

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: EAD-2/AO/134 -139/2013]

UNDER SECTION 15 I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of

- 1. M/s. Rich Universe Network Limited (PAN: AACCR4640N)**
- 2. Shri Shashwat Agarwal (PAN: ABUPA2590C)**
- 3. Shri Rajeev Agarwal (PAN: ADNPA8011B)**
- 4. Shri Sanjay Gupta (PAN: ABWPG4052D)**
- 5. Shri Dhruv Shah (PAN: ABZPS1382H)**
- 6. Late Shri K. K. Agarwal (PAN: AGHPA1139K)**

In the matter of

Rich Universe Network Limited

Background:

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigations into the alleged irregularity in the trading in the shares of Rich Universe Network Limited (hereinafter referred to as the Noticee No. 1) which was formerly known as Rich Capital & Financial Services Ltd., for the period from February 01, 2010 to September 24, 2010 (hereinafter referred to as the "Investigation Period"). Shri Shashwat Agarwal is the Chairman and Managing Director and Shri Rajeev Agarwal, Shri Sannjay Gupta, Shri Dhruv Shah and Late Shri K. K. Agarwal are Directors of the Noticee No. 1 (hereinafter referred to as Noticee Nos. 2-6 respectively).

2. The investigation revealed that the shares of the Noticee No.1 opened at Rs 56.75 on February 01, 2010 and reached a high of Rs 119.90 on September 02, 2010 and closed at Rs 111.80 on September 24, 2010. A group of entities has indulged into circular trading, created artificial volume and influenced the price of the shares of the Noticee No. 1 during the investigation period. In order to further analyze the violations, if any, committed by the several entities, the Investigating Authority of SEBI issued a Summon to Noticee No. 1 and 2 requiring them to provide certain information documents, which they failed to furnish and thereby hampered the investigations.

Appointment of Adjudicating Officer:

3. In view of the above, SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer vide order dated May 08, 2012, under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge the alleged violation of section 11 C (2) and 11 C (3) and if satisfied, to impose monetary penalty under section 15A (a) of the SEBI Act.

Show Cause Notice, Reply of Noticees and Hearing:

4. A common Notice dated June 12, 2012 (herein after referred to as "SCN") was issued to the Noticees under rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry be not held against them and penalty be not imposed under section 15 A (a) of the SEBI Act for the violations of section 11 C (2) and 11 C (3) of the SEBI Act which reads as follows;

11C.....

(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 it 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.

5. The Noticees, except Noticee No. 6, filed their replies to the SCN. For the purpose of inquiry, I have granted an opportunity of personal hearing on October 11, 2012. The Noticee No. 1 to 4 vide letter dated October 04, 2012 sought adjournment of the hearing on health reasons, unavailability of advocate etc. and requested to fix the date of hearing after November 15, 2012. Accordingly another opportunity of hearing was granted to Noticee No. 1 to 4 on December 21, 2012. However they did not attend the personal hearing.
6. The Noticee No. 1 to 4 vide their common letter dated December 18, 2012 requested to consider their replies dated September 26, 2012, July 02, 2012, June 29, 2012 and June 30, 2012 respectively in the case, and to waive the hearing under the Adjudication Rules. The Noticee No. 5 vide his letter dated October 06, 2012 desired to file another reply within a period of 45 days, however, he neither filed any such reply nor he appeared during the hearings scheduled on October 11, 2012 and December 21, 2012.
7. In respect to Noticee No. 6, the SCN could not be served and later on, I was informed that he has already been expired on July 19, 2010. This was confirmed and the death certificate dated August 10, 2010 is placed on record. It is apparent that the demise of the Noticee No. 6 took place well before the issuance of the summons dated August 01, 2011 by the Investigating Authority. In view of the above, the present proceedings against the Noticee No. 6 cannot be continued, and hence, the same is hereby abated.
8. The proceedings against the remaining Noticees i.e. Noticee No. 1 to 5 is hereby continued. The written and oral submissions made by the Noticees No. 1 to 5

which are relevant to the allegations as referred to in the SCN, are mentioned below:

(i) Noticee No. 1 & 2 submitted that they have prayed the Investigating Authority through their letter dated September 07, 2011 to provide the copy of order passed by the Board/SEBI under section 11 C (1) SEBI Act for conducting investigation. However, instead of providing a copy of the same, the concerning officer informed us that Investigating Authority has been appointed by the Competent Authority to investigate the matter.

(ii) We could not understand the reason for not providing the copy of order passed by Board under section 11C (1) of the SEBI Act. Section 15T of the SEBI Act provides a statutory right of appeal before the Securities Appellate Tribunal against an order of the Board.

(iii) We have repeatedly shown our interest to file appeal against the said order of the Board and in absence of certified copy of such order, our right to appeal before Tribunal was curtailed.

(iv) It is surprising that in place of providing certified copy of said order, the present adjudication proceedings are initiated. Therefore, it is prayed not to proceed further in the matter and provide us the certified copy of the said order.

(v) Noticee No. 3 to 5 submitted that they are not the person in charge, and are not looking day to day affairs of the RUNL (Notice No. 1). Except being directors to attend the meeting, we have no knowledge of any agenda discussed by the Noticee No. 1 about any matter.

Consideration of Issues and Finding:

9. After taking into account the allegations, replies of the Noticee No 1 to 5 and other evidences/material available on records, I hereby, proceed further to inquire the case on merit. The issues that arise for consideration in the present case are as under:

(A) Whether all the Noticee No. 1 to 5 were under an obligation to provide the information/documents in compliance with the Summon No. OW/24795/2011

dated August 01, 2011 issued by the Investigating Authority of SEBI, and have failed to do so?

(B) If yes, then whether the said acts of the Noticee No. 1 to 5 are in violation of section 11 C (2) and 11 C (3) of the SEBI Act?

(C) If yes, then what appropriate monetary penalty can be imposed against them under the provisions of section 15 A (a) of the SEBI Act taking into consideration the factors mentioned in section 15 J of the SEBI Act?

10. I have perused the available records, allegations as per the SCN and the undisputed facts. I find from the documents available on record that the SEBI appointed Shri Suresh Gupta, Chief General Manager in accordance with Section 19 read with Section 11 and 11C of the SEBI Act as the Investigating authority to investigate into the transactions in the securities of Noticee No. 1 and submit a report at the earliest. The Investigating Authority issued a Summon No. OW/24795/2011 dated August 01, 2011 to Noticee Nos.1 and 2 requiring them to provide certain information/necessary documents as indicated in the annexure attached thereto, on or before August 16, 2011.

11. The summons required the Noticees No.1 and 2 to furnish various information and documents, the brief of which are mention below:

- a. Name, address, PAN of the promoters/directors of the Noticee No.1.
- b. Details of Persons Acting in Concerts during the investigation period.
- c. Details of Shareholding pattern of the Noticee No.1 , top 50 shareholder and their percentage etc.
- d. Details of Corporate developments or announcements and implementation of such announcements.
- e. Details of loan and finance availed by the promoter of the Noticee No.1 or pledge etc.
- f. Details of market and off market transactions in the shares of the Noticee No. 1 by its promoters/detectors/associates/PAC etc.
- g. Copy of agenda minutes of the Noticee No.1 during the period of investigations.

- h. Details of the disclosures if any, made by the promoters/director/person etc. under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992
- i. Details of preclearance taken by the director/promoters etc. while dealing in the shares of Noticee No.1.
- j. Copy of the Annual Report of the Noticee No.1 for the financial years 2007-08 and 2010-11.
- k. Confirmation by Noticee No.1 and its promoters/director etc. about the relation/connection with 20 entities as indicated in the annexures of summon.

12. I find that the above information and documents as required by the investigating Authority, are critical for the conduct and timely completion of the investigation. However, instead of providing the said information, the said Noticees vide letter dated August 11, 2011 sought extension of 15 days time to submit reply. Again instead of providing the required information/documents, the said Noticees vide letter dated September 07, 2011 asked to provide the copy of order passed by the SEBI/Board under section 11C (1) of the SEBI Act, i.e. appointing the Investigating Authority. The SEBI/office of Investigating Authority vide letter dated September 30, 2011 informed the said Noticees that the investigation in the matter has been ordered in writing by the Competent Authority of Board, and the Board has the powers to call for information under Section 11(2) of the SEBI Act. It was mentioned that the competent authority appointed Shri Suresh Gupta, CGM as the Investigating Authority and further advised to furnish the required information/documents within a period of 7 days.

13. The said Noticees did not furnish the information/documents as required under the aforesaid summon. However, the said Noticees vide letter dated October 07, 2011 *inter-alia* asked for a copy of order passed by the Board appointing Investigating Authority on the basis of which the investigations started and summon was issued to them. The Noticees submitted that they desired to file an appeal before the Securities Appellate Tribunal against the order of Investigation passed by the Board under Section 11 C (1) of the SEBI Act. From the said

submission of the Noticee, it is abundantly clear its intention of not providing the information sought for by the Investigating Authority was to hamper the Investigation ordered by the SEBI.

14. The investigating authority vide letter dated November 14, 2011, provided a copy of proceedings of Investigating Authority's appointment dated July 01, 2011, and again reminded the said Noticees to furnish the information/documents as sought vide aforesaid summon, within a period of 7 days. Despite the receipt of aforesaid copy of appointment of Investigating Authority, the said Noticees did not furnish the required information/documents, rather it has vide letter dated November 21, 2011 again raised various objections in furnishing the information *such as* the authenticity of the said appointment, stating that it was a photocopy of one formal letter which was not a certified copy/attested copy and does not bears any order number etc. The Noticees reiterated their desire to file appeal before Securities Appellate Tribunal against the Investigation order.
15. The Noticee Nos. 1 to 2 did not dispute the allegations as shown in the SCN, but repeatedly contended that the certified copy of order passed by the Board/SEBI under section 11 C (1) SEBI Act for appointing Investigating Authority, was not provided to them which curtailed their statutory right of appeal before the Securities Appellate Tribunal. The contentions of Noticee No. 3 to 5 were that they are not the person in charge and are not looking day to day affairs of the Notice No. 1. Except being directors to attend the meeting, they have no knowledge of any agenda discussed by the Noticee No. 1.
16. It is settled law that if a company which is required to do something under law, the failure to do the same makes it liable and Chairman/Managing Director of such company, who is under law deemed to have been aware of the transactions done by the Company, is also liable for such failure on the part of the Company. It is also a settled law that for making other directors liable for the offence/irregularities committed by the Company, it is necessary to show that such directors are in charge of day to day affairs of the company and are having

knowledge of the transactions being done. Merely, because they are directors, cannot *iposo - facto* make them liable in absence of above requirement.

17. The Hon'ble Supreme Court of India in the case of **Everest Advertising Pvt. Ltd. Vs State of Delhi 2007 indlaw SC 334** emphasized that; merely being a director of a Company is not sufficient to make the person liable, because a director in a Company cannot be deemed to be in charge of and responsible to the Company for the conduct of its business. The requirement is that the person sought to be made liable, should be in charge and responsible to the Company for the conduct of its business at the relevant time and there is no deemed liability of a director. In case of **Katta Sujatha (Smt) V Fertilizers and Chemicals Travancore Ltd**, 2002 Indlaw SC 1772, the Hon'ble Supreme Court of India followed by its own decision in **State of Karnataka V Pratap Chand, 1981 Indlaw SC 279** and held: wherein the question as who is a "person in charge" of the business of a firm in the context of Section 18-A of the Drugs and Cosmetics Act, 1940 was considered by this Court. This court explained the meaning by observing that the term "person in charge" must mean that the person should be in overall control of the day-to-day business of the company or firm. The person should be a party to the policy being followed by a company and yet not be in charge of the business of the company or may be in charge of but not in overall charge or may be in charge of only some part of the business. The whole body of directors of a company cannot be said to be in charge of the day-to-day management and running of the business of the company and cannot be attributed knowledge of every day working of the company.

18. In the present case, as observed above, the summon and the other communications, were not independently referred to the Noticee Nos. 3 to 5 to meet the requirements of aforesaid information/documents, but were referred to the Noticee Nos. 1 & 2 only. Further, it is not shown from the available records that the Noticee No. 3 to 5 were in charge of company's day to day affairs and were having knowledge or participated in any of such issues being done by the company or its managing director. Rather, as per records, Noticee No. 5 is

shown as non executive director and said designation itself *prima facie* suggest that he was not concerned with the day to day affairs of the company.

19. Therefore, in view of aforesaid observations, I am of the view that the Noticee No. 3 to 5 cannot be made responsible for the failure on the part of company (Noticee No.1) in not furnishing the information / documents etc., and only Noticee No. 1 and Noticee No. 2 (being Chairman & Managing Director) can be made responsible for such failure.

20. It is observed that the non compliance of summons by the Noticee Nos.1 and 2, has not been disputed by them, and such non compliance has certainly hampered the investigation. Since the Noticee Nos 1 and 2 are connected with the securities market, it is their duty to co-operate with the regulator; however, it was not so done by them. Further, it is not the case that the required information/documents were not available with them, but they throughout made a plea to file an appeal before the Tribunal against the Investigating order. Evasively arguing that they wanted to file an appeal without setting forth the reasons as to how they are aggrieved by such appointment of Investigating Authority or why they are having any suspicion of credibility of such appointment, can not absolve them from the liability for gross unheeding the regulator. No doubt, they can avail opportunity of an appeal, but the regulatory mandate of furnishing of documents/information under law cannot be overlooked by them. Such continued vexatious adamant approach by them during the investigation and also during the instant proceedings apparently shows their malafide intentions to disregards the process of law.

21. Therefore, in light of the above facts and circumstances of the case, I am of belief that the Noticees No. 1 and 2 failed to comply with the summon dated August 01, 2011 and subsequent communiqué, issued by the Investigating Authority resulting into an impediment during the investigations, and thereby they have violated the provisions of section 11 C (2) & 11 C (3) of the SEBI Act. The

said violations makes both of the Noticees liable for monetary penalty under section 15A (a) of the SEBI Act reads 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 hereunder,-

(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;

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

23. The available records did not indicate the quantum of any unfair gain made by both of the Noticees or any loss/harm caused to the investors/shareholders, due to such non compliance, nor is the default of the Noticee repetitive in nature. However, I cannot ignore the disregardful act and conduct of both the Noticees towards the regulator throughout the investigation as if submission of the information might unearth more serious defaults committed by the Noticees.

24. Here, I cannot ignore the case of **M/s Kajol Impex Ltd. vs. SEBI (Appeal No. 167 of 2009 decided on October 10, 2009)** wherein, the Hon'ble Securities Appellate Tribunal while upholding the monetary penalty of Rs. 25,00,000/- for the non compliance of the summon, made following observation;

"It is, thus, clear that by not furnishing the requisite information and by not appearing before the investigating officer the appellant hampered the investigation which is , indeed, very serious matter. The market regulator under the provision of the Act will not be able to perform its statutory functions and duties if the person connected with the securities market throttle the investigations by not responding to the summons issued to them."

Order:

25. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15 I of the Act and rule 5 of the Adjudication Rules, I impose a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs only) upon Rich Universe Network Ltd. (Noticee No. 1) and a penalty of ₹ 15,00,000/- (Rupees Fifteen Lakhs only) upon Shri Shashwat Agarwal (Noticee No. 2) and thus a total penalty of ₹ 40,00,000/- (Rupees Forty Lakhs only), under the provisions of section 15 A (a) of the SEBI Act. I am of the view that the said penalty is commensurate with the violations committed by them. The allegations against the Noticee No. 3 to 5 has not been established and therefore, the proceedings against them is disposed off accordingly. Since, the Noticee No. 6 has been expired, the proceeding against him is abated.
26. The Noticee No 1 & 2 shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The demand draft shall be forwarded to the Chief General Manager, IVD - 5, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
27. Copy of this order is being sent to the Noticee No. 1 to 5 and also to the SEBI, in terms of rule 6 of the Adjudication Rules.

Date: January 15, 2013

Place: Mumbai

**P. K. KURIACHEN
ADJUDICATING OFFICER**