

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. EAD-9/ AO/SM/114 – 116/2018-19]**

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

**In respect of:**

**Ashok Shivlal Rupani  
(PAN: AABPR0488E)**

**Naresh Shivlal Rupani  
(PAN: AABPR0487M)**

**Utam Ravji Gada  
(PAN: Not Available)**

**In the matter of Saianand Commercial Limited (formerly known as Oregon Commercial Limited)**

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation of the alleged irregularity in the trading of the shares of Saianand Commercial Limited (formerly known as Oregon Commercial Limited) (hereinafter referred to as "SCL/ company") had observed that the board of directors of OCL in its meeting held on July 22, 2010 recommended for change in management and the proposal was moved through postal ballot. However, no corporate announcement was made by the company to the stock exchange regarding the Board meeting and such recommendation of change in management.

Thus, the Board of directors including Ashok Shivilal Rupani (hereinafter referred to as “Noticee 1”), Naresh Shivilal Rupani (hereinafter referred to as “Noticee 2”) and Utam Ravji Gada (hereinafter referred to as “Noticee 3”) (collectively known as “Noticees”), are allegedly in violation of regulation 30(4) of SEBI (Listing Obligations and Disclosures Requirements) Regulation, 2015 (hereinafter referred to as “LODR regulations”) read with clause 36 of listing agreement read with section 21 and section 24 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “SCRA”).

#### **APPOINTMENT OF ADJUDICATING OFFICER**

2. Vide an order of the Competent Authority, SEBI, dated May 18, 2017, the undersigned has been appointed as the Adjudicating Officer under section 23I of SCRA and Rule 3 of Securities Contracts and Regulation (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as ‘ SCRA Rules’) to inquire into and adjudge the alleged violations of provisions of LODR Regulations, listing agreement and SCRA.

#### **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Based on the findings by SEBI, Show Cause Notice dated March 12, 2018 (hereinafter referred to as 'SCN') was issued to the Noticees to show cause as to why an inquiry should not be held and penalty should not be imposed on it under Section 23A (a) read with section 21 of SCRA for the alleged violations.
4. Noticee 1 and Noticee 2, vide separate letters dated March 27, 2018 submitted, inter alia, “*The period of irregularities in the script of Oregon Commercial Ltd. (OCL / Company) mentioned is between January 4, 2010 to January 10, 2011 for which I have not been able to trace any papers readily. However, I am making best efforts to find papers since the matter under reference is more than 7/ 8 years old.*” Noticee 3 did not submit any reply to the SCN.
5. Noticee 1 and Noticee 2, vide separate letters dated May 7, 2018 submitted, inter alia, “*Regarding your query for the corporate announcement for change of management, we would like to inform you that the same had also been complied. But unfortunately we could not locate the copy of the same. We are still in look out for the same and will send you once we get some information. You please*

*appreciate the fact that we not in position to submit few details that may be required. However, we are of the opinion we had complied with requisite disclosures as was required.”*

6. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticees on June 1, 2018 vide notice dated May 10, 2018. Noticee 1 and Noticee 2, vide letters dated May 17, 2018 submitted that due to ill health of Noticee 1 , they are unable to attend the scheduled hearing on June 1, 2018.
7. Noticee 3, vide letter dated May 18, 2018 submitted that *“I have already, vide my letter dated 29.03.2018 submitted that I was not involved in the day to day management of this company. I have relied on the other Directors who have assured me that they have communicating to you confirming all the compliances. As I am not in good health I request you to excuse me from the requirement of personal hearing”*. He attached copy of the letter dated March 29, 2018 stating, inter alia, *“I have to submit that I was non operational Director, not involved in day to day working of the above Company and as this matter is very old, I do not recall the exact details. However, I have consulted the other Directors who were the part of day to day management, and they have assured me that all the necessary compliance have been carried out. I have been informed that they are trying to locate the papers and would be submitting the necessary documents related to this.”*
8. Another opportunity of hearing was given to Noticee 1 and 2 on June 13, 2018. Both, Noticees 1 and 2, vide letter dated June 5, 2018 submitted that they would avail the opportunity of hearing but vide letter dated June 12, 2018 sought three to four weeks' time to attend the personal hearing. Another opportunity of hearing was given to Noticee 1 and 2 on July 9, 2018. Due to heavy rain in Mumbai they sought adjournment. Final opportunity of hearing was given to Noticee 1 and 2 on July 30, 2018. Noticee 2 along with authorised representative of Noticee 1 appeared and reiterated the submissions made vide letter dated May 7, 2018.

## **CONSIDERATION OF ISSUES AND EVIDENCE**

9. I have carefully perused the charges levelled against the Noticees in the SCN, their reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

- (a) Whether the Noticees have violated the provisions of regulation 30(4) of LODR Regulations read with clause 36 of listing agreement read with section 21 and section 24 of SCRA?
- (b) Do the violations, if any, on the part of the Noticees attract monetary penalty under section 23A(a) of SCRA for the alleged violation?; and,
- (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 23J of the SCRA?

10. Before proceeding further, I would like to refer to the relevant provisions of the LODR Regulations, listing agreement and SCRA:

**Relevant provisions of LODR Regulations**

***30. Disclosure of events or information***

*(4) (i) The listed entity shall consider the following criteria for determination of materiality of events/information:*

*(a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or*

*(b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;*

*(c) In case where the criteria specified in sub-clauses (a) and (b) are not*

*applicable, an event/information may be treated as being material if in the*

*opinion of the board of directors of listed entity, the event / information is considered material.*

*(ii) The listed entity shall frame a policy for determination of materiality, based*

*on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website.*

**Relevant provisions of SCRA:**

*21. Where securities are listed on the application of any person in any recognised Stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange*

**Offences by companies.**

*24. (1) Where an offence has been committed by a company, every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:*

*Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.*

*(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*

*Explanation—*

*For the purpose of this section,—*

*(a) “company” means any body corporate and includes a firm or other association of individuals, and*

*(b) “director”, in relation to-*

*(i) a firm, means a partner in the firm;*

*(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.]*

*(3) The provisions of this section shall be in addition to, and not in derogation of, the provisions of section 22A.*

11. I note from the documents on record that the Noticees were directors of the company. It was the responsibility of all the directors to ensure that all the legal and procedural compliances are done by the company. Noticee 1 and 2 failed to submit any evidence regarding the public announcement made to the exchanges. Noticee 3 cannot wash off his responsibility by stating that he got the assurance of the other directors that all the necessary compliances have been carried out. In view of the above, the submissions of the Noticees cannot be accepted.

12. The recommendation of the Board of Director in regard to change in management of the company is a very vital information. Not only shareholders but the entire market needs to be made aware of such a change. For this reason, it is essential that a corporate announcement is made by the company to the exchange in this regard. As the company did not make such change, all directors at the relevant time are liable for the non-compliance and hence they are to be penalized under section 23A(a) of SCRA which reads as:

***Penalty for failure to furnish information, return, etc.***

**23A.** Any person, who is required under this Act or any rules made thereunder,—

*(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, 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.*

13. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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..."*.

14. While determining the quantum of penalty under section 23A(a) of SCRA, it is important to consider the factors relevantly as stipulated in section 23J of SCRA which read as under:-

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

*While adjudging quantum of penalty under section 23I, 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.*

15. I find that the investigation did not bring out the disproportionate gain or unfair advantage to the Noticees and loss caused to investors as a result of non announcement of the

recommendation of the Board of directors. The non-compliance happened only once. Hence we cannot say that the violation is repetitive in nature.

### **ORDER**

16. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of section 23-J of SCRA, I, in exercise of the powers conferred upon me under section 23 I of the SEBI Act read with Rule 5 of the SCRA Adjudication Rules, conclude that the proceedings against the Noticees stand established in terms of the provisions of SCRA. Hence, in view of the charges established under the provisions of SCRA, I, hereby impose monetary penalty under section 23A(a) of SCRA of ₹ 2,00,000/- (Rupees Two Lakh only) each on Noticees 1, 2 and 3 for the alleged violations.
17. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - I [ **EFD-DRA-I** ] SEBI Bhavan, Plot No.C4-A, ' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

**Account No. for remittance of penalty(ies) levied by Adjudication Officer :-**

<b>Bank Name</b>	State Bank of India
<b>Branch</b>	Bandra-Kurla Complex
<b>RTGS Code</b>	SBIN0004380
<b>Beneficiary Name</b>	SEBI – Penalties Remittable To Government of India
<b>Beneficiary A/c No.</b>	31465271959

18. The Noticee shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

19. The Format for forwarding details / confirmations of 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 reproduced as under:-

<b>1. Case Name :</b>	
<b>2. Name of Payee:</b>	
<b>3. Date of Payment :</b>	
<b>4. Amount Paid :</b>	
<b>5. Transaction No :</b>	
<b>6. Bank Details in which payment is made:</b>	
<b>7. Payment is made for : ( like penalties / disgorgement / recovery/Settlement amount and legal charges along with order details)</b>	

20. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**Date : September 6, 2018**  
**Place : Mumbai**

**SAHIL MALIK**  
**ADJUDICATING OFFICER**