

**ADJUDICATION ORDER NO. EAD-3/ORDER/JS/SP/2526-2527/2018-19**

**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:**

**1. Vaishnavi Gold Ltd. (PAN: AACCM1543M)**

**2. MJVVD Prakash (PAN: AGDPM3021C)**

**In the matter of:**

**Vaishnavi Gold Ltd.**

**BACKGROUND**

1. Securities and Exchange Board of India ('SEBI') during the course of investigation, observed that in the scrip of Vaishnavi Gold Ltd. ('Company/Scrip'), listed at Stock Exchange, Bombay ('BSE'), the following entities have alleged to have violated relevant provisions of SEBI Act, 1992 for the investigation carried out during the period April 01, 2010 to December 15, 2010 ('Investigation Period'):

Noticee Name	Alleged Violation	Violation Provisions of	Action Initiated
Vaishnavi Gold Ltd. ('Vaishnavi /Noticee 1')	Non-compliance of summons dated May 05, 2015 and February 25, 2016	Section 11C(2) and 11C(3) of SEBI Act	Section 15A(a) of SEBI Act
MJVVD Prakash (Prakash/ Noticee 2)			

*hereinafter the abovementioned entities are collectively referred to as the 'Noticees'*

2. SEBI, therefore, initiated adjudication proceedings against the Noticees for the alleged violation of the above-mentioned provisions of law.

**APPOINTMENT OF ADJUDICATING OFFICER**

3. SEBI vide order dated June 09, 2017, appointed Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of SEBI (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 for the alleged violations against the Noticees as mentioned above. Consequent to transfer vide Office order dated May 10, 2018, the proceedings are continued for the aforesaid alleged violations against the Noticees.

## SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice ('SCN') dated December 19, 2017 was issued to the Noticees in terms of provisions of Rule 4 of the said Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violation of provisions of law. The SCN was issued to the Noticees to the below mentioned address, available on record, were returned undelivered.

<b>Noticee Name</b>	<b>Address of the Noticee</b>
<i>Vaishnavi</i>	<i>1-206, Divya Shakthi Complex, Green Lands, Ameerpet, Hyderabad – 500016 (Telangana)</i>
<i>Prakash</i>	<i>H. No. 6, Satyam Status Enclave, Old Bowenpally, Secunderabad – 500011 (Telangana) and 1-206, Divya Shakthi Complex, Green Lands, Ameerpet, Lal Bangalaw, Hyderabad – 500016 (Telangana)</i>

5. Subsequently, the referred SCN was served in terms of Rule 7 (c) of the Adjudication Rules 1995 by affixture at the last known address of the Noticee viz Vaishnavi and Prakash.
6. Further, vide Notice dated February 23, 2018, Noticees were granted an opportunity to appear for personal hearing on March 09, 2018 was duly received by Vaishnavi. With respect to Prakash, an attempt was made to affix the Notice dated February 23, 2018 at the last known address could not be made as the occupants in the address did not allow to affix. Accordingly, the unserved hearing notice was uploaded in the SEBI website.
7. In the meantime, in terms of Rule 7(d) of Adjudication Rules, newspaper publication of the notice was carried out in English daily newspaper (Times of India), a Hindi daily newspaper (Swatantra Vaartha) and a newspaper in vernacular language i.e. Telegu in Sakshi newspaper having wide circulation in the state of Telangana, informing the Noticees to download the referred SCN from the website of SEBI ([www.sebi.gov.in](http://www.sebi.gov.in)) under the head "Unserved Summons/Notices" or to collect from the Office of SEBI, Mumbai. Further, vide the newspaper publication, Noticees were also granted an opportunity of hearing before the Adjudicating Officer on May 09, 2018. Subsequently, the then AO rescheduled the hearing and the same was communicated to the Noticees vide email dated May 04, 2018.

8. Vaishnavi, vide letter dated March 03, 2018 (received on May 02, 2018), has filed reply to the SCN on behalf of Vaishnavi and Prakash, Managing Director of Vaishnavi. It is further observed that the letter dated March 03, 2018 was issued from the same address to which the SCN and hearing notice were delivered. The relevant extracts of the reply filed by Vaishnavi and Prakash with respect to the allegation are as follows:

- a. *Vaishnavi Gold Limited (previous known as was incorporated as Master Multi Tech Systems Limited. During the year 2008-09 the Company amended its main objects and from April 2009 onwards, the company started business in the areas of Gold related activities. Thereafter, a Scheme of Amalgamation between the shareholders of Tanmai Jewells Private Limited (transferor company) and Master Multi- Tech Systems Limited (transferee company) was approved by the Hon'ble High Court of Andhra Pradesh vide its Order dated July 13, 2010 and accordingly Master Multi-Tech Limited (transferee company) allotted 1,04,98,500 Equity Shares of Rs. 10/- each to the shareholders of the Tanmai Jewells Private Limited (transferor company) in lieu of 69,99,000 Equity shares of Rs. 10/- each held in the transferor Company pursuant to the exchange ratio of 3 shares for every 2 shares, as per the Scheme of Amalgamation approved by the Hon'ble high Court of Andhra Pradesh. The name of the company was changed from Master Multi-Tech Systems Ltd to Vaishnavi Gold Ltd on November 10, 2010. The scrip of the company was not listed on BSE but permitted to trade on BSE w.e.f. 01.12.2009. The trading in the shares of the company has been discontinued w.e.07.02.2017.*
- b. *During the same period, the Company had outstanding secured and unsecured loans payable to banks and other creditors to the tune of Rs.22.50. crores as on 31.03.2011. The financial position of the Company was in doldrums. The Company was struggling to serve its debt and the management was working day in and day out to meet the financial obligations of the banks and creditors. The Company also lost its valuable human resources in the process. The Company had informed the BSE about the allotment of shares to the shareholders of the transferor company on 15.10.2010 but due to pressure of repayment and servicing of loans to the creditors and unavailability of the staff the disclosures etc., have missed the attention of the management.*
- c. *The management contributed a lot in terms of time, energy, efforts and money to keep the Company alive against all odds faced and always tried to protect the Company to keep it as a going concern. The Company have faced stiff competition and undergone financial difficulties which have put tremendous amount of pressure on management and it was under depressive mood looking for some financial help so that the company can come out of debt that did not happen for various reasons. The Company became helpless and reduced to merely a spectator to the outgoing deeds. In said toughest circumstances while we were thinking intensely to avoid unpleasant situations, we totally forgot disclosures that are to be made to the Company and Stock Exchanges in terms of SEBI (SAST) Regulations.*
- d. *We, with utmost respect to SEBI submit that there are no non disclosures by us in the past and we agree that the instant one is an unintentional lapse and was neither deliberate nor wilful on our part to comply with the requirement and that there was no mala fide intention at any point of time. It is an honest omission out of financial pressure and business challenges but not deliberate violation or non-compliance of SEBI Regulations/Guidelines.*
- e. *We also submit that the reply to the summons asking information about disclosures made by Mr. Prakash and the Company to BSE could not be made because of the aforesaid reasons and there was no deliberate intention of non – corporation in the investigation. On account of financial pressures, the company's functioning has become standstill including serving employees and as a result staff left the organisation and the business operations got closed. Henceforth, the Company will provide any document/information required by SEBI in its investigation at the earliest.*

9. Subsequent to the transfer of the present proceedings, vide Notice dated January 11, 2019, Noticees were granted an opportunity to appear before the new

Adjudicating Officer for the personal hearing dated January 28, 2019. Also a copy of the Notice dated January 11, 2019 was served through email i.e. [md@vaishnavigold.com](mailto:md@vaishnavigold.com); [mmtl321@gmail.com](mailto:mmtl321@gmail.com); [info@vaishnavigold.com](mailto:info@vaishnavigold.com). The Notice dated January 11, 2019 was duly received by Vaishnavi and Prakash.

10. On the date of hearing, the Noticee Vaishnavi and Prakash have failed to appear for the hearing before the Adjudicating Officer.
11. Further, vide notice dated March 06, 2019, Vaishnavi and Prakash were informed to appear for personal hearing on March 20, 2019. On the date of hearing, Vaishnavi and Prakash once again failed to appear before the Adjudicating Officer.
12. From the above, it is clear that the Noticees were served SCN and hearing Notices, through affixture and publication of the Notices in the nationwide newspaper in English, Hindi and Regional language in terms of Rule 7(c) and 7(d) of the AO Rules 1995 respectively. In spite of providing enough opportunity, Noticees have failed to appear before the Adjudicating Officer. Thus, the matter is proceeded based on the facts available on record in terms of Rule 4(7) of the AO Rules 1995.

### **CONSIDERATION OF ISSUES AND FINDINGS**

13. After perusal of the material available in record, the following issues are for consideration viz.
  - a. Whether Vaishnavi Gold Ltd and MJVVD Prakash have failed to comply with Section 11C(2) and 11C(3) of SEBI Act, 1992.
  - b. Do the violations, if any, on the part of the Noticees attract any penalty under SEBI Act?
  - c. If yes, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

### **ISSUE A: Whether Vaishnavi Gold Ltd and MJVVD Prakash have failed to comply with Section 11C(2) (3) of SEBI Act, 1992.**

14. 11(C) (2) of the SEBI Act enjoins upon every person to whom the summons has been issued to produce the documents as sought by the Investigating Authority.

15. It is pertinent to mention that the provisions under Section 11C(3) of the SEBI Act, grant powers to Investigation Authority ('IA') to seek such information or record evidences/ statement which are relevant or necessary for the purpose of investigations, from any person associated with securities market in any manner.
16. SEBI during the investigation have issued summons, dated May 05, 2015, to Vaishnavi to furnish information to provide the following information:  
*"Copy of the disclosures received from directors/officers and disclosures made to Bombay Stock Exchange about the transactions in the scrip of Vaishnavi Gold Ltd under SEBI (SAST) Regulations, 1997 and SEBI (PIT) Regulations, 1992 during the period from March 2010 to March 2011".*
17. It is not in dispute that Vaishnavi were issued summons under Section 11C(2) and 11C(3) of the SEBI Act to furnish certain information/documents. Records show that the summonses were duly received by the noticees.
18. It is noted that for the purpose of ascertaining the facts, IA sought details of disclosures received from directors/officers and then subsequently made to the Exchange. Thus, the information sought by IA was relevant to the investigations and was available only with the noticee.
19. Since, Vaishnavi failed to furnish the documents sought, vide another summons dated February 25, 2016, Vaishnavi was once again advised to furnish the documents. The Summons dated February 25, 2016 was duly received by Vaishnavi. However, Vaishnavi once again failed to furnish the required information and the documents.
20. On a bare perusal of the information sought from the noticees by the IA it can be concluded that the information sought was in the knowledge of the Vaishnavi and Prakash, being the Managing Director of Vaishnavi and that the same could not be gathered from any other source without hampering timelines for investigations.
21. It is critical to the investigation process that the information flow is unhampered as a fact finding mission can easily be derailed by entities by not submitting the

relevant information. Further it is assessed from the requisition of the information that the information was indeed specific to Vaishnavi.

22. Also, during these proceedings, Vaishnavi was called upon to file reply to the SCN dated December 19, 2017. In reply to the SCN, Vaishnavi and Prakash, vide letter dated March 17, 2018, before the Adjudicating Officer, while acknowledging the receipt of summons issued by the Investigating Authority have informed that *"the reply to the summons asking information about disclosures made by Mr. Prakash and the Company to BSE could not be made because of the aforesaid reasons and there was no deliberate intention of non-cooperation in the investigation"*. The reasons quoted by the noticees included amalgamation and its efforts to pay off its loans as made out in its submissions mentioned above.

23. Thus, the Noticee Vaishnavi and Prakash have accepted the fact that they have received the summonses issued by the Investigating Authority however, failed to reply or to provide the requisite information.

24. Also, during the proceedings, Vaishnavi and Prakash were granted various opportunity to appear before the Adjudicating Authority for the personal hearing. However, both Vaishnavi and Prakash failed to appear before the Adjudicating Officer or provide any confirmation or waive off the personal hearing despite several opportunities.

25. Thus, it is an admitted fact that Vaishnavi and Prakash being the Managing Director of Vaishnavi have failed to reply to the Summonses issued by IA and accordingly violated Section 11C(2) and 11C(3) of SEBI Act.

**ISSUE B: Do the violations, if any, on the part of the Noticees attract any penalty under SEBI Act?**

26. As regards the imposition of monetary penalty for non-compliance of summons, it is noted that the Hon'ble SAT had the occasion to deal with this issue in the matter of *DKG Buildcon Pvt. Ltd. (supra)*, wherein it observed: *"It was then argued on behalf of DKG that section 15A(a) of the Act does not apply as the Act, Rules or Regulations made thereunder do not per se require the production of documents or furnishing of information and that it was only*

*a direction of the Board contained in the summons that the appellant was required to comply with. The argument indeed is that non-compliance with the directions of the Board would not attract section 15A(a) and that the penalty could be levied under the residuary provision contained in section 15HB. The argument is being noticed only to be rejected. Section 11C of the Act was introduced with effect from 29.10.2002 and sub-section (3) thereof provided that the investigating authority may require any person associated with the securities market "to furnish such information, or produce such books, or registers, or other documents, or record before him...". The power to require a person to furnish any information or record or documents includes the power to require such person to make a statement and give clarifications with regard to the information and documents produced by him. In the absence of such a power the purpose of the legislature in introducing section 11C would be frustrated and the Board will not be able to investigate properly the market irregularities and offences. In order to advance the object of Parliament the language used in sub-section (3) of section 11C has to be given a wider meaning. We are, therefore, of the considered opinion that section 11C (3) gives the power to the investigating authority to call upon any person to make a statement while furnishing any information, document or record."*

27. Thus, it is clear that if a person fails to comply with the summonses of IA he is liable for penalty under Sec. 15A (a) of SEBI Act. As the violation of provisions of section 11C(2) and 11C(3) of SEBI Act, 1992 by the noticees i.e. Vaishnavi and Prakash has been established and it is held that Noticees i.e. Vaishnavi and Prakash are liable for monetary penalty under section 15A(a) of SEBI Act.

28. The non-compliance of Summonses makes the Noticees Vaishnavi and Prakash liable for penalty under Section 15A(a) of the SEBI Act. The provisions of Section 15A(a) are as follows:

"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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less".*

29. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. .... Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.*"

30. Based on the above, it is determined that it is a fit case for imposition of monetary penalty on the Noticees Vaishnavi and Prakash.

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

31. 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 is as follows:-

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

**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.”

<sup>1</sup>[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.

32. The available records neither reveals any disproportionate gains/ unfair advantage made by Vaishnavi and Prakash, the specific loss suffered by the investors due to such violations and nor has such allegations been made against Vaishnavi, and Prakash. However, it is pertinent to mention here by not submitting complete details to the summonses despite having received the summonses compromises the regulatory framework and hampers the investigation.

33. Therefore, taking into consideration the facts, circumstances of the case and all of the above factors, it is determined that a justifiable penalty needs to be imposed upon Vaishnavi and Prakash.

**ORDER**

34. In view of above and after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, it is concluded that the proceedings against Vaishnavi Gold Ltd. and MJVVD Prakash stands established in terms of the

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<sup>1</sup> Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.



provisions of the SEBI Act. Accordingly, a monetary penalty against Vaishnavi Gold Ltd. and MJVVD Prakash is imposed which is as follows:

Noticee Name	Violated	Penal Provisions	Amount of Penalty (in Rs.)
Vaishnavi Gold Ltd.	Section 11C(2) and 11C(3) of SEBI Act, 1992	Section 15A(a) of SEBI Act, 1992	7,50,000
MJVVD Prakash			7,50,000

35. Vaishnavi and Prakash shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

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

36. Vaishnavi and Prakash shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - II [ EFD1-DRA-II ], SEBI Bhavan, Plot No.C4-A, ‘ G’ Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. 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;

- I. Case Name :
- II. Name of Payee:
- III. Date of payment:
- IV. Amount Paid:
- V. Transaction No:
- VI. Bank Details in which payment is made:
- VII. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

37. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to Vaishnavi and Prakash and also to SEBI.

**Date: March 28, 2019**  
**Place: Mumbai**

**Jeevan Sonparote**  
**Adjudicating Officer**