

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/GR/KG/2020-21/10150)

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:

Jahman Dealers Pvt. Ltd (PAN: AACCCJ8082E)

In the matter of Dwitiya Trading Limited

FACTS OF THE CASE IN BRIEF:

1. The BSE had sought certain documents from certain companies which had raised funds through preferential issue. Subsequently, BSE appointed an Auditor's Committee to scrutinize these documents submitted by the companies, such as Auditor's certificates, AOA, MOA, Ledger accounts, invoices, bank account statements, loan agreements etc. Pursuant to examination of the same BSE had concluded that *prima facie* there were misutilization of funds received against issue of equity shares on preferential basis by several companies including **Dwitiya Trading Limited ("DTL"/ "The Company")**. Subsequently, the matter was referred to SEBI by the BSE.
2. The case was then taken up by SEBI for detailed investigation to ascertain the possible violations inter alia of the provisions of SEBI (Prohibition of Fraudulent

and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”), Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”), Securities Contracts (Regulation) Act, 1956 (“**SCRA**”) and any other Regulations made there under, if any. The period of investigation for SEBI was from February 28, 2013 to May 10, 2013. It was *prima facie* observed that the company had misutilised its fund raised through the issue of preferential shares and a part of the said funds was transferred to certain entities purportedly for purchasing shares from the said entities, which included **Jahman Dealers Pvt. Ltd** (“hereinafter referred to as the “**Noticee**”).

3. The company in its Extraordinary General Meeting (“EGM”) held on February 28, 2013, had approved the issue of preferential shares of 48 lakh shares at Rs 10 each. The shares issued on a preferential basis were allotted on May 10, 2013 and an amount of Rs. 4.80 crores was raised through the preferential issue
4. It has been *prima facie* observed from the investigations of SEBI that the company had used the proceeds of the aforesaid preferential allotment of shares to grant loan/ invest in the following entities:

SI No	Name of parties	Purpose	Amount (Rs)
1.	Manya Traders Pvt. Ltd.	Loan	1,25,00,000
2.	Keshav Developers P. Ltd.	Loan	35,00,000
3.	Vikash Goyal HUF	Loan	10,00,000
4.	Shakti Carriers	Loan	10,00,000
5.	Vivid Concepts & Ambience Pvt. Ltd.	Loan	10,00,000
6.	Shree Valley Realtors Pvt. Ltd.	Loan	35,00,000
7.	Jordan Textiles	Loan	30,00,000
8.	Ashish Mittal	Loan	30,00,000
9.	Hi Tech International	Loan	1,05,00,000
10.	Investment	Investment	90,00,000
Total			4,80,00,000

5. As observed from the above table, the company had utilised Rs. 3.90 crores of the funds raised through the preferential issue for granting loans to 9 entities. The company has also informed that the remaining issue proceeds of Rs. 0.90 crores were invested in purchasing shares of the following private companies:

SI No	Name of company	Date of Investment	Amount (Rs)
1.	M/s. Khyati Merchants Ltd	21/03/2013	7,00,000
2.	M/s. RPS Merchants Pvt. Ltd	05/03/2013	40,00,000
3.	M/s. Shivparvati Traders & Suppliers Ltd	15/03/2013	43,00,000
Total			90,00,000

6. However, on analysis of the bank statement as provided by the company, it was observed that transfers were made to the following entities of the aforementioned amount of Rs. 90 Lakhs:

- a) Devbhumi Mercantile Pvt Ltd
- b) Gangadham Suppliers Pvt Ltd
- c) Jahman Dealers Pvt. Ltd.

7. Vide email dated September 13, 2019 to the company, information was sought with respect to the relation between Khyati Merchants Ltd, RPS Merchants Pvt. Ltd, Shivparvati Traders & Suppliers Ltd with Devbhumi Mercantile Pvt Ltd, Gangadham Suppliers Pvt Ltd and Jahman Dealers Pvt. Ltd. Further, the company was also asked to clarify as to why the bank statement does not indicate any transfers made to Khyati Merchants Ltd, RPS Merchants Pvt. Ltd and Shivparvati Traders & Suppliers Ltd. The company vide email dated September 21, 2019

provided the following information:

- a) Devbhumi Mercantile Pvt Ltd, Gangadham Suppliers Pvt Ltd and Jahman Dealers Pvt. Ltd., all the three Companies held shares of Khyati Merchants Ltd, RPS Merchants Pvt. Ltd and Shivparvati Traders & Suppliers Ltd.
 - b) The company had purchased shares from Devbhumi Mercantile Pvt Ltd, Gangadham Suppliers Pvt Ltd and Jahman Dealers Pvt. Ltd and not directly from Khyati Merchants Ltd, RPS Merchants Pvt. Ltd and Shivparvati Traders & Suppliers Ltd. So it made payments to Devbhumi Mercantile Pvt Ltd, Gangadham Suppliers Pvt Ltd and Jahman Dealers Pvt. Ltd.
8. It is *prima facie* observed that summonses were issued to all the 12 entities named at paragraphs number 4 and 6 above, to whom the preferential issue proceeds were given in the form of loans or investments, seeking details about the utilization of the loan/investment proceeds along with documentary evidence. Response to six summonses was received and with respect to five entities the summonses were returned undelivered. One entity viz. Jaman Dealers Pvt Ltd. ("**Noticee**") to whom Summons was issued on September 27, 2019 and subsequently two reminder summonses were issued on October 23, 2019 and November 01, 2019 asking for details pertaining to the utilisation of funds. The summonses were delivered but no response was provided by the Noticee. It was therefore alleged that the Noticee has failed to furnish information sought through summons thereby violating section

11C (2) and (3) of SEBI Act, 1992. The contents of section 11C (2) and (3) of SEBI Act is reproduced herein below:

11C. (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.

APPOINTMENT OF THE ADJUDICATING OFFICER

9. The Competent Authority has, vide order dated September 4, 2020, appointed the undersigned as the Adjudicating Officer (hereinafter referred to as the “**AO**”) *inter*

alia under section 15I(1) of the SEBI Act, 1992 read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**Adjudication Rules**”) to enquire into and adjudge *inter alia* under section 15A(a) of SEBI Act, 1992 for the alleged violation of section 11C(2) and 11C(3) of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) by the Noticee.

SHOW CAUSE NOTICE AND REPLY

10. A notice to show cause (Hereinafter referred to as the “**SCN**”) dated November 10, 2020, was issued to the Noticee alleging the non-compliance of summonses of SEBI as already detailed in the preceding paragraphs despite the receipt of the said summons. The SCN was issued to the Noticee in terms of the provisions of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under the provisions of Section 15A(a) of the SEBI Act.

11. It was alleged in the SCN that the Noticee had failed to submit details sought by SEBI vide the aforesaid summonses dated September 27, 2019, October 23, 2019 and November 01, 2019. Noticee by his failure to comply with the summons, has allegedly violated the provisions of Sections 11C(3) read with Section 11C(2) of SEBI Act.

12. In this regard it is pertinent to mention that the proof of delivery of the said summonses by the Noticee was also annexed to the said SCN. The said SCN had returned undelivered from the address of the Noticee as available on the portal of the Ministry of Corporate Affairs with the postal endorsement “*no such firm found*”.

Thereafter, vide email dated December 10, 2020, a scanned copy of the said SCN with annexure was emailed to the email address of the Noticee as available on the portal of the Ministry of Corporate Affairs. The said email had not bounced back from the said email address. Further, to comply with the principles of natural justice, an advertisement was published on January 5, 2021, in "The Statesman" newspaper, Kolkata and Siliguri editions *inter alia* informing the Noticee about the instant adjudication proceedings and it was further informed to collect a copy of the SCN with annexure from the website of SEBI under the heading "unserved summons/ notices" or to collect it from the office of the undersigned at SEBI-Head Office, Mumbai. The same notice was also published in the Times of India, on January 5, 2021, in its Mumbai, Ahmedabad, Lucknow editions as well. Despite the said advertisement made in newspapers having circulation at the place where the registered office of the Noticee is situated, no response to the SCN has been received from the Noticee till date, despite the passage of fourteen days from the date of publication of the said notice in the newspapers.

CONSIDERATION OF ISSUES AND FINDINGS

13. Before proceeding further, a preliminary issue with respect to the compliance of the principles of natural justice needs to be settled. The SCN could not be delivered at the address of the registered office of the Noticee. For any change in the address of the registered office, the duty is cast upon the concerned corporate entity under the laws to intimate the Registrar of Companies about such change which then gets reflected on the portal of the MCA. Therefore, the fact that the Noticee was not available at the registered office' address, is to be held squarely against it. Thereafter, the said SCN was published in a newspaper having circulation at the

place of address of the Noticee (“The Statesman”, Siliguri Edition). Further a scanned copy of the said SCN was also sent by email dated December 10, 2020, to the email address of the Noticee obtained from the portal of the MCA. The said email had not bounced back. Therefore, I conclude that the said SCN was duly served upon the Noticee in terms with the Adjudication Rules and the principles of natural justice have been complied with *qua* the Noticee. 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 (fourteen days from the date of service of the SCN), 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 Adjudication Rules is reproduced herein below:

“4(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]

14. 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 Noticee.

15. I observe from the available records that summonses were issued by SEBI during the process of investigation and the said summonses were duly delivered to the

Noticee. In this regard, the proof of service of the said summonses was also annexed to the SCN. The summons dated September 27, 2019, was delivered on October 14, 2019, as is evident from the receipt of acknowledgement received from the postal authorities. The subsequent summonses dated October 23, 2019 and November 01, 2019 were delivered on November 1, 2019 and November 7, 2019 respectively. Thus, there is no dispute that the summonses in question were duly served upon the Noticee at his registered office address. It is on record that the Noticee had not responded to any of the said summonses. Further, in the absence of any response from the Noticee, there is nothing on record to controvert this point of fact. I find that the summonses issued to the Noticee clearly stated that if the Noticee fails to comply with the summons, adjudication proceedings may be initiated against the Noticee under which 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 SEBI Act. . I therefore hold that the Noticee has not complied with the summonses of SEBI, resulting into a violation of sections 11C (2) and (3) of SEBI Act, 1992.

16. In this regard, it is pertinent to note that Section 11(2)(ia) empowers the Board to call for information and records relevant to any investigation or inquiry by the Board in respect of any transaction in securities from any person. Further, under Section 11C(2) it is the duty of the officers of a company and intermediaries to preserve and to produce to the Investigating Authority (“IA”) or any person authorised by him 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 and Section 11C(3) empowers the

Investigating Authority of SEBI to require any intermediary or any person associated with the securities market in any manner to furnish such information to, or produce such books or registers or other documents or record before him or any person authorized by him in this behalf as it may consider necessary if the furnishing of such records/information/documents are necessary. In this regard, I note that it is obligatory on the Noticee to provide any information sought by the IA, if he deems such information relevant or necessary for purpose of investigation.

17. In this context, I note that Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'), in matter of *Asian Films Production and Distribution Ltd. vs SEBI* (Appeal No. 203 of 2010 decided on 19th January, 2011), has held that:

“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. We do not know what would have come to light if the company had furnished the information sought from it.”

18. I also note that Hon'ble SAT, in its order dated October 22, 2013 in the matter of *Rich Capital & Financial Services Limited & Ans vs SEBI*, observed that:

“10. We may pertinently note that the SEBI is basically constituted to promote orderly and healthy growth of securities market apart from protecting investors’ interest. For discharging this onerous job, and with a view to achieve the underlined object, SEBI as a regulator is required to conduct investigation and enquiries in the affairs of various parties from time to time. For this purpose, first and the foremost thing is co-operation from the concerned officers of the companies not only to produce the relevant records as and when required by an investigating officer or enquiring authority or by any person authorised by the SEBI in this behalf but to appear in person as and when called upon. Section 11C (2) mandates every manager, managing director, officer or other employees of the company to preserve and produce such documents which are in their custody or power. Similar is the tone and texture of Section 11C (3).

11. 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.”

19. From the foregoing paragraphs, it is conclusively established that the Noticee has failed to comply with the summonses dated September 27, 2019, October 23, 2019 and November 01, 2019 issued to it by the IA and therefore, I hold that the Noticee

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

20. In this regard, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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.....”

21. The aforesaid violations, makes the Noticee liable for penalty under section 15 A(a) of the SEBI Act. The contents of the said provisions of law is reproduced herein below:

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 [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]];*

22. 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*

23. 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 non-compliance of the summonses is not available. The conduct of the Noticee in not paying heed to the summonses issued by SEBI and resultant non-cooperation with the process of investigation cannot be taken lightly. The SEBI Act grants powers of investigation and collection of information/documents for the purposes of investigation. For this purpose, SEBI has been empowered to issue summons to compel production of documents/ information. These powers of issuing summons have been granted to SEBI keeping in mind the statutory mandate of safeguarding the securities market and the interests of the

bona fide investors/ participants in the securities market. It is also noted that the Noticee has failed to comply with three summonses that were issued and served upon him. The conduct of the Noticee shows brazen unwillingness on its part to cooperate with the investigation 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 15A(a). Since the default has already occurred, the penalty must follow in this case.

ORDER

24. 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. 5,00,000/- (Rupees Five Lacs only)** on the Noticee, viz. **Jahman Dealers Private Limited** under section 15A(a), for not complying with the summonses issued on September 27, 2019 and subsequently two reminder summonses which were issued on October 23, 2019 and November 01, 2019, as found hereinabove. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

25. The amount of penalty shall be paid by the Noticee 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 ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>

26. 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-1), 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)	

27. In the event of failure to pay the said amount of penalty within 45 days of the service 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.

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

Date : January 22, 2021

G. Ramar

Place : Mumbai

Adjudicating Officer



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE