

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 118/2009]

**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

KIRAN K.KHATRI

(PAN: Not Available)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in the trading in the scrip of M/s Softrack Technology Exports Limited (hereinafter referred to as ‘**STEL / Company**’) during the period from January 01, 2002 to July 31, 2002.
2. The findings of the investigation led to the allegation that kiran K. Khatri (hereinafter referred to as “**KKK/Noticee**”) had not complied with the summonses issued by SEBI under sections 11C (2) and 11C (3) Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’) and consequently, liable for monetary penalty under section 15A (a) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated April 07, 2008 under section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15A(a) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-5/VSS/SS/133243/2008 dated July 28, 2008 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(a) of SEBI Act for failure to comply with the provisions of sections 11C (2) and 11C (3) of SEBI Act.
5. The said notice was sent through Ahmedabad Stock Exchange Limited (hereinafter referred to as "**ASE**"). However, the Noticee refused to accept the said SCN as per the communication of ASE dated August 07, 2008.
6. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on January 20, 2009, vide notice dated December 31, 2008 through ASE. ASE vide its communication dated January 21, 2009 informed that 1005 is the right Apartment number and not 1010. The second opportunity of hearing was granted to the Noticee on March 03, 2009 vide notice dated February 05, 2009 which was addressed to Apartment

No.1005. The same was sent through SPAD, but returned undelivered on February 10, 2009 without any remark.

7. Meanwhile, the Noticee replied vide letter dated Nil received by me through fax on June 19, 2009. He has submitted, inter-alia, that he had no knowledge or information regarding the subject matter. He has stated that STEL belongs to Sunil Gaglani who is his customer for sewing clothes. At the request of Sunil Gaglani, he had given his photographs to him and he does not know anything regarding the Company. He has also submitted that he is a tailor and involved in sewing clothes. He had not opened any account for trading in shares till today.
8. The last opportunity of hearing was granted to the Noticee on August 03, 2009 vide notice dated June 25, 2009 at SEBI, Western Regional Office, Ahmedabad. The Noticee appeared on August 03, 2009 and submitted, *inter alia*, as under:

I am a tailor. I do not know anything pertaining to securities market. Mr. Sunil Gaglani did everything on my name. Because of my background and ignorance I did not respond to the summons issued by SEBI. I may, therefore, be exonerated.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee had complied or not with the provisions of sections 11C (2) and 11C (3) of SEBI Act?
 - b. Does the non-compliance, if any, attract monetary penalty under section 15A (a) of SEBI Act?

- c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

10. Before moving forward, it is pertinent to refer to the provisions of regulations 11C(2) and 11C(3) of SEBI Act, which reads as under:-

11C. Investigation

(2). Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 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 authorized 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 authorized 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.

11. I find that the Investigating Authority (hereinafter referred to as “IA”) had issued three summonses to the Noticee as part of the investigation to examine the role of the Noticee. The details of summonses issued vis-à-vis status of their compliance by the Noticee are as under:

Date of Summons	Mode of Delivery	Proof of delivery of summons	Status of compliance
December 19, 2007	Through ASE	Received and acknowledged by the Noticee.	Not furnished information sought and not appeared in person
January	Through	Undelivered	N.A.

31,2008	RPAD		
February 19, 2008.	Through ASE	N.A.	Refused to accept summons from ASE officials

From the above table, I find that:

- (a) The summons dated December 19, 2007 along with annexure was issued by the IA to the Noticee through ASE, directing the Noticee to appear in person on January 04, 2008 at 2.30 p.m. before her along with the details as given in the annexure to the said summons. The summons was received and acknowledged by the Noticee. The Noticee had neither appeared in person before the IA at the specified date, time and place nor furnished the details sought by the IA.
 - (b) The summons dated January 31, 2008 along with annexure was issued by the IA to the Noticee through RPAD, directing the Noticee to appear in person on February 12, 2008 at 2.30 p.m. before her along with the details as given in the annexure to the said summons. The summons was returned undelivered.
 - (c) The summons dated February 19, 2008 along with annexure was issued by the IA to the Noticee through ASE, directing the Noticee to appear in person on February 29, 2008 at 2.30 p.m. before her along with the details as given in the annexure to the said summons. The Noticee refused to accept the summons.
12. The Noticee has not disputed the fact of his non-compliance with the summonses issued by the IA. He had neither appeared in person before the IA nor furnished the details sought by the IA. Had the Noticee submitted before the IA, the information stated in

paragraphs 7 & 8 of this order that he is a tailor and Mr. Sunil Gaglani did everything on his name, he might have come clean and at the same time the real culprit/s could have been identified and dealt with as per law by SEBI. It is amply clear that the information sought by the IA was crucial and central to the investigation and failure on the part of the Noticee to comply with the summonses had indeed hampered the investigation. I find that the Noticee was under an obligation to provide the information as sought by IA. The decision to call for such information and the judgment as to its relevancy is completely at the discretion of the IA and is in furtherance of the discharge of his official duties. The Noticee under the summonses is only obliged to co-operate with the IA and furnish the required information, since the same was very much available with him. In case of any evasion of the regulatory requirements, which are enforced in the interests of the investors, due cognizance should be taken and liability should be fixed thereon. Thus, as the Noticee did not provide the information, the same thwarted the attempts of SEBI to effectively gather vital evidence for the timely conclusion of the investigation proceedings.

13. The Noticee had failed to furnish the information to IA. Under the circumstances, the details sought by the IA were absolutely vital for SEBI to carry out its solemn objective of investor protection and regulation of the securities market. The timely submission of the information as sought through the summonses from the Noticee would have possibly helped the IA to complete the investigation and to establish the manipulation and fraudulent trade practice in the trading in the shares of STEL. I also find that as the Noticee failed to appear in person before the IA his statement could not be recorded. Further, I find that the Noticee was given adequate opportunity by the IA to comply with the summonses. I am also of

the view that it is the duty, responsibility and obligation of every person from whom information is sought to fully co-operate with IA and promptly produce all documents, records, information, etc., to the IA. If persons are allowed to flout the summonses 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.

14. I have noted the submission of the Noticee that he is a tailor and he does not know anything about the securities market. I have also noted the submission of the Noticee that Mr. Sunil Gaglani did everything in his name and further because of his background and ignorance he did not respond to the summons issued by SEBI. The reasons cited by the Noticee cannot be accepted as an excuse for his failure. As the Noticee has admitted his failure to comply, I hold that the allegation of the violation of the provisions of sections 11C (2) and 11C (3) of SEBI Act by the Noticee stands established.
15. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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..."*.
16. The Honorable Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in Appeal No.95/04 in Mayfair Paper & Board Pvt.Ltd. V SEBI held that *"failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under section 15A of the SEBI Act"*.

17. Thus, the aforesaid violation by the Noticee makes it liable for penalty under Section 15A (a) of SEBI Act, 1992 which read 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;

18. 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.”*

19. It is not possible to quantify the exact gains made by the Noticee or the loss caused to the investors as a result of the failure on his part to comply with the summonses. The Honourable SAT had the occasion to consider a similar factual situation in *Appeal No: 114 of 2005 Nokia Finance International Pvt. Ltd.Vs SEBI*. In the said appeal, the Honorable SAT examined the failure on the part of the appellant to provide necessary information to the IA of SEBI. In the said matter, while upholding the penalty imposed by the Adjudicating Officer, the SAT observed that the appellant could have availed the

opportunity to submit the required information, however, he failed to do so and the penalty has been imposed in terms of the provisions of law. The order passed by SAT is relied upon in this case for guidance. Considering the aforesaid observations of SAT, the failure on the part of the Noticee to comply with the summonses has to be viewed seriously.

20. Further, I have also perused the order dated January 07, 2009 of SAT in Appeal No. 106 of 2006 DKG Buildcon Pvt. Ltd. V SEBI, the SAT has stated inter-alia, that” *By not responding to the summons, the representative(s) of the appellant did not appear before the investigating officer as a result whereof their statements could not be recorded. This obviously, hampered the investigations....*” The Hon’ble SAT had also upheld the penalty of Rs.1,00,00,000/- levied on the entity u/s 15A (a) of the SEBI Act for failure to comply with the summons.
21. With regard to the repetitive nature of the default, I find that the IA had issued three summonses to the Noticee and out of three, one was returned undelivered, The Noticee failed to comply with two summonses. This repeated failure indicates that the default is of repetitive in nature.

ORDER

22. After taking into consideration all the facts and circumstances of the case and more particularly, the background of the Noticee as submitted by him, I hereby impose a monetary penalty of Rs.10,000/- (Rupees ten thousand only) on the Noticee which will be commensurate with the violation committed by him.
23. The Noticee 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 said demand draft should be forwarded to Ms. Barnali Mukherjee, General Manager, Investigations Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

24. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **August 12, 2009**
Place: **MUMBAI**

V.S.SUNDARESAN
ADJUDICATING OFFICER