BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/SR/SM/AO/88/2018-19/1891]

UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

Sukhram Prajapat
(Address: - 36, Hiwari Nagar,
Beside Patil Flour Mill, Nagpur- 441203)
PAN no. – AMGPP6961K

In the matter of Sanjay Dangi, his associates and other entities in Murli Industries Ltd. and other scrips

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BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) received a reference dated November 27, 2009 from the Income Tax Department, Nagpur (hereinafter referred to as the IT Department), containing certain findings in the matter of Murli Industries Limited (hereinafter referred to as the **MIL**). It was stated in the said reference that ten entities were holding substantial number of shares of MIL and the affairs of the aforesaid ten companies were being looked after by one Amit Raja, Chartered Accountant (CA), who happened to be their auditor. The IT Department had found certain documents in the office of the company suggesting manipulation in the share price of the company. A department of SEBI (OD) initiated a preliminary inquiry in light of the aforesaid reference and documents received from the IT Department regarding the manipulation in the shares of the company and the profit sharing arrangement between the company and Mr. Sanjay Dangi, to find whether there was any concentration of shareholding of the MIL among the Dangi Group entities and whether there was any attempt to manipulate the shares of the MIL before the foreign currency convertible bond (FCCB) issue of

MIL. Based on the preliminary findings of the aforesaid investigation, it appeared to OD that the Dangi Group entities have influenced the price rise in the scrip during the pricing period of FCCB and thereafter exited the scrip at profit, as per the alleged agreement made with the promoters of the Company.

2. Based on the findings in MIL that a group was operating to offer its services to a promoter, SEBI examined similar patterns in the trading and price-volume of scrips of other companies that had issued FCCBs or in which Dangi group had been found to have traded regularly or both. The said examination revealed that the Dangi group was actively trading in the shares of many companies, where there was capital raising exercise through FCCB issue, ADR/GDR issue, QIB/QIP placement, preferential allotment or loans or pledge/revocation of pledge of promoter shares. Among the several scrips in which Dangi group was trading, their role was taken up for examination in their dealings in the shares of Ackruti City Limited (presently known as Hubtown Ltd.) (**Hubtown**), Welspun-Gujrat Stahl Rohren Limited (**Welspun**), Brushman (India) Limited (**Brushman**) and RPG Transmission Ltd (**RPG**).

3. In view of the above findings in various scrips and noticing that such operations were possibly continuing in the market to the detriment of the investing public, SEBI vide ad-interim exparte order dated December 02, 2010 **(interim order**) issued directions against Mr. Sanjay Dangi, his associates and promoter entities of four companies i.e. MIL, Hubtown, Welspun and Brushman restraining them from accessing the securities market and further prohibited from buying, selling or dealing in securities in any manner whatsoever, till further directions. Further, the aforesaid four companies and their respective promoters are directed to ensure that, the shareholding of the promoters/promoter group in the said companies is not altered in any manner till further directions. Also, in the said interim order, some stock brokers were directed not to buy, sell or deal in the securities in their own/proprietary account in any manner and not to take/deal with fresh/new clients with immediate effect until further

orders. The said interim order was confirmed vide order dated March 23, 2011 (**confirmatory order).**

4. While conducting investigation into the affairs relating to the buying, selling or dealing by Mr. Sanjay Dangi, his associates and other entities in various scrips , the Investigating Authority (IA) observed Sukhram Prajapat (hereinafter referred to as **Noticee**) received shares of MIL in off market transaction during the year 2005 and 2006 and for the said off-market transaction, it was observed by IA that payment for this off-market transactions was not made within the time as stipulated under the provisions of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **SCRA, 1956**) and thus alleged to have violated section 2(i) of SCRA, 1956 read with (r/w) sections 13 and 18 of SCRA, 1956. OD initiated the adjudication proceedings against the Noticee for the alleged violations that the Noticee had entered into spot delivery contracts with payment of consideration not made within the time frame as specified in the said provision of SCRA, 1956.

APPOINTMENT OF ADJUDICATING OFFICER

5. Shri Piyoosh Gupta was appointed as the Adjudicating Officer under section 23-I of the SCRA, 1956 r/w rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **Adjudication Rules, 2005**) to inquire into and adjudge under section 23H of the SCRA, 1956 for the alleged violation of the provisions of section 2(i) of SCRA, 1956 r/w sections 13 and 18(1) of SCRA, 1956 by the Noticee. Before me certain other Adjudicating Officers were also appointed in succession and finally the matter was transferred to me and I was appointed as Adjudicating Officer vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice no. EAD-5/PG/ADJ/BRK/29328/2012 dated December 28, 2012 (hereinafter referred to as SCN) was issued to the Noticee in terms of rule 4 of the Adjudication Rules, 2005 requiring the Noticee to show cause as to why an

inquiry should not be held against it for the alleged violations of provisions of sections 2(i) r/w sections 13 and 18(1) of SCRA, 1956 through registered post acknowledgement due (RPAD) and the same was delivered to the Noticee as seen from the reply of the Noticee to the earlier AO. Further, vide hearing notice dated March 06, 2013, an opportunity of hearing was given to the Noticee by the earlier AO to appear on March 14, 2013 through SPAD and the same was delivered to the Noticee as seen from the material available on record. PDS & Associates, the authorized representative (AR) on behalf of the Noticee attended the hearing as scheduled on March 14, 2013 and also submitted the reply of the Noticee. Hearing minutes are on record.

7. The allegations levelled against the Noticee in the SCN are as under:

a) It was alleged in the SCN that the Noticee received shares of MIL in off-market transactions during the investigation period. The details of transaction made by the Noticees along with other people were provided to the Noticee in the following tabular format:

Date	From	To	Total
2-May-05	Premlata Jhanwar	Sukhram Prajapat	850
3-May-05	Premlata Jhanwar	Sukhram Prajapat	850
3-May-05	Premlata Jhanwar	Sukhram Prajapat	1650
9-May-05	Sajjan Jain	Sukhram Prajapat	34269

b) IA observed that on May 09, 2005, Sajjan Jain, a partner of Jain Coal Services, transferred 1,38,269 shares of MIL in off market mode to Noticee and other three entities. Payments for the same was made as late as 2007 only after many reminders. Details of payments provide to the Noticee in the following tabular format:

Date	From	To	Amount (Rs.)
01/10/2007	Sukhram Prajapat (Noticee)	Sajjan Jain	17,74,717

c) In view of the above, it was alleged in the SCN that by not making payment within one day of receiving delivery of shares of MIL, the Noticee violated the provisions of sections 2(i) of SCRA, 1956 r/w sections 13 and 18(1) of SCRA, 1956.

8. PDS & Associates, the AR on behalf of the Noticee submitted reply to the SCN vide letter dated March 14, 2013. The reply of the Noticee is summarised below:

a) The Show cause notice had identified contravention under section 13 and 18 of the Securities Contracts (Regulation) Act, 1956 (SCRA) against the Noticee. It appears that the no notification under section 13 of SCRA has been issued for the municipality of Nagpur.
b) In light of the above, we humbly wish to submit that the transactions identified in the show cause notice are not spot delivery contracts under section 2(i) of SCRA as payments for the said transactions were not made within a day.
c) It is therefore humbly submitted that the Noticee is not covered under the exception carved out under section 18 of SCRA. Consequently, in the absence of notification under section 13 of SCRA, penalties under section 23 do not apply to the Noticee.
d) Furthermore, it is a fundamental principle of the principles of natural justice that the party against whom a show cause notice has been issued should be given all the necessary details and information on the basis of which the party has been alleged to have contravened the provisions of a particular enactment. In the present case, the show cause notice has not identified any notification that has been issued under section 13 to make applicable against our client. Therefore it is submitted that unless all the material that are applicable against the Noticee are brought to the attention of the Noticee, the SCN would itself violate an essential facet of the principles of natural justice- right to a fair hearing.
e) In the interest of natural justice and in order to enable Noticee to address an adequate reply to the contentions contained in the above mentioned Show cause notice, we request you to kindly supply us with a copy of the Notification under which Section 13 of SCRA has been invoked against the Noticee.
f) In the event you are not able to supply us with the Notification under section 13 of SCRA or if it found to have not been issued. It is humbly submitted that proceedings under the Show cause notice be kindly dropped.

9. After my appointment, I granted an opportunity of personal hearing to the Noticee by issuing hearing notice dated December 13, 2017 requesting the Noticee to appear before me on January 23, 2018. The said hearing notice was sent through speed post acknowledgement due (SPAD) and the same was delivered to the Noticee as

seen from record. The delivery proof is on record. However, the Noticee did nt come for hearing on the scheduled date. Therefore, a final opportunity of hearing granted to the notice on August 31, 2018 vide hearing notice dated August 16, 2018. The said hearing notice was sent through SPAD and the same was undelivered as seen from available record. Thereafter, the said hearing notice was uploaded on SEBI website under the head "Home>>Enforcement>>Unserved Summons/Notices. A Public Notice was also given in Times of India, Lokmat Samachar and Lokmat, Nagpur Edition, which was published on September 12, 2018 advising the Noticee to appear for personal hearing on September 24, 2018. However, the Noticee did not appear for the personal hearing as scheduled on September 24, 2018.

10. Further, upon amendment of alleged violation sections provision from section 2(i) of SCRA, 1956 r/w sections 13 and 18(1) of SCRA, 1956 to section 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of SCRA, 1956, supplementary SCN (hereinafter referred to as SSCN) was issued to the Noticee on October 09, 2018 through SPAD. The said SSCN was sent to Noticee by SPAD and the same was undelivered as seen from the record. In the said SSCN, it was stated that, in the SCN dated December 28, 2012, "*the Noticee was alleged to have violated the provisions of section 2(i) of of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as SCRA, 1956) read with (r/w) sections 13 and 18(1) of SCRA, 1956. However the competent authority has approved the amendment of alleged violation provisions from section 2(i) of SCRA, 1956 r/w sections 13 and 18(1) of SCRA, 1956 to section 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of SCRA, 1956 by the Noticee..... Noticee is hereby advised to read the alleged violation sections as section 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of SCRA, 1956 instead of section 2(i) of SCRA, 1956 r/w sections 13 and 18(1) of SCRA, 1956, which is mentioned in the aforementioned SCN dated December 28, 2012.*"

11. Thereafter, the said SSCN was uploaded on SEBI website under the head "Home>>Enforcement>>Unserved Summons/Notices. A Public Notice was also given in Times of India, Dainik Bhaskar and Lokmat, Nagpur Edition, which was

published on December 11, 2018 advising the Noticee to appear for personal hearing on January 08, 2019. However, neither did not the Noticee appear for the personal hearing as scheduled on January 08, 2019 nor filed any reply to the SSCN till date. I believe that sufficient opportunities were granted to the Noticee to submit reply to the SSCN and also to appear for personal hearing in the instant adjudication proceedings.

12. I have carefully perused the charges made against the Noticee as mentioned in the SCN and SSCN, reply of the Noticee to SCN and other materials available on record. After taking into account, the allegations levelled in the SCN and SSCN, reply received from the Noticee and other materials available on record, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES

13. I have carefully perused the charges made against the Noticee as mentioned in the SCN and the documents available on record. The issues that arise for consideration in the present case are:

   a) **Whether the Noticee has violated the provisions of section 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of the SCRA, 1956?**
   b) **Do the violations, if any, on the part of the Noticee attract monetary penalty under section 23H of the SCRA, 1956 for the alleged violation by the Noticee? and,**
   c) **If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 23J of the SCRA, 1956?**

14. Before proceeding further, it will be appropriate to refer to the relevant provisions of the SCRA, 1956 which read as under:-

Section 2(i) of the SCRA, 1956

"Spot delivery contract" means a contract which provides for, -

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefor

through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

Contracts and Options in Securities
Section 16 of the SCRA, 1956
Power to prohibit contracts in certain cases.

16. *(1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.*

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

Section 18 of the SCRA, 1956

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

18. *(1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.*

FINDINGS

15. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

16. **Issue (a): Whether the Noticee has violated the provisions of section 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of the SCRA, 1956?**

i. It is alleged in the SCN and SSCN that during the investigation, the Noticee had received shares of MIL in off-market transaction and he did not make payment to the consideration towards the off-market transaction within the period specified for spot delivery contracts as specified under the provisions of sections 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of SCRA, 1956.

ii. As seen from record, opportunities were given to the Noticee to submit reply and also to appear for personal hearing in the instant adjudication proceedings. However, the Noticee neither attended personal hearing granted to him nor replied to the SSCN. It is pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed "... *the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".* In view of the above, I note that by not submitting any reply to SSCN, the Noticee has admitted the charges levelled against him in the SCN and SSCN. However, I still decide the case on merit, based on material available on record.

iii. It is observed from the Investigation Report (IR) that the Noticee received shares of MIL in off market transactions during the year 2005. As seen from the IR, the off-market transactions made with one Sajjan Jain was not in accordance with the timeline as prescribed under the provision of sections 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of SCRA, 1956. It is observed from the IR that the Noticee received 34,269 shares of MIL in off-market on May 09, 2005. However, Noticee did not make payments to Sajjan Jain within the time as prescribed under section 2(i) of SCRA, 1956. As per section 2(i) of SCRA, 1956, a spot delivery contract in securities market is said to be completed only if delivery/transfer of securities and payment therefor has been made within the prescribed time i.e. on the same day or the next day. It is noted from IR that the Noticee received the shares of MIL on May 09, 2005 and payment made in this regard in the year 2007 which is not within the prescribed time as per section 2(i) of SCRA, 1956.

iv. In view of the above, in absence of any material in IR and in the absence of any reply of the entity, I have no material based on which I can differ from the observation made in the IR that the off-market transactions by the Noticee is in

contravention of the said provision of SCRA Regulations, 1956. Hence by not making payment either on the same day or next day of the said contract as per the requirements prescribed under section 2(i) of SCRA, 1956, the Noticee has violated the provision of section 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of SCRA, 1956 and hence, the allegation against the Noticee stands established.

17. **Issue 2: Do the violations, if any, on the part of the Noticee attracts monetary penalty under section 23H of the SCRA, 1956 for the alleged violation by the said Noticee? and,**

After taking into account the aforesaid entire facts / circumstance of the case, it is noted that the said violations of provisions of section 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of SCRA, 1956 by the Noticee attract the imposition of monetary penalties upon the Noticee under section 23H of the SCRA, 1956, which is reproduced below:

SCRA, 1956

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

18. **Issue 3 - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 23J of the SCRA, 1956?**

While determining the quantum of penalty under sections 23 H of the SCRA, 1956, it is important to consider the factors stipulated in section 23J of the SCRA, 1956 which reads as under:-

SCRA, 1956

23J "Factors to be taken into account by the adjudicating officer-

While adjudging quantum of penalty under section 23 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. I observe that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any made by the Noticee and the loss, if any suffered by the investors due to the aforesaid violations. Also, material available in record does not show that the violation was repetitive in nature. I find that the Noticee received shares of MIL on off-market transaction and did not make payment either on the same day or next day of the said contract as per the requirements prescribed under section 2(i) of SCRA, 1956. Hence, the Noticee attract monetary penalty for violations of provision of section 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of SCRA, 1956. I am of the view that the Noticee is liable for a monetary penalty of Rs. 34,000/- (Rupees Thirty-four Thousand only) for violating the said provisions SCRA, 1956.

ORDER

20. In exercise of the powers conferred under section 23-I of the SCRA, 1956 and rule 5 of the Adjudication Rules, 2005, I hereby impose a penalty of Rs. 34,000/- (Rupees Thirty-four Thousand only) on the Noticee viz. Sukhram Prajapat under section 23H of SCRA, 1956 for the violation of the provision of provisions of section 2(i) of SCRA, 1956 r/w sections 16 and 18(1) of SCRA, 1956. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee in terms of penalty structure provided in section 23H of SCRA, 1956.

21. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI – Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below;

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

22. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary / Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

23. In terms of the rule 6 of the Adjudication Rules, 2005, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: January 16, 2019
Place: Mumbai

SANGEETA RATHOD
ADJUDICATING OFFICER