

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/KS/PP/2020-21/9506)

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) RULES, 1995.

In respect of:

Surajit Dey

(Address I: 9/12, Lal Bazar
Street, C Block, 3rd Floor
Room no. 11 Kolkata-700001

Address II: 85, Chetla Road
Kolkata-700053)

(PAN-BLHPD6637D)

In the matter of non-compliance of summons

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation on the matter of trading activities of certain entities in the scrip of Kailash Auto Finance Ltd. (hereinafter referred to as '**Kailash Auto**') during the period July 01, 2014 to August 31, 2014 (hereinafter referred to as '**investigation period**'). It was observed that Everlight Tie-Up Pvt. Ltd. (hereinafter referred to as '**Everlight**') had transferred shares of Kailash Auto through off-market route to these entities. It was noted that Shri Surajit Dey (hereinafter referred to as '**the**

Noticee’) was a Director of Everlight at the relevant time. During the course of investigation, SEBI issued summons dated February 26, 2019 to the directors (including Noticee) of Everlight seeking details of transfer of shares through off-market, reason/purpose for transfer of shares, consideration received and relationship with respective transferees with the entity. However, the said summons could not be delivered to the addressees, stating the remarks as “insufficient address”.

2. SEBI issued another summons dated March 12, 2019 to the directors (including Noticee) of Everlight on their residential as well as office address and again sought details of transfer of shares through off market, reason/purpose for transfer of shares, consideration received and relationship with respective transferees with the entity. The delivery of summons to the addressees was arranged through Eastern Regional Office of SEBI at Kolkata (**SEBI-ERO**). As per the delivery status provided by SEBI-ERO, the letter addressed to the Noticee was delivered at both the addresses, i.e. at office and residential address. In the said summons, the Noticee was advised to submit information on or before March 15, 2019. However, the Noticee failed to provide any information to SEBI. In view of the aforesaid, it was alleged that the Noticee has failed to comply with the summons dated February 26, 2019 and March 12, 2019 and, therefore, adjudication proceedings were initiated against the Noticee under Section 15A(a) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **‘SEBI Act’**) for the violation of the provisions of

Sections 11(2)(ia) and 11C(3) read with Section 11C(2) of the SEBI Act by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer, vide Order dated September 19, 2019 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15A(a) of the SEBI Act for the alleged failure on the part of the Noticee to furnish the documents/information/details as required to be produced by him in terms of the summons dated February 26, 2019 and March 12, 2019, which were issued to the Noticee by the IA during the course of investigation and thereby, violating the provisions of Sections 11(2)(ia) and 11C(3) read with Section 11C(2) of the SEBI Act.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. A Show Cause Notice ref. SEBI/HO/A&E/EAD/KS/AA/26354/4/2019 dated October 04, 2019 (hereafter referred to as '**SCN**') was issued to the Noticee in terms of the provisions of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under the provisions of Section 15A(a) of the SEBI Act.

5. It was alleged in the SCN that the Noticee had failed to submit details sought by SEBI vide summons dated February 26, 2019 and March 12, 2019. Noticee by his failure to comply with the summons, has allegedly violated the provisions of Sections 11(2)(ia) and 11C(3) read with Section 11C(2) of SEBI Act.

6. The SCN was sent to the Noticee through the speed post acknowledgment due (SPAD) and hand delivery through SEBI-ERO. SEBI-ERO vide email dated November 22, 2019 confirmed the delivery of the SCN and provided the copy of acknowledgment of receipt of SCN by the Noticee. The said copy bearing the endorsement "Received Surajit Dey 22/11/2019" is available on record. In the interest of natural justice an opportunity of hearing was granted to the Noticee vide hearing notice dated February 12, 2020. Hearing notice sent through SPAD returned undelivered. Thereafter, hearing notice sent for affixture through SEBI-ERO returned back with the comment "Family member of this entity refused to take this Notice. They also refused affixture". Subsequently, by way of release of public notice vide newspaper publication dated August 28, 2020 the hearing notice was served on the Noticee by way of publication in terms of Rule 7(d) of the Adjudication Rules and the paper clippings are on record. The Noticee was advised to file his reply to the SCN within 14 days from the date of publication and was also provided with an opportunity of hearing on October 05, 2020. Newspaper publication were released on September 16, 2020 in the newspapers detailed hereunder-

S.No	Name of the newspaper	Language	Edition
1.	The Statesman	English	Kolkata Edition
2.	Sanmarg	Hindi	Kolkata Edition
3.	Bartman	Bangali	Kolkata Edition

7. However, the Noticee has neither filed his reply to the SCN nor availed of the hearing fixed on the stipulated date. In view of the above reasons, I am compelled to proceed further in the matter on the basis of facts/material available on record.

8. In this context, I would like to place reliance on the Order dated February 11, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Sanjay Kumar Tayal and Ors. vs SEBI (Appeal No 68 of 2013), wherein SAT had observed that “..... *As rightly contended by Mr. Rustomjee, the learned senior counsel for respondents, appellants have neither filed any reply to the show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted the charges leveled against them in the show cause notices*”

9. After taking into account, the allegations levelled in the SCN, and other evidences / material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS:

10. Before moving forward, the relevant provisions of the SEBI Act allegedly violated by the Noticee and as mentioned in the SCN are reproduced as under:-

SEBI Act

Functions of Board.

11(1)....

....

(2)(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

Investigation.

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 him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

11.I note that SEBI had conducted investigation in respect of dealing of certain entities in the scrip of Kailash Auto and allegation in respect of violation of PFUTP Regulations have also been made against certain entities. The limited issue for consideration before me in respect of the Noticee is non-compliance of summons.

12.The allegation against the Noticee is that, he has failed to comply with the summons dated February 26, 2019 and March 12, 2019, which were issued to him by the Investigating Authority (“IA”) during the course of investigations and in view of the same, the Noticee is liable to the penalty

prescribed under Section 15A(a) of the SEBI Act. I now proceed to discuss the issue of alleged non-compliance of the two summons by the Noticee, which has resulted in the violation of the provisions of Sections 11(2)(ia) and 11C(3) read with Section 11C(2) of the SEBI Act by the Noticee.

13. It is on record that the Noticee, despite being summoned vide summons dated February 26, 2019 and March 12, 2019, failed to submit the details/information/documents sought by the IA.

14. The details of the two summons dated February 26, 2019 and March 12, 2019 issued to the Noticee by the IA and the status of the same are mentioned in the table below:

S. No.	Date of Summons	Mode of Delivery	Status of Acknowledgement	Status of Reply
1.	February 26, 2019	-	-	No reply from the Noticee.
2.	March 12, 2019	Hand Delivery	Acknowledgement received	No reply from Noticee.

15. I find that the summons issued to the Noticee clearly stated that if the Noticee fails to comply with the summons, adjudication proceedings may be initiated against the Noticee under which a penalty of one lakh rupees for each day during which such failure continues, or one crore rupees, whichever is less, as provided under Section 15A of SEBI Act.

16. I further note that there is nothing on record to show that the summons dated February 26, 2019 was served upon the Noticee. Thus, charges with regard to non-compliance with summons dated February 26, 2019 are not established. However, with regard to summons dated March 12, 2019 carrying the addresses of the Noticee's residence and office, I find the

same was duly served on the Noticee on March 12, 2019 which receipt was acknowledged by Mr. Prosenjit Dey, his elder brother. Thus, I find that the Noticee has failed to comply with the summons dated March 12, 2019 despite receipt of the same.

17. In this regard, it is pertinent to note that Section 11(2)(ia) empowers the Board to call for information and records relevant to any investigation or inquiry by the Board in respect of any transaction in securities from any person. Further, under Section 11C(2) it is the duty of the officers of a company and intermediaries to preserve and to produce to the Investigating Authority (IA) 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 and Section 11C(3) empowers the Investigating Authority of SEBI to require any intermediary or any person associated with the 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 him in this behalf as it may consider necessary if the furnishing of such records/information/documents are necessary. In this regard, I note that it is obligatory on the Noticee to provide any information sought by the IA, if he deems such information relevant or necessary for purpose of investigation.

18. In this context, I note that Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**'), in matter of Asian Films Production and Distribution

Ltd. vs SEBI (Appeal No. 203 of 2010 decided on 19th January, 2011), has held that:

“Non-compliance with summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market. We do not know what would have come to light if the company had furnished the information sought from it.”

19. I also note that Hon'ble SAT, in its order dated October 22, 2013 in the matter of Rich Capital & Financial Services Limited & Ans vs SEBI, observed that:

“10. We may pertinently note that the SEBI is basically constituted to promote orderly and healthy growth of securities market apart from protecting investors' interest. For discharging this onerous job, and with a view to achieve the underlined object, SEBI as a regulator is required to conduct investigation and enquiries in the affairs of various parties from time to time. For this purpose, first and the foremost thing is co-operation from the concerned officers of the companies not only to produce the relevant records as and when required by an investigating officer or enquiring authority or by any person authorised by the SEBI in this behalf but to appear in person as and when called upon. Section 11C (2) mandates every manager, managing director, officer or other employees of the company to preserve and produce such documents which are in their custody or power. Similar is the tone and texture of Section 11C (3).

11. In case of failure on the part of the concerned person to furnish such records/information, heavy monetary penalty is prescribed in Section 15A(a) of the SEBI Act, 1992. In fact such an act on the part of a company or its concerned officers is not only contemptuous but also a hindrance in the way of conducting smooth investigation and enquiry by the regulator to arrive at a just and fair conclusion as per

the provisions of SEBI Act, 1992. Such an increasing tendency on the part of the companies needs to be curbed at the threshold.”

20. From the foregoing paragraphs, it is conclusively established that the Noticee has failed to comply with the summons dated March 12, 2019 issued to him by the IA and therefore, I hold that the Noticee has violated the provisions of Sections 11(2)(ia) and 11C(3) read with Section 11C(2) of the SEBI Act.

21. In this regard, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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.....”*

22. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of Section 15A(a) of the SEBI Act, which reads as under :

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under-
(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.*

23. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty,

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.


24. With regard to the above factors, I note that the material made available on record has not quantified the profit/loss for the violations committed by the Noticee. Further, there is nothing on record which shows repetitive nature of the default by the Noticee. In view of the fact that Noticee has failed to comply with the summons issued to him by the IA, the Noticee has failed to comply with the mandatory statutory obligation.

ORDER

25. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on the Noticee viz. Shri Surajit Dey under the provisions of Section 15A(a) of the SEBI Act for his failure to submit the desired details/information/ records/documents sought by the IA vide summons dated March 12, 2019 which resulted in violation of the provisions of Sections 11(2)(ia) and 11C(3) read with Section 11C(2) of the SEBI Act. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

27. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid to the Enforcement Department of SEBI. The Noticee shall provide the following details while forwarding DD/payment information:

- 
- a) Name and PAN of the entity (Noticee)
 - b) Name of the case / matter
 - c) Purpose of Payment –Payment of penalty under AO proceedings
 - d) Bank Name and Account Number
 - e) Transaction Number

28. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Shri Surajit Dey and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: October 29, 2020

K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER