

**BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD
OF INDIA [ADJUDICATION ORDER NO. Order/BD/MG/2020-21/9554]**

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

Ms. Pushendra Singh Baghel
PAN: AFZPB0624B

In the matter of Sai Prakash Properties Development Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') started investigation into the affairs of Sai Prakash Properties Development Limited (hereinafter referred to as '**SPPDL/ Company**'). During the course of investigation, the Investigating Authority of SEBI (hereinafter referred to as '**IA**') issued summons under Sections 11C(3) of the SEBI Act to various entities including Shri Pushendra Singh Baghel (hereinafter referred to as the "**Noticee/ by Name**") for production of documents. However, the Noticee failed to comply with the summons. In view of the same, SEBI initiated adjudication proceedings under Section 15A(a) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer on dated March 14, 2019, under Section 15-I (1) of SEBI Act to inquire into and adjudge under the

provisions of Section 15A(a) for the violations of the provisions of Section 11C (3) of the SEBI Act. The appointment was communicated to the undersigned vide communique dated March 20, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice dated November 18, 2019 (hereinafter referred to as 'SCN') was issued to the Noticee under the provisions of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**AO Rules**'), to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, should not be imposed on the Noticee under the provisions of Section 15A(a) of the SEBI Act for the violations of the provisions of Section 11C(2) and 11C(3) of the SEBI Act.
4. The IA had called for providing complete list of Investors containing full name including father / husband name, address of the investor, date of bookings / payments, date of maturity, type of scheme, amount invested, maturity amount, details of investment, details of plan, details of branches, branch wise collection details, total amount collected since inception till date, details of agents, details of agent wise collection, details of all bank account, bank statement and any other information pertaining to fund mobilization by the SPPDL. The above mentioned information was sought by issuing summons to the Noticee who was a director of SPPDL. Summons were issued on December 2, 2016, December 19, 2016 and January 16, 2017. However, these summons sent through registered post returned undelivered. Thereafter, two summons were issued on January 16, 2017 and January 19, 2017, which were affixed at the two available addresses of the Noticee situated in Noida and Shahdol, on January 20, 2017 and January 28, 2017, respectively. However, no information was submitted by the Noticee in response to summons.

5. The Show Cause Notice (“**SCN**”) was sent via Speed Post Acknowledgement Due (‘**SPAD**’) to the last known address of the Noticee but the SCN returned undelivered. Thereafter, the SCN was served upon the Noticee through a Public Notice dated October 09, 2020, in terms of Rule 7 of AO Rules. The Noticee was advised to file his reply within 14 days of publication of the said Notice. In addition to that, vide aforesaid Public Notice the Noticee was granted an opportunity of personal hearing before the undersigned in the interest of natural justice. However, the Noticee failed to submit his reply to the SCN and did not attend the hearing on October 27, 2020.

6. In view of the above, I am compelled to proceed *ex parte* in the matter against the Noticee. I am of the view that principles of natural justice have been complied with since sufficient opportunity has been provided to the Noticee to submit reply and to appear for hearing. In the facts and circumstances of this case, I am of the view that the Noticee is keeping away from these proceedings and is not willing to cooperate. I, therefore, am of the view that the Noticee has nothing to submit and in terms of rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record. Therefore, the present proceedings against the Noticee are undertaken *ex-parte* on the basis of available documents and information.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the documents / evidence available on record and the issues that arise for consideration in the present case are:
 - (a) Whether the Noticee has violated the provisions of Sections 11C(2) and 11C (3) of the SEBI Act by his non-compliance of summons issued by IA?
 - (b) Does the violation, if any, attract monetary penalty under Section 15A(a) of the SEBI Act?
 - (c) If yes, what should be the quantum of penalty?

8. Before moving forward, it is pertinent to refer to the relevant provisions of the SEBI Act:

Investigation.

11C (1)

(2)

(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.

9. Before moving forward, it is pertinent to refer to the brief background of the matter. SEBI was in receipt of information regarding illegal money mobilization by SPPDL and in order to safeguard interest of investors, SEBI vide and interim Order dated December 26, 2014, directed SPPDL and its directors (including the Noticee), which reads as under-

- a) *not to collect any fresh moneys from investors from its existing scheme;*
- b) *not to launch any new scheme/plan or float any new companies/firm to raise fresh moneys;*
- c) *not to dispose of any of the properties or alienate the assets of the existing scheme;*
- d) *not to divert any funds raised from public at large, kept in bank account(s) and/ or in the custody of the company;*
- e) *to immediately submit the full inventory of the assets owned by Sai Prakash Properties out of the amounts collected from the "customers"/investors under its existing schemes;*
- f) *to furnish all the information sought by SEBI, within 15 days of the receipt of this Order, including,*

- i. scheme wise list of investors and their contact numbers and addresses, who have invested in the scheme till date,*
- ii. the details of amount mobilized and refunded till date.*

10. Subsequent to the aforesaid Interim Order, SEBI conducted an Investigation in the matter. During the course of investigation, IA issued Summons to the Noticee seeking information, however, as stated above the Noticee did not furnish the required information to IA.
11. As stated earlier, the summons dated December 2, 2016, December 19, 2016 and January 16, 2017 were undelivered. Then, the IA issued summons dated January 16, 2017 and January 19, 2017, to the Noticee which was duly affixed on last known addresses of the Noticee and was thus properly served. However, no information was served to the IA by the Noticee as sought in the summons.
12. Thus, I note that multiple attempts have been made to serve the summons to the Noticee. I observe from the available records that the IA had sought certain information by issuance of the said summons such as (i). Complete list of Investors containing full name including father / husband name, address of the investor; (ii). Date of bookings / payments, date of maturity, type of scheme, amount invested, maturity amount, details of investment; (iii). Copies of bank statements detailing the requirements, details of plan, details of branches, branch wise collection details, total amount collected since inception till date; (iv). details of agents, details of agent wise collection; (v). Details of all bank accounts maintained by SPPDL and any other information pertaining to fund mobilization by the SPPDL.
13. As per records I observe that the summons dated January 16, 2017 and January 19, 2017, was duly delivered to the Noticee through affixture. I observe that the Noticee was advised, vide the aforesaid summon referred above, to furnish the required information within one week of receipt of summons. I also find that it is mentioned in the Investigation Report that due to non-submission of information

by the Noticee the investigation was concluded on the basis of data available on the records and in absence of documents/ information sought from the Noticee.

14. In view of the above, I conclude that the Noticee has violated the provisions of Sections 11C(2) and 11C(3) of the SEBI Act by not complying with the summons. Any non-compliance of the summons of the Investigating Authority hampers the process of investigation. The Hon'ble SAT has also recognized the importance of compliance of summons and in the matter of *DKG Buildcon Pvt. Ltd. v. SEBI* (Appeal No. 106 of 2006, Date of Decision: January 07, 2009), it has held that: "...It is of utmost importance that every person from whom information is sought should fully co-operate 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 the investigations, the Board as the watchdog of the 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." Thus, it is well established that timely submission of information is very important for the purpose of effective investigation proceedings and non-cooperation by an entity can be detrimental to the interest of investors and the securities market on account of delay or hindrance in the investigation. The Hon'ble SAT in the *Mayfair Paper & Board Pvt. Ltd. v. SEBI* (Appeal No. 95 of 2004, Date of Decision: August 09, 2004) has held that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under Section 15A of the SEBI Act.
15. As stated above, I note that sufficient opportunities were granted to the Noticee to submit his reply to the SCN and to appear for personal hearing. However, despite service of the SCN and hearing notice, none of the given opportunities were availed of by the Noticee. The Hon'ble SAT in the matter of *Classic Credit Ltd. v. SEBI* [2007] 76 SCL 51 (SAT - MUM) inter alia held that – "*the appellants*

did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them". The Hon'ble SAT also made such proposition in case of Sanjay Kumar Tayal & Ors. v. SEBI (in appeal No. 68/2013) decided on February 11, 2014 viz. "...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices".

16. The Hon'ble Supreme Court of India in the matter of *SEBI v. Shriram Mutual Fund* [2006] 68 SCL 216(SC) has observed 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...."*

In view of the same, I find that the Noticee's failure to comply with the summons attracts penalty under section 15A(a) of the SEBI Act.

17. In view of the above, the next issue for consideration is as to what would be the monetary penalty that can be imposed under section 15A(a) of the SEBI Act on the Noticee for the violation of Sections 11C(3) of the SEBI Act. The relevant text of the provisions of Section 15A(a) of the SEBI Act are reproduced as under:

"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."*

18. 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.

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.

19. In the instant matter, it is not possible to quantify the gains made by the Noticee or the loss caused to investors as a result of the failure on the part of the Noticee to honour the summons. Further, I note that the Noticee has failed to comply with two summons dated January 17 & January 19, 2017. However, I observe that the Noticee's failure to furnish required information to the Investigating Authority reflects the Noticee's disregard for the investigation process of SEBI and the same needs to be viewed seriously.

ORDER

20. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also 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 a penalty of ₹ 3,00,000/- (Rupees Three Lakh only) on the Noticee under the provisions of Section 15A(a) of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

21. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. 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 by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
22. The Noticee shall forward said Demand Draft to the Enforcement Department – Division of Regulatory Action– III of SEBI. The Noticee shall provide the following details while forwarding the Demand Draft:
- i. Name and PAN of the entity (Noticee)
 - ii. Name of the case / matter
 - iii. Purpose of Payment – Payment of penalty under AO proceedings
 - iv. Bank Name and Account Number
 - v. Transaction Number
23. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: November 06, 2020

Place: Mumbai

**B. J. DILIP
ADJUDICATING OFFICER**