

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/GR/KG/2020-21/10121-10122)

---

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

In respect of:

Mr. Mansoor Rafiq Khanda (PAN: ALMPK3448B)

and

Mr. Firoz Rafiq Khanda (PAN: AFMPK5766J)

In the matter of their non-compliance with the order of disgorgement passed by SEBIs

---

**FACTS OF THE CASE IN BRIEF:**

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") had received complaints against Mansoor Rafiq Khanda and Firoz Rafiq Khanda (hereinafter collectively referred to as the "Noticees" and individually Noticee No.1" and "Noticee No. 2" respectively) *inter alia* alleging that they were offering trading tips through WhatsApp messages and internet websites including [www.fullonoption.com](http://www.fullonoption.com). Pursuant to a preliminary examination, SEBI had *prima facie* found the Noticees to have engaged in providing investment advisory services to investors upon receipt of requisite fees without obtaining registration from SEBI to

act as 'Investment Adviser' and to have solicited and induced investors to deal in securities on the basis of such investment advisory services. Upon completion of the investigation, SEBI had issued directions against the Noticees vide an Order dated May 12, 2016 ("**Impounding Order**") to impound the unlawful gains of a sum of ₹5,04,01,896 (gain of ₹3,83,80,477 + interest of ₹1,20,21,419) jointly and severally from the Noticees.

2. Thereafter, SEBI had passed an order under section 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") on Jun 20, 2018 (hereinafter referred to as the "**SEBI Order**") against the Noticees. It was held in the said order that the Noticees fell within the ambit of the definition of '*Investment Adviser*' as per Regulation 2(m) of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**"), although, they were not registered with SEBI as '*Investment Adviser*' at the relevant time when they offered and provided 'investment advice' to clients/investors i.e. from April 21, 2013–June 5, 2014. The said conduct of the Noticees was held to be non-compliant with the provisions of Section 12(1) of the SEBI Act read with Regulation 3 of the IA Regulations, which mandate that a person shall hold a Certificate of Registration from SEBI in order to be associated with the securities market as an 'Investment Adviser'.

3. Having held as stated above, vide the said order, SEBI had *inter alia* directed that:

*"Mansoor Khanda and Firoz Khanda shall, jointly and severally, disgorge the unlawful gains along with interest as determined by SEBI in the Impounding Order dated May 12, 2016 i.e. Rs. 5,04,01,896 (gain of Rs. 3,83,80,477 +*

*interest of Rs. 1,20,21,419). Mansoor Khanda and Firoz Khanda shall pay the aforesaid amount within 45 days from the date of this Order.”*

4. The Noticees had appealed against the above mentioned order of SEBI before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as “**SAT**”). The said appeal was dismissed vide order dated January 7, 2020. No appeal was filed against the aforesaid SAT order. Thus, the SEBI directions had attained finality as on the said date, i.e, January 7, 2020. Therefore, the Noticees were supposed to pay the aforesaid amount of disgorgement within 45 days from January 7, 2020, which they have allegedly not done.

#### **APPOINTMENT OF THE ADJUDICATING OFFICER**

5. The Competent Authority has, vide order dated October 1, 2020, appointed the undersigned as the Adjudicating Officer (hereinafter referred to as the “**AO**”) under section 15I(1) read with section 19 of the Securities and Exchange Board of India Act, 1992 and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**Rules**”) to enquire into and adjudge under section 15HB of the SEBI Act, 1992 for the alleged violations by the Noticees named above.

#### **SHOW CAUSE NOTICE AND REPLY**

6. Accordingly, in terms of rule 4(1) of the Rules read with section 15I of the SEBI Act, with regard to the alleged non- compliance of the SEBI order, a notice to show cause (hereinafter referred to as ‘**SCN**’) (bearing no. EAD-

4/GR/KG/OW/19033/1/2020) dated November 10, 2020, was issued to the Noticees, calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HB of the SEBI Act for the aforesaid alleged failure to comply with the SEBI order.

7. The said SCN while delivered to the Noticee No.2 at his address, had returned undelivered from the address of the Noticee No.1 with the postal endorsement "*item returned addressee moved*". Thereafter, a scanned copy of the said SCN along with annexure was uploaded on the website of SEBI under the heading "unserved Summons/Notices" and an advertisement informing about the said SCN was also published in English in the Times of India (Ahmedabad and Surat edition) on January 5, 2021 and in Gujarati language in Divya Bhaskar (Surat Edition) on January 5, 2021, having circulation at the place of residence of the Noticees, *inter alia* informing the Noticees about the present proceedings and providing them an opportunity of availing the said SCN from the website of SEBI or to collect a physical copy thereof from the office of the undersigned at SEBI- Head Office, Mumbai, and to reply to the said SCN within fourteen days from the date of receipt/publication of the said SCN. However, till date, even after the expiry of the period of fourteen days from the date of the aforesaid publication, no response has been received from the Noticees.

### **CONSIDERATION ISSUES AND FINDINGS**

8. Before proceeding with the case, a preliminary issue with respect to the compliance of the principles of natural justice needs to be settled. The SCN was delivered at the address of the Noticee No.2 by post on November 19, 2020, although it had returned undelivered from the address of the Noticee No.1. Thereafter, the said SCN was published in an English newspaper having national circulation ("Times of India", Mumbai, Ahmedabad, Surat editions) and also in a vernacular newspaper having circulation the place of addresses of the Noticees ("Divya Bhaskar", Surat Edition). Further a scanned copy of the said SCN was also sent by email dated December 9, 2020, to the email address of the Noticee No. 2 obtained from his UCC details maintained with the BSE. The said email had not bounced back. Therefore, I conclude that the said SCN was duly served upon the Noticees in terms with the Rules and the principles of natural justice have been complied with *qua* the Noticees. In the said SCN it was also mentioned that if no response to the same is received within the period of time as stipulated therein, the case shall be proceeded *ex-parte* on the basis of the material available on record. In this regard, the contents of Rule 4(3) of the Rules is reproduced herein below:

*"(3) If, after considering the cause, if any, shown by such person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative." [emphasis supplied*

It is observed from a reading of the Rule 4(3) cited above that only after a 'cause' is shown by a Noticee in response to a notice issued for showing cause, that the AO shall offer an opportunity of hearing to the said Noticee. Therefore, I now proceed with the case *ex-parte*, there being no need to provide any opportunity of personal hearing in the absence of any response from/ 'cause' being shown by the Noticees.

9. I note that the Noticees had challenged the SEBI order before the Hon'ble SAT.

Therefore, it is established that they knew about the SEBI order and its contents and was also aware of their duties to comply with the said SEBI order within the timeline as stipulated therein. They also knew that in the absence of any appeal before the Hon'ble Supreme Court against the said order of the Hon'ble SAT upholding the SEBI order, the directions contained in the SEBI order had attained finality as on January 7, 2020, and the time period of 45 days for payment of the disgorgement amount had begun from the said date.

10. It is on record that the Noticees have not paid the said amount of disgorgement within the stipulated time period or at all. Without any response received from the Noticees, there is nothing to controvert this point of fact.

11. It is therefore established that the Noticees have failed to comply with the directions contained in SEBI order. This is further evident from the fact that proceedings for recovery have been already been initiated by SEBI against the Noticees vide Notices of attachment of bank and demat accounts dated November 19, 2020. Therefore, I find that the Noticees have completely disregarded the directions of SEBI to disgorge the ill-gotten gains made from their activities as unregistered

investment adviser. I, therefore, deem this case fit to impose monetary penalty upon the Noticees under section 15HB of the SEBI Act. The provisions of section 15HB is reproduced herein below:

***Penalty for contravention where no separate penalty has been provided.***

**15HB.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

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

**15J - Factors to be taken into account by the adjudicating officer**

*While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

**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*

13. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the said default cannot be computed. It is noted that the Noticees have not paid the disgorgement amount even as on November 19, 2020, i.e., the date of the notices of attachment issued by SEBI and after almost eleven months have passed subsequent to the aforesaid order of the Hon'ble SAT on January 7, 2020. This shows unwillingness on the part of the Noticees to comply with the directions of SEBI, a statutory regulator and such defaults seriously compromise the regulatory framework. A lenient view in such cases would defeat the legislative intent of section 15HB. Since the default has already occurred, the penalty must follow in this case. At this point it may be important to clarify that the instant proceedings are independent from said Recovery Proceedings which have been initiated by SEBI against the Noticees on November 19, 2020, and any possible attachment order of SEBI with regard to recovery of the amounts as directed in the SEBI order cannot be a reason to exonerate the Noticees with regard to their failure to comply with the said order.

14. 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 the monetary penalty of **Rs. 25,00,000/- (Rupees Twenty-Five Lacs only)** on the Noticees under section 15HB, for not complying with the directions issued vide order dated June 20, 2018, as found hereinabove. In my view, the said penalty is commensurate with the violation committed by the Noticees in this case.

15. The amount of penalty shall be paid jointly by the Noticees either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website [www.sebi.gov.in](http://www.sebi.gov.in) ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>

16. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department I-DRA-3), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	

Transaction No. :	
Bank Details in which payment is made :	
Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

17. 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.

18. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticees and also to the Securities and Exchange Board of India.

**Date : January 20, 2021**

**G. Ramar**

**Place : Mumbai**

**Adjudicating Officer**