BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2018-19/1928]

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 BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

Mr. Soni Sanjay Jethalal,
1st Floor, 27, Shakti Arcade,
Opp. Water Tank, Science City Road,
Ahmedabad – 380060 (Gujarat)

In the matter of M/s Timbor Home Ltd.

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1. M/s Timbor Home Limited (hereinafter referred to as "the company") is a company having its shares listed on Bombay Stock Exchange Limited ("BSE") and National Stock Exchange Limited ("NSE"). An investigation was conducted by SEBI in the scrip of the company during the period April 1, 2014 to May 30, 2015 (Investigation Period).

2. The Investigation Authority ("IA") authorized for undertaking investigation in the natter had issued a summons dated April 28, 2016 under Section 11(2)(i) and 11C(3) of the SEBI Act, 1992 requiring Mr. Soni Sanjay Jethalal ("the Noticee") to furnish the documents/ records/ information on or before May 04, 2016 as follows:

   "*This has reference to e-mail sent to you on April 06, 2016 and further reminders mail sent on April 11, 2016 and April 12, 2016. However you have failed to provide information sought till date.*
   This is w.r.t. trading in the matter of Timbor Home Limited, wherein you have utilised the service of Solution Infini and ZEN Enterprises for circulation of SMS styled as DM-070000 with message "BEST BUY TIMBOR HOME AT BSE (533444) & NSE (24316) AT CMP 14 SHORT TERM TGT @17 THIS WEEK N 25 WITHIN NEXT WEEK WITH SAFESIDE SL 11.5 LONG TERM TGT 60" from July 2014 onwards.

   In view of above, you are requested to provide the following information:

   1. *Nature of your occupation/ business and details of your annual returns for last 2 financial years.*
   2. *What was the basis or reasoning behind circulation of such SMS?*
   3. *Kindly mention the name of person/ source through which such news was received by you and details of consideration received by you for circulation of such SMS (supported by appropriate evidences/ proof).*
   4. *Number of persons to whom such SMS was being sent by you.*
   5. *Are you registered with SEBI as Research Analyst or in any other capacity?*

6. *Your relationships/ connections whether personal, financial or otherwise, with the promoters or directors of the company viz. Timbor Home Limited.*
7. *Details of your trading in the captioned scrip as well as other scrips.*
8. *Your relationships with the following:*
    - *Mr. Anant Sureshchandra Maloo*
    - *M/s Maloo Building Materials Pvt Ltd*
    - *Mr. Manan Vidhyapati Patel*
    - *Mr. Abhijeet Dwarkadas Daga*

All the information should be supported by appropriate evidences and proofs. You are requested to provide point wise reply of abovementioned 8 points."

3. Aforesaid summons was duly served upon the Noticee on May 03, 2016. However, the Noticee failed to provide the documents/ records/ information as advised vide the aforesaid summons. Thereafter, the IA issued another summons dated May 12, 2016 to him, whereby he was again advised to furnish the documents/ records/ information on or before May 20, 2016 as follows:

"*This is w.r.t. trading in the matter of Timbor Home Limited, wherein you have utilised the service of Solution Infini and ZEN Enterprises for circulation of SMS styled as DM-070000 with message* "*BEST BUY TIMBOR HOME AT BSE (533444) & NSE (24316) AT CMP 14 SHORT TERM TGT @17 THIS WEEK N 25 WITHIN NEXT WEEK WITH SAFESIDE SL 11.5 LONG TERM TGT 60*" *from July 2014 onwards.*

In view of above, you are requested to provide the following information:

1. *Nature of your occupation/ business and details of your annual returns for last 2 financial years.*
2. *What was the basis or reasoning behind circulation of such SMS?*
3. *Kindly mention the name of person/ source through which such news was received by you and details of consideration received by you for circulation of such SMS (supported by appropriate evidences/ proof).*
4. *Number of persons to whom such SMS was being sent by you.*
5. *Are you registered with SEBI as Research Analyst or in any other capacity?*
6. *Your relationships/ connections whether personal, financial or otherwise, with the promoters or directors of the company viz. Timbor Home Limited.*
7. *Details of your trading in the captioned scrip as well as other scrips.*
8. *List of your immediate relatives (including your wife, children, parents, brothers and sisters and their respective spouse) along with their PAN.*
9. *Your relationships with the following:*
    - *Mr. Anant Sureshchandra Maloo*
    - *M/s Maloo Building Materials Pvt Ltd*
    - *Mr. Manan Vidhyapati Patel*
    - *Mr. Abhijeet Dwarkadas Daga*

All the information should be supported by appropriate evidences and proofs. You are requested to provide point wise reply of abovementioned 9 points."

4. When the Noticee failed to respond the aforesaid second summons also the IA had sent two reminders to the Noticee vide letters dated August 10, 2016 and August 22, 2016 and same were also duly served upon him. The details of summons/ reminders issue date, date of delivery upon him and date of receipt of acknowledgement are as follows:

Summons/ Reminders	Date of Issuance	Date of Delivery	Acknowledgement Receipt Date	Mode of Delivery
Summons 1	28.04.2016	03.05.2016	03.06.2016	Post
Summons 2	12.05. 2016	24.05.2016	24.05.2016	Hand Delivery
Reminder 1	10.08.2016	19.08.2016	29.08.2016	Post
Reminder 2	22.08.2016	30.08.2016	30.09.2016	Post

5. SEBI noted that despite service of summons and subsequent reminders as aforesaid, the Noticee failed to provide the requisite documents/ records/ information and thus, he disobeyed the aforesaid summons, a statutory obligation cast upon him to submit documents/ records/ information to IA. Since, he had failed to furnish information sought through summons issued to him under section 11C(3) of the SEBI Act for the purpose of investigation, he had violated the provisions of Section 11C(2) read with 11C(3) of the SEBI Act. The aforesaid provisions of the SEBI Act alleged to have been violated, in this case, are reproduced as under:

SEBI Act, 1992

Powers and Functions of Board

11C. Investigation

(1) ……………………………………

(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 authorised 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.

6. The competent authority in SEBI has *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provisions of section 11C(2) read with 11C(3) of the SEBI Act by the Noticee. Vide a communication - order dated August 21, 2018, undersigned was been advised to inquire and adjudge under Rule 5 of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) and under section 15A(a) of the SEBI Act, of the alleged violation of the provisions of section 11C(2) read with 11C(3) of the SEBI Act by the Noticee.

7. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act the notice to show cause no. EAD/SS/AKS/OW/P/29110/1/2018 dated October 17, 2018 ('the SCN') was issued to the Noticee, calling upon him to show cause as to why an inquiry should not be held against him in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A(a) of the SEBI Act for the aforesaid alleged violations. The SCN was duly served upon him, however, he failed to submit the reply to the said SCN. In terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted on December 11, 2018 which was subsequently rescheduled to December 20, 2018 and intimated to the Noticee vide e-mail dated December 10, 2018. Vide an e-mail dated December 13, 2018, Mr. Nishant K. Upadhyay, referring to the SCN sought time to file reply to the SCN and to avail opportunity of hearing in the second week of January 2019. The Noticee was again advised to avail the opportunity on December 20, 2018.

8. On the said date i.e. December 20, 2018, Mr. Nishant K. Upadhyay, advocate appeared on behalf of the Noticee based upon an authorization letter dated December 17, 2018. Mr. Nishant K. Upadhyay submitted that the Noticee had not received the SCN dated October 17, 2018 and sought copy of the SCN and further time to file reply thereto. When the duly acknowledged receipt of delivery of SCN to the Noticee was shown to learned advocate, he again confronted and denied receipt of the SCN. When his e-mail dated December 13, 2018 wherein he had, referring to the SCN sought further time to file reply to the same, was shown to him, he vehemently confronted and insisted that the SCN had not been received by the Noticee at all. Since the reply was not received till date of hearing and request made in e-mail dated December 13, 2018 was to be decided in the interest of natural justice, the last opportunity to file the reply to the SCN was granted and the Noticee was asked to file its reply to the SCN within 10 days from the date of hearing i.e. on or before December 31, 2018 and last opportunity of personal hearing was granted to the Noticee on January 21, 2019. A copy of the SCN was again provided to Mr. Nishant K. Upadhyay on his request.

9. On January 21, 2019, Ms. Hiral Parag Shah, advocate appeared on behalf of the Noticee as his auhorised representative and tendered reply to the SCN in terms of a letter dated January 18, 2019 of the Noticee. She made submissions on the lines of the aforesaid written reply of the Noticee wherein he e has made following submissions:

    a. Vide e-mail dated April 12, 2016, the Noticee had replied to the emails of the IA, wherein he made following submissions:

"*This is in respect to your letter received wrt trading in the matter of Timbor Home Limited. I would like to state that we are not connected or known to any of the persons or directors or promoters of the company. We had received some information that the company was expanding and opening new showrooms and some research analysts had also suggested in the business news channels. We and our clients had bought the stocks and all our targets had been achieved and all our clients exited from the stock. And would provide you the financial details and the trading details of the 2 years shortly.*"

b. The aforesaid reply covered the substantial part of the query raised by IA *via* aforesaid summons. He has submitted that point wise response to summons as inferred from aforesaid e-mail was provided to the IA prior to the summons:

Query raised by IA from Noticee	**Noticee Reply**
Reasoning or basis behind the circulation of such SMS	He had received some information that the company was expanding and opening new showrooms and some research analysts had also suggested in the business news channels.
Relationships/ Connections (Personal/ Financial or otherwise) with the promoters or directors of the company	He is not connected or known to any of the persons or directors or promoters of the company.
Details of trading in the scrip of the company as well as other company scrips	He and his clients had bought the stocks of the company and all of their targets had been achieved and thereafter all clients exited from the stock.
Relationships with Mr. Anant Sureshchandra Maloo, Maloo Building Materials Pvt. Ltd., Mr. Manan Vidhyapati Patel and Mr. Abhijeet Dwarkadas Daga	He is not connected or known to any of the persons or directors or promoters of the company.

c. Non submission of the complete details by the Noticee had no adverse effect on the securities market or the general investors. The documents/ information sought *via* summons was not really relevant.

d. SEBI has not shown that how in the absence of the documents, which are purportedly not provided by the Noticee at the relevant time, has hampered the investigation process or proceedings in an adverse manner or how the said acts and omissions of the Noticee caused a delay to the investigation of SEBI in the scrip of the company.

e. There was no intention to cause delay or hamper the investigation by the Noticee.

f. The Noticee request to drop the charges levelled against him and he should be relieved from the charges.

10. I have considered the allegation levelled in the SCN, the relevant material brought on record and reply of the Noticee. The limited question for determination in the instant proceeding is whether the Noticee has failed to comply with and disobeyed the summons dated April 28, 2016 and May 12, 2016 and reminders thereto dated August 10, 2016 and August 22, 2016. It is noted that Section 11C(3) of the SEBI Act, empowers the IA to seek such information or record evidences/ statement which are relevant or necessary for the purpose of investigations, from any person associated with securities market in any manner. Section 11C(2) casts mandatory duty upon such person, from whom documents/ records/ information/ evidence has been sought by the IA, to produce to the IA or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to such person.

11. It is matter of record that although the Noticee received the aforesaid summons and reminders, he failed to submit the documents/ records/ information sought by the IA in the matter. The same is admitted position as evident from his reply dated January 18, 2019. The Noticee has not responded to the summons/ reminders issued by the IA at all and has sought to contend that prior to the summons and advices of the IA, he had provided the substantial information to the IA vide his e-mail dated April 12, 2016. In this regard, it is pertinent to note from the aforesaid summons that the IA had not found such response of the Noticee satisfactory and issued aforesaid summons and reminders under section 11C requisitioning the documents/ records/ information from the Noticee which in the opinion of the IA was relevant and pertinent for the purposes of investigation. Vide the summons issued to the Noticee, the IA had, in very clear terms, advised the Noticee that he had failed to provide the information sought by him with regard to trading in the matter of Timbor Home Limited, wherein the Noticee had utilised the service of Solution Infini and ZEN Enterprises for circulation of SMS styled as DM-070000 with message "*BEST BUY TIMBOR HOME AT BSE (533444) & NSE (24316) AT CMP 14 SHORT TERM TGT @17 THIS WEEK N 25 WITHIN NEXT WEEK WITH SAFESIDE SL 11.5 LONG TERM TGT 60*" from July 2014 onwards.

12. In the aforesaid summons dated April 28, 2014 and May 03, 2016 , the IA had, *inter alia,* also advised the Noticee that –

> "*….without prejudice to the provisions of any other law for the time being in force, if you omit to attend and give evidence or to produce the books of accounts and/or documents as required, SEBI will initiate adjudication proceedings against you under which you could be levied a penalty of one lakh rupees for each day during which such failure continues, or one crore rupees, whichever is less, as provided under section 15A of Securities and Exchange Board of India Act. Further, criminal prosecution may also be launched against you under section 11C (6) which provides for a punishment with imprisonment for a term which may extend to one year or with fine which may extend to rupees one crore, or with both, and also with a further fine which may extend to five lakh rupees for each day after the first, during which the failure or refusal continues*".

13. The Noticee has failed to substantiate as to how he had complied with the summons and advices issued by the IA. It is undisputed fact that there is no response from the Noticee to the summons and reminders issued by the IA to him rejecting his claims in his e-mail dated April 12, 2016.

14. In this case, the investigation was initiated in the background that promoters of the company had transferred shares of the company directly or indirectly to other connected entities through off market route during June and July 2014. Also, these connected entities bought small quantity of shares of the company which contributed to increase the price of shares of the company. Subsequently, the Noticee, circulated bulk SMS during July 25, 2014 to July 28, 2014 containing unsolicited advice recommending purchase of shares of the company and lured unsuspecting gullible investors to buy the shares of the company. In turn, post circulation of the bulk SMS, the connected entities offloaded 26,15,280 shares at BSE and offloaded 31,99,688 shares at NSE. Further, the connected entities including the Noticee had traded among themselves for 8,49,220 shares at BSE and 8,31,895 shares at NSE, and thereby created artificial volume, which invited the attention of gullible investors towards the scrip. Later on, price of the shares of the company crashed from 20.20/- to 3.26/- per share. In order to determine the reason behind the circulation of bulk SMS, analyse the impact of circulation of bulk SMS on share price of the company, the Noticee's relationship with the promoters of the company and the Noticee's status (such as SEBI registered intermediary, who may be eligible for circulating such SMS), summons/ advices were issued by the IA. In this background, the documents/ records/ information sought by the IA were very relevant, which would have enabled the IA to draw precise conclusions with regard to the role of the Noticee in the matter.

15. The Noticee was under statutory obligation in terms of section 11C(2) of the SEBI Act to co-operate in the investigation and to provide the documents/ records/ information to the IA as requisitioned by him by the way of summons/ reminders. Not furnishing the documents/ records/ information requisitioned by the IA in terms of the aforesaid summons/ reminders has potential to hamper the investigation. In this regard, in the matter of *Gennex Laboratories Ltd. Vs. SEBI (Appeal No. 172/2011),* the Hon'ble Securities Appellate Tribunal (SAT) has held that *"non-compliance to summons and consequent non furnishing of information hampers investigation by statutory authorities and it acts as a severe handicap in arriving at just and reasonable conclusion by the statutory authorities within a reasonable period of time."*

16. It is important to note that for discharging its duties and with a view to achieve the underlined object under the SEBI Act, SEBI is required to conduct investigation in the affairs of various persons from time to time. For this purpose, first and the foremost thing is co-operation from the concerned persons associated with the securities market to produce the relevant records as and when required by the IA. Therefore, the contention by the Noticee, that documents/ records/ information sought from the Noticee were not relevant to the investigation and had not hampered the investigation process in an adverse manner or had caused a delay to the investigation process, has no basis and I reject the same. I do not find any reason for the Noticee to hide the documents/ records/information unless some deceitful practices were being carried out by him in connivance with other entities

associated with the irregularities investigated in the matter. I, therefore, find that the Noticee has failed to comply with, disobeyed and disregarded the summons and the advices issued by the IA.

17. In the instant matter, by completely disobeying and disregarding the summons/ advices of the IA, the Noticee has failed to comply with these mandatory statutory obligations. Such non-compliance and contraventions are very serious and should be dealt with sternly. In this regard, the following observations of Hon'ble SAT in case of *Asian Films Production and Distribution Ltd. (Appeal No. 203 of 2010 decided on 19th January, 2011)* are relevant to mention and rely upon:

    "*Non-compliance with summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market.*"

18. In the present case, the fact of non-compliance to summons is established. I, am of the view that such violations do not deserve leniency on the ground that the contraventions do not apparently have adverse impact on the investors. Such violations are serious as they completely defeat the statutory purpose and adversely impact the integrity of the securities market. I also note that during these proceedings, the Noticee had shown obstinacy to respond to the SCN and it was only after the repeated opportunities, that Noticee furnished his reply to the SCN vide his letter dated January 18, 2019. This clearly tantamount to a definitive stance on the part of the Noticee which signifies deliberate non co-operative intent.

19. I, therefore, hold that the breach by the Noticee, as found hereinabove, attracts penalty as prescribed under Section 15A (a) of the SEBI Act. The relevant provisions of the possible penalty provided in section 15A(a) of the SEBI Act are reproduced as follows:

    <u>Penalties and Adjudication</u>

    Penalty for failure to furnish information, return, etc.

    15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

    (a) *to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to 56[a penalty 57[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].*

20. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the Act, 1992 which reads as follows:-

    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."

Explanation.—*For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section;*

21. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. In this case, I find that the Noticee had repeatedly failed to comply/ honor summons/ advices issued by the IA and has completely disregarded and disobeyed the same. The complete disregard on the part of the Noticee to the summons/ advices and statutory obligations shows willful defiance on his part. I also note that SEBI as the securities market regulator will not be able to perform its statutory functions and duties under the SEBI Act, if persons associated with the securities market strangle the investigations by not responding to the summons issued to them. Since the wilful disobedience to statutory requirements has occurred, the penalty must follow in the facts and circumstances of this case. It is also noteworthy that the undisputedly the Noticee had circulated bulk SMSs containing unsolicited advice recommending purchase of shares of the company and lured unsuspecting gullible investors to buy the shares of the company and he apparently was active party in alleged irregularities that were under investigation. It is pertinent to refer here the following findings of Hon'ble SAT in the matter of - *Rich Capital & Financial Services Limited and Mr. Shashwat Agarwal,* order dated October 22, 2013 - "*In case of failure on the part of the concerned person to furnish such records/information, heavy monetary penalty is prescribed in section 15A(a) of the SEBI Act, 1992. In fact such an act on the part of a company or its concerned officers is not only contemptuous but also a hindrance in the way of conducting smooth investigation and enquiry by the regulator to arrive at a just and fair conclusion as per the provisions of SEBI Act, 1992. Such an increasing tendency on the part of the companies needs to be curbed at the threshold*".

22. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹15,00,000/- (Rupees Fifteen Lakh only) on the Noticee *viz.* Mr. Soni Sanjay Jethalal under section 15A(a) of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

23. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

24. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

25. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: January 22, 2019

Place: Mumbai

Santosh Shukla

Adjudicating Officer