**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**(ADJUDICATION ORDER NO: Order/GR/BM/2022-23/16086)**

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**UNDER SECTION 15 - I OF THE 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:

| SL. No. | Name of the Entity | PAN |
|---|---|---|
| 1 | Ashish Pandey | BIPPK2228G |

**In the matter of Ricoh India Ltd.**

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**<u>FACTS OF THE CASE</u>**

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings under Section 15A(a) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") against Ashish Pandey (hereinafter referred to as "**Noticee**") in the matter of Ricoh India Ltd. (hereinafter referred to as "**Ricoh/the Company**"). Adjudication proceeding was initiated against the Noticee for alleged violation of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act.

2. The undersigned was appointed as the Adjudicating Officer vide Order dated March 13, 2020 under Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge

under the provisions of Sections 15A(a) of the SEBI Act for the aforesaid alleged violation by the Noticee.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

3. A Show Cause Notice dated December 23, 2020 (hereinafter referred to as 'SCN') was issued by the undersigned on the Noticee at its latest known address available on record. The SCN was issued to the Noticee under the provisions of Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on the Noticee under the provisions of Sections 15A(a) of the SEBI Act, for the aforesaid alleged violations.

4. The fact of the case and the allegations made in the SCN are summarised below:

   a) SEBI conducted an investigation in Ricoh during the period April 1, 2012 to March 31, 2016 to ascertain whether there was any violation of provisions of SEBI Act, 1992 and/or SEBI (PFUTP) Regulations, 2003.

   b) SEBI observed that the statutory auditors of Ricoh i.e., BSR & Co., LLP conducted limited review of the financial statements of the Company for quarter and half-year ended September 30, 2015 and it had raised suspicions regarding certain transactions between Ricoh and its customers and vendors. Further, the statutory auditor had recommended review of these transactions.

   c) The Audit Committee of Ricoh appointed M/s. Shardul Amarchand Mangaldas & Co., Advocates & Solicitors, who in turn appointed Pricewaterhouse Coopers Private limited, India (PWC) to conduct forensic audit of the books of accounts of Ricoh for the period April 1, 2015 to

September 30, 2015. PWC submitted its report on preliminary findings on April 20, 2016, pursuant to which, on the same day, Ricoh informed SEBI that its financial statements for quarters ended June 30, 2015 and September 30, 2015 did not reflect true and fair view of its state of affairs. Ricoh, vide letter dated July 19, 2016, disseminated to BSE that the unaudited estimate of the losses incurred for the financial year 201516 was Rs. 1123 crore.

d) Subsequently, SEBI, vide interim Order dated February 12, 2018, restrained seven officials of Ricoh from accessing securities market. In addition, vide corrigendum dated March 6, 2018, SEBI *inter alia* directed BSE to appoint an independent auditor/audit firm for conducting a detailed forensic audit of the books of accounts of Ricoh. BSE appointed CJS Nanda & Co. for conducting the forensic audit of the books of accounts of Ricoh.

e) As the forensic audit report submitted by CJS Nanda & Co was insufficient in terms of evidence, SEBI appointed Pipara & Co. LLP on February 20, 2019 to conduct forensic audit into the books of accounts of Ricoh and Fourth Dimension Solutions Limited (FDSL) for the financial year ending March 31, 2013 to financial year ending March 31, 2018. FDSL was a vendor and customer of Ricoh.

f) Pipara & Co. LLP submitted its final forensic audit report dated October 25, 2019 to SEBI. It was observed that the books of accounts of Ricoh had been manipulated since FY 2012-13. Some of the major observations from the Forensic Audit Report were as stated below:

    i. <u>Sales recorded before receipt of order and subsequent write offs:</u> As per practice followed by Ricoh, on receiving an Order from a customer, an Order Sales Form (OSF) was first created which was entered into system. Subsequently, Sales Order was executed by the Company in accordance with OSF.

It was observed that Ricoh, in 29 instances, had recorded sales amounting to Rs 438.98 crore before the OSF, i.e., sale was recognized before the order was actually received and executed. In addition, it was observed from books of accounts of Ricoh that funds receivable from certain entities (worth Rs 171.59 crore) was written off in FY 2016-17. The said entities were directly or indirectly connected to Mr. Amalendu Mukherjee who was MD of FDSL.

ii. Ricoh IT Services (RITS) partner Program: Ricoh had initiated RITS Partner Program for its IT Services Business under which it registered only 3 partners, namely, Redhex, Vedavaag and FDSL. Redhex and Vedavaag are related to Mr. Amalendu Mukherjee and FDSL. It was observed that RITS Partner Program was designed to unduly benefit FDSL and entities connected with Amalendu Mukherjee.

iii. UID Units: During FY 2013-14, Ricoh purchased 3850 Unique Identification (UID) kits from FDSL on June 13, 2013 for Rs 36.37crore. Out of 3850 UID kits, 2700 kits were rented out to Vedavaag on June 12, 2013 (rental income from Vedavaag was Rs 27.12 crore). Inventories were rented out to Vedavaag one day before the same was purchased from FDSL. Subsequently, Ricoh sold 3850 units for Rs 23.01 crore to AS international and Connect Residuary Private Limited who are connected with FDSL. Thereafter, Ricoh leased 4650 kits from Connect and paid an amount of Rs 65.71 crore towards lease dues. From the above transactions, Ricoh incurred a financial loss of Rs 55.61 crore where the corresponding beneficiaries were FDSL and entities connected to FDSL.

iv. Misrepresentation of the lease transaction to the Board of Ricoh: Ricoh entered into the Master Rental Agreement with Connect on December 6, 2013 which is several months before the approval from the Board was taken in Board meeting held on September 25, 2015. The first rental schedule with Connect was on January 29, 2014 which was eight months before the board approved the matter. From the Board resolution and minutes of meeting dated September 25, 2015, it was observed that the Board was not intimated that Ricoh had already purchased UID kits from FDSL at a cost of Rs. 36.37 crore and that it intended to do sale and lease back transaction from Connect.

v. <u>Preferential treatment to FDSL through Vendor Financing:</u> From the books of accounts of Ricoh, it was observed that FDSL was the sole beneficiary of Vendor Financing facility for the purpose of procurement of goods and services from FDSL. Ricoh made payment to FDSL through vendor financing from Bank of America and HSBC bank amounting to Rs 244 crore and Rs 311 crore respectively during FY 2014-15 and FY 2015-16.

vi. <u>Diversion of funds of Ricoh to RNMT:</u> On September 9, 2014, Ricoh transferred Rs 10 crore to Rudra Enterprises. Out of that, Rudra Enterprises transferred Rs 1 crore to RNM IT Solutions Private Limited (RNMT). From bank statement of RNMT, it was observed that on April 9, 2015, Rs 4 crore was transferred to RNMT from FDSL. Wives of Mr Amalendu Mukherjee, Mr Arvind Singhal and Mr Anil Saini were directors of RNMT and received funds which were diverted from Ricoh.

vii. <u>Instances where sales were made by FDSL without having the requisite inventory:</u> On analyzing stock summary of FDSL from FY 2013-14 to FY 2016-17, many instances of negative stock were observed. Negative inventory can only arise in the books of accounts when sales of products are being made which have not been purchased or which are not actually backed by current inventory. This indicates that the sales made by FDSL were fictitious.

g) From the facts of the case, it was observed that Ashish K. Pandey (Noticee) was company secretary as well as CFO of FDSL in 2017-18 and also he has been authorized to provide the data for the Forensic Audit conducted by Pipara & Co. LLP during the audit. It was alleged that the Noticee, did not provide data and information with respect to FDSL for 2017-2018 to the forensic auditor despite several reminders. Further, SEBI, on April 3, 2019 directed the Noticee to cooperate with the forensic auditor in providing information. However, it was alleged that the Noticee did not cooperate with the forensic auditor for sharing information pertaining to FDSL.

h) In view of the above failure of the Noticee to provide information to the forensic auditor appointed by SEBI, it was alleged that the Noticee has violated Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act, 1992

5. SCN was issued to the Noticee at his latest known address available on record.

6. However, the SCN returned undelivered and the same was served upon the Noticee through public Notice on February 9, 2021 in two newspapers, namely, Hindustan Times (English) and Nav Bharat Times (Hindi), both publications in Delhi Edition/Circulation. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, Noticee was granted an opportunity of personal hearing on February 23, 2021 through the said public Notice. In addition, the Noticee was provided an opportunity for submitting its reply to the SCN. However, Noticee neither submitted any reply to the SCN refuting the allegations made against it in the SCN nor availed the opportunity of personal hearing before me.

7. Accordingly the matter was proceeded *ex-parte* against the Noticee and SEBI vide order dated February 24, 2021 found that Noticee violated the provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act and imposed

a monetary penalty for a sum of Rs.5 lakhs under the provisions of Sections 15A(a) of the SEBI Act for the aforesaid alleged violation by the Noticee.

The aforesaid sections and provisions are reproduced below:

***Relevant provisions of SEBI Act, 1992***

***Functions of Board.***

*11.(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—*

*(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;]*

***Investigation***

*11C.(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.*

*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.*

***<u>Power to adjudicate</u>.***

***15-I.***

*(1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G,15H, 15HA and 15HB, the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.*

*(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subjectmatter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.*

***<u>SEBI Act 15A - "Penalty for failure to furnish information, return, etc. –</u>***

*If any person, who is required under this Act or any rules or Regulations made there under-*

***(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.*

8. Subsequently, the Noticee filed an appeal no. 722 of 2021 against the aforementioned order dated February 24, 2021 before the Hon'ble Securities and Appellate Tribunal (SAT). Pursuant to the appeal, Hon'ble SAT vide its order dated January 06, 2022 held as under:

   *"5. Considering the aforesaid, we are of the opinion that the appellant was not served with the show cause notice nor was served with any notice asking them to appear for hearing. We are of the opinion that the delay in the filing of the appeal has been sufficiently explained. Consequently, the delay is condoned. The application is allowed.*

   *6. For the same reason, we are of the opinion that the proceedings were ex-parte and the appellant was not given an opportunity of hearing. Consequently, the impugned order cannot be sustained on this short ground and is set aside. The appeal is allowed and the matter is remitted to the AO to pass a fresh order after serving a show cause notice and proceed from thereafter. In this regard, the appellant will appear before the AO on January 24, 2022 on which date the appellant would be served with the show cause notice and the matter will proceed from there onwards in accordance with law. In the circumstances of the case, parties shall bear their own costs."*

**<u>APPOINTMENT OF ADJUDICATING OFFICER</u>**

9. The undersigned is appointed as Adjudicating Officer vide order dated January 11, 2022 to inquire into and adjudge under Section 15A(a) of SEBI Act the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated vide communique dated January 12, 2022.

**REPLY AND HEARING**

10. Pursuant to the aforesaid Hon'ble SAT order, vide letter and mail dated January 13, 2022, Noticee was advised to collect the SCN on January 24, 2022. The aforementioned SCN was also sent along with the said letter and mail dated January 13, 2022. The Noticee was further advised to submit his reply within 14 days from January 24, 2022.

    However, vide mail dated February 04, 2022, the Noticee sought additional time to file his reply which was granted and accordingly, vide mail dated February 08, 2022, the Noticee was advised to submit his reply by February 21, 2022. Vide the same mail, the Noticee was also granted an opportunity of personal hearing on February 25, 2022.

    The Noticee, submitted his reply vide mail dated February 21, 2022. Further, the Noticee and the authorised representative of the Noticee attended the said hearing on February 25, 2022 wherein they reiterated the submissions made earlier and also sought additional time to make further submissions which was granted to them. Accordingly, the Noticee made the additional submissions vide mail dated March 05, 2022.

11. The Noticee vide the aforementioned replies dated February 21, 2022 and March 05, 2022 made the following submissions:
    a) *The Noticee resigned on January 4, 2019 from the Company FDSL and was relieved on February 06, 2019, after serving a notice of one month i.e. much before commencement of Forensic Audit. He was not having the Authority to provide any information as sought by the Forensic Auditor.*
    b) *He was not having the custody of documents and nor had the power to provide the documents to the Forensic Auditor as he was no longer the employee of FDSL. There is nothing on record to show that the possession/custody of the documents was with him. It was not the duty of the Noticee to provide the documents as stated in the SCN.*

c) *He was in service of FDSL from March 22, 2018 to February 6, 2019 and not in 2017-18 as is being alleged in the SCN that he was the company secretary and authorised person and CFO in 2017-18. Therefore, the SCN is factually incorrect and the allegations are based on incomplete facts.*

d) *The emails in reference are of May 2019 and by that time he was already relieved from the services of the organisation i.e. on February 06, 2019 and had joined another organisation which is based out of Gurugram, Haryana. Therefore, he is not privy to such communication and he was not having access to any email id in the domain of company.*

e) *It is evidently clear from Annexure D to the SCN (wherein extracts of certain e-mails have been provided in the SCN) itself whereby the Forensic Auditor being aware about his non availability in the company had sought the details of the persons in charge with whom they should meet in his absence.*

12. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

**CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS**

13. I have taken into consideration the facts, the submission made by the Noticee and the material available on record wherein it is alleged that the Noticee has failed to comply with provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act.

I have the following issues for consideration, viz.,

I. *Whether the Noticee has violated the provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act?*

II. *Does the violation, if any, attract monetary penalty under Section 15 A (a) of SEBI Act.?*

III. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

***Issue I: Whether the Noticee has violated the provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act?***

14. From the fact of the case, I find that during February 2019, SEBI had appointed Pipara & Co LLP as the forensic auditor with respect to the financial statements of Ricoh India Limited and Fourth Dimension Solutions Limited (FDSL) for the financial years ending March 31, 2014 to March 31, 2018.

15. It is observed that FDSL was a vendor and customer of Ricoh. Ashish K. Pandey (Noticee) was company secretary of FDSL and CFO in 2017-18. He was also authorised by FDSL to provide the data for the Forensic Audit by Pipara & Co. LLP which was not provided by him to the auditor even after multiple reminders from SEBI and the forensic auditor.

16. In view of the above, the allegation made against the Noticee is that he failed to provide information to the forensic auditor appointed by SEBI. From the material available on record, it is observed that the forensic auditor on March 13, 2019 sought various information from Noticee including the following:

    a) Service Invoices pertaining to year FY 2013-14 & 2014-15
    b) Invoices, Delivery Challans, Purchase Orders received from customers, Sales Order Form, purchase order from the vendor, etc.
    c) all files related to purchase documents
    d) Tally data pertaining to FY 2017-18
    e) financial statements of the group companies (individually, duly signed by the auditors & management)
    f) the access/ clone of the computer system of the director and KMPs

g) Shareholding pattern of the company during the period of scope of Audit

h) Bank accounts details of the directors and KMPs of FDSL

i) Copy of Rent Agreements, Board Resolution for signing Rent Agreements & Board Resolution for undertaking the rent premises for FY 2013-14 till FY 2016-17.

17. Subsequently, on not receiving the aforesaid documents, the auditor, vide mail dated March 27, 2019 to FDSL and to the Noticee under copy to SEBI wrote the following:

*"Despite the emails, call attempts from our office and visits to your premises, FDSL has not provided any substantial information which has delayed the commencement of the assignment, quoting various reasons. Our calls to Mr. Paanday (the Noticee) remain unanswered at various instances and coordination becomes cumbersome with FDSL.*

Further, vide mail dated April 03, 2019, the auditor again wrote the following to FDSL under copy to SEBI and the Noticee:

*"Whereas Mr. Ashhish Paanday had assured us that we would start receiving accounting information & access to accounting software, the same remains pending as on date."*

18. In addition, from the material available on record, I find that on March 27, 2019 and April 3, 2019, SEBI had also advised the Noticee to co-operate in the process of forensic audit and provide all the information sought by the forensic auditor. It was further intimated by SEBI that if the Noticee fails to co-operate and provide relevant information to forensic auditor, appropriate action would be initiated against it.

19. However, despite the above reminders/advisory, the Noticee failed to furnish information/documents sought by the forensic auditor.

20. In this regard, the Noticee has contended that he resigned from the Company FDSL on January 4, 2019 and was relieved on February 06, 2019 much before commencement of Forensic Audit and he was not having the Authority to provide any information as sought by the Forensic Auditor. Further, the Noticee has contended that he was not having the custody of documents and nor had the power to provide the documents to the Forensic Auditor as he was no longer the employee of FDSL. It is also contended that there is nothing on record to show that the possession/custody of the documents was with him and that it was not the duty of the Noticee to provide the documents.

In this regard, I note from the available records that the Noticee never submitted either to SEBI or to the forensic auditor that he is no longer associated with FDSL and he is neither having the required documents nor the authority to provide the same. In fact, in his reply dated February 21, 2022 to the SCN, the Noticee admittedly submitted that on request of the Managing Director of FDSL, he agreed to assist in collating the data and to co-ordinate with the forensic auditor.

Further, from the communications exchanged between the Noticee, SEBI and the forensic auditor, I note that though the Noticee has submitted that he was relieved from FDSL on February 06, 2019, the Noticee, on February 26, 2019, replied from his FDSL email id, Ashhish@fdsindia.co.in in response to SEBI's email which was written to FDSL on its official email id i.e. secretarial@fdsindia.co.in. Further, from the same FDSL email id, the Noticee, keeping FDSL informed, provided his contact details as the official contact person for coordination and for providing required information and data during the process of forensic audit.

Further, I note that the Noticee also attended various physical meetings with the Forensic Auditor as a representative of FDSL for the purpose of replying to the issues raised and to provide information pertaining to the said audit process.

Therefore, the afore said facts is established and evident from the fact that the Noticee was the official person appointed by FDSL and responsible for coordinating the audit process with the auditor and for providing relevant information and data which was not provided by him to the auditor even after multiple reminders from SEBI and the forensic auditor. In view of the above, I reject the above contentions made by the Noticee.

21. Noticee has further contended that the emails in reference are of May 2019 and by that time he was already relieved from the services of the organisation and he was not privy to such communication and was not having access to any email id in the domain of company. It is matter of fact that at no point of time during the investigations it has ever been contended by the Noticee that he was not in the possessions or did not have any information as sought by the Forensic Auditor/SWEBI. In fact it is on records and also recorded in SEBI Order dated October 10, 2017 that Noticees did not furnish the requisite information despite grant of series of extensions In this regard I note from the aforesaid communications between the Noticee, SEBI and the Forensic Auditor that various meetings were scheduled with the Noticee on his official email id of FDSL and pursuant to which the physical meetings were held between the Noticee and team of the Forensic Auditor which confirms that the Noticee was using his FDSL email id. In view of the above I find no merit in the above contention of the Noticee.

22. Noticee has also contended that the Forensic Auditor was aware about his non availability in the company as the auditor had sought the details of the persons in charge with whom they should meet in his absence. In this regard I note from the emails dated March 13, 2019 and March 14, 2019 between the Noticee and the Forensic Auditor that the aforesaid statement of the auditor, made in the email dated March 14, 2019, was in response to the Noticee's email dated March 13, 2019 wherein he requested the Forensic Auditor a week's time before their meeting as he was travelling. To this the auditor vide the said mail wrote: *'Kindly*

*let us know the person in charge (with whom we should meet) when you are not available at the office'.* I note that this email of auditor was for Noticee's non availability on account of travelling and not on account of not associated with the company or working in another company. I further note from the available record that the Noticee never informed the Forensic Auditor or SEBI about him not being associated with the company. In view of the above, I find no merit in the above contention of the Noticee.

23. The Noticee has further contended that he was in service of FDSL from March 22, 2018 to February 6, 2019 and not in 2017-18 as is being alleged in the SCN that he was the company secretary and authorised person and CFO in 2017-18. Therefore, the SCN is factually incorrect and the allegations are based on incomplete facts. In this regard I note that the allegation against the Noticee is not with respect to his designation or his period of being company secretary or CFO. The allegation against the Noticee is of non-cooperation with the audit process by not providing information to the forensic auditor appointed by SEBI being the authorized person to do so. Therefore, I reject the above contention of the Noticee.

24. It is pertinent to mention here that it is the responsibility of every person from whom information is sought 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 Noticees against the background of serious irregularities.

25. Non submission of the requisite information has adversely affected the investigation process. The Hon'ble Securities Appellate Tribunal in its Order

dated 22.10.2013, in the matter of **Rich Capital & Financial Services Limited and Mr. Shashwat Agarwal vs. SEBI** observed that-

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

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

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

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

Also, the Hon'ble SAT in the matter of **DKG Buildcon Private Ltd. v/s AO&EO, SEBI**, Appeal No. 106/2006, wherein it was, inter alia, held that *"It is of utmost importance that every person from whom information is sought should fully cooperate with the investigating officer and promptly produce all documents, records, information as may be necessary for the investigations. If persons are allowed to flout the summons issued to them during the course of investigations, the Board as the watchdog of securities market will not be able to perform its duties in protecting the interests of the investors and safeguarding the integrity of the securities market.*

26. I find from the records that the Noticee has been charged for violating the provisions of Section 11C (2), (3) of the SEBI Act. After going through the provisions specified under Section 11C (2) of the SEBI Act, I note that the said provision requires 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 (IA) 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.

From the provisions of Section 11C (3) of the SEBI Act, I observe that said provisions empowers the Investigating Authority to call for information, details, documents etc. by issuing summons as needed for the purpose of investigation.

From the above, it is clear that under of Section 11C (2), the persons/entity mentioned under the provision are mandated with a twin duty i.e., (a) to preserve all the books, registers, other documents and record of, or relating to, the company/ the intermediary and (b) to produce the same to the IA as and when demanded/called for by the IA. Section 11C (3) on the one hand empowers the IA to call for records, books or other documents which he views or finds relevant or necessary for the purposes of investigation and on the other hand also imposes a duty on the person/entity concerned to furnish such books, records and/or information to the IA.

On a plain reading, it may be observed that Section 11C (2) and (3) are complementary to each other in so far as one sub-section empowers IA to requisition information while the other sub-section creates a liability in the form of duty to preserve, produce and furnish information.

Once information is called for by IA under Section 11C(3), it necessarily commands performance of duty by the persons/entity who has been called upon to furnish such information failing which it results in violation of both Sections 11C(2) as well as 11C(3).

27. In view of the above observations, there is no hesitation to hold that the Noticee, by not providing information sought by forensic auditor appointed by SEBI, has violated the provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act.

***Issue II: Does the violation, if any, attract monetary penalty under Section 15 A (a) of SEBI Act.?***

The provisions of Section 15A (a) of the SEBI Act, 1992 read as under:

***<u>SEBI Act 15A - "Penalty for failure to furnish information, return, etc. –</u>***

*If any person, who is required under this Act or any rules or Regulations made there under-*
***(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*

28. In view of the foregoing, I am convinced that the Noticee is liable for monetary penalty under Section 15A(a) of the SEBI Act, 1992.

***Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?***

29. While determining the quantum of penalty under Section 15A(a) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-.

**Factors to be taken into account by the adjudicating officer.**

*Section 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.*

30. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticee. In the present matter, I note that the Noticee has

violated the provisions of Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act.

**ORDER**

31. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticee:

| Noticee | Violation | Penal Provisions | Penalty (Rs.) |
|---|---|---|---|
| Ashish Pandey (PAN: BIPPK2228G) | Section 11(2)(ia) read with Section 11C(2), (3) of the SEBI Act | Section 15A(a) of the SEBI Act, 1992 | Rs. 5,00,000/- (Rupees Five Lakh Only) |

I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

32. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

33. 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 favor 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**

34. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

| | |
|---|---|
| 1. Case Name: | |
| 2. Name of the Noticee: | |
| 3. PAN No. of the Noticee | |
| 4. Date of payment: | |
| 5. Amount paid: | |
| 6. Transaction no.: | |
| 7. Bank details in which payment is made: | |
| 8. Payment is made for:<br>(like penalties/ disgorgement/ recovery/ settlement amount etc.) | |

35. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated 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.

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

**Date: April 22, 2022** **G RAMAR**
**Place: Mumbai** **ADJUDICATING OFFICER**