BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/SM/AR/2018-19/804)

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:

Udaybhai Prabhudas Shah
(PAN No. ALYPS8682D)
1601, 16th Floor, Moksh Mahal,
P K Road, Sarvodaya Nagar,
Mulund West, Mumbai-400080

In the matter of

Ravi Kumar Distilleries Ltd.

FACTS OF THE CASE

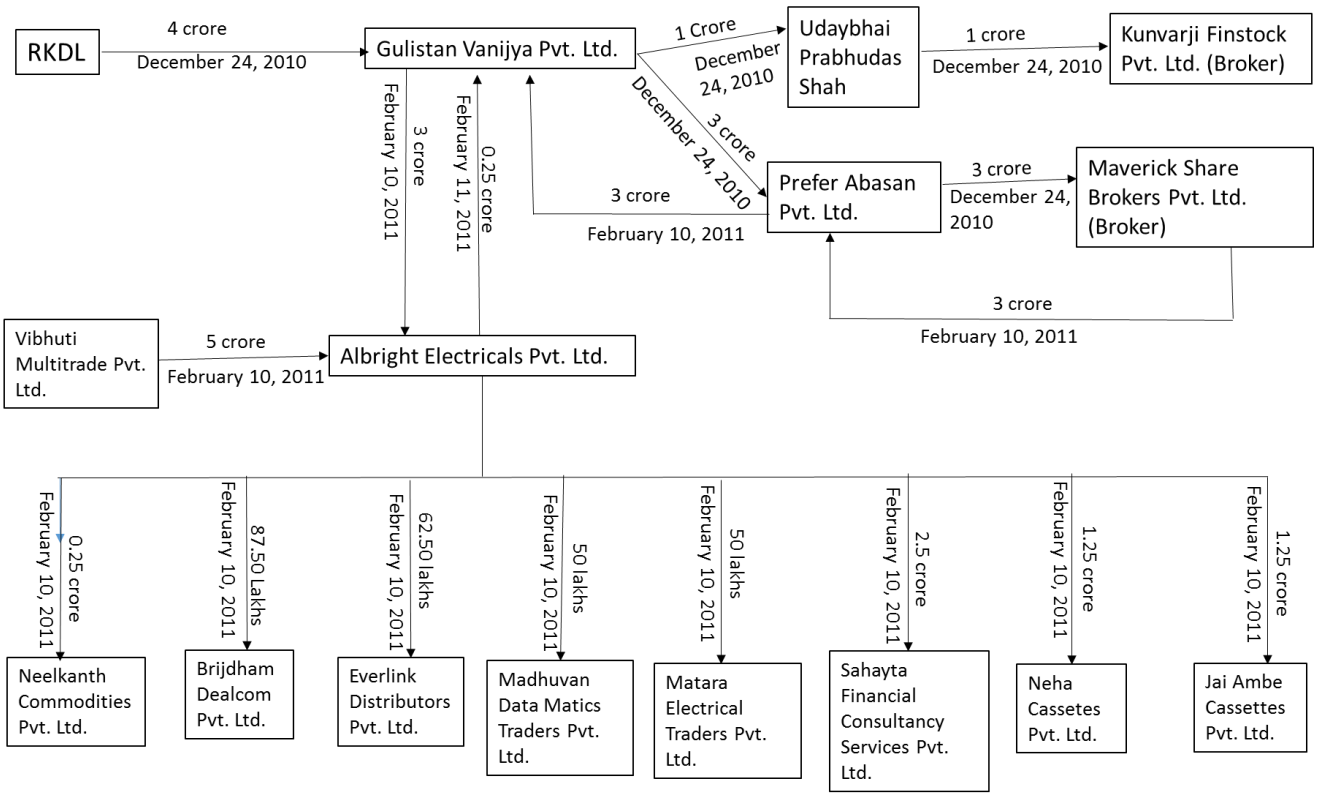
1. Pursuant to a news article that appeared on the website of moneycontrol.com on December 21, 2011 regarding a disclosure made by Comfort Intech Limited (**CIL**) that shares of Ravi Kumar Distilleries Ltd. (hereinafter referred to as "**RKDL**"/"**Company"**) held by the promoters of RKDL aggregating to 51.77% of the total shareholding of the company have been pledged with CIL, Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated investigation into the irregularities in the Initial Public Offering (hereinafter referred to as "**IPO**") of RKDL and prima facie observed that an amount of Rs. 33.83 crores out of the IPO proceeds of RKDL was siphoned off by RKDL in connivance with the associate/connected entities of the Merchant Banker associated with

the IPO of RKDL viz. Comfort Securities Limited (hereinafter referred to as "**CSL**"). It was also observed during the investigation that CIL, which has been referred in the aforementioned news article was a group/associate company of CSL.

2. RKDL came out with its IPO for issue of 1,15,00,000 equity shares of Rs. 10 each during the month of December 2010. The price band of the issue was Rs 56 to Rs 64 per equity share and the bid period of the IPO was from December 08, 2010 to December 10, 2010. The IPO was subscribed by 2.16 times and the issue price of the IPO was fixed at Rs. 64 per equity share, aggregating to Rs. 73.60 crore. The scrip of RKDL was listed at Bombay Stock Exchange (**BSE**) and National Stock Exchange (**NSE**) on December 27, 2010.

3. Pursuant to the conclusion of investigation, it was observed by SEBI in the investigation report (**IR**) that Udaybhai Prabhudas Shah (hereinafter referred to as "**Noticee**") had facilitated RKDL and CSL and its associate/connected entities in siphoning of the IPO proceeds of RKDL. It was observed during the investigations that after the IPO proceeds to the tune of Rs 72.35 crores was credited into the escrow account of RKDL on December 23 & 24, 2010, an amount of Rs 4 crores out of the IPO proceeds was transferred to the account of M/s Gulistan Vanijya Private Limited (a connected entity of CSL and CIL) on the same day i.e. December 24, 2010. On the very same day, it was observed that Gulistan Vanijya Private Limited (**Gulistan**) had transferred Rs 1 crore to the account of the Noticee (maintained with Federal Bank A/c No 15410200002214) who in turn transferred the said amount of Rs 1 Crore to the account of his stock broker viz. M/s Kunvarji Finstock Pvt Ltd on the same day i.e. December 24, 2010. During the course of investigations, it was observed that Noticee had purchased 6,42,500 shares of RKDL and sold 2,42,500 shares of RKDL through his stock broker viz. Kunvarji Finstock Pvt. Ltd. on the first day of the listing of the scrip of RKDL on the stock exchanges i.e. on December 27, 2010.

4. A pictorial representation of the above mentioned flow of funds from the account of RKDL to the Noticee through Gulistan, which was mentioned in the IR that was enclosed along with the SCN issued to the Noticee is given below:



5. Specifically, the IR had made the following observations against the Noticee

"*On receipt of Rs 1 Crore from Gulistan on December 24, 2010, Udaybhai Prabhudas Shah (Federal Bank A/c No 15410200002214) (Annexure 16) transferred Rs 1 crore to his broker, Kunvarji Finstock Pvt Ltd on the same day. Udaybhai Prabhudas Shah had bought 6,42,500 shares (buy value= approx.. Rs 5.47 cr) and sold 2,42,500 shares (sell value = approx..Rs 1.95 cr) of RKDL on the day of listing i.e. December 27, 2010.*"

"*Vide summons dated Jan 29, 2014 and June 04, 2014, Udaybhai Prabhudas Shah was advised to inter alia furnish the reasons for its above fund transaction with Gulistan. However, no reply has been received from*

him, thereby hampering the investigation (corresponding documents given at Annexure 21)"

6. In view of the above observations and in order to ascertain the veracity behind the above transactions and to draw precise conclusions in the matter regarding the role of the Noticee, the Investigating Authority (**IA**) of SEBI had issued two summons to the Noticee on different dates. Summons dated January 29, 2014 and June 4, 2014 were issued to the Noticee at his Bhavnagar address located at Siddhchakra Flat B/1/201, Krishnanagar Blood bank Road, Bhavnagar, Gujarat- 364001. The summonses were sent to the Noticee's address by Speed Post with Ack due (SPAD) and were also served on the Noticee, which is evident from the proof of service of the said two summons on the Noticee's address. The summons issued to the Noticee also contained an Annexure seeking information / details / documents / records from the Noticee w.r.t. his transactions with Gulistan and Kunvarji Finstock Pvt Ltd, as mentioned above.

7. It is observed that the Noticee has received the summons dated January 29, 2014 and June 4, 2014, but failed to furnish the information/records/documents in spite of several reasonable opportunities provided to the Noticee. In view of the aforesaid, it was alleged that the Noticee has failed to submit / provide the details//information/documents enumerated in the annexure to the summons. In view of the above, it was alleged that the Noticee has failed to comply to the summons dated January 29, 2014 and June 4, 2014 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 11C (2) and 11 C (3) of the SEBI Act by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

8. The undersigned was appointed as Adjudicating Officer, vide Order dated June 09, 2016 under Section 19 read with Section 15-I of the SEBI Act,

1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter 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 documents/information/details as required to be produced by him under the summons issued to him and thereby violating the provisions of sections 11C(2) and 11C(3) of the SEBI Act.

SHOW CAUSE NOTICE, HEARING AND REPLY

9. Show Cause Notice No. A&E/EAD-3/SBM-ASR/27501/32/2016 dated September 30, 2016 (herein after 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 him and why penalty, if any, should not be imposed on him under the provisions of Section 15A(a) of the SEBI Act.

10. The SCN issued to the Noticee, *inter alia*, mentioned the following:

    a) *It is also alleged in the Investigation report that several entities connected to Comfort Securities Ltd. namely Gulistan, Udaybhai Prabhudas Shah, Albright, Ranisati, Suvidha, Fact, BLC, Vibhuti, Grafton, Heranba, Kiran Vinodchand Shah (director of Heranba), Padma Impex, Gaungour, S5 Trading, Everready & Laxminarayana have not furnished information/ documents, and/or have furnished false/ contradictory information, and have therefore not complied with the summons issued by SEBI for furnishing of information/documents pertaining to the investigation, thereby hampering the investigation.*

    b) *It was alleged that the entities have violated the provisions of sections 11C(2) and 11C (3) of the SEBI Act and liable for penalty under section 15A(a) of the SEBI Act.*

11. Vide letter dated September 08, 2017, the Noticee submitted his response to the SCN. In his reply, the Noticee submitted that:

a) *I was absolutely unaware of the receipt of certain summons at my Bhavnagar address since I have shifted to Mumbai in and around 2010/ 2011. One of my brothers is staying at Bhavnagar and is not much educated, hence he is not at all aware about any legal issues and did not inform me about the summons/ other communications received. It was only when I visited him after a long time, he handed me all those summons along with the notice.*

b) *I do not have any connection with CSL whether direct or indirect in any manner whatsoever, except that I have received funds from CIL in the ordinary course of business.*

12. Thereafter, in the interest of natural justice, Noticee was provided with opportunity of personal hearing on June 02, 2017, July 20, 2017 and August 24, 2017 vide letters dated April 25, 2017, July 04, 2017 and July 28, 2017 respectively. I find that the above letters were served on the Noticee but the Noticee failed to appear for the hearing on the stipulated dates. Thereafter, vide his letter dated September 08, 2017, the Noticee requested for exemption from the personal hearing. In view of the above, I am proceeding further in the matter on the basis of material/facts on record, which also includes Noticee's reply to the SCN.

CONSIDERATION OF ISSUES AND FINDINGS:

13. I have taken into consideration the facts and circumstances of the case, the material available on record and the submissions made by the Noticee in the said matter. The allegation against the Noticee is that, he failed to comply with the summons dated January 29, 2014 and June 04, 2014 which were issued by the 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 non-compliance of the two summons by the Noticee, which has resulted in the violation of the provisions of Sections 11C(2) and 11C(3) of the SEBI Act by the Noticee.

14. 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

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.

15. In this regard, it is pertinent to note that section 11 C (2) clearly obligates any person associated with the securities market to produce/submit the records/information sought by the investigating authority. Further, section 11 C (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.

16. The details of the two summons dated January 29, 2014 and June 4, 2014 issued to the Noticee by the IA are mentioned in the table below :

S. No.	Date of Summons	Mode of Delivery	Status of Acknowledgement	Status of Reply
1.	January 29, 2014	SPAD	Acknowledgement received	No reply from Noticee
2.	June 04, 2014	SPAD	Acknowledgement received	No reply from Noticee

17. I find that the summons issued to the Noticee clearly stated that if the Noticee fails to comply with the summons, criminal prosecution may be launched against the Noticee under section 11C(6) of the SEBI Act which provides for a punishment with imprisonment for a term which may extend to one year or with fine which may extend to one crore rupees, or with both and also with a further fine which may extend to 5 lakh rupees for each day after the first, during which the failure or refusal continues. It was also stated that if the Noticee omits to attend and/or fails to give evidence or to produce the books of accounts and/or documents as required, SEBI will initiate adjudication proceedings against the Noticee under section 15 A of the SEBI Act.

18. I note that the IA through Summons dated January 29, 2014 and June 4, 2014 also enclosed Annexure requiring the Noticee to submit the following details/records/documents:

a) Copy of income tax returns of the Noticee for FY 2008-09, 2009-10, and 2010-11
b) Reasons along with back-papers/supporting documents for the abovementioned transactions
c) Noticee's relationship with the entities listed in Annexure A along with any monetory transaction done by him with them during the period October 01, 2010 to March 31, 2011
d) Details of trading done by the Noticee on account of Rs. 1 crore that he had transferred to Kunvarji Finstock Pvt. Ltd.
e) Any additional documents/records

19. The allegation/observation made in the IR that RKDL along with CSL, CIL and the connected/associate entities (which also includes the Noticee) have siphoned of the IPO proceeds of RKDL to the tune of Rs 33.83 crores is serious in nature and the above details/information sought by the IA from the Noticee through the summons dated January 29, 2014 and June 4, 2014 was very relevant, which would have enabled the IA to draw precise conclusions w.r.t. the role of the Noticee in the said matter. It is also on record that although the Noticee received the said two summons, he failed to submit the details/information/documents sought by the IA in the matter. The same is also not disputed by the Noticee, which is evident from his reply to the SCN. The Noticee has contended that he was not residing at the particular address wherein the two summons were issued. The Noticee further contended that his brother who was residing at the address at the relevant time when the summonses were delivered was not educated and was not aware of the legal issues and had not informed the Noticee about the summonses that were served on his Bhavnagar address. I am not in agreement with the contentions of the Noticee as these are not valid reasons for not complying with the requirements of the summons. I am of the view that Noticee should have made proper arrangements to receive the said two summons at his present address. I also note that during the course of the present proceedings, the Noticee had failed to respond to the SCN and therefore, reminders had to be sent to the Noticee to furnish his reply. It was only after the reminders that Noticee furnished his reply to the SCN vide his letter dated September 8, 2017. This clearly tantamounts to a definitive stance on the part of the Noticee which signifies deliberate non-cooperative intent. I am of the view that such casual attitude displayed by the Noticee should be sternly addressed.

20. Further, I also note that the information which was sought from the Noticee through the two summons dated January 29, 2014 and June 4, 2014 was very crucial and vital in respect of the investigation process as regards the irregularities observed in the IPO of RKDL. For example, information

regarding receipt of Rs 1 crore by the Noticee into his account from Gulistan and subsequent transfer of the same amount to the account of his stock broker i.e. Kunvarji Finstock on the same day to trade in significant quantities of shares of RKDL on the day of listing, copy of the IT Returns sought by the IA from the Noticee for the relevant period etc. are important information/details to establish the link of the Noticee in the matter of irregularities in the IPO of RKDL. I do not find any reason for the Noticee to hide this information unless some deceitful practices are being carried out by him in connivance with other entities associated with the irregularities noted in the IPO of RKDL viz. promoters of RKDL, CSL, CIL and their associate/connected entities. The said information sought from the Noticee vide summons dated January 29, 2014 and June 4, 2014 was very relevant and important in unearthing the truth to protect the interest of the investors and punish the manipulators associated with the IPO of RKDL. The failure of the Noticee to comply with the two summons issued by the IA has clearly hampered the investigation process.

21. In this context, I note that Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**'), in case 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.*"

22. 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 past of the companies needs to be curbed at the threshold."

23. From the foregoing paragraphs, it is conclusively established that the Noticee did not comply with the summons dated January 29, 2014 and June 4, 2014 issued by the IA and therefore, I hold that the Noticee has violated the provisions of sections 11 C (2) and 11 C (3) of the SEBI Act.

24. 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

25. 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.

26. 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. In view of the above, I am of the view that by not furnishing the documents/details/informtion to the IA on time, the Noticee has failed to comply with the mandatory statutory obligation. I also observe that Noticee has failed to comply with the summons on two occasions and therefore, the violation is repetitive in nature. In this context, 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……..."

ORDER

27. 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 5,00,000/- (Rupees five lakh only) on the Noticee viz. Shri Udaybhai Prabhudas Shah under the provisions of Section 15A(a) of the SEBI Act for his failure to submit the required information/documents/records sought vide summons dated January 29, 2014 and June 04, 2014, which resulted in violation of the provisions of Sections 11C (2) and 11C(3) of the SEBI Act. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

28. The Noticee shall remit / pay the said amount of penalty within 45 days of the 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 the 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

29. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of

Enforcement Department (EFD) of SEBI. The format for forwarding details / confirmation of the 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 mentioned 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)	

30. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Shri Udaybhai Prabhudas Shah and also to Securities and Exchange Board of India.

Place: Mumbai
Date: June 29, 2018

SURESH B MENON
ADJUDICATING OFFICER