BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[[ADJUDICATION ORDER NO.: ORDER/VV/NK/2020-21/10230]

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 THE MATTER OF SUNGOLD CAPITAL LIMITED.

In respect of:
Mrs. Mamta Agarwal
(PAN: AFNPA3447B)

IN THE MATTER OF MANPASAND BEVERAGES LIMITED

BACKGROUND

1. On May 27, 2018 at 17:27 (Sunday), Manpasand Beverages Limited (hereinafter to be referred as 'MBL/ the company') has informed National Stock Exchange (hereinafter to be referred as 'NSE') regarding change in auditors of the company, wherein it was mentioned that, "subsequent to resignation of M/s Deloitte Haskins & Sells, Chartered Accountants, the Statutory Auditors of the company, with effect from May 26, 2018 the Board of Directors of the company upon recommendation of the audit committee, have appointed M/s Mehra Goel & Co., Chartered Accountants, as Statutory Auditors of the company with effect from May 27, 2018 to fill the casual vacancy in the office of Statuary Auditors, who shall hold office as such till the conclusion of the Annual General Meeting subject to the approval of the company."

2. Based on an alert generated by NSE, an analysis of trading activity was carried out by NSE for the period from April 02, 2018 to June 29, 2018. On the basis of above analysis, Mrs. Mamta Agarwal (Hereinafter referred to as "by her name/ Noticee") (PAN:AFNPA3447B) was one of the entity shortlisted by NSE, whose trading activity pointed to the possibility of trading on the basis of Unpublished Price Sensitive Information(UPSI) as defined under Regulation 2 (1) (n) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations").

3. As per the information provided by the NSE to Securities and Exchange Board of India Act (hereinafter referred to as "SEBI ") , the trades attributed to Noticee on Bombay Stock Exchange Ltd("BSE") & NSE during UPSI period, pre and post UPSI period are as follows:

Date	Buy Qty	Wt. Avg. Buy Price(in `)	Sell Qty	Wt. Avg Sell Price(in `)
Prior to UPSI period(April, 02, 2018 - May, 09, 2018)				
No trades observed related to MBL				
During UPSI Period(May, 10, 2018 - May, 27, 2018)				
14 May 2018	0	0	8630	396.01
Post UPSI Period(May, 28, 2018 - June, 29, 2018)				
No trades observed related to MBL				

From the above table, it is observed that, Noticee was holding 8630 shares of MBL on April 2, 2018. Noticee has not traded on the BSE platform during the period of investigation and one month prior to the period of investigation

4. As per the observation of NSE during Analysis Period: April 02, 2018 to June 29. 2018, it was mentioned that, Noticee net sold 0.09 lac shares in the UPSI period at an average price of Rs. 396.01/- when compared to the low price of Rs.247.9/- on 30, May, 2018 i.e. post UPSI period, it can be observed that Noticee has avoided a notional loss of approximately Rs.13.33 lacs

5. Preliminary examination in the matter was carried out and SEBI also had similar observations as made by the NSE. Thus the matter was referred for detailed investigation. SEBI conducted investigation into the dealing in the shares of Manpasand Beverages Limited and into possible violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and various regulations made thereunder by appointing an Investigating Authority (hereinafter referred to as "IA/ Investigating Officer") in exercise of its powers under Section 11C (1) of the SEBI Act.

6. The focus of investigation was to ascertain whether trading in the scrip of MBL by the suspected entities including Noticee was based on UPSI and thus in violation of provisions of SEBI Act and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations") during the period May 10, 2018 (starting date of UPSI period) to May 27, 2018 (end date of UPSI period), hereinafter referred to as 'the investigation period/IP'.

7. During the course of investigation, the Investigating Authority ('IA') issued summons to Noticee in order to ascertain certain facts/ information from the Noticee for finding her

connection with insider (term "insider" as defined under Regulation 2 (1) (g) of PIT Regulations) through the statement recording of Noticee.

8. Noticee failed to provide the information sought by the IA on November 05, 2019. Further, Noticee failed to appear before IA on November 28, 2019. Statement of Noticee was required to find out the connection between the insider and the suspected group of entities including herself. In view of the same, it is alleged that the Noticee has violated the provisions of Section 11C (5) of the SEBI Act, 1992 thus, the non-compliance of summons thereby hampering the process of investigation.

APPOINTMENT OF ADJUDICATING OFFICER

9. The undersigned was appointed as Adjudicating Officer **(AO)** vide order dated October 28, 2020 under section 15 I of the SEBI Act and Rule 3 of the SEBI Rules read with Section 19 of SEBI Act to inquire into and adjudge the alleged violation of non-compliance of summons by way of non-Submission of required information before the Investigating Officer on November 05, 2019 and failure to appear before the Investigating Officer on November 28, 2019 by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

10. Show Cause Notice dated December 24, 2020 *(hereinafter referred to as "SCN")* was issued to the Noticee in terms of Rule 4 of SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as 'SEBI Adjudication Rules'*) read with Section 15I of SEBI Act, 1992, to show cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15HB of SEBI Act, 1992, for the contravention of the provisions of Section 11C (5) of SEBI Act, 1992 by the Noticee as alleged in the SCN. The Noticee was given 15 days' time from the date of the receipt of the SCN to file its reply. The allegations in the SCN are as follows:
    a) In order to ascertain certain facts/ information from the Noticee pursuant to detailed investigation by SEBI, the Investigating Authority had served summons on Noticee to appear before her. However, as per the Investigation Report (hereinafter referred to as "**IR**") the Noticee failed to comply with the summons as set-out hereunder:

        i. The Investigating Authority issued summons dated September 13, 2019, to the Noticee, for recording the statement at 10 AM on September 26, 2019 at SEBI Bhavan-II, Mumbai. However, Noticee vide letter dated September 19, 2019

received by SEBI on September 23, 2019 expressed her inability to appear before the Investigating officer due to health issues**.**

ii. Further, Noticee did not appear before the investigating officer and vide email dated September 24, 2019, Mr. Vikas Bengani (advocate of Noticee) informed the Investigating Officer that Noticee is her client and she is not fit to travel out of station. Mr. Vikas Bengani further informed that Noticee is ready to appear at Delhi Office of SEBI and she has authorized him to appear on her behalf on schedule date i.e., September 26, 2019. Her advocate also submitted that, if personal appearance of Noticee is necessary then investigating officer may accommodate her to appear at the SEBI office at Delhi.

iii. Considering the request of the Noticee, Investigating Officer agreed to conduct the statement recording at SEBI NRO, New Delhi. Hence the Investigating Authority sent a reminder on October 17, 2019 to remain present on November 5, 2019 at SEBI- NRO, New Delhi.

iv. On November 5, 2019, Noticee appeared before the investigating officer for Investigation. The statement recording of Noticee was started at around 10:45 am at SEBI Delhi Office. However, after recording her statement partly, the Noticee refused to answer the questions of the Investigating Authority and left the SEBI Delhi office without answering the questions and even without signing the half recorded statement. Furthermore, no documents required whatsoever were submitted by her. It is pertinent to note that the purpose of statement recording was to find the link between insiders and Noticee.

v. As Noticee left the SEBI Delhi premises without completing the statement recording and submitting any information with regard to her connection with insider as sought by the SEBI investigating officer on Nov 5, 2019, Noticee was again vide summons dated November 13, 2019 called upon to remain present before the Investigating Officer on November 28, at 10 am at SEBI Bhavan-II, Mumbai. However, Noticee failed to appear on said date and vide letter dated November 23, 2019, Noticee informed SEBI that, she has appeared and deposited all the documents in SEBI Delhi office on Nov 5, 2019. She has further stated that she is a small long term investor filing Income Tax Returns and that she is not a trader as stated in the Notice. She has further claimed that as per the Income Tax Act, 1961, individuals are not required to keep book of accounts.

Noticee has further stated in her letter that the same be considered as her reply to the summons.

vi. The details of summons issued to Noticee are as follows:

Particulars	**Issue Date**	**Delivery Status (Yes / No)**	**Date on which called for appearance**	**Statement Recording completed (Yes / No)**
Summons to Noticee	September 13, 2019	YES	September 26, 2019	**No.** Noticee vide letter dated Sept 19, 2019 (received on Sept 23, 2019) expressed her inability to appear before the Investigating officer due to health issues.
First Reminder of Summons	October 17, 2019	YES	November 5, 2019	**No**. Noticee appear before the Investigating officer on Nov 5, 2019 but left the premises without completing the statement recording proceedings. The Noticee also refused to sign the half recorded statement. No documents were submitted by Noticee on Nov 5, 2019.
Second reminder of Summons	November 13, 2019	YES	November 28, 2019	**No.** Noticee vide her letter dated November 23, 2019 informed that she has appeared and deposited all the documents in SEBI Delhi office on Nov 5, 2019. She has completed the proceedings and statement at Delhi. The matter stand fully explained and completed from her side along with the proof. The same may be considered as the compliance of summon

b) Noticee did appear before the investigating officer on November 05, 2019, however, Noticee did not provide any information and left the premises without completing the statement recording. Thus, the intention of the Noticee was just to show compliance of the summons by appearing before the investigating authority. Noticee has traded in the scrip only during the UPSI period and her non-co-operation in investigation raises suspicion of insider trading by Noticee based on UPSI. The non-co-operation by the Noticee hampered the investigation and no connection could be established between the insider and the Noticee despite sufficient opportunities i.e. on Sept 26, 2019, November 5, 2019 and November 28, 2019 provided to her.

c) Further, Noticee vide her letter dated November 6, 2019 (received on November 13, 2019) has made various allegations against the investigating officer and dealing officer. However, it was observed in the IR that allegations made by Noticee in her

letter dated November 06, 2019 were not factually correct. Noticee was asked to appear before the investigating officer through 3 summons issued to her. No information was sought from Noticee in through summons. Thus information and documents submitted by Noticee on her own were not in compliance of summons and documents only had information with regard to her trading and Income Tax Returns etc.

d) In view of the above, it is alleged in the SCN that in spite of receipt of summons by Noticee, she has violated the provisions of Section 11C (5) of the SEBI Act by Non-submission of required information before the Investigating Officer on November 05, 2019 and failing to appear before the investigating officer on November 28, 2019,thus, Non-compliance of summons.

11. The aforesaid SCN was sent through speed post acknowledgement due and a digitally signed copy of the said SCN was also sent through e-mail to the Noticee. The said SCN was delivered to the Noticee. Vide email dated January 04, 2021, the Noticee submitted its reply.

12. An opportunity of personal hearing was granted to the Noticee on January 14, 2021. However, the same was adjourned to January 18, 2021 at the request of the Noticee. The personal hearing was availed by the Noticee on January 18, 2021 alongwith her Authorized Representatives and reiterated the submissions made by the Noticee in its letter dated January 04, 2021. Hearing minutes is on record.

13. Noticee in her reply dated January 04, 2021 to the SCN has *inter-alia* submitted the following :

On Para No. 5

I have incurred actual loss of Rs. 20,974/- on holding the shares for 11 months in my Demat Account. All documents have been submitted 5 times by Email, Speed Post and personally in Delhi Office. You have ignored the actual delivery based transactions and your observation on notional loss is hypothetical in nature.

B- ***On Para No. 8***

I am a long term small investor who had bought delivery of the shares in May/June 2017 as per stock exchange record and sold delivery on 14-05-2018 as per stock exchange, demat and income tax record. The above mentioned transaction were based on my personal judgment and not on any inside information as alleged by you. Thus, your suspicion on trading in shares is baseless as I have not traded in shares, But delivery based buying and delivery based selling after 11 months.

C- ***On Para No. 9***

Details of all documents submitted.

1- Income Tax Return attested Copy A.Y. 2019-20 showing PAN No. AFNPA3447B
2- Income Tax Return attested Copy A.Y. 2018-19 showing PAN No. AFNPA3447B
3- Statement of MANPASAND (Cash Flow) by assesse.
4- Contract Note Broker.
5- Demat A/c Copy Attested Copy of 2018 and 2019.
6- Statement of Account of Brokers (2 Pages)
7- Bank Statement of my account attested.
8- Certificate of Brokers.
9- Photocopy of complaint SEBI CHIEF.
10- Photocopy of reply of 23/11/2019.
11- EMAIL Photocopy of 19/09/2019 reply.
12- EMAIL Photocopy of 03/10/2019 for Medical Certificate.
13- Photocopy of Medical Certificate
14- Stamped SEBI Letter.

The documents were submitted to Investigation Officers in Delhi SEBI Office for which receipts were issued to me. I have produced each and every document small investor is required to keep for Income tax, SEBI and for Stock Exchanges.

D- ***On Para No. 10***

When all documents have been submitted by Email, Speed Post and personally, which were readily available in your office. The question of stalling investigation doesn't arise as I have crystal clear record of each and every transaction from day one.

E- ***On Para No. 11***

You have given finding on a complaint made by me to the SEBI Chief who is a higher Authority. Any kind of physical, criminal offence against me (Woman) if not decided by your department will be decided on appropriate forum in due course of time. Giving clean chit to your Investigating Officers on the complaint is uncalled for and beyond your jurisdiction.

F- ***On Para No. 12, 13, 14 and 15***

I appeared on 5th November 2019 in Delhi SEBI Office and completed all my submission, queries and deposited all documents mentioned above vide receipt and my presence of 5 hours is entered in VISITOR REGISTER NO. 3167. Issuing of summons again and again in the petty matter resulting to loss of Rs. 20,974/- to me and asking me to travel 1100 Km from Rohtak to Mumbai "all alone" convince me the malafide intention of the department, as my experience on 05 Nov 2019 at SEBI Office was bitter one. I am of strong belief that calling me all alone will result in some criminal act causing me serious physical harm.

LOSS OF RS.20, 974/- :-

I am a small individual investor filing income tax return for more than 30 years belonging to highly reputed family of judicial officer, Advocate and so. I am doing all my activity of life obeying law of land and never ever been engaged in unlawful activity and not engaged in activity of so called inside trading.

GENUINE TRANSACTION :-

A	*B*	*C*
SELLING ON 14-05-18	*RATE ON 25 MAY 2018*	*RATE ON 30 MAY 2018*
RATE RS. 396/-	*RATE RS. 458/-*	*RATE RS. 247.90 PAISA*

A) I had sold share on 14-05-2018 on loss of Rs. 20,974/-

B) As alleged by you that I had any inside information I would have sold shares on 25 May 2018 @ Rs. 458/- and made profit of Rs. 5,21,926/-

C) The figure of National Loss mentioned by you of Rs. 13.33 Lakh is baseless.

There is no meaning of Notional loss in stock market. My transaction is 100% genuine and your suspicion is baseless. Had I sold shares on 25 May 2018 , I would have made profit of Rs. 5,21,926/- instead of incurring actual loss of Rs. 20,974/- after 11 months of holding.

Details of Shares of MANPASAND :-

Date	***SHARES PURCHASED***	***AMOUNT***
18/15/2017	*1310*	*10,48,418*
06/06/2017	*2140*	*17,05,826*
16/06/2017	*825*	*06,76,370*
27/09/2017	*4315(BONUS SHARES)*	*-*
TOTAL COST	***8630***	***34,30,614***
SOLD (14/05/2018)	***8630***	***34,09,640***
ACTUAL LOSS		***20,974/-***
PERIOD OF HOLDING SHARES		***11 MONTHS***
TOTAL BUYING TRANSACTIONS		***3***
SELLING TRANSACTION		***1***

The shares purchased in May and June 2017, was out of amount received from selling shares of PRESSMAN, WEP and GSS as per income tax record attached.

The details of all above transaction are there in my proof documents.

1- Income Tax Return A.Y. 2019-20 and A.Y. 2018-19

2- Statement of MANPASAND (Cash Flow) by me.

3- Statement of Account-of- Brokers.

4- Contract note of Brokers.
5- Bank Statement of my account.
6- Demat Account showing holding.
7- MIS ledger of Brokers.

INFORMATION OF SMALL INVESTORS :-

As per my record, I normally do two or three transaction per year. I am living in small town Rohtak (Haryana) doing share transaction based on Newspaper and TV on recognized stock exchange as per law of land. I have no links with any inside traders, further I have incurred loss of Rs. 20,974/- after holding shares for 11 months. There is no meaning of notional loss in share market as alleged by you. The share was consistently trading in same range and touched high of Rs. 458/- on 25 May 2018 when I sold shares on my personal belief. The shares were sold to buy new shares of other company.

COMPLIANCE OF NOTICE :-

NOTICE DATE	COMPLIANCE
13/09/2019	Had send all documents on First notice and expressed inability to appear due to health ground
24/09/2019	Advocate Vikas Bengani deposited documents again along with medical certificate request.
13/11/2019	I replied to notice that I recorded my statements and deposited all documents on 05 Nov 2019 for shows. It is strange to note that for my five hours of cooperation in Delhi Office, you find that I have not completed investigation.

PERSONAL APPEARANCE ON 5 NOV 2019 IN SEBI OFFICE :-

I appeared before both investigators.

DURATION OF INVESTIGATION — ***VISITOR REGISTER NO.***

10 AM TO 3 PM — *ENTRY NO. 3167*

(5 HOURS)

I explained to all the queries of investigators in the case and submitted all documents as per receipts of SEBI office.

DOCUMENTS SUBMITTED :-

1- Income tax return copy of A.Y. 2018-19 and A.Y. 2019-20.
2- Statement of MANSPASAND by me for source of fund.
3- Statement of Account brokers.
4- Contract Note of Brokers.
5- Bank statement of my account.
6- Demat Account showing holding.
7- MIS ledges of Brokers.
8- Statement of account of Brokers.

It is strange to note that I had deposited all documents 4 times and explained all the facts of matter in personal appearance and recorded statement for 5 hours. Even a layman going through the submitted documents and looking into facts can come to conclusion that record is crystal clear and no violation has been made and full compliance has been done with the SEBI.

COMPLAINT AGAINST VANDANA RAJESH AND INVESTIGATING OFFICER :-

A complaint was filed with SEBI CHIEF MR. AJAY TYAGI by registered Post and Email ON 6 November 2019 for illegal acts beyond power conducted by two above named officers.

1- Treating like criminal.

2- Snatching of Phone and searching of my personal family details which were not connected to the matter.

3- Personal remarks and irrelevant questioning.

4- Blocking the door by two investigating officers and threatening to detain me till midnight unless you fulfill our demand.

5- Not allowing my Advocate husband to explain the matter.

It is to bring to your notice that all possible necessary evidence and documents have been submitted 5 times by Speed post and Email on personal appearance from day one to till date. I am law abiding citizen and have done my transaction as per exchange rules.

CONCLUSION :-

Before deciding the case , following facts must be considered :-

1- All proof documents submitted five times by post and email.

2- Personal appearance at SEBI Delhi office for 5 hours for one simple transaction resulting in actual loss of Rs. 20,974/- after holding shares in my demat account for 11 months. And deposited all documents at SEBI Office Delhi, receipts attached.

That, due to Covid and my personal experience at SEBI Office, I have little faith in working of SEBI, the document submitted for 6 times now should be considered as my full and final submission from my side on the petty matter.

You are required to decide the matter, based on the facts of matter in light of natural justice.

ISSUES FOR CONSIDERATION & FINDINGS

14. I have carefully perused the charges levelled against the Noticee, reply of the Noticee and the documents/material available on record. The issues that arise for consideration in the present case are:

Issue I: Whether the Noticee has violated provisions of Section 11C (5) of SEBI Act, 1992?

Issue II: If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of SEBI Act, 1992?

Issue III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15HB of SEBI Act and Section 15J of the SEBI Act?

15. Before proceeding further, I would like to refer to the relevant provision of Section 11C (5) of SEBI Act, 1992 allegedly violated by the Noticee, which read as under:-

Section 11C:- Investigation

(1)…
(2)…
(3)…
(4)…
(5) *Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally."*

16. On perusal of the material available on record and having regard to the submissions made by the Noticee, I record my findings hereunder.

ISSUE I: Whether the Noticee has violated provisions of Section 11C (5) of SEBI Act, 1992?

17. The allegation levelled against the Noticee vide SCN dated December 24, 2020 is Non-Submission of required information before the Investigating Officer on November 05, 2019 and failure to appear before the Investigating Officer on November 28, 2019. Noticee is therefore charged for violation of Section 11C (5) of SEBI Act, 1992.

18. I note that, Noticee has not denied the receipt of all the summons and has also mentioned in her reply that, she appeared on November 05, 2019 before both the

investigators in SEBI Office and recorded her statements and deposited all documents on 05 Nov 2019.

19. In this regard, I note that, initially vide summons dated September 13, 2019, Noticee was called for recording the statement at 10 AM on September 26, 2019 at SEBI Office at Mumbai. However, Noticee expressed her inability to appear before the Investigating officer due to health issues. Noticee did not appear before the investigating authority on September 26, 2019 and requested for personal appearance at SEBI Delhi Office through her advocate. Considering the request of the Noticee, Investigating Officer / authority agreed to conduct the statement recording at SEBI Northern Regional Office (NRO), New Delhi and accordingly summoned her to appear before the Investigating authority for statement recording at 10:30 am on November 5, 2019 at SEBI office at New Delhi.

20. I note from available records that the Investigating Officer and dealing officer had travelled all the way from Mumbai to Delhi and SEBI incurred expenses towards travel and stay at Delhi. The investigating officer offered tea, coffee and water during the statement recording to Noticee. Further, based on the request of the Noticee lunch break of 45 minutes was granted to the Noticee. However, in spite of acceding the request of the Noticee for statement recording at SEBI Delhi office, due to non-cooperation by the Noticee, the Investigating Authority could not complete the statement recording. The Noticee left SEBI Delhi office without completing the statement recording and even refused to sign the statement that was recorded. As the Investigating officer wanted to complete the statement recording which was very crucial in nature, both the SEBI officials waited for the Noticee in SEBI NRO office till 6:00 pm. Therefore, I note that the Noticee deliberately left the statement recording midway so that the Investigation in the matter would be hampered. Thus, I am of the view that the Noticee hampered the investigation by not co-operating with the investigating officers in establishing the link with the insiders.

21. I note that the Noticee has contended that she is a small individual investor. However, from the income tax returns submitted suo moto by the Noticee, I note that Noticee has invested more than 20 lakhs in the stock market and therefore, cannot be said to be a small investor. Such reference to being small investor is not relevant either, keeping in view the context of the investigation of SEBI which was being done to find the link of Noticee with insiders for ascertaining whether her tradings took place based on UPSI or not. I further note, as per the information available with the investigating officer, that the Noticee was suspected entity based on her trading activity in the scrip Manpasand

Beverages Ltd. The Noticee had traded through Indus Portfolio (P) Ltd and had sold 8630 shares on May 14, 2018 i.e., during UPSI period at an average price of Rs. 396.01/- when compared to the low price of Rs.247.9/- on 30, May, 2018 i.e. post UPSI period and avoided a notional loss of approximately Rs.13.33 lacs. No trading was observed to be done by Noticee during pre UPSI (April, 02, 2018 - May, 09, 2018), post UPSI period (May, 28, 2018 - June, 29, 2018) and on BSE platform during the period of investigation and one month prior to the period of investigation. Thus, it was suspected that Noticee has traded in the shares of MBL based on information of UPSI. Thus, her connection with insider was required to be investigated in the matter.

22. Noticee in her reply has stated that, she has submitted the relevant documents 6 times and this now should be considered as full and final submission from her side on the matter. In this regard, I would like to mention that, Investigating officer summoned the Noticee for statement recording on September 26, 2019, November 5, 2019 and November 28, 2019. However, due to non-co-operation of the Noticee, the investigating officer could not complete the statement recording proceedings. The Noticee left the statement recording proceedings incomplete on November 5, 2019 without submitting any information with regard to her connection with insider sought by the SEBI investigating officer. Subsequently, Noticee has submitted letter dated November 23, 2019 along with some documents suo moto vide email dated November 26, 2019 and physical copy through courier (received on November 26, 2019). It is pertinent to note that the purpose of statement recording was to find the link between insiders and the Noticee. However, as per the IR, the documents submitted by the Noticee did not contain any information with regard to her connection with insider. It only had information with regard to her trading and Income Tax Returns etc. As Noticee has avoided an alleged notional loss of approximately Rs.13.33 lakh and investigation officer was investigating the insider trading angle in this matter. Hence, the statement of Noticee was essential to find out the connection between the Noticee and insiders.

23. I further note that submission of documents suo moto by Noticee at the stage of adjudication does not serve anyone's purpose as examination of this information is not a subject matter of these proceedings and it would be beyond the scope of this proceeding to examine the information submitted by the Noticee.

24. I have taken note from the IR that, based on the preliminary examination in the matter of MBL, few suspected entities were called for recording the statement. The statement recording of all other entities was completed by September 2019 in SEBI Office at

Mumbai. However, due to non-cooperation by Noticee, the statement recording of the Noticee was pending since September 26, 2019.

25. There is no dispute that, the Noticee did appear before the investigating officer on Nov 5, 2019 at SEBI Northern Regional Office, New Delhi. However she did not provide the information sought during the statement recording and left the statement recording proceedings incomplete on November 5, 2019 without submitting any information with regard to her connection with insider sought by the SEBI investigating officer. Further, investigating Authority issued one more summons on November 13, 2019 seeking her appearance on November 28, 2019 for the purpose of statement recording. However, Noticee failed to appear before Investigating Authority despite sufficient opportunities provided to her by the IA to comply with the summons. Since it was suspected that Noticee has traded in the scrip based on information provided by insider. The information was price sensitive information. It was observed that the Noticee has avoided a notional loss of approximately Rs.13.33 lacs on NSE during the period of Investigation and the Noticee has not traded three months prior to the period of investigation in MBL. Thus, I find that her statement was crucial for finding the connection between the Noticee in order to examine the connection with the insider, However, the non-co-operation by the Noticee hampered the investigation and no connection could be established between the insider and Noticee.

26. I am of the view that the Noticee cannot abdicate her responsibility by stating that the documents were submitted by her and she appeared on November 05, 2019. It has been analysed in the foregoing paragraphs that her appearance was only for namesake and she neither provided requisite information nor signed the partially recorded statement during her interaction with the investigating officers exhibiting utter lack of cooperation with the process of SEBI Investigation. It is the statutory duty, responsibility and obligation of every person from whom information is sought vide summons to fully co-operate with statutory Authority and promptly produce all documents, records, information, etc., to the Investigating Authority, failing which a person has to suffer the consequences thereof. If the summons issued by the IA are allowed to be flouted and not taken seriously, 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. The information was sought from the Noticee against the background of possibility of trading on the basis of UPSI in the scrip of Manpasand Beverages Limited. The Noticee neither provided the requisite information at her appearance on November 05, 2015 nor did she appear before the Investigating

Officer on November 28, 2019. Her defiant conduct has certainly thwarted the attempt by the IA to gather vital evidence for a timely conclusion of the investigation proceedings.

27. The Hon'ble Securities Appellate Tribunal *(hereinafter referred to as **"SAT")*** in its Order dated 22.10.2013, in the matter of *Rich Capital & Financial Services Limited and Mr. Shashwat Agarwal Vs SEBI* observed that-
"We note that requisite information and relevant records are pre-requites for a meaningful investigation. In the absence of cooperation by the concerned company, the SEBI cannot move an inch. Therefore, every company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If companies are allowed to take the statutory summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins."

28. I would also like to refer to the judgment of the Hon'ble SAT in the case of *Asian Films Production and Distribution Ltd. (earlier known as K.C. Bokadia Films vs. SEBI (Appeal No.203 of 2010, Date of Decision:19.01.2011)* wherein it has been held that:

"Non-compliance with the 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."

29. Further, the Hon'ble SAT in the matter of *Mr. Jalaj Batra vs. SEBI (Appeal no. 184 of 2010, date of decision dated December 06, 2010)* wherein it observed "*.....We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non co-operation with the market regulator*

has to be viewed seriously. We do not know what else would have come to light if the appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him."

30. Thus, it is well established that compliance of summons is very important for the purpose of effective investigation proceedings and non-cooperation by a Noticee can be detrimental to the interest of investors and the securities market on account of delay or hindrance in the investigation. Any non-compliance of the summons of the Investigating Authority hampers the process of investigation. The Hon'ble SAT has also recognized the importance of compliance of summons as is evident from the abovementioned order of Hon'ble SAT.

31. In view of the above, the allegation of the violation of the provisions of Sections 11C(5) of the SEBI Act by Non-submission of required information before the Investigating Officer on November 05, 2019 and failing to appear before the investigating officer on November 28, 2019, against the Noticee stands established. Any non-compliance of the summons of the Investigating Authority hampers the process of investigation. The Hon'ble SAT has also recognized the importance of compliance of summons as is evident from the abovementioned orders.

Issue II: If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of SEBI Act, 1992?

32. It has been established in the foregoing paragraphs that Noticee has violated the provisions of Section 11C (5) of SEBI Act, 1992 and therefore, the aforesaid violation committed by Noticee attracts monetary penalty under section 15HB of the SEBI Act, 1992.

33. 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 A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not*.''

34. In view of the above, I conclude that the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, for violation of provisions of Section 11C (5) of SEBI Act, 1992. Provisions of Section 15 HB of SEBI Act, 1992, are reproduced hereunder:-

15HB. Penalty for contravention where no separate penalty has been provided.
Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Issue III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15HB of SEBI Act and Section 15J of the SEBI Act?

35. While determining the quantum of penalty under Section 15 HB of SEBI Act 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.

Explanation:
For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F,15G,15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

36. In the instant matter, it is not possible to quantify the gains made by the Noticee or the loss caused to investors as a result of the failure on part of Noticee to comply with the summons. The Hon'ble, SAT in *Appeal No: 114 of 2005 Nokia Finance International Pvt.*

Ltd. Vs SEBI, while upholding the penalty imposed by AO held that *the* failure on the part of the Noticee to comply with the summons has to be viewed seriously.

37. I observe that the information sought by the IA was relevant to the investigation, which would have enabled the IA to draw precise conclusions in the matter which also involved investigation into the affairs of other related entities/persons. Had the Noticee complied with the summons and provided the factual information at the appropriate time, the IA would have been in a better position to examine the role of Noticee. The information sought from the Noticee is not otherwise available in public domain and remain exclusive to the Noticee. I note that the Noticee did not provide any information with respect to her connection between the insider and the suspected group of entities including herself. Further, Noticee failed to appear before Investigating Authority and complete the proceedings of statement recording despite sufficient opportunities. It is therefore amply clear that the information sought by the IA were crucial and central to the investigation and failure on the part of the Noticee to comply with the summons has indeed adversely affected and delayed the investigation. Lastly, with regard to the repetitive nature of the default, I find that the IA had issued summons dated September 26, 2019 which was adjourned to November 05, 2019 considering the request of Noticee, since Noticee left the SEBI Delhi premises on November 05, 2019 without completing the statement recording and submitting any information with regard to her connection with insider as sought by the SEBI investigating officer, Noticee was again vide summons dated November 13, 2019 called upon to remain present before the Investigating Officer on November 28,2019. However, Noticee failed to appear on said date.

ORDER

38. After taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000 (Rupees Two Lakh only) on the Noticee under section15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the violations committed by the Noticee.

39. 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 online payment facility available on the SEBI website www.sebi.gov.inon 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

40. The said demand draft and its details OR details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief, (Enforcement Department-1, Division of Regulatory Action -1), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051" and also send an email to tad@sebi.gov.in with the following details:

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

41. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

42. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : January 29, 2021
Place : Mumbai

Vijayant Kumar Verma
Adjudicating Officer