BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: AO/SBM/EAD-1/314/2018)

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:

Shri. Sunil Kumar Mehta
(Proprietor M/s Share Shoppe)
PAN No ACEPM8838L
Evershine Millenium Park,
EMP-47, Flat No. 1804, Phase V,
Thakur Village, Kandivalli (East)
Mumbai 400 101

In the matter of

Peacock Industries Limited.

FACTS OF THE CASE

1. As part of off-line surveillance mechanism of the Compliance Department of National Stock Exchange ('**NSE**'), an inquiry was conducted by NSE into the trading/dealings in the scrip of Peacock Industries Ltd (hereafter referred to as '**PIL' or 'Company'**). During the course of inquiry, it was observed by NSE that, as on September 22, 2000, there was considerable difference in the closing price of the scrip of PIL at NSE and Bombay Stock Exchange ('**BSE**'). It was observed that the closing price of PIL at NSE was Rs 36.75 whereas, at BSE, it was Rs 14.85, which is a difference of 63.25%. The quantities traded in the scrip of PIL at NSE and BSE were 1 & 10072 respectively, which is a difference of 1007100%. In view of the above reasons, Securities and Exchange Board of India ('**SEBI**') initiated

investigations into the trading/dealings in the scrip of PIL during the period from August 23, 2000 to September 26, 2000 (hereinafter referred to as **'Investigation Period'**). Accordingly, the trading pattern in the scrip of PIL for Settlement No 2000035N to 2000039 N at NSE and Settlement no. 22 to 27 at BSE were examined during the course of investigation.

2. During the aforementioned investigation period, it was observed that M/s Share Shoppe, a proprietary concern owned by Shri Sunil Kumar Mehta (hereinafter referred to as '**Noticee**') had purchased and sold 2129 shares of PIL through the Stock Broker viz. ISJ Share and Stock Broker Pvt Ltd. It was also observed that the Noticee had dealt in his capacity as a sub broker to M/s Pramod Kumar Jain Securities Pvt. Ltd. Further, it was alleged that the ultimate client for which the Noticee had dealt in the scrip of PIL during the aforementioned investigation period was M/s Park Continental Ltd, which was a group/associate entity of PIL.

3. In view of the above observations and in order to ascertain the role of the Noticee in the matter, the Investigating Authority (**IA**) of SEBI had issued three summons to the Noticee on various dates calling for information/details pertaining to his dealings/trading in the scrip of PIL during the investigation period and also calling for the personal appearance/attendance of the Noticee before the IA. It was observed from the material/records made available that during the course of investigations, the IA had issued summons dated July 27, 2004, August 04, 2004 and August 26, 2004 to the Noticee. From the details/information made available, it was observed that the summons dated July 27, 2004 issued to the Noticee had returned undelivered. The summons dated August 4, 2004 which was issued to the Noticee through Overnite Courier was served on the Noticee on August 06, 2004 and the same is evident from the confirmation obtained from the web track details of Overnite Express Courier. The summons dated August 26, 2004 issued to the Noticee returned undelivered with remarks "person shifted to Chennai". During the course of investigations, it was observed that a sub broker viz. Shitiji Enterprises had dealt in the scrip of PIL and had sold 13,210 shares of PIL through Shilpa Stock Brokers Pvt Ltd, a stock broker of BSE. It was

also observed that out of 13,210 shares sold by Shitji Enterprises, only 1700 shares of PIL were delivered and the remaining shares that could not be delivered were auctioned at BSE. The investigations brought out that the proprietor of Shitji Enterprises is Ms Anjana Mehta, who is the spouse of the Noticee. It was further observed that both Shitji Enterprises and Share Shoppe shared common address i.e E-431, Bhupalpura, Udaipur, Rajasthan.

4. The investigations brought out that the Noticee had received the summons dated August 4, 2004, but failed to appear before the IA on the stipulated date of hearing i.e August 11, 2004 at Jaipur Stock Exchange Building (i.e place fixed for the hearing) and also failed to furnish the information/records/documents sought by the IA in the said matter. In view of the aforesaid, it was alleged that the Noticee has failed to appear in person before the IA and also failed to submit / provide the details/information/documents sought by the IA. In view of the above reasons, it is alleged that Noticee has failed to comply to the summons dated August 4, 2004 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 section 11 (3) r/w section 11 C (5) of the SEBI Act by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer, vide Order dated January 6, 2005 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 appear in person before the IA and also his failure to furnish the documents/information/details as required to be produced by him before the IA during the course of investigations and thereby violating the provisions of sections 11 (3) r/w 11C (5) of the SEBI Act.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice ref. AO/5612/2010 dated January 12, 2010 (hereafter referred to as '**SCN'**) was issued to the Noticee in terms of the provisions of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under the provisions of section 15A(a) of the SEBI Act.

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

   - During the period of investigations it was observed that M/s Share Shoppe, a proprietary concern owned by Shri Sunil Kumar Mehta had bought a total of 2129 shares and sold a total of 2129 shares through the stock broker, M/s ISJ Share and Stock Broker Pvt. Ltd. M/s Share Shoppe also dealt in the capacity of a sub broker to M/s Pramod Kumar Jain Securities Pvt. Ltd. The ultimate client for which Share Shoppe was dealing was M/s Park Continental Ltd, a group entity of PIL. The extract of the observation as regards M/s Share Shoppe's role as a sub broker to Pramod Kumar Jain Securities Pvt. Ltd has been mentioned above in the relevant paragraph.

   - During the course of investigations it was observed that M/s Share Shoppe is also Udaipur based. In his statement, Mr Pawan Goyal has also submitted that he knew Mr. Sunil Kumar Mehta who was doing stock market business and had his office in Bhupalpura in Udaipur. In his statement, Mr Arun Goyal has also submitted that Mr. Sunil Kumar Mehta was known to him and that he was a member of the unofficial Udaipur Stock Exchange from 1992-96 operating under the name and style of M/s. S K Mehta and Company. Mr Arun Goyal submitted that Mr. Sunil Kumar Mehta was also a sub broker of M/s Pramod Kumar Jain Securities Pvt. Ltd, a BSE Member and Mr. Arun Goyal used to trade through him.

   - Summons dated 27.07.2004, 04.08.2004 and 26.08.2004 were sent to Share Shoppe/Mr.Sunil Kumar Mehta calling for information and

personal appearance but Mr. Sunil Kumar Mehta / Share Shoppe has neither appeared for the statement recording nor submitted the information required. The summons dated 27.07.2004 came back undelivered. The summons dated 04.08.2004 was received by M/s Share Shoppe but no compliance was made by him. The summons dated 26.08.2004 was sent to the same address at which the earlier summons dated 04.08.2004 was sent but it came back undelivered with the remarks that the person had "shifted to Chennai".

- A perusal of the details submitted by the BSE Member, Shilpa Stock Brokers Pvt Ltd, shows that a sub broker by the name, Shitij Enterprises had dealt in the scrip of PIL and had sold a total of 13,210 shares out of which only 1,700 were delivered and the rest of the shares went for auction. This indicates that the seller did not have the requisite number of shares of PIL at the time of sale. **The proprietor of Shitij Enterprises is Mrs Anjana Mehta, wife of Sunil Kumar Mehta, proprietor of Share Shoppe. Both the entities, Share Shoppe and Shitij Enterprises have the same address i.e. E-431, Bhupalpura, Udaipur, Rajasthan.**
- The failure on the part of M/s Share Shoppe / Shri Sunil Kumar Mehta to comply with the summons (requesting for his personal appearance) and to furnish the requisite information regarding its trading activities conducted as sub-broker (esp. on behalf of M/s Park Continental Ltd) and as client has acted as an impediment in the process of investigation in the matter of PIL.
- The Investigations into the alleged price manipulation in the scrip of PIL had brought out that M/s Share Shoppe dealing through ISJ Stock & Share Brokers Pvt Ltd had executed over a dozen cross deals with other known clients,
- It is alleged that summonses dated 27.7.04, 4.08.04 and 26.08.04 were sent to the Noticee by the IA of SEBI requiring the Noticee to appear in person before the investigating authority and also to submit certain details / information relating to the dealings of the Noticee in the scrip

of PIL. In this regard, a copy of the Summons dated 4.08.04 issued to the Noticee by the IA and served on the Noticee's address is enclosed (as Annexure A). The related portion of the Investigation report enumerating the Noticee's role in the dealings in the scrip of PIL is also attached as Annexure B. It is alleged that Noticee has failed to comply with the summons as mentioned above and therefore, it is alleged that Noticee is liable for penalty prescribed under Section 15 A (a) of the SEBI Act, 1992.

8. Vide letters dated March 11, 2010 and July 13, 2011, the Noticee submitted his response to the SCN, which inter alia, mentioned that:

   a) The above mentioned Show Cause Notice (hereinafter referred to as "the said SCN"), alleges that I have failed to appear before the investigating authority and also failed to produce the desired details / information to SEBI thereby hampering the progress of the investigation.
   b) At the outset, I deny the said allegations and/or contentions made in the said SCN dated 12.01.2010 and nothing therein shall be deemed to have been admitted and/ or inferred to have been admitted, save and except to the extent specifically admitted herein.
   c) I deny that I have received any of three summonses dated 27.07.2004, 04.08.2004 and 26.08.2004 issued upon me by SEBI.
   d) Without prejudice to anything else hereinafter stated, I state and submit that I reserve my right to make further submissions based on material facts that may be disclosed to me at a later date.
   e) I state that I have not received any summons sent to my address E-431, Bhupalpura, Udaipur. I had sold this office on 10.11.2003. At that time I had closed the office & terminal of the broker and I had shifted to Mumbai. I am attaching the proof of sale of office E-431, Bhupalpura, Udaipur. However in view of the pending investigations for almost 6 to 7 years, I am requesting the authority to take a lenient view. Once again I am saying that I have not received any summons on my address.
   f) I wish to submit my para wise reply to the said SCN as under:

- With reference to unnumbered para no. 1 of the said SCN, with regard to the contention that SEBI issued summons on three occasions requiring me to submit certain details/ information regarding my dealings in the scrip of PIL during the period 23.08.2000 to 06.09.2000, I state and submit that I have not received any of the said summons w. r.t. my dealings in the scrip of PIL. In view thereof, the contention that I have failed to appear before the investigating authority (IA) and also failed to produce the desired details/ information to SEBI and thereby hampering the progress of the aforementioned investigation cannot be sustained.
- With reference to the unnumbered para no. 2 of the said SCN, I state and submit that I deny that I was aware regarding issuance of the three summonses dated 27.07.2004, 04.08.2004 and 26.08.2004 upon me by SEBI.
- In page number 11 of Annexure B that was attached to the said SCN , the following were observed:
- The summons dated 27.07.2004 came back undelivered. The summons dated 26.08.2004 was sent to the same address at which the earlier one was sent on 04.08.2004 but it came back undelivered with the remarks that the person had "shifted to Chennai".
- I state and submit that thus the delivery of summonses dated 27.07.2004 and 26.08.2004 cannot be held to be a good delivery/service. I deny having received the said summonses dated 27.07.2004 and 26.08.2004.
- With reference to unnumbered para no. 2 and Annexure A of the said SCN, I state and submit that I deny having received the summons dated 04.08.2004 issued upon me by the Investigation Authority.

- The true and correct fact is that the said summons dated 04.08.2004 was issued upon me at following address: C/o, Share Shoppe, 95, Panchvati, Udaipur, Rajasthan, Pin- 313001
- It is pertinent to note that the said summons has been incorrectly addressed. The correct address of M/s Share Shoppe was as under: E 431 Bhupalpura, Udaipur, Rajasthan Pin- 313001
- I state and submit that the business of M/s Share Shoppe has been closed down in year 2004. I state and submit that the address 95, Panchvati, Udaipur, Rajasthan, Pin- 313001 is the address of the premises which I had taken on rent for residential purpose from February 2004 to March 2006.
- I state and submit that I am not aware of the delivery of the said summons dated 04.08.2004 at the above mentioned address at 95, Panchvati, Udaipur, Rajasthan, Pin- 3130014.
- I state and submit that I do not recall any such person by name of Mohanlal as noted in Annexure A who is claimed by SEBI to have collected the said summons dated 04.08.2004 on my behalf. I deny that any such person by name Mohanlal was authorised to accept any delivery on my behalf or has collected the said summons dated 04.08.2004 on my behalf and has handed over the same to me.
- I state and submit that thus the delivery of summons dated 4.08.2004 cannot be held to be a good delivery/service, I deny having received the said summons dated 04.08.2004.
- I repeat, reiterate and confirm that I have not received any of said three summonses dated 27.07.2004, 4.08.2004 and 26.08.2004. In view of the above, I am not in the position to verify the details/ information sought by SEBI regarding my dealings in the scrip of PIL during the period 23.08.2000 to 06.09.2000.
- I further state and submit that my proprietary concern M/s Share Shoppe has ceased its business in the year 2004. I have cancelled my registration as a sub broker with SEBI in the year

2004 and terminated my sub brokership. Thereafter, in the year 2006, I shifted my residence to Mumbai. During this time I have lost in transit all the data and documents pertaining to my dealings in the scrip of PIL during the period 23.08.2000 to 06.09.2000. Therefore, I am not in position to verify the details/ information and submit the same to SEBI.

- With reference to page 11 of Annexure A to the said SCN, I deny that I was aware, concerned, involved or part of the price manipulation in the scrip of PIL. I further deny that M/s Share Shoppe while dealing through ISJ Stock and Share Brokers Pvt. Ltd., have executed over a dozen of cross deals with other known clients.
- I state and submit that I have not executed any proprietary trades in the scrip of PIL during the period 23.08.2000 to 06.09.2000. I may have dealt on behalf of my client, M/s Park Continental Limited as mentioned on page 11 of Annexure B attached to the said SCN, in my capacity as a sub broker only under its instructions. My earning, if any, will be a share in the brokerage earned for trades in the account of said client.
- I have no knowledge and am not in a position to know the intent of the client, manipulative or otherwise. As far as I am concerned, I have allowed trades which were genuine. I am not aware about the trades and intent of other entities mentioned in Annexure B and am not in a position to comment upon the same.
- In any event, in the absence of any knowledge about any market manipulation by the client, I may not be held liable for the violations, if any of the client. I choose to rely on the judgments of the Hon'ble SAT in Kasat Securities and Millennium Securities.

9. Meanwhile, vide letter dated March 29, 2010 received from M/s Juris Matrix, which was addressed to the Division of Regulatory Assistance (DRA- SEBI) and a copy of which was also marked to the undersigned, it

was mentioned that the Noticee has filed a settlement application in the matter. In this regard, I note that, vide letter dated December 15, 2010, it was informed to the Noticee by SEBI that the adjudication proceedings initiated against him would be proceeded with as the settlement terms offered by the Noticee were not as per the recommendations made by the High Powered Advisory Committee (HPAC). Subsequently, vide letter dated February 18, 2011, which was addressed to DRA, SEBI and a copy of the same marked to the undersigned, the Noticee once again requested that the adjudication proceedings initiated against him may be kept in abeyance as he was in agreement with the settlement terms recommended by the HPAC. Vide e-mail dated May 16, 2018, it was confirmed by the Settlement Division that the settlement application filed by the Noticee was rejected by the HPAC in its 63rd meeting held on June 16, 2010.

10. In the interest of natural justice, Noticee was provided with opportunity of personal hearing on February 3, 2011 and July 12, 2011 respectively. During the course of personal hearing the Noticee reiterated the submissions made by him in his earlier replies to the SCN and specifically mentioned that he had not received the summons dated August 4, 2004, which he claimed was sent to his address located at E 431, Bhulpura , Udaipur, which was sold by him on November 10, 2003. In view of the above, I am proceeding further in the matter on the basis of material/facts on record, which also includes the replies submitted by the Noticee during the course of the proceedings.

CONSIDERATION OF ISSUES AND FINDINGS:

11. I have taken into consideration the facts and circumstances of the case, the material available on record and the submissions made by the Noticee during the course of the proceedings. The allegation against the Noticee is that, he has failed to comply with the summons dated August 04, 2004, which required his personal appearance/attendance before the IA and also required him to submit the documents/records sought by the IA.

12. I find that Noticee was issued summons dated July 27, 2004, August 4, 2004 and August 26, 2004 calling for his personal appearance before the IA and also submission of information/details pertaining to the investigations. I note that the summons dated July 27, 2004 and August 26, 2004 issued to the Noticee had returned undelivered and were not served on the Noticee. However, the summons dated August 4, 2004 which was issued to the Noticee through Overnite Courier at his address located at No 95, Panchavati, Udaipur, Rajasthan (Pin code- 313001) was served/delivered at the above mentioned address of the Noticee and the same was also acknowledged by one Mr Mohan Lal on August 06, 2004. The same is evident from the web track details obtained from the website of Overnite Express Courier, which is available on record. In view of the above observations, I now proceed to discuss the issue of non-compliance of the summons dated August 4, 2004 by the Noticee, which has resulted in the violation of the provisions of section 11(3) r/w section 11C (5) of the SEBI Act by the Noticee.

13. Before moving forward, the relevant provisions of the SEBI Act allegedly violated by the Noticee are mentioned as under:-

Investigation.

11(3) of SEBI Act

Notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub-section (2A), the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :-

(i) the discovery and production of books of accounts and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;

(iv) inspection of any books, registers and other documents or record of the company referred to in sub-section (2A);

(v) issuing commissions for the examination of witnesses or documents

Section 11(C) (5) of SEBI Act.

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 the 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.

14. In this regard, it is pertinent to note that section 11 (3) empowers the IA of SEBI to summon and enforce the attendance of persons and examine them on oath in the matters of investigations conducted by SEBI. Further, section 11 C (5) empowers the Investigating Authority of SEBI to require any intermediary or any person associated with the securities market in any manner to appear in person before the IA and 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 may be considered by the IA during the course of the investigations.

15. The details of the summons dated August 04, 2004, which was issued to the Noticee and which resulted in non-compliance by the Noticee is mentioned as under:-

S. No.	Date of Summons	Mode of Delivery	Status of Acknowledgement	Status of Reply
1.	August 04, 2004 sent to the Noticee at his address: C/o Share Shoppe, No 95, Panchavati, Udaipur, Rajasthan (Pin – 313 001).	By Overnite Express Courier (Airway bill no 36441264)	Delivered and acknowledged by one Mohan Lal on August 06, 2004 (Friday)	No response/reply from the Noticee.

16. I observe that the IA had issued the above summons to the Noticee, which required his personal appearance/attendance before the IA along with the

related records/documents pertaining to the case on August 11, 2004 (at 3.00 PM) at Jaipur Stock Exchange Ltd, Stock Exchange Building, Jawahar Lal Nehru Marg Malviya Nagar, Jaipur 302017. As per the aforementioned summons, it was 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.

17. The allegation/observations made in the IR that Noticee had indulged in cross deals in the scrip of PIL during the investigation period and had indulged in acts calculated to create a false and misleading appearance of trading in the scrip of PIL during the investigation period are serious in nature. Besides this, it was also observed in the IR that Shitji Enterprises (which was owned by the spouse of the Noticee) had sold 13,210 shares of PIL during the related period out of which only 1,700 shares were delivered and the remaining shares were auctioned at BSE. In my view, ascertaining the factual position of these details were very relevant in the context of the investigations into irregularities observed in the trading of PIL, which would have enabled the IA to draw precise conclusions w.r.t the role of the Noticee in the said matter. It is in this context that the IA had issued the summons dated August 04, 2004 to the Noticee which required his personal appearance in order to ascertain the factual position. As can be observed from the above Table, the summons dated August 04, 2004, which required the Noticee's physical presence at Jaipur Stock Exchange Office on August 11, 2004 was served on the Noticee on August 6, 2004 and one Mr Mohal Lal had acknowledged the receipt of the said summons. It is on record that Noticee has failed to comply with the requirements of the aforementioned summons and also failed to submit the

details/information/documents to the IA in the said matter, which clearly hampered the progress of the investigations in PIL.

18. The Noticee has contended that the summons dated August 4, 2004 was incorrectly addressed and the same should have been addressed to E 431, Bhupalpura, Udaipur, Rajasthan (Pin) 313 001 instead of addressing the summons at No. 95, Panchavati, Udaipur, Rajasthan Pin 313 001. It was also contended by the Noticee that he was not aware of any person by the name of Mohan Lal who had acknowledged the receipt of the summons dated August 4, 2004, which was issued to the Noticee. In view of the above, the Noticee has contended that the Summons dated August 4, 2004, which was served on the Noticee's address at 95, Panchavati, Udaipur, Rajasthan, Pin 313 001 cannot be reckoned as a good delivery/service of summons. I am not in agreement with the above contentions of the Noticee as these are not valid reasons for not complying with the requirements of the summons. I note from the submissions made by the Noticee (vide his letter dated March 11, 2010) that he has confirmed the fact that the address to which the summons dated August 4, 2004 was sent and delivered on the Noticee was in fact the residential address of the premises which the Noticee had taken on rent from February 2004 to March 2006. The same is also not disputed by the Noticee. Therefore, from the above observations, I note that the summons dated August 4, 2004 was sent to the Noticee's residential address stated above and he cannot escape liability for non-compliance with the requirements of the aforementioned summons.

19. The contentions of the Noticee regarding sale of his office located at E-431, Bhupalpura, Udaipur and enclosing a copy of the sale deed in this regard and also his argument that documents/records pertaining to the case were not available due to shifting of office etc are baseless and without any merit. As already stated above, the summons dated August 4, 2004 was issued to the Noticee's address located at no. 95, Panchavati, Udaipur, Rajasthan, Pin 313 001 and not to his address located at E-431, Bhupalpura, Udaipur. It is on record that the summons dated August 4, 2004 was served on the Noticee at his residential address located at No

95, Panchavati, Udaipur, Rajasthan. Further, it is an admitted fact by the Noticee that he had taken the above premises located at No 95, Panchavati , Udaipur on rental basis for residential purpose during the period from February 2004 to March 2006. Therefore, I am of the view that Noticee should have made appropriate arrangements to receive the said summons dated August 4, 2004 from the above mentioned address. The Noticee's submission that he was not aware of the person by name Mohan Lal who had acknowledged the receipt of the summons dated August 4, 2004 and also that he was not residing at that address etc are not valid reasons for not complying with the requirements of the summons. Clearly, from the above observations, it is evident that the Noticee has failed in his obligation to comply with the summons dated August 4, 2004. The failure of the Noticee to comply with the summons issued by the IA has clearly hampered the investigation process.

20. 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.*"

21. 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, had observed the following :

"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."

22. From the foregoing paragraphs, it is conclusively established that the Noticee has failed to comply with the summons dated August 4, 2004 which was issued to him by the IA and therefore, I hold that the Noticee has violated the provisions of section 11 (3) r/w section 11C (5) of the SEBI Act.

23. 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

24. 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.

25. With regard to the above factors, I find that the material made available on record has not quantified the profit/loss for the violations committed by the Noticee. However, the failure of the Noticee to comply with the summons dated August 04, 2004 which was issued by the IA has clearly hampered the progress of the investigations in the matter of PIL. In view of the above, I am of the view that by not complying with the requirements/directions issued by the IA, the Noticee has failed to comply with the mandatory statutory obligation. 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

26. 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 1,50,000/- (Rupees One Lakh and Fifty thousand only) on the Noticee viz. Sunil Kumar Mehta (Prop. M/s. Share Shoppe) under the provisions of Section 15A(a) of the SEBI Act for his failure to appear in person before the Investigating Authority vide summons dated August 4, 2004, which resulted in violation of the provisions of Section 11 (3) r/w Section 11C(5) of the SEBI Act by the Noticee. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

27. 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

28. 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)	

29. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Shri Sunil Kumar Mehta (Prop. Share Shoppe) and also to Securities and Exchange Board of India.

Place: Mumbai
Date: August 27, 2018

SURESH B MENON
ADJUDICATING OFFICER