
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

Vishvas Projects Limited (Formerly known as Mefcom Agro Industries Ltd) (PAN No.: AAACM2047A)
Satyender Kumar (PAN No.:CXDPK2039R)
Ashok Marwah (PAN No.:AGAPM9028L)
Nihar Ranjan Mishra (PAN No.:AFLPM1238C)

In the matter of

Mefcom Agro Industries Limited
CIN No.: U29211WB1995PLC071741

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ("SEBI") conducted examination in the scrip of in the scrip of Mefcom Agro Industries Limited (hereinafter also referred to as Mefcom and/or the company), a company listed at Bombay Stock Exchange Limited ('BSE'), during the period of January 1, 2006 to June 30, 2007 (investigation period). During the period of investigation, it was observed that entities namely; Vishvas Projects Limited (Formerly known as Mefcom Agro Industries Ltd), Ashok Marwah, Satyender Kumar and Nihar R Misra (Noticees), had violated provisions of Section 11C(2) and 11(C)(3) of SEBI Act, 1992.
2. It was further observed that SEBI Investigating Authority sought certain information, which was relevant for the purpose of conducting investigation. Since, the Noticees did not comply with summons issued to it and did not provide the relevant information, the current proceedings were initiated against the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

3. Adjudicating Officer was appointed under section 15I of Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992) and under Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) to inquire into and adjudge under section 15A(a) of SEBI Act, 1992 for the violations of Section 11C(2) and 11(C)(3) of SEBI Act, 1992 by the Noticees.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

4. A Show Cause Notice (SCN) dated February 21, 2018 was issued under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (AO Rules) in the matter to the Noticee.
5. SCN returned undelivered, therefore, the above mentioned SCN along with the Hearing Notice (HN) (in terms of Rule 4(3) of AO rules) was served to the Noticee by way of affixture on March 20, 2018, in terms of rule 7(c) of AO rules, affording him the opportunity of personal hearing on April 05, 2018. However, the notice could not be delivered again. The said notices were also uploaded on SEBI website under the head Enforcement->Unserved summons/Notices.
6. Thereafter, the Notices were served to Noticees by way of paper publication in terms of Rule 7(d) of AO rules. Subsequently, the Notices were published in Delhi edition of Hindustan Times (English) and Navbharat times (Hindi) on January 18, 2019. The Noticees by way of aforesaid

paper publication were also required to avail of the opportunity of hearing on February 11, 2019, which clearly indicates that the date of personal hearing was provided after a period of one month from the date of issuance of the publication of notice.

7. Subsequently, two Noticees namely; Vishvas Projects Limited and its whole time director, Mr. Ashok Marwah, responded to the publication of the notice vide their letter dated February 02, 2019 and submitted interim reply to the information sought under summons. Subsequently, vide their letter dated February 18, 2019, the Noticees, namely; Vishvas Projects Limited and Ashok Marwah filed a common detailed reply in the matter. The key submissions of the Noticees are summarized below;

- *As per the annual report of the company the directors of the company for the financial year 2004-2005 to 2007-2008 shown in tour tabulated form is correct.*
- *The date of appointment of Mr. Ashok Marwah, Mr. Satyender Kumar and Mr. Nihar Ranjan Mishra appointed as additional directors since August 17, 2007.*
- *The Noticee submitted certified true copy of resolution passed by the Board of Directors of the company on August 17, 2006, for change in control of the company in favour of Mr. Satyender Kumar and Mr. Ashok Marwah.*
- *We had already provide you the information regarding change in Management control vide letter 04th February, 2014.*
- *We would like to inform you that we had informed BSE on 22.09.2016 regarding change in management but it is unfortunate it is not motioned in the outcome of stock Exchange.*
- *The pending replies of our letter dated 04th February, 2014, now competed.*

8. However, till date, no communication has been received from the other two Noticees, Shri Satyender Kumar and Nihar Ranjan Mishra. Since, the Noticees; Shri Satyender Kumar and Nihar Ranjan Mishra, have neither submitted replies to the SCN nor appeared for hearing. During the instant proceedings, despite giving ample opportunity to the Noticees to file reply to the SCN and to appear for personal hearing on several occasions, Noticees have neither submitted their reply to the SCN nor availed opportunity of personal hearing till the date of passing of order in the current proceedings. In view of the same, the matter is being proceeded ex-parte in terms of Rule 4(7) of AO Rules 1995 with respect to these two Noticees.

ISSUES FOR CONSIDERATION

9. After perusal of the material available on record, the following issues arise for consideration;
- I. Whether the Noticees have violated 11C (2) read with 11C (3) of the SEBI Act, 1992?
 - II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (a) of the SEBI Act, 1992?
 - III. If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

FINDINGS

10. The texts of the said provisions are reproduced as under :-

Investigation. 11C.

(1) Where the Board has reasonable ground to believe that—

(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or

(b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder,

it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

(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.

Issue No. I: Whether the Noticees have violated 11C (2) read with 11C (3) of the SEBI Act, 1992?

11. Investigation was conducted into suspected violation of provisions of SEBI (PFUTP) Regulations, SEBI (SAST) Regulations & SEBI (PIT) Regulations in the scrip of Mefcom Agro Industries Limited.
12. Subsequently, investigating authority (IA) was appointed vide order dated January 20, 2014 and summons were issued to the Noticees on several occasions, details of which are tabulated below, seeking relevant information for the purpose of investigation (which was also brought out in the summons itself). However, it was observed that Summons to the Noticee was successfully affixed at the last known addresses of the Noticees. However, the Noticees did not respond to the summons.
13. Following are the details of summons issued and duly delivered to the Noticee:

Entity Name	Mode of Delivery	1st Summon Date	Noticee to submit his reply before	Acknowledgement	2nd Summon Date	Noticee to submit his reply before
Mefcom Agro Industries Ltd	SPAD	21.01.2014 24.12.2014	31.01.2014 31.12.2014	Yes Yes	19.01.2015	23.01.2015
Ashok Marwah	Hand Delivery	28.02.2014	10.03.2014	Yes	03.02.2015	Immediate basis
Satyender Kumar	Hand Delivery	28.02.2014	10.03.2014	Yes	15.01.2015	19.01.2015
Nihar Ranjan Mishra	Hand Delivery	28.02.2014	10.03.2014	Yes	09.01.2015	15.01.2015

14. It is noted that following information was sought from the Noticees vide various summons;
 - a. Details of announcements during the investigation period
 - b. Status of announcements during the investigation period, and
 - c. Details of implementation during the investigation period

15. It is further noted that vide summons dated December 24, 2014, the compliance of Officer of the Noticee; Vishvas Projects Limited, was called upon to provide the following information;
 - a. Certified copy of the Model code of conduct for prevention of insider trading for listed companies as required under schedule I of SEBI (Prevention of Insider Trading) Regulations, 1992.
 - b. Details of pre-clearance sought by the promoters / group companies for their sale of shares of Mefcom Agro industries Limited under provisions of SEBI (prevention of Insider Trading) Regulations, 1992.
16. It is further noted that as per the available records, reminder to the summons were also issued to the Noticee Mefcom Agro Industries Ltd. on February 06, 2014 and January 15, 2015, Noticee Ashok Marwah on February 03, 2015, Noticee Satyender Kumar on March 06, 2014 and Noticee Nihar Ranjan Mishra on March 06, 2014. It is further noted that all the summons, issued to the Noticee, have been duly delivered to all the Noticees.
17. From above, it is clear that the Noticees were granted ample opportunities and time to submit the requisite information on several occasions, as sought under summons, to the investigating officer. However, it is noted that despite of summons and reminder letters issued to the Noticees, none of the Noticees submitted that information to the investigating officer. It is also noted that the information sought from the Noticee vide above-mentioned summons, were specific to the Noticee. The nature of the information suggests that this information was available only with the Noticee and that such information could not have been procured from any other source.
18. It is further noted that it was clearly mentioned in the summons that in case Noticee failed to submit the sought information within the stipulated time (as mentioned in the table above), the investigation proceedings shall continue against the Noticee and that SEBI may also initiate adjudication proceedings against the Noticee under which Noticee be levied a penalty, including liability for criminal prosecution under section 11C(6) of the SEBI Act, 1992, in case of non-compliance of summons. Thus, the consequences for non-compliance were fairly laid out to the Noticee.
19. The Noticees; Vishvas Projects Limited and Ashok Marwah have now during the instant proceedings submitted their reply to the summons and appear to have attempted to provide information for which the summons were issued to them during the period of investigation. Without going into the details of the information provided, it is observed that the compliance with respect to the summons were to be complied within a specific timeline provided by the investigating authority. It appears that this has not been complied with.
20. It is not the case of the Noticees that they did not have the requisite information in their possession or that they did not understand the context of the information sought for, as indeed the information has been presented under these proceedings.
21. Thus, it appears that though the information was available with the Noticees the same was not provided to the investigating authority at the time when summons were issued.
22. Moreover, presenting of information during the instant proceedings, which was required to be submitted to the investigating authority, have nullified the purpose for which the information was sought from the Noticee and thus, amounts to non-submission of information as and when sought for the purpose of conducting investigation under section 11(C) of the SEBI Act, 1992.

23. It is however observed that throughout the period of investigation, no response was received by any of the above-mentioned Noticees, despite giving ample opportunities to do so at the time of investigation. Moreover, during instant proceedings, Noticees namely; Satyender Kumar and Nihar Ranjan Mishra, neither submitted any information nor appeared for personal hearing despite giving ample opportunity.
24. It is clearly brought out that the information was not submitted by the Noticees to SEBI despite granting sufficient time and latitude by the IA in aiding him in concluding the investigations. This has the obvious effect of hampering and delaying the investigations and its subsequent processes, apart from waylaying the process of investigations which are detrimental to the interest of the investors in general and investors of the company in specific.
25. It is pertinent to mention here that it is the responsibility of every person from whom information is sought vide summons 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.
26. 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-requisites 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."
27. In this context, it is also important to refer to the judgment of the Hon'ble SAT in the case of Asian Films Production and Distribution Ltd. (earlier known as K.C. Bokadia Films vs. SEBI (Appeal No.203 of 2010, Date of Decision:19.01.2011) wherein it has been held that:
"Non-compliance with the 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."
28. 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.
29. Given the above, there is no hesitation to hold that the Noticees have violated the provisions of 11C (2) and C(3) of the SEBI Act by not complying with the summons issued thereunder.

Issue No. II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (a) of the SEBI Act, 1992?

30. Provisions of Section 15A (a) of SEBI Act, 1992, are reproduced hereunder:-

“15A. Penalty for failure to furnish information, return, etc.-

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]];”

31. As regards the Noticee, it is clear that it is liable for imposition of penalty as is drawn from the Hon’ble Supreme Court of India Order in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) has also 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...”

Issue No. III: If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

32. While determining the quantum of penalty under Section 15A (a), it is important to consider the factors stipulated in Section 15J of SEBI Act, 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.”

33. In this regard, reference is also drawn upon the judgment of the Honble Securities Appellate Tribunal (SAT) in Appeal no.114/2005-Nokia Finance International Finance Pvt. Ltd. Vs. SEBI (date of decision-20/09/05) wherein, SAT inter alia observed :

“The appellant could have availed the opportunity of submitting the required information and come clean, but he failed to do so. We, therefore, feel that there is no violation of natural justice in this particular case and the penalty has been imposed as per the regulations. The impugned order indicated that various factors to be reckoned under Section 15 J of the SEBI Act, 1992 were duly considered before deciding on the quantum of penalty imposed. In view of the fact that appellant has failed to give necessary information to the respondent for conducting investigation into a very serious irregularity in the market, we are inclined to uphold the impugned order and dismiss the appeal.”

34. Reference is also drawn towards Bhanuben Jaisukhlal Shah vs. SEBI, decided on March 05, 2010, wherein it was held by Hon’ble SAT that:

“During the course of the investigations, the appellant did not respond to the letters written to him by the investigating officer and he failed to furnish the requisite details of the transactions. When the adjudication proceedings commenced, the appellant had an opportunity to file a reply to the show

cause notice and he could have taken this plea therein. He did not file any reply to the show cause notice either. The adjudicating officer provided the appellant with yet another opportunity when he called him for personal hearing and recorded his submissions. Even then the appellant did not take the stand that the shares were got transferred by Mahendra Shah from the demat account of Alpa Haren Shah towards the settlement of the amount due from him to the appellant. Further, no such plea has been taken even in the memorandum of appeal. We cannot, therefore, accept the ipse dixit of the learned authorized representative of the appellant during the course of the hearing.”

35. At this juncture, it is also relevant to refer to the observation of the Hon’ble SAT in the matter of Dave Harihar Kiritbhai v. Securities and Exchange Board of India (Appeal No. 181 of 2014 dated December 19, 2014), wherein, it was observed that, “...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/ letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim no receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...”
36. It is noted that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees’ default. Also there is no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default. However, any delay or hurdle in investigation due to non-cooperation by any entity is detrimental to the interest of investors in securities market and the same shall be liable for a penalty under Section 15A (a) of SEBI Act, 1992.
37. It is to be mentioned that non-compliance with the summons issued by the IA is the gravest of nature of offence as by committing this offence the Noticee has effectively snowballed the efforts of the SEBI to come to know the facts of the case.
38. Given the above, it is clear that non-compliance of the Noticees viz. Vishvas Projects Limited (Formerly known as Mefcom Agro Industries Ltd), Ashok Marwah, Satyender Kumar and Nihar R Misra, is established. Therefore, an appropriate penalty is liable to be imposed on the Noticees in the matter.

ORDER

39. After taking into consideration the facts and circumstances of the case, in term of Section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, a penalty as provided in the tabulation herein is imposed under Section 15A (a) of the SEBI Act, 1992, for the violation of Section 11C (2) read with Section 11C (3) of SEBI Act, 1992;

Name of the Noticees	Penalty amount (Rs.)
Vishvas Projects Limited (Formerly known as Mefcom Agro Industries Ltd) (PAN No.: AAACM2047A)	15,00,000/- (Fifteen Lakh Only)
Satyender Kumar (PAN No.:CXDPK2039R)	15,00,000/- (Fifteen Lakh Only)
Ashok Marwah (PAN No.:AGAPM9028L)	15,00,000/- (Fifteen Lakh Only)

Nihar Ranjan Mishra (PAN No.:AFLPM1238C)	15,00,000/- (Fifteen Lakh Only)
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40. The above Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

41. The above Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI (EFD-DRA-IV). The Format for forwarding details/ confirmations of e-payments made to SEBI shall be in the form as provided At Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

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

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

Date: March 20, 2019

Place: Mumbai

**Jeevan Sonparote
Adjudicating Officer**