upon the Noticees in terms of Rule 4(1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be held against the Noticees and penalty not be imposed against the Noticees under Section 15A(a) of SEBI Act for the aforesaid alleged violations.

4. The following was inter alia observed and/or alleged per the SCN :

5. It was observed after examining end user of the SMS headers used for sending the SMS with respect to GFSL that the bulk SMS were sent from SMS headers (AM-DGAINS, AD-DGAINS, VM-DGAINS, & HP-DGAINS) during September 25, 2017 to October 12, 2017. The information with respect to end users were sought vide summons dated June 04, 2019 issued to Noticee 1, Noticee 2 and summons dated December 14, 2021 issued to Noticee 3.

Noticee 1:

6. Summons dated June 04, 2019 were issued to Noticee 1. Thereafter, vide email dated June 04, 2019, Noticee 1 sought certain clarification regarding the summons and the same was provided vide email dated June 06, 2019. Reminder emails to the same were sent on March 18, 2020 and March 20, 2020. In this regard, it was alleged that Noticee 1 failed to furnish documents/information sought vide summons dated June 04, 2019 under section 11C (3) read with

section 11C (2) of SEBI Act and thereby Noticee 1 has violated section 11C (3) read with section 11C (2) of SEBI Act.

Noticee 2:

7. Summons dated June 04, 2019 were issued to Noticee 2. Vide email dated June 10, 2019 Noticee 2 submitted, "*None of our Users/Re-sellers have send any of the SMS, which has the content related to Greencrest Financial Services Ltd.*" Noticee 2 further requested that sample numbers be shared with them for rechecking at their end. Certain sample mobile numbers and contents of the SMS were shared with Noticee 2 by SEBI vide its email dated June 10, 2019. In this regard, it was alleged that Noticee 2 failed to furnish documents/information sought vide summons dated June 04, 2019 under section 11C (3) read with section 11C (2) of SEBI Act and thereby Noticee 2 has violated section 11C (3) read with section 11C (2) of SEBI Act.

Noticee 3:

8. Summons dated December 14, 2021 were sent to Noticee 3 at addresses and emails mentioned in table below. The details of the summons and reminders issued, status of delivery, etc. are given in table below:

<table>
<tr><th colspan="6">Table: Status of Delivery of summons issued to Noticee 3</th></tr>
<tr><th>Sr. No.</th><th>Available address /Email</th><th>Date of Summons/Email</th><th>Mode of Delivery</th><th>Status of delivery of letter/Email in brief</th><th>Status of Reply</th></tr>
<tr><td rowspan="2">1</td><td rowspan="2">MR. HANIF KASAMBHAI SHEKH
Royal Rehmani Complex Flat No 102 Sir Pattani Road, Bhavnagar, Gujarat, India, 364001

hkshekh@yahoo.co.in; hanifshekh1990@yahoo.in</td><td>14.12.2021</td><td>Speed Post</td><td>Delivered</td><td>Not received</td></tr>
<tr><td>17.12.2021</td><td>Email</td><td>Delivery to these recipients or groups is complete: hkshekh@yahoo.co.in

Delivery has failed to these recipients or groups: hanifshekh1990@yahoo.in</td><td>Not received</td></tr>
<tr><td>2</td><td>MR. HANIF KASAMBHAI SHEKH</td><td>14.12.2021</td><td>Speed Post</td><td>Returned Undelivered</td><td>N.A.</td></tr>
</table>

	3rd FLOOR, PLOT NO 1067, OPP. BINDU NIVAS, Kaliyabid Rd, Bhavnagar, Gujarat 364001 hkshekh@yahoo.co.in; hanifshekh1990@yahoo.in	17.12.2021	Email	Delivery to these recipients or groups is complete: hkshekh@yahoo.co.in Delivery has failed to these recipients or groups: hanifshekh1990@yahoo.in	Not received
3	MR. HANIF KASAMBHAI SHEKH Block No-4 Alka Road Near Mital Guest House, Bhavnagar, Gujarat, India, 364002 hkshekh@yahoo.co.in; hanifshekh1990@yahoo.in	14.12.2021	Speed Post	Delivered	Not received
		17.12.2021	Email	Delivery to these recipients or groups is complete: hkshekh@yahoo.co.in Delivery has failed to these recipients or groups: hanifshekh1990@yahoo.in	Not received
4	**Email Reminder 1** hkshekh@yahoo.co.in; hanifshekh1990@yahoo.in	22.12.2021	Email	Delivery to these recipients or groups is complete: hkshekh@yahoo.co.in Delivery has failed to these recipients or groups: hanifshekh1990@yahoo.in	Not received
5	**Email Reminder 2** hkshekh@yahoo.co.in; hanifshekh1990@yahoo.in	28.12.2021	Email	Delivery to these recipients or groups is complete: hkshekh@yahoo.co.in Delivery has failed to these recipients or groups: hanifshekh1990@yahoo.in	Not received

In this regard, it was alleged that Noticee 3 failed to furnish documents/information sought vide summons dated December 14 2021 under section 11C (3) read with section 11C (2) of SEBI Act and thereby Noticee 3 has violated section 11C (3) read with section 11C (2) of SEBI Act.

9. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15A(a) of the SEBI Act.

10. SCN was duly served to the Noticees. SCN was served to Noticee 1 and Noticee 3 through SPAD and Email. SCN was served to Noticee 2 through Email.

11. In the interest of natural justice, opportunity of hearing was provided to the Noticees vide Hearing Notices dated November 21, 2022. The said hearing Notices were duly served to the Noticee 1 and Noticee 3 through SPAD and to all the Noticees through the email addresses available on record.

12. Mr. Ashish Kalanoria, Authorized Representative (AR) of Noticee 1 attended the hearing on December 09, 2022. Mr. Saurabh Tyagi and Mr. Mackwan Marconi James, ARs of Noticee 2 attended the hearing on December 09, 2022. Noticee 1 filed its reply to the SCN vide its letter dated December 27, 2022 and Noticee 2 filed its reply to the SCN vide its letter dated December 29, 2022.

13. The key submissions related to the SCN inter alia made by Noticee 1 and Noticee 2 as part of their reply to the SCN are summarized as below:

Noticee 1:

(i) Notice 1 being sole proprietor of Bluewaves Media submitted that it is a reseller of connectivity for BULK SMS services, it procure connectivity from the Operator and act as the interlink between the Operator and/or aggregator and other resellers and/or telemarketers and/or principal entities. It has no role to play in the content that is shared via the BULK SMS connectivity. The content of the BULK SMS, i.e., the BULK SMS template ID is also approved by the Operator. Resellers merely extend the connectivity procured from the Operator, to the Principal Entity which has already got its template approved by the Operator.

(ii) Noticee 1 stated that it was in no manner connected with and/or acquainted with Greencrest Financial Services limited. Since, it could not fully ascertain the full scope of the information being sought by SEBI, it also requested for details pertaining to the time and date of the relevant period so that it could get more details against the case concerning Greencrest Financial Services Limited. It was impossible to ascertain which entity and/or customer had received the service from it and passed it onto which entity so that the connectivity may have been used for the alleged misuse. The summons dated June 4, 2019 did not disclose even the nature of allegations and or the nature of misuse under investigation. In such circumstances, Noticee 1 was not in a position to respond with any documents and/or information as Noticee 1 was unaware of the scope of information being sought. Accordingly, it had requested for some more details in its response dated June 4, 2019.

(iii) On June 6, 2019, an E-mail was issued by SEBI to Noticee 1 at about 3:34pm, stating that *"The contents of the summons and annexure sent vide our email dt. June 04, 2019 are self explanatory. You are once again advised to submit your reply to the same."*

(iv) Noticee 1 further submitted that since it has no connection with Greencrest Financial Services Limited, it was not in a position to share any documentation as it was not sure which transactions pertain to the alleged misuse, thus Noticee 1 was waiting for more clarification from SEBI. However, the June 6, 2019 response issued by SEBI went unread and/or unacknowledged due to simple and unintended inadvertence. Since the same also did not provide any additional information, the same might have gone unnoticed by its team. For this reason, it could not seek further additional clarification from SEBI on the nature of information sought by SEBI and Noticee 1 was waiting for more clarification from SEBI.

(v) Noticee 1 received no communication from SEBI till March, 2020. The reminders issued by SEBI on March 18, 2020 and March 20, 2020 were issued by E-mail. These reminders were missed by its team as they were issued on the Email ID *ashish@bluewavesmedia.in*, however, its team was slowly transitioning to other E-mail accounts. It might also have been that due to the transition in its employees' appointments as well as the arrival of the COVID-19, the reminders mails have been missed as its offices remained closed.

(vi) Noticee 1 inter alia stated that after SEBI issued the response dated June 6, 2019, it could have vigilantly pursued the matter with SEBI since it required more clarification. It was also inter alia stated by Noticee 1 that it would provide all the relevant documents to SEBI, as are or shall be available with it and that it is also agreeable to participating in the investigation of the above referred case in every way.

(vii) Noticee 1 inter alia submitted that, "…..*In response to our online meeting on 9th December 2022 regarding the clarification against the summon issued on 4th of June 2019, I would request you to please allow me 14 days time to revert back to you in this regard.*

After we cross checked our email account i.e my official mail id bluewavesmedia11@gmail.com we couldn't retrieve all old mail transaction due to mail storage limit by Gmail, so to gather/retrieve the information of the sms transactions, we have raised the issue with the operator to pull the information all of sms content regarding the script Greencrest Financial Services Limited which was pushed by us as mentioned in the summon notice, in regards to that operator is taking time to revert me on same due to the past report which is 5 years old and as per the TRAI guidelines (attached document for your reference - point no 8 para (vi) page no- 4) all operators has to store the transactions/report for maximum 1 year and beyond that its upto the operator and their policy to store the old data on their server.

The purpose of this sms transaction /logs is to cross check and to identify the user who has do lb sm broadcast, so that we can provide you with the detail information of that client/ company who has done this activity, I further confirm you that we never done any kind of direct transaction with Greencrest Financial Services Limited or via *any of their agents/agencies. We have also crossed checked our sms server and it has been found that we have the logs available from 2020 onwards till date only. I hope this information will help to you to understand the situation and once again request you to allow us more time to get the final reply from the operator/aggregator end…..”*

(viii) Noticee 1 stated that it had no intention to ignore and/or fail to comply with summons dated June 4, 2019 and/or to submit relevant documents. Noticee 1 was waiting for further clarification, and later, reminder E-mails issued in March 2020 went unread and/or unnoticed as they were issued in its other Email ID. Noticee 1 also stated that the present instance is an exception and is due to unintended and sorry inadvertence.

(ix) Noticee 1 also stated that *“…..In case, your good office still considers me guilty of delaying the response, I would request your good office to kindly allow me further time, in view of your renewed show cause notice being your E-mail dated December 20, 2022, to avail of the settlement mechanism as provided under the SEBI (Settlement Proceedings) Regulation, 2015. However, in view of my detailed response as provided above, and my commitment to cooperate henceforth, I request your good office to kindly exonerate me in the instant matter…..”*

Noticee 2:

(i) Noticee 2 submitted that after receiving the summons dated June 4, 2019, it had duly raised a query before the Operator, being 'Airtel' and it had taken all steps to get more information from Airtel and that Airtel had responded to it with the message that the matter will be looked into. Noticee 2 stated that unless it could have the necessary information with regards to which particular entity had issued the impugned sample message, it was not in a position to share the relevant information as sought by the summons.

(ii) Noticee 2 submitted that after receiving the summons dated June 4, 2019, it had responded to SEBI by Email dated June 10, 2019 that it had checked logs and found that none of its Users/Re-sellers had sent any of the SMS, which had the content related to Greencrest Financial Services Limited. It was also informed to SEBI that it used the Sender ID 'D-DGAINS' for different SMS content by different users. It had requested SEBI to recheck with the Operator. Accordingly, it issued an email to the Operator, Airtel on June 12, 2019 that it had informed SEBI that SMS with content regarding Greencrest Financial Services Limited had been pushed from Smart Technology with sender ID DGAINS, however, it had not found any log with the impugned content. It had further requested the operator to share number log so that it could re-verify at its end. Under the said email, it had requested Operator to share the required details on priority.

(iii) Noticee 2 stated that it left no stone unturned to gather more information, so that it could in all bona fides, share the information sought from it by SEBI. It had duly checked at its end and not found any of its customers/re-sellers having used the impugned message content. As it had already informed this to SEBI, and since it did not receive further response from the Operator, it had in good faith assumed that the issue had been resolved.

(iv) Noticee 2 submitted that it had sent an email to operator to provide data, but operator had failed to share any information. It had taken all necessary steps to be able to provide the information sought SEBI. Further, it had duly responded with documents, pursuant to the SCN.

(v) Noticee 2 stated that prior to the revised guidelines of TRAI issued in 2018, the same sender ID could be used by different entities to share different SMS content.

(vi) It is/was in no manner connected with and/or acquainted with Greencrest Financial Services Limited. Since, it has no connection with Greencrest Financial Services Limited, it was not in a position to share any documentation as it was not sure which transactions pertain to the alleged misuse. It was, thus, waiting for some more clarification. Even then, it verified and checked logs at its end to ensure none of its resellers had sent the impugned SMS and had informed SEBI about the same.

14. Vide hearing notice dated November 21, 2022 an opportunity of personal hearing was provided to Noticee 3. However, Noticee 3 neither appeared on the scheduled date of hearing nor any reply to the SCN has been received from him till date. I note that through the SCN and Hearing Notice, Noticee 3 was advised to furnish his reply, if any, within stipulated time, failing which, it shall be presumed that he has no reply to submit and the matter will be proceeded with on the basis of the material available on record.

15. As sufficient opportunity was given to the Noticee 3 to submit reply and appear for hearing and no response was received from him, the adjudication proceeding against him is undertaken *ex-parte* on the basis of material available on record in terms of Rule 4(7) of the Adjudication Rules which reads as under: -

"4(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so."

16. I now proceed to decide the matter on the basis of SCN, reply of Noticee 1 and Noticee 2, non response of Noticee 3 and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

17. The issues that arise for consideration in the instant matter are:

Issue No. I	Whether, the Noticees have violated provisions of Section 11C (3) read with 11C (2) of the SEBI Act.
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?
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?

Issue No. I Whether, the Noticees have violated provisions of Section 11C (3) read with Section 11C (2) of the SEBI Act

Noticee 1:

18. It was alleged that Noticee 1 did not furnish documents/information sought vide summons dated June 04, 2019 under section 11C (3) read with section 11C (2) of SEBI Act. In this regard, I note from the material available on record that summons dated June 04, 2019 was issued to Noticee 1 to furnish documents/information as per annexure to the said summons and it was duly delivered to the Noticee 1 through SPAD on June 10, 2019 and also through email.

19. In its reply to the SCN, Noticee 1 has inter alia submitted that since it has no connection with Greencrest Financial Services Limited, it was not in a position to share any documentation as it was not sure which transactions pertain to the alleged misuse, thus Noticee 1 was waiting for more clarification from SEBI. Noticee 1 further inter alia accepted that response from SEBI dated June 06,

2019 went unnoticed by Noticee 1. Noticee 1 also stated that June 6, 2019 response issued by SEBI went unread and/or unacknowledged due to simple and unintended inadvertence. I note from the material available on record that after receipt of summons on June 04, 2019, Noticee 1 replied to SEBI on June 04, 2019 through email ID (ashish@bluewavesmedia.in) asking for more details regarding the matter. SEBI replied on June 06, 2019 on same email ID that *"The contents of the summons and annexure sent vide our email dt. June 04, 2019 are self explanatory. You are once again advised to submit your reply to the same."* Since, SEBI replied to the Noticee 1 within two days on same email ID, contention of the Noticee 1 that response issued by SEBI went unread and/or unacknowledged due to simple and unintended inadvertence can not be accepted. Further, Noticee 1 also accepted that reminders issued by SEBI on March 18, 2020 and March 20, 2020 were missed by its team as they were issued when its team was slowly transitioning to other E-mail accounts. I note that Noticee 1 failed to provide any response to summons issued by SEBI, even after receipt of reminders dated June 06, 2019, March 18, 2020 and March 20, 2020.

20. I note that it was clearly mentioned in the said summons that if Noticee 1 failed to give evidence or provide documents as required, Adjudication Proceedings may be initiated against it.

21. The documents/information sought vide the aforesaid summons are reproduced hereunder:

    a) *How do you know company Greencrest Financial Services Limited*
    b) *Rationale for sending SMSs regarding Greencrest Financial Services Limited with buy recommendation during aforementioned period.*
    c) *Rationale for choosing SMSs recipients for above SMSs.*
    d) *In case request for sending abovementioned SMSs was made by client or aggregator then provide KYC documents and complete details viz, name, email id, address, PAN number, contact number of the client or last level aggregator.*

e) *Details of present association with the said client/aggregator along with their current contact details.*

f) *What was the mode of communication between you and the client/aggregator? Provide verifiable evidences in support of you reply. Provide certified copies of all correspondences with the client/aggregator.*

g) *What payment was received / paid for sending the SMSs w.r.t. Greencrest Financial Services Limited. Provide verifiable evidences in support of you reply.*

h) *What is the payment mode for the services provided by you to the client/aggregator? Provide details w.r.t receipt of payment such as bank name, bank account no. etc. (along with a copy of the bank statement in which the payment was received) in the following format.*

Sr. No.	***Bank Name and address of Branch***	***Account Number***	***Account holder Name***	***PAN of account holder***
1				
2				

i) *In case payment was received in cash, you are advised to provide details of the same including the invoices issued in respect of the payments received by you.*

22. As regards contention of the Noticee 1 to allow more time to get final reply from operator/aggregator end, I note that the subject matter of instant proceeding is with regard to Noticee 1 having failed to provide documents/information sought vide summons dated June 04, 2019, then i.e. during the investigation period and not now. Accordingly, contention of the Noticee 1 is observed to be devoid of merit and hence not acceptable.

23. As regards contention of the Noticee 1 that the emails were issued on its other email Id's in March 2020, I note that the Noticee 1 had himself sought clarification with regard to summons on June 04, 2019 which was promptly replied within two

days i.e. on June 06, 2019. The said reply by SEBI was sent to the Noticee 1 on same email Id from which Noticee 1 had communicated with SEBI. In this regard, Noticee 1 has neither denied nor demonstrated that the earlier email Id was not being used by it. In any case the Noticee 1 has not demonstrated that he had informed SEBI to communicate with it on certain/desired email Id. In view thereof, the contention of the Noticee 1 in this regard is devoid of merit and hence not acceptable.

24. As regards contention of the Noticee 1 regarding further time to avail settlement mechanism sighting renewd SCN, I note that in the instant matter there is no renewed SCN, but only one SCN viz., Show Cause Notice dated October 20, 2022 issued to Noticee 1, whereby vide para 10 of the SCN, Noticee 1 was specifically inter alia informed about the option of settlement mechanism available under the SEBI (Settlement Proceedings) Regulations, 2018. Accordingly, the contention of the Noticee 1 seeking certain time sighting renewed SCN is devoid of merit. In any case the Noticees were at the liberty to avail the option of settlement mechanism as per the Settlement Regulations.

25. I note that specific information/documents were sought from the Noticee 1 by issuing aforesaid summons, however, Noticee 1 failed to respond with any information/documents within stipulated time to SEBI, even after receiving reminders to the summons issued by SEBI. I note from the material available on record that after receipt of summons on June 04, 2019, Noticee 1 replied to SEBI on June 04, 2019 through email (ashish@bluewavesmedia.in) asking for more details regarding the matter. In response, SEBI replied to the Noticee 1 on June 06, 2019 on same email ID and once again advised Noticee 1 to submit reply to the summons issued to it, however, Noticee 1 failed to provide any response to summons issued by SEBI, even after receipt of reply from SEBI and reminders sent on March 18, 2020 and March 20, 2020.

26. In view of the aforesaid, it is established that Noticee 1 failed to furnish documents/information sought vide summons dated June 04, 2019 under section 11C (3) read with section 11C (2) of SEBI Act and thereby Noticee 1 has violated section 11C (3) read with section 11C (2) of SEBI Act.

Noticee 2:

27. It was alleged that Noticee 2 did not furnish documents/information sought vide summons dated June 04, 2019 under section 11C (3) read with section 11C (2) of SEBI Act. In this regard, I note from the material available on record that summons dated June 04, 2019 was issued to Noticee 2 to furnish documents/information as per annexure to the said summons and it was duly delivered to the Noticee 2 through email.

28. In its reply to the SCN, Noticee 2 has inter alia submitted that it had no connection with Greencrest Financial Services Limited, and it was not in a position to share any documentation as it was not sure which transactions pertain to the alleged misuse, thus, waiting for some more clarification from SEBI. Noticee 2 also stated that it had sought certain information from operator, Airtel, as unless it had the necessary information with regards to which particular entity had issued the impugned sample message, it was not in a position to share the relevant information as sought by the summons.

29. I note that allegation against the Noticee 2 is about non furnishing of documents/information sought vide summons dated June 04, 2019. I note from the Annexure to the summons dated June 04, 2019 issued to Noticee 2 that specific information/documents i.e. relationship with GFSL, rationale for sending SMS regarding GFSL, details of clients/aggregator etc. were sought from the Noticee 2.

30. The documents/information sought vide the aforesaid summons are reproduced hereunder:

a) *How do you know company Greencrest Financial Services Limited*

b) *Rationale for sending SMSs regarding Greencrest Financial Services Limited with buy recommendation during aforementioned period.*

c) *Rationale for choosing SMSs recipients for above SMSs.*

d) *In case request for sending abovementioned SMSs was made by client or aggregator then provide KYC documents and complete details viz, name, email id, address, PAN number, contact number of the client or last level aggregator.*

e) *Details of present association with the said client/aggregator along with their current contact details.*

f) *What was the mode of communication between you and the client/aggregator? Provide verifiable evidences in support of you reply. Provide certified copies of all correspondences with the client/aggregator.*

g) *What payment was received / paid for sending the SMSs w.r.t. Greencrest Financial Services Limited. Provide verifiable evidences in support of you reply.*

h) *What is the payment mode for the services provided by you to the client/aggregator? Provide details w.r.t receipt of payment such as bank name, bank account no. etc. (along with a copy of the bank statement in which the payment was received) in the following format.*

Sr. No.	***Bank Name and address of Branch***	***Account Number***	***Account holder Name***	***PAN of account holder***
1				
2				

i) *In case payment was received in cash, you are advised to provide details of the same including the invoices issued in respect of the payments received by you.*

31. I note that Noticee 2 has denied that the said SMSs were sent through it. On perusal of material available on record, I note that after receiving the summons dated June 4, 2019, Noticee 2 had responded to SEBI vide its email dated June 10, 2019 inter alia indicating that it had checked logs and found that information given to SEBI by Airtel was incorrect, as none of its Users/Re-sellers had sent any of the SMS, which has the content related to Greencrest Financial Services Limited and requesting SEBI to rechceck with the operator viz., *'we request you to please recheck with the operator and if still the operators says that the same script has been send from our side, please share some sample numbers so that we can recheck and provide you the further details.'* I also note that Noticee 2 as part of his submissions has provided copy of an email dated June 12, 2019 sent by it to Airtel content of which is reproduced as under:

> *'…..*
> *Hello Telemarketer (Airtel)*
> *We have receive SEBI Investigating Authority email about information of Greencrest Financial Services Ltd sms*
> *According to SEBI airtel has given information that sms has been pushed from Smart Technology account duration 25 September - 12 October and sender id is DGAINS and content of the sms*
> *Weekly Performance: - Sensex Down 2% This Week -GREENCREST Up 7% This Week - Clearly GREENCREST is Out Performing The Market So HOLD For Non Stop TARGET 120+*
> *We have not find any log with following sms content if Airtel has submit information to sebi please share number log with us so we can again recheck and give reply to SEBI*
> *Please share all detail as a priority*
> *…..*
> *'*

In this regard, Noticee 2 in his submissions has stated that in response to its e-mail dated June 12, 2019 it received no further response from the Operator.

32. In this regard, I note that SEBI replied to the Noticee 2's email dated June 10, 2019 on the same day providing the content of the SMS circulated and provided

two sample phone numbers to which the SMS was sent inter alia advising Noticee 2 to submit the information as sought vide summons dated June 04, 2019. However in this regard, I note that there is no material available on record about SEBI having addressed Noticee 2's denial about such SMS's having been sent through it and /or its request for rechecking with the operator. This assumes importance in backdrop of categorical statement by the Noticee 2 in its response vide email dated June 10, 2019 to SEBI inter alia stating that it had checked logs and found that information given to SEBI by Airtel was incorrect, as none of its Users/Re-sellers had sent any of the SMS, which has the content related to Greencrest Financial Services Limited.

33. Further, I note from the submissions of the Noticee 2 that prior to the revised guidelines of TRAI issued in 2018, the same sender ID could be used by different entities to share different SMS content.

34. In view of the above, it is apparent that Noticee 2 did respond to SEBI with categorical denial viz., none of its Users/Re-sellers had sent any of the SMS, which has the content related to Greencrest Financial Services Limited, inter alia requesting for reconfirmation from Airtel and had simultaneously /independently tried to gather information from the TSP also. The developments in this regard reflect upon the efforts of Noticee 2 and are demonstrative of the responsiveness of Noticee 2. In view thereof and having regard to the submission of Noticee 2 that prior to issuance of Circular of 2018 by TRAI, the SMS header could be shared by multiple users and that SEBI neither addressed the aspect of Noticee 2 having denied about any such SMS having been sent through it nor responded to Noticee 2 that the SMS was indeed sent through it only, the alleged violation in this regard does not clearly get established. Accordingly, having regard to the facts and circumstances and the material available on record, in this regard, I am of the opinion that Noticee 2 warrants a benefit of doubt and hence cannot be held liable for the alleged violation.

35. In view of the above, I hold that allegation of violation of section 11C (3) read with section 11C (2) of SEBI Act is not established against Noticee 2.

Noticee 3:

36. It was alleged that Noticee 3 failed to furnish documents/information sought vide summons dated December 14, 2021 under section 11C (3) read with section 11C (2) of SEBI Act. In this regard, I note from the material available on record that summons dated December 14, 2021 was issued to Noticee 3 to furnish documents/information as per annexure to the said summons and it was duly delivered to the Noticee 3 through SPAD on December 28, 2021 and through email - hkshekh@yahoo.co.in.

37. The documents/information sought vide the aforesaid summons are reproduced hereunder:
   a) *What is your profession?*
   b) *How do you know company Greencrest Financial Services Limited?*
   c) *Rationale for sending SMSs regarding Greencrest Financial Services Limited with buy recommendation during aforementioned period.*
   d) *Rationale for choosing SMSs recipients for above SMSs.*

38. I note from material available on record that, as per reply of the reseller to SEBI, Noticee 3 was allegedly using fake name for booking SMS, hence summons dated December 14, 2021 were sent to Noticee 3 at various addresses and emails.

39. I note that Noticee 3 neither appeared on the scheduled date of hearing nor any reply to the SCN received from him. In absence of any response from the Noticee 3, it is presumed that Noticee 3 admitted the charge of violation of provisions as alleged in the matter. In this regard, it is pertinent to note that 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, inter alia, held that: "........... *appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*". Therefore, it can reasonably be presumed that the allegations made against Noticee 3 has been admitted by the Noticee 3 in this matter. The material available on record does not indicate anything to ex facie hold otherwise.

40. In view of the above, it is established that Noticee 3 failed to furnish documents/information sought vide summons dated December 14 2021 under section 11C (3) read with section 11C (2) of SEBI Act and thereby Noticee 3 has violated section 11C (3) read with section 11C (2) of SEBI Act.

41. The relevant sections of SEBI Act are reproduced as under:

SEBI Act

Investigation.

11C. *where the Board has reasonable ground to believe that-*

(2) *Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.*

(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. II **If yes, whether the failure on the part of the Noticees would attract monetary penalty under Section 15A(a) of the SEBI Act?**

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?**

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

43. 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."*

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

SEBI Act:

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.*

45. 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.

46. In the instant matter, I note that the material on record has not brought out any disproportionate gain made by the Noticee1 and Noticee 3 or loss caused to investors by them. I also note from material available on record that as per SEBI, Noticee 1 was a first level aggregator while Noticee 3 was the client /sender of SMS. I note from the websearch /SEBI website that penalty has been imposed upon Noticee 3, for similar violations, in various other matters like in the matter of Leading Leasing Finance & Investment Company Limited (Adjucation Order dated November 25, 2022), Agro Phos India Limited (Adjucation Order dated

October 3, 2022), Pro Fin Capital Services Limited (Adjucation Order dated November 28, 2022), V B Industries Limited (Adjucation Order dated January 20, 2023). In the instant matter, I note from material available on record that on account of non-submission of documents/information, no further information could be obtained to ascertain his role in the circulation of SMS. I also note that Noticee 3 has chosen to be non-responsive in the instant proceeedings though he has been responsive in certain other matters viz., to cite as example in an ongoing matter before the undersigned (wherein he has corresponded from the same email id to which correspondences were sent in the instant matter), in the matter of VB Industries Ltd., concluded recently. In view of the above, taking into account the facts and circumstances of this matter, I find that a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on Noticee 1 and Rs. 10,00,000/- (Rupees Ten Lakhs only) on Noticee 3 under Section 15A(a) of SEBI Act for violation of the provisions of Section 11C (2) and 11C (3) of SEBI Act will be commensurate with the violations committed by them.

ORDER

47. 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:

S. No.	Name of the Noticee	Penalty under Section	Penalty Amount
1.	Bluewaves Media [Prop: Ashish Kalanoria] (Noticee 1)	Section 15A(a) of the SEBI Act	Rs. 1,00,000 (Rupees One Lakh only)
2.	Hanif Kasambhai Shekh (Noticee 3)	Section 15A(a) of the SEBI Act	Rs. 10,00,000 (Rupees Ten Lakhs Only)
TOTAL			**Rs. 11,00,000/-** **(Rupees Eleven Lakhs only)**

48. 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

49. 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.

50. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: February 28, 2023
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER