

ADJUDICATION ORDER NO. EAD-3/JS/SP/51-53/2018

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:

Manali Properties & Finance Ltd. (PAN: AACCM9560A)
Soumitra Ghose, Director, Manali Properties & Finance Ltd. (DIN 00245028)
Atish Kumar Shaw, Director, Manali Properties & Finance Ltd. (DIN 06871009, PAN: DVOPS2364M)

In the matter of:

Falcon Tyres Ltd. and Dunlop India Ltd.

BACKGROUND

1. Securities and Exchange Board of India (**‘SEBI’**) during the course of investigations in the acquisition of shares through preferential allotment by certain entities in the scrips of Falcon Tyre Ltd. (**‘Falcon’**) and Dunlop India Ltd. (**‘Dunlop’**) on April 26, 2012 and April 28, 2012 respectively (**‘period of investigation or IP’**), issued summonses to “Manali Properties & Finance Ltd. (**‘Manali’**), its Managing Director and to Shri Soumitra Ghose (**‘Soumitra’**) Director of Manali, to furnish certain information and to appear before the Investigating Authority (**‘IA’**). The details of the summonses issued are as follows:

Name of the Noticees	Summons issued under	Summons dated	Delivery Evidence	Details/
Manali	11(3) and 11C (3) of SEBI Act, 1992	July 22, 2015	Received by Manali on July 28, 2015	
Manali		July 31, 2015	Letter from Manali dated August 10, 2015, acknowledged the receipt of summons	
Manali		Sept 10, 2015	Letter from Manali dated September 17, 2015 acknowledged the receipt of summons.	
Manali		Oct 28, 2015	Received on November 02, 2015	

Name of the Noticees	Summons issued under	Summons dated	Delivery Evidence	Details/
Soumitra	11C (3) and 11C (5) of SEBI Act, 1992	Nov 19, 2015	Refused to accept	
Managing Director, Manali		July 05, 2016	Letter from Manali, dated July 19, 2016, acknowledged the receipt of the summons	
Manali	Letter- to appear and file reply before IA	July 27, 2016	Received on August 03, 2016.	
Soumitra Ghose	11C (3) and 11C (5) of SEBI Act	Aug 12, 2016	Acknowledged the receipt of summons vide letter dated August 18, 2016	
Soumitra Ghose	Reminder -1 to appear and file reply before IA	Aug 23, 2016	Acknowledged the receipt of letter vide letter dated Sept 03, 2016	
Soumitra Ghose	Reminder- 2 to appear and file reply before IA	Letter dated September 09, 2016	Acknowledged the receipt of letter vide letter dated Sept 20, 2016	

2. It was alleged that the Manali and its directors namely Soumitra and Atish Kumar Shaw ((‘**Atish**’), **Manali, Atish and Soumitra collectively referred to as ‘Noticees’**) neither furnished the information as required under the summonses nor appeared on the scheduled date and time before the IA.
3. Therefore, it was alleged that the noticees have violated Section 11C (3) and 11C (5) of SEBI Act, 1992 (‘SEBI Act’). Accordingly, SEBI initiated adjudication proceedings against Manali, its directors Soumitra and Atish to inquire and adjudge under Section 15A (a) of SEBI Act, 1992 in the matter of Falcon and Dunlop.

APPOINTMENT OF ADJUDICATING OFFICER

4. Adjudicating Officer was appointed vide order dated May 17, 2017 under Section 15-I read with Section 19 of the SEBI Act, 1992 (‘**SEBI Act**’) and Rule 3 of SEBI

(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 ('**Adjudication Rules**') and Section 19 of the SEBI Act to inquire into and adjudge under Section 15A(a) of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A common Show Cause Notice (SCNs) dated October 04, 2017 was issued to Manali and Atish to the address of Manali i.e. "Ruia Centre, 16, Sayed Amir Ali Avenue, Kolkata- 700 017", and to Soumitra i.e. "210/A, Prince Anwar Shah Road, Kolkata – 700 045", address of the noticees available in our record, in terms of provisions of Rule 4 of Adjudication Rules.

With respect to Manali and Atish

6. Vide email dated October 06, 2017, a copy of the referred SCNs addressed to Manali and Atish was emailed to manali.prop@gmail.com, an email id available in our record.
7. Manali, vide letter dated October 23, 2017, while acknowledging the receipt of the SCNs addressed to Manali and Atish, has requested to grant one month time to file reply to the SCNs. Also, Manali vide the referred letter has provided new registered office address of Manali i.e. "Subham Apartments", 1, Sarojini Naidu Sarani, 6th Floor, Kolkata- 700017" and accordingly informed to send all the correspondences to the referred address.
8. In this regard, vide letter dated November 17, 2017, Manali was informed to file reply to the SCN by November 30, 2017. Further, vide letter dated November 17, 2017, Manali was advised to serve the SCN dated October 04, 2017 to Soumitra. Also vide email dated November 17, 2017, a copy of the letter dated November 17, 2017 and SCN dated October 04, 2017 was emailed to manali.prop@gmail.com.
9. In this regard, Manali, vide letter dated November 29, 2017, has once again requested to grant two weeks' time to file reply to the SCN.

10. Since, no reply was received, Manali and Atish, vide letters dated February 02, 2018, were informed to file reply to the SCNs and an opportunity of personal hearing before the Adjudicating Officer was granted on February 22, 2018 in terms of Rule 4 of Adjudication Rules. The said letters were issued to the new address of Manali, which was duly delivered to Manali. The letter addressed to Atish was returned undelivered with remarks "left".
11. Manali, failed to appear before the Adjudicating Officer on the date of hearing and also to file reply to the SCNs. Subsequently, vide letter dated March 20, 2018, Manali and Atish were granted another opportunity of hearing on April 05, 2018. The letter addressed to Atish was returned undelivered with remarks "refused", which was subsequently uploaded in SEBI website under the heading "Unserved Summons/ Notices. With respect to Manali, the letter dated March 20, 2018 was duly delivered.
12. On the date of hearing, Manali once again failed to appear for the hearing. Subsequently, Manali, vide email -manali.prop@gmail.com dated April 30, 2018, has once again sought time to file reply to the SCN. Accordingly, vide email dated May 03, 2018, Manali was informed to file reply to SCN by May 21, 2018.
13. Subsequently, vide email dated June 08, 2018, the representatives of Manali, appeared before the adjudicating officer and requested further two weeks' time to file reply to the SCN and a hearing opportunity in the matter. As requested, vide letter dated June 11, 2018, Manali was informed to file reply to the SCN i.e. on or before June 02, 2018 and an opportunity to appear for hearing on June 22, 2018. A copy of the letter dated June 11, 2018 was also emailed to manali.prop@gmail.com and to the email id of its representatives.
14. On the date of hearing i.e. June 22, 2018, the representatives of Manali appeared before the Adjudicating Officer and requested further two weeks' time to file written submission and submitted that the "*agreement copy sought during investigation could*

not be provided as the payment of stamp duty was required if the same was to be produced in Mumbai”.

15. With respect to further time sought by Manali to file written submissions, it was denied on the ground that the sufficient time to file reply to SCN and hearing opportunity was already provided to Manali. Moreover, Manali not only failed to file reply to the SCN during the hearing, Manali failed to make any submission in regard to the allegation. Further, Manali, did not file any submissions till the date of passing of order pursuant to the hearing pursuant to the hearing.

16. With regard to Atish, in terms of Rule 7(d) of the Adjudication Rules, paper publication on May 11, 2018 edition of “The Times of India (English) and Anandabazar Patrika (Hindi)”, were made providing details of SCN and hearing notices attempted to deliver to Atish. Further, in the publication, Atish was notified to reply to the SCN within 14 days of publication of the notice and to appear for the hearing on May 22, 2018.

17. Atish, vide letter dated May 11, 2018 has informed that:

I was presently surprised to find a SCN/Hearing Notice published in Times of India Kolkata edition on May 11, 2018 wherein you have mentioned my Name along with DIN number wrongly addressed to Ruia Centre, 16, Sayed Amir Ali Avenue, Kolkata-700 017 under notices of Violation U/s 11C(3) and 11C(5) of SEBI Act, 1992 also read with Section 15A(a) of SEBI Act, 1992.

In this connection I would like to submit that Hon’ble SEBI has erroneously not sent any notice to my address registered with Registrar of Companies till date which is 10/12/2, Sitanath Bose Lane, Salkia, Howrah- 711106. As such I failed to understand how non-appearance and other matter related to the issues mentioned in the paper notice is applicable to the undersigned specially in the following circumstances:

- a. In reply to your above referred email and Show Cause Notice dated October 4, 2017 enclosed therein, I would like to state that I have already given my written submission in my letter dated May 11, 2018. However once again I am submitting my reply to your above-mentioned Show Cause Notice as under:*
- b. My appointment in the Board of Director of Manali Properties & Finance Pvt. Ltd. was on the basis of inducting as professional non-executive director to fill up the casual vacancy till the appointment of a regular director in my place and I was not involved into day to day activity of the Company and have not received any remuneration from the company till date. My appointment was registered with the Registrar of Companies on 30th March 2015 and subsequently I had resigned as per ROC record on 11th February 2017.*
- c. On reading of my appointment as a professional non executive director it should be amply clear that transactions referred in the Show Cause Notice dated 4th October 2017 which I have downloaded from the website www.sebi.gov.in were well out of domain of my period of Directorship with M/s. Manali Properties & Finance Pvt. Ltd and was wrongly addressed **as Director** of Manali Properties & Finance Ltd, Ruia Centre, 16, Sayed Amir Ali Avenue, Kolkata which is not my*

registered address and I was not the Director of the Company as on that date and hence no such SCN have reached me till date.

- d. *I as a Professional Chartered Accountant have gone through the entire document which I have downloaded from the website www.sebi.gov.in and hence have to conclude that as I perceive the matter is related to the period beyond my Jurisdiction as a director in the Company and the matter was addressed by the Company on several dates as appeared in the notice dated 04th October 2017 through written communication signed by Authorised Signatory of the Company without proper Authorisation by Board of Director as no such matter was placed before Board and I have not given any assent to such authorisation.*

I take serious view of the fact that my Name without application of mind and facts have been published in the National Paper without proper verification of facts and period of any such alleged violation, if any, on my part.

On considering the above facts, I am not in the position to clarify or contribute anything or to appear before you. You are therefore requested to kindly consider this letter as proper and necessary compliance with SCN published on May 11, 2018.

Accordingly, Atish provided a copy of Form DIR-12 and Form No. DIR-11.

With respect to Soumitra

18. The SCN issued to Soumitra was returned undelivered with remarks “refused”, which was consequently uploaded on the SEBI website. Subsequently, vide letter dated February 05, 2018, Soumitra was informed to file reply to the SCN and to appear for personal hearing on February 22, 2018. The said letter dated February 05, 2017 was addressed to Soumitra and the same was duly delivered.
19. Soumitra, vide letter dated February 12, 2018, while acknowledging the receipt of the letter dated February 05, 2018, had requested to adjourn the hearing to 1st week of March 2018. Vide the letter, Soumitra had informed that he was no longer a director of Manali. The said letter of Soumitra was received from the same address to which SCN and letter dated February 05, 2018 were issued.
20. As requested, the hearing of Soumitra was scheduled on March 01, 2018. During the hearing, as requested a copy of SCN dated October 04, 2017 was once again provided to Soumitra and accordingly advised to file reply to the SCN by March 19, 2018. Soumitra, during the hearing, submitted a copy of Form DIR 11.

21. Subsequently, Soumitra, vide email dated March 19, 2018 sought time to file reply to the SCN and the same was acceded. Vide email dated April 18, 2018, Soumitra was once again reminded to file reply by May 01, 2018. In this regard, Soumitra, vide email dated April 18, 2018 has made the following submissions:-

- i. *At the very outset I express my sincere most thanks to you for allowing me some more time to reply due to sudden death of my father. I now give below the background and my involvement relating to the alleged charges for your perusal information and necessary action to drop the charges against me. This letter may be treated as my reply to your letter/notice no. Sebi/HO/EAD=8/JS/NS/OW/p/4065/1/2018 dated ...5th February 2018*
- ii. *I had joined Dunlop India Ltd. in the year 2001 under Manohar Rajaram Chhabaria, the then Promoter, and was receiving salaries from the company. The Company was in BIFR. In December, 2005 the company was taken over by acquisition of shares by Pawan Kumar Ruia having office at Ruia Centre, 46, Syed Amir Ali Avenue, Kolkata – 700 017 and permanently residing at 6 Sunny Park, Kolkata- 700 019.*
- iii. *As a taken over employee of Dunlop India Ltd I used to continue under pay roll of the company till July 2013 and was exclusively looking after Dunlop accounts. Thereafter from the month of 1st August, 2013 I became an employee of M/s. Zeal Infotech..... having office at Ruia Centre and used to receive my salaries from this company till my resignation in the month of December 2017. However there were no change in my portfolio even after liquidation of Dunlop in the year 2013. Should there be any requirement I will be able to furnish some of my pay slip and Form 16 issued by the Employer in support of my above contention.*
- iv. *Being in service with Pawan Kumar Ruia group, many of the executives were forced to sign as Non-Executive Director for various other companies of his group, only at the cost of the retaining the service. Be that as it may, I was not an Executive Director of Manali Properties nor did I have day to day control and take any part in day to day business of the company. I also did not receive any Remuneration from Manali Properties Ltd. at any point of time. Whatever letters and/or other documents were signed by me, were signed at the request of Mr. Pawan Kumar Ruia and in the capacity of a Non-Executive Director. All papers and documents of the Company all along been kept at the personal custody of Pawan Kumar Ruia being the owner of the company.*
- v. *In view of my above submission, I expect that natural justice will be shown to me and exonerate me from all charges. I request you to withdraw the notice dated 5th February 2018 Issued to me and pass necessary orders.*

CONSIDERATION OF ISSUES AND FINDINGS

22. After perusal of the material available on record, the following issues are for consideration viz.

- A. Whether Noticees i.e Manali, Atish and Soumitra have violated Section 11C(3) & 11C(5) of SEBI Act, 1992?
- B. Does the violation, if any, attract monetary penalty under Section 15A (a) of SEBI Act?

- C. 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 noticees i.e. Manali, Atish and Soumitra have violated Section 11C(3) and 11C(5) of SEBI Act.

23. It is pertinent to mention that the provisions under Section 11C(3) of the SEBI Act, grant powers to 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. Also, under Section 11C (5) of the SEBI Act, IA to examine on oath, may require any person associated with the securities market in any manner, to appear before it personally. Accordingly, it is noted that for the purpose of ascertaining the facts and role of various entities involved in alleged manipulations, IA sought information/documents and advised Manali, Soumitra and Managing Director, Manali to appear before the IA, relating to acquisitions of shares of Falcon and Dunlop by certain entities and assignment of debt and thus the information sought by IA was relevant to the investigation.

24. Vide summonses dated November 19, 2015, August 12, 2016 and letter dated July 27, 2016 Soumitra was summoned to file reply to the summonses and to appear before the IA. Also, Managing Director, Manali was summoned on July 05, 2016, to file reply and to appear before the IA. Vide letters dated August 23, 2016 and September 09, 2016 Managing Director, Manali, was requisitioned to file reply to summons and to appear before the IA. Soumitra and Managing Director, Manali failed to provide the information/documents sought and also to appear before the IA.

25. As per records, IA issued summonses to Manali and its Managing Director seeking various details which were not submitted and thus the basis for alleged non-compliance with the summons. The details sought are as follows:

Sr. No.	Details sought from Manali through various Summons	Whether Manali provided information / documents for the summonses issued
a.	<i>Whether any formal loan agreement was entered into between Manali and Falcon with regard to loan of Rs. 1,44,04,50,000 to Falcon. If yes, to provide a certified copy of the same.</i>	Not Provided
b.	<p><i>Referring to point 3 of reply of Manali dated June 19, 2015, inter- alia, stated that</i></p> <p><i>“The company had issued cheques to the tune of INR 92,38,69,000 to Falcon, which has been further endorsed by Falcon to various parties and subsequently these cheques were endorsed by the third parties in favour of the Company by way of adjustments against purchases and other business transaction.”</i></p> <p><i>Manali was advised to confirm whether the cheques were presented for payment at respective banks. If yes, provide the account no. and bank account statement highlighting all the cheques and amount.</i></p>	Not Provided
c.	<i>To provide the names of the counterparties to whom Falcon endorsed the cheques who in turn, endorsed the cheques back to Manali. Since it is also mentioned in your reply that the cheques were endorsed by the third parties in favour of the company by way of adjustments against purchases and other business transaction, you are also advised to provide the details of said purchases/ business transactions alongwith documentary evidence i.e purchase bills/ delivery receipt/ tax paid etc for every cheque which was endorsed back to the company.</i>	Not Provided
d.	<p><i>You are advised to confirm whether any deed of assignment was signed between the Company and Suncap, Regus, & Salputri for assigning loan of Rs. 144.04 crs given to Falcon. If yes, provide a certified copy of the same.</i></p> <p><i>It is further mentioned in your reply that Regus, Suncap and Salputri approached the Company with a proposal for assignment of debt. Whether Manali had dealt with any of these companies in the past. If yes, kindly explain the nature of dealings.</i></p> <p><i>Further, considering the huge amount of loan which was assigned to these entities whether any security was taken for assignment of loan or due-diligence with regard to the repaying capacity of these entities was done by Manali. If yes, provide documentary evidence of the same.</i></p>	Not Provided
e.	<i>It is mentioned in your reply that Salputri, Suncap & Regus were required to repay the loan amount to Manali by Oct 31, 2012 or earlier. However, from your reply and bank account statement analysis of Salputri, Suncap and Regus, it is observed that the entities started repaying the said loan in</i>	Not Provided

	<i>April/May 2013. You are advised to provide the details of penal actions taken by the company for non-payment of the assigned amount by the assignee(s) on or before October 31, 2012 along with documentary evidences regarding the same.</i>	
<i>f.</i>	<i>Provide the balance sheet for the FY 2009-10, 2010-11 and 2011-12</i>	<i>Not Provided</i>
<i>g.</i>	<i>From the reply of Manali dated June 19, 2015, it is observed that Manali paid Rs. 12, 02, 38,000 between Feb 09, 2012 to Feb 15, 2012 by way of crossed cheques to Falcon which formed part of the total loan disbursed to Falcon, whereas the deed of assignment was executed on Feb 09, 2012. Explain the contradictory nature of the transactions.</i>	<i>Not Provided</i>
<i>h.</i>	<i>Manali was advised to confirm whether any disclosures under SEBI (SAST) Regulations, 2011 and SEBI (PIT) Regulations, 1992 has been filed by the Company with Stock Exchange and/or the companies Falcon and Dunlop. If yes, provide documentary evidences regarding the same.</i>	<i>Not Provided</i>

26. Manali, in reply to the various summonses, vide letters dated July 27, 2015, August 10, 2015, August 27, 2015, September 17, 2015, October 14, 2015 and July 19, 2016 has made the following submissions before IA:

- a. to grant additional time for compiling relevant information/documents*
- b. We are advised by Falcon that they have preferred a writ petition in the said matter against you being writ petition No. 28358/2015 and the same is pending before the Karnataka High Court, Bangalore. Therefore, the matter is sub judice.*
- c. As ICICI Bank has filed civil suit against Falcon being OS 808/2012 with a prayer to restrain falcon in allotting the shares to the three companies under the preferential allotment and also for the listing and dealing in the said shares, we have not been allowed to deal or trade in the said shares. Though the shares were allotted in April 2012, the shares are yet to be listed by Bombay Stock Exchange and you have the complete details with you as you have been included a party. The said proceedings have resulted in various other proceedings namely MA 50 to MA 53/2012 before the appeal court of Mysore and writ petition No. WP 55106/2015 before the Karnataka High Court, Bangalore. In addition to the above Falcon has also filed a writ against Bombay Stock Exchange in which you have been included as a party and the writ petition number is WP9989/2014 which is pending before the Karnataka High Court, Bangalore.*

27. Soumitra, vide letters dated August 18, 2016, September 03, 2016 and September 20, 2016 has made the following submissions before the IA:

- a. The Hon'ble Supreme court confirmed the order of winding up of the company vide its orders dated July 25th and July 29, 2016. The official liquidator for all practical purposes has stepped into the*

shoes of the company. I have therefore no locus standi. You may kindly summon the Official Liquidator attached to Calcutta High Court if necessary. In the absence of the company I do not have any authority to even write this letter to you.

b. As you are well aware, the company was taken over by the Government of West Bengal on 27th February 2016 vide Dunlop India Ltd (Acquisition and Transfer of Undertakings) Bill, 2016 (Bill No. 4/2016 and therefore the West Bengal Government has already taken charge of this company from 27.02.2016. You may therefore write to the appropriate authorities of the Government of West Bengal.

c. I have neither position nor power nor locusstandi to appear before you. Hope this clarifies the position.

28. It is not in dispute that Manali were issued summonses under Section 11C(3) to furnish certain information/documents. Similarly summonses were issued to Soumitra and Managing Director, Manali under Section 11C(3) and 11C(5) to provide information and to appear before the IA. The referred summonses were duly received, which is also not disputed. However, the Manali, Soumitra, being the director of Manali and Managing Director, Manali have failed to file required information and to appear before the IA.

29. 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 noticees and that the same could not be gathered from any other source without hampering timelines for investigations. The non-submission of information and non-appearance before the IA have hampered the investigation to proceed further in the matter.

30. 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 Manali, Soumitra and Managing Director, Manali.

31. It is pertinent to note that, Manali was informed to supply required documents instead it had informed the IA to approach the Official Liquidator of Dunlop to get the required

information pertaining to Manali. It is clear that the information was sought from the Manali /Soumitra/Managing Director, Manali which was only with respect to them and thus the excuse provided by the Manali to seek information from the Official Liquidator for the information which was pertaining to them depicts an approach to not cooperate with the investigations.

32. Manali, has gone on records to state that the Falcon has filed a writ petition against SEBI and thus avoided providing the information as sought by the IA. The obligation to provide the information to the SEBI-IA had no relation to the writ filed by the Falcon against SEBI.

33. Thus, by not providing the requisitioned information on one count or the other, Manali hampered the investigation.

34. Even during these proceedings, Manali continued to adopt the same approach as it did during investigations, by not responding to the SCN, despite being provided multiple extension of time to file reply as well as to appear before the Adjudicating Officer.

35. It is on record that Manali was issued SCN and subsequently sought extension of time to file reply to the SCN on five occasions which was not denied. However, during the entire proceedings i.e. for more than ten months, Manali have failed to reply to the SCN. With respect to personal hearing, Manali was granted opportunity on February 22, 2018 and April 05, 2018, which it failed to appear nor sought adjournment of hearing. Only on the third hearing opportunity i.e. June 22, 2018, Manali through its representative had appeared before the Adjudicating Officer and made oral submissions, which are as follows:

“The representative requested for two weeks’ time to file written submissions. The SCN dated October 04, 2017 was duly received by the noticee. No reply to the SCN has been made by the noticee during the entire period of these proceedings. Three opportunities of hearing were granted to the noticee. No reply has been filed even as on the date. Given the same further time to file reply has been denied.

The representative has stated that the copy of agreement could not be provided as the payment of stamp was required if the same was to be produced in Mumbai”.

36. During the hearing, Manali tried to make ground that the information sought during the investigations in 2015 could not be submitted as payment of stamp duty was required if the copy was to be provided in Mumbai. However, Manali could not explain the grounds for such an explanation. Other than these there were no submissions made by Manali in the entire proceedings. No reply was filed by Manali even as on the date of the hearing or even as on the date of this order. Thus, it is concluded that Manali had violated Section 11C(3) of the SEBI Act.
37. With respect to non-compliance of Section 11C(5) of SEBI Act by Manali, it is observed that there is no document on record to state that the summons were issued to Manali to appear before the IA under Section 11C(5) of SEBI Act, hence, this charge of alleged violation of Section 11C(5) of SEBI Act cannot be sustained.
38. Apart from Manali, summonses were also issued to Soumitra and Managing Director, Manali, to supply information and to appear before the IA. In this regard, it is observed that Soumitra and Atish were the directors of Manali during the period of investigation, wherein Soumitra was appointed as ‘Additional Director’, Manali for the period May 09, 2007 to December 30, 2017 and Atish was appointed as ‘Professional Non-Executive Director’, Manali for the period March 30, 2015 to February 11, 2017.
39. Further, it is noted that the reply of Manali, seeking further time to file reply to the summonses dated July 27, 2015, August 10, 2015, August 27, 2015, September 17, 2015, October 14, 2015, August 18, 2016, September 2016 and September 20, 2016 were signed by Soumitra Ghose, which were also not denied by Soumitra during the proceedings.
40. Further, it is observed, during the course of investigation, Soumitra had replied to the summonses issued to Manali, its Managing Director and to Soumitra. It is also observed that Soumitra, as a director of Manali, is signatory to the audited balance

sheet and also director's report of Manali for the year ended March 31, 2015. Hence, Soumitra claiming that he did not have day to day control of Manali nor took part in day to day business of Manali is clearly not tenable. Also, during the investigation, Soumitra was informed to appear before the IA, which he also failed to do. Thus, for not supplying information/ documents sought and for not appearing before the IA during the investigation, Soumitra had violated Section 11C(3) and 11C(5) of SEBI Act.

41. With respect to Atish, it is observed that though the summonses were issued to Manali and its Managing Director during the tenure of Atish as a director of Manali. As per the record, Atish was Professional- Non-Executive Director of Manali. It is observed that Atish was signatory to the audited balance sheet and also director's report of Manali for the year ended March 31, 2015. However, there is no proof on record to state that Atish was aware of the summonses during his tenure as a director, Manali nor he was part of day to day affairs of Manali. It is also observed from the records available that the summonses were replied by Soumitra. Since, there is no evidence available on record to prove that Atish is guilty of charges, the charges alleged in the SCN against Atish Kumar Shaw are disposed off.

Issue B: Does the violation, if any, attract monetary penalty under Section 15A (a) of SEBI Act?.

42. 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.*"

43. 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." 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(3) and 11C(5) of SEBI Act, 1992 by the noticees has been established and it is held that Noticees are liable for monetary penalty under section 15A(a) of SEBI Act.

44. The aforesaid provisions read as under:

"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".

45. Given the above, it is concluded that the present case is a fit case for imposing penalty upon Manali Properties & Finance Ltd. and its director Soumitra Ghose under Section 15 A(a) of the SEBI Act, 1992.

Issue C- what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?.

46. 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. 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.

¹[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.

47. The material available on record has not quantified the amount of disproportionate gain or unfair advantage made by Manali and Soumitra and the loss suffered by the investors as a result of the 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 Manali and Soumitra as a result of default. However, it is pertinent to mention here by not submitting complete details to the summonses as well as not appearing before the IA for giving evidence despite having received the summonses compromises the regulatory framework and hampers the investigation.

48. Therefore, taking into consideration the facts / circumstance of the case and above mitigating factors, a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

49. After taking into consideration all the facts and circumstance of the case, In view of the above, 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

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

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 Manali Properties & Finance Ltd., and its director Shri Soumitra Ghose stands established in terms of the provisions of the SEBI Act. Accordingly, a monetary penalty against Manali Properties & Finance Ltd. and Shri Soumitra Ghose is imposed as under:

Noticee Name	Violated	Penal Provisions	Amount of Penalty (in Rs.)
Manali Properties & Finance Ltd. (PAN AACCM9560A)	Section 11C(3) of SEBI Act, 1992	Section 15A(a) of SEBI Act, 1992	3,00,000
Soumitra Ghose (DIN 00245028)	Section 11C(3) and 11C(5) of SEBI Act, 1992		5,00,000
Total	8,00,000		

50. These proceedings against Atish Kumar Shaw are disposed off for want of evidences on records. Also, proceedings against Manali for non-appearance before the IA is also disposed off on the ground that there are no records to substantiate the initiation of proceedings against Manali under Section 11C(5) of SEBI Act, 1992.

51. Manali and Soumitra 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

52. Manali and Soumitra 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 - IV [EFD1-DRA-IV], 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;

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)

53. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to Manali and Soumitra and also to SEBI.

Date: August 24, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer