BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER No. Order/MC/RM/2022-23/20419-20424]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I (2) OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

1. **Mr. Archit Jindal (PAN: AGNPJ5775G)** having addresses at:
   i. H-1/1-A, Model Town 3, Delhi, India-110009
   ii. F 3/12, 2nd Floor, Model Town 2, New Delhi, Delhi India 110009

2. **Fussy Financial Services Pvt Ltd. (PAN: AAACF0157G)** having addresses at:
   i. 1837/138, Tri Nagar, Shanti Nagar, New Delhi, India-110035
   ii. Plot-05/12/56, T/F, Dr Chamber, Deshbandhu Gupta Road, Karol Bagh, New Delhi, India-110005
   iii. 6141/2, D/6 Vasant Kunj, New Delhi, India-110070

3. **Mr. Laxman Singh Satyapal (PAN: AIDPS0821N)** having address at 104, Mukand House Commercial Complex, Azadpur, Delhi-110033

4. **Ms. Meera Mishra (PAN: AJBPM5839R)** having addresses at:
   i. K-31/6 Model Town-III, Delhi-110009
   ii. 104, Mukand House Commercial Complex, Azadpur, Delhi-110033

5. **Nanon Distributors Private Limited (PAN: AADCN3085E)** having address at 512, Usha Kiran Building, Commercial Complex, Azadpur, Delhi-110033

6. **Pradeep Kumar Jindal (PAN: AAIPJ8526A)** having addresses at:
   i. H-1/1-A, Model Town 3, Delhi, India-110009
   ii. F-3/12, Model Town, Delhi, India- 110009

In the matter of Delta Leasing & Finance Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings against Mr. Archit Jindal (**Noticee 1),** Fussy Financial Services Pvt Ltd. **(Noticee 2),** Mr. Laxman Singh Satyapal **(Noticee 3),** Ms. Meera Mishra **(Noticee 4**), Nanon Distributors Private Limited **(Noticee 5),** and Mr. Pradeep Kumar Jindal **(Noticee 6),** under Section 15A(a) of SEBI Act for the alleged violations Section 11C(2) & 11C(3) of SEBI Act, 1992; under Section 15HA for the alleged violation of Regulation 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"); and Section 23H of Securities Contracts (Regulations) Act (hereinafter referred to as **'SC(R)A'**) for the alleged violations of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') *vide* order dated December 21, 2020 to inquire into and adjudge under 15A(a) & 15HA of the SEBI Act, and Section 23H of SC(R)A, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated *vide* order dated January 13, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/RM/2022/3494 dated January 28, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('SEBI Adjudication Rules') and Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ('SCR Adjudication Rules') to show cause as to why an inquiry should not be held and penalty not be imposed against Noticees in terms of Section 15A(a) & 15HA of the SEBI Act, and Section 23H of Securities Contracts (Regulations) Act (hereinafter referred to as **'SC(R)A'**) for the aforesaid alleged violations.

4. The allegations levelled against the Noticees in the SCN are summarized as below:

5. Delta Leasing & Finance Ltd. (DLFL) was incorporated in November 1983 and was listed on DSE on June 27, 1984 and at BSE on April 18, 2013. As per the website of DLFL, the company is engaged in investments and providing loan & advances and other related activities. The Noticees engaged in some off-market transactions in the scrip of DLFL during the year 2013 which were required to be settled as spot delivery contract. The off market transactions executed during the investigation period were carried out electronically in dematerialized form by transfer from the account of a Beneficial Owner (Transferor or Source Client) to the account of another beneficial owner (Transferee or the Target Client) through Delivery Instruction Slips (DIS).

Spot Trades not settled within the time frame stipulated in Section 2(i)(a) of SC(R)A, 1956.

6. A “spot delivery contract” is defined in SC(R)A to mean a contract which provides for actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality. An off-market transaction is in the nature of a spot delivery contract in terms of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013.

7. The reasons mentioned by Noticees for transfers on DIS Slips of their off market transactions are detailed below:

(Table 1)

S.No.	Noticee	Reason Mentioned on majority of DIS Slips
1	Noticee 1	“Sale”
2	Noticee 2	“Loan”

3	Noticee 3	“Sale”
4	Noticee 4	“Sale”
5	Noticee 5	“Delivery Return”
6	Noticee 6	“Sale”

8. In order to analyze the off market transactions of the Noticees in the scrip of the company, summons were issued to the Noticees, and to the target clients of their transactions. In their replies, target clients submitted that the shares were received from the source clients much after the payment was made. Target clients also provided supporting documents like bank account, demat account statements in respect of the transactions.

9. On examination of the DIS slips of the Noticees (provided as Annexure 2 of the SCN), reply of the target clients (provided as Annexure 3 of the SCN), and other documents like bank account statements, demat account statements, following was observed:

10. In respect of all the sale transactions of the Noticee 1, 3, 4 and 6, many of the transactions of aforesaid Noticees were not settled within the time frame stipulated in Section 2(i)(a) of SC(R)A, 1956 as the consideration for off market transfer of shares were paid by the target clients first and the shares were transferred by the Source clients (i.e. Noticee) after delay beyond the time frame stipulated in the said provisions. A brief summary of transactions carried out by Noticees are tabulated below:

(Table 2)

S.No.	**Name of Source client**	**No. of target clients with whom transacted**	**Total no. of transactions**	**Qty of shares transferred**		**Total Consideration amount received (Rs.)**		**No. of instances of delay in settlement**	**Delay/ Range of Delay(no. of days)**
				Total qty	**Qty in delayed cases**	**Total Consideration**	**Consideration in delayed cases**		
1.	Archit Jindal	32	34	16,12,750	7,34,000	1,42,29,000	71,44,000	24	20 days to 417 days

2.	Laxman Singh Satyapal	18	18	7,21,131	3,70,000	61,11,310	33,15,000	12	21 days to 330 days
3.	Meera Mishra	49	51	18,52,500	15,63,500	1,38,86,000	1,08,51,000	47	6 days to 306 days
4.	Pradeep Kumar Jindal	3	3	57,525	6,500	1,00,000	65,000	2	30 days to 120 days

11. The detailed list of all the transactions of Noticee 1, 3, 4 and 6 with delay in settlement was provided as Annexure 4 of the SCN.

12. In regard to the transactions conducted by Noticee 2 and 5 (provided as Annexure 5 of the SCN), summons were issued to them seeking details like payment, bank account statement etc. to substantiate that there was no delay in settlement of these transactions, to which they failed to reply adequately. In view of the same, the off market transactions were alleged to be settled by Noticee 2 and 5 with delay.

13. As in case of all the transactions given in Annexure 4 and 5 for Noticees, transfers have taken place only in electronic mode and not through physical mode, the exclusion of the actual period taken for dispatch of securities or the remittance of money there for through the post from the computation of the time period taken for transfer (if the parties to the contract do not reside in the same town or locality" as stipulated in section 2(i)(a) of SC(R)A, 1956) do not arise and therefore the same have not been taken in to account.

14. As detailed above transactions given at Annexure 4 and 5 of Noticees were not settled within the time frame stipulated in Section 2(i)(a) of SC(R)A, 1956. Hence, by not settling the off market transactions within the time frame as stipulated in Section 2(i)(a) of SC(R)A, 1956, the Noticees were alleged to have violated provisions of section 13, section 16 & section 18 of SC(R)A, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013.

Failure to reply to Summons

15. During investigation to determine whether the aforesaid off market transactions carried out were as per the time frame stipulated in Section 2(i)(a) of SC(R)A, ascertaining the date of settlement of transactions was crucial. In this regard, summons were issued to Noticees to seek the requisite information. In addition to sending of summons by speed post with acknowledgement due, the scanned copy of the summons were also sent by email to the e-mail IDs of the entities registered by them with the Depositories through KYC. The details of status and date of delivery of summons issued to Noticees are given in the table below:

(Table 3)

Sr no.	Name of Entity	Status of delivery	Date of Delivery	Proof of Delivery	Particulars of Reminders sent
1	Archit Jindal	Delivered through email to 'archit@multicube.in'; 'archit.jindal@hotmail.com'; 'jindal21@ymail.com'	29.10.2019	Email delivery receipt	Reminder mail sent on 11.12.2019 & 02.01.2020
2	Fussy Financial Services Pvt Ltd	physical copy delivered on 29.10.2019 & Delivered through email to 'fussyfinancial@gmail.com'; 'abomcx@hotmail.com' on 24.10.2019	29.10.2019	Email delivery receipt & acknowledgement	Reminder mails sent on 01.11.2019 , 12.12.2019 ,17.12.2019 & 31.12.2019
3	Pradeep Kumar Jindal	Physical copy delivered on 04.11.2019 and Delivered through email to jindal21@ymail.com	04.11.2019	Email delivery receipt and acknowledgement	Reminder mail sent on 11.12.2019 & 02.01.2020
4	Nanon distributors private limited	Physical copy delivered on 04.11.2019 and Delivered through email to jindal21@ymail.com	04.11.2019	Email delivery receipt and acknowledgement	Reminder mail sent on 11.12.2019 & 02.01.2020
5	Meera Mishra	Delivered through email to 'jindal21@ymail.com'	29.10.2019	Email delivery receipt	Reminder mail sent on 11.12.2019 & 02.01.2020
6	Laxman singh satyapal	Delivered through email to 'jindal21@ymail.com'; 'laxmansinghsatyapal@yahoo.co.in'	29.10.2019	Email delivery receipt	Emails sent on 06.11.2019, 19.12.2019, 31.12.2019

16. SEBI IT Department vide emails dated December 18, 2019 confirmed the delivery of the summons to Noticees through email. Copy of aforesaid emails were provided as Annexure 6 of the SCN.

17. As detailed above, the summons and reminders were delivered to the Noticees, but Noticees failed to furnish bank statements/cash receipt/share bills in respect of their transactions which was crucial and essential information for ascertaining the compliance status of the off market transactions within the time frame for settlement as stipulated in Section 2(i)(a) of SC(R)A, 1956.

18. The failure to give complete reply to summons impeded the investigation and hence by failing to give complete reply to the summons issued, the **Noticees are alleged to have violated Section 11C(2) and 11C(3) of SEBI Act, 1992.** Section 11C(2) and 11C(3) of SEBI Act, 1992 are reproduced below:

    Securities and Exchange Board of India Act, 1992

    11 C. (2) *Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.*

    11 C. (3) *The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.*

Incorrect information in DIS Slips

19. In terms of Section 12 (1) of the Depositories Act, a Beneficial Owner (B.O) may with previous approval of the Depository create a pledge or hypothecation in respect of security owned by him through a depository. Further in terms of sub-section (2) ibid every beneficial owner shall give such intimation of pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly. Any entry in the records of depository under sub-section 2 shall be evidence of pledge or hypothecation.

20. Further, Regulation 58 of SEBI (Depositories and participants) Regulations, 1996 prescribes in detail the manner in which a pledge or a hypothecation can be created, revoked or invoked. Sub-section 11 *ibid* stipulates that no transfer of security in respect of which a notice or entry of pledge or hypothecation is in force shall be effected by a participant without the concurrence of the pledgee or the hypothecatee as the case may be.

21. SEBI Master circular CIR/MRD/DP/13/2013 dated April 15, 2013, stipulates that Section 12 of the Depositories Act and Regulation 58 of SEBI (Depositories and participants) Regulations, 1996 along with the relevant bye-laws of the Depositories enumerate the manner of creating pledge and that any procedure followed other than as specified under the said provisions of law shall not be treated as pledge. The para 4.3 (ii) of the Circular states that the Depositories shall advise the DPs that an off market transfer of shares lead to change in ownership, the same cannot be treated as pledge.

22. On examination of the DIS slips of Noticee 2 for the off market transfers, it was observed that almost in all DIS Slips the reason for transfer stated in the DIS Slips was “Loan of Shares or return of loan of shares”. To consider aforesaid transactions as loan transactions, these transactions ought to have been carried out in the manner provided in Section 12 of the Depositories Act and Regulation 58 of SEBI (Depositories and participants) Regulations 1996.

23. CDSL vide email dated June 18, 2020 and NSDL vide emails dated June 16, 23 and 24, 2020 informed that none of the off market transactions entered by the Noticee 2 are in the nature of pledge. Accordingly, the off market transfers involved transfer of ownership on the shares and therefore attract the provisions of Section 2(i)(a) of SC(R)A, 1956.

24. For effecting transfer of shares electronically, the Source Clients issue the DIS duly filled in and signed to the Source DP. Therefore, the Source clients are accountable and responsible for the contents filled in by them in the DIS. As the Source clients stated the reasons for transfer in the DIS as Loan Transaction or return of loan transaction but the other records as stated above are contrary to the reasons stated in the DIS by the Source Clients, the act of the Source clients in giving false reason of loan or return of loan for transfer of shares allegedly amounts to an act of deceit, undermining the ethical standards and good faith dealings while dealing in securities. In view of the above, it was alleged that such an act has been resorted to by the source clients in order to evade or avoid regulatory compliance on off market transfer of shares as stipulated in Section 2(i)(a) of SC(R)A, 1956.

25. Further, in order to verify the claims of the Noticees 1, 3, 4, 5 and 6 for transactions wherein they stated the reason for transfer in the DIS as Bad delivery/Delivery Return, vide emails dated June 15, 18 and 20, 2020 the RTA of the company M/s Beetal Financial Computer Services Pvt Ltd. (hereinafter referred as “RTA”) was asked to provide the complete information of any instance of bad delivery rectification request received from Noticees (among other source clients) and to confirm whether bad delivery rectification has been done by the RTA for shares in physical mode during the period January 01, 2010 to December 31, 2014. The RTA vide emails dated June 17, 19 and 22, 2020 provided the complete transfer register maintained by the RTA along with the list of bad delivery rectification requests rejected during the said period.

26. On analysis of the information provided by the RTA and comparison of the transactions involved in the transfer register with the off-market transactions, it was observed that there were neither any requests from the Target Clients (involved in the category of Bad Delivery/Delivery Return transactions) to the RTA for transfer of shares in their names nor from the Source Clients for Bad Delivery Rectification in the case of shares transferred in Physical form. Further, there can be no case of Bad Delivery/Delivery Return when the shares are transferred in Demat form through a depository.

27. For effecting transfer of shares electronically, the Source Clients, in the aforesaid transactions, i.e. Noticees had issued the DIS duly filled in and signed to the Source DP. Therefore, the Noticee 1, 3, 4, 5 and 6 being Source clients are accountable and responsible for the contents filled in by them in the DIS for the aforesaid off market transactions. As the aforesaid Noticees stated the reasons for transfer in the DIS as Bad Delivery/Delivery Return but other records as stated above are contrary to the reasons stated in the DIS by the Source Clients, the act of the aforesaid Noticees in giving false reason of Bad Delivery/Delivery Return for transfer of shares allegedly amounts to an act of deceit, undermining the ethical standards and good faith dealings while dealing in securities.

28. Noticees 1, 3, 4, 5 and 6 by stating their off market transfer of shares as Bad Delivery/Delivery Return transactions in the DIS when none of such transactions were Bad Delivery/Delivery Return transactions, have allegedly committed an act of deceit by giving false reason of "Bad Delivery/Delivery Return" in DIS for transfer of shares in order to evade or avoid regulatory compliance stipulated in Section 2(i)(a) SC(R)A, 1956 for off market transfer of shares.

29. For the reasons detailed above from para 24 to 31, Noticees by mentioning false and incorrect information in the DIS Slips, to evade regulatory compliances for transfer of shares, committed an act of deceit and were alleged to have violated Regulation 4(1) of SEBI PFUTP Regulations, 2003, which is reproduced as under:

<u>SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003</u>

4. *Prohibition of manipulative, fraudulent and unfair trade practices*

(1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

30. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15A(a) & 15 HA of the SEBI Act.

31. In response to SCN, Noticees neither filed any reply nor attended personal hearing before undersigned. The details of the delivery of SCN and Hearing Notice (HN) to the Noticees is as follows:

Noticee Name	**SCN/HN delivered by**
Mr. Archit Jindal	SCN served by SPAD and by email (on email address jindal21@ymail.com, archit.jindal@hotmail.com, archit@multicube.in) on 28.01.2022 and HNs by email on 07.07.2022 and 06.10.2022
Fussy Financial Services Pvt Ltd	SCN served by email (on email address abomcx@hotmail.com, fussyfinancial@gmail.com, fussymcx@yahoo.com) on 28.01.2022 and HN by email on 07.07.2022 through email
Mr. Laxman Singh Satyapal	SCN served by SPAD and by email (on email address laxmansinghsatyapal@yahoo.co.in; jindal21@ymail.com) on 28.01.2022 and HNs by email on 07.07.2022 and 06.10.2022
Ms. Meera Mishra	SCN served by SPAD and by email(on email address jindal21@ymail.com) on 28.01.2022 and HNs by email on 07.07.2022 and 06.10.2022
Nanon Distributors Private Limited	SCN served by SPAD and by email (on email address jindal21@ymail.com) on 28.01.2022 and HNs by email on 07.07.2022 and 06.10.2022
Mr. Pradeep Kumar Jindal	SCN served by email (on email address jindal21@ymail.com) on 28.01.2022 and HNs by email on 07.07.2022 and 06.10.2022

32. From the details of delivery of SCN and HN as given in the table above, I note that Noticees did not submit any reply to the SCN, and did not appear for personal hearing, despite being provided with sufficient opportunity for filing the reply to

the SCN and to appear for hearing. In these facts and circumstances, with respect to these Noticees, the matter can be proceeded ex-parte on the basis of material available on record in terms of Rule 4(7) of the Adjudication Rules which reads as under: -

“4(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.”

CONSIDERATION OF ISSUES AND FINDINGS

33. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticees violated Section 11C(2) and 11C(3) of SEBI Act; Regulation 4(1) of SEBI PFUTP Regulations, 2003; and Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013?

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(a) and 15HA of the SEBI Act; and Section 23H of SC(R)A?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules and Section 23J of SC(R)A read with Rule 5(2) of the SCR Adjudication Rules?

Issue No. I Whether the Noticees violated Section 11C(2) and 11C(3) of SEBI Act; Regulation 4(1) of SEBI PFUTP Regulations, 2003; and Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013?

34. The first allegation against the Noticees is based on delay in settlement of off-market trades. In this regard, I note that Section 16 of the SC(R)A as well as the SEBI Notification S.O. 184(E) dated March 01, 2000 issued in terms of Section 16*,* emphasizes legislative intent to prevent undesirable speculation in securities, by ensuring that parties to off-market dealings in shares comply with Section 2 (i) of the SC(R)A which in turn required a spot delivery contract to provide for "*actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day".* As per Section 2 (i), it is important to note that the reference to payment of price and delivery of securities is from the date of contract. Further, the duration of 'same day or next day' does not include *"the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality*". Thus, unavoidable procedural delays due to the process involved in receiving payment for, and transferring shares on account of contract for off-market transaction in shares, have been excluded from the computation of same day or next day in Section 2 (i).

35. I note from the replies of target clients of impugned transactions wherein the Noticee 1, 3, 4 and 6 were the source clients, that there was a delay in delivery of shares sold by Noticees of 20-417 days, 21-330 days, 6-306 days, and 30-120 days for impugned transactions carried out by Noticee 1, 3, 4 and 6 respectively (as detailed in table 2).

36. In respect of Noticee 2 and 5, I note that unlike statements and supporting documents provided by target clients of impugned off market transactions of Noticees 1, 3, 4 and 6, there is nothing on records in support of the allegation that the impugned transactions of Noticee 2 and 5 were settled with delay in violation of timelines stipulated in Section 2(i) of SC(R)A for spot trades. The allegation is based on the fact that the Noticee 2 and 5 have failed to reply adequately to the queries in the summons and emails. I note that such an inference from the fact is not logical.

37. In view of the above, there is a clear failure by Noticees 1, 3, 4 and 6 to settle transactions within the timelines stipulated in Section 2(i) of SC(R)A for spot trades, and with such lengthy time taken to settle the trade, it loses the character of a spot trade. **Hence, it is established that the Noticees 1, 3, 4 and 6 violated provisions of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013**

38. The second allegation in the SCN pertains to alleged violation of Regulation 4(1) of PFUTP Regulations, 2003 due to incorrect statement by Noticees in the DIS slip that transactions were Bad Delivery/Delivery Return but other records as stated above are contrary to the reasons stated in the DIS.

39. Regulation 4(1) of PFUTP Regulations states that "*no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets".* The issue to be examined here is whether an incorrect reason given in the DIS slip by a transferor amounts to manipulative, fraudulent or unfair trade practice. The Noticees stated that the transactions were for loan whereas they were outright sale and purchase transactions. As per the SCN, Noticees committed an act of deceit by giving a false reason for transfer in the DIS slip. In this regard, I refer to judgment of Hon'ble SC in the matter of SEBI vs. Kanaiyalal Patel [CA No. 2595 of 2013] of 20.09.2017 wherein the SC held as follows:

    "Market manipulation is normally regarded as an "unwarranted" interference in the operation of ordinary market forces of supply and demand and thus undermines the "integrity" and efficiency of the market."

    "Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions"

40. Based on the above, incorrect entry in DIS slip does not amount to market manipulation as by itself, it does not affect the market forces of demand and supply. A trade practice would be unfair if it is unfair to the parties involved in the

transactions or otherwise affects fairness and integrity in the markets. The wrong entry for reason of sale on a DIS slip, as in this case, has not been shown to have created unfairness for the parties engaged in the transaction. It is also not demonstrated as to whether the fairness or integrity of trading in DLFL is impacted by the wrong entry.

41. As regards fraudulent trade practice, regulation 2(c) of the PFUTP Regulations defines fraud as *"any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss".* In the SC order in SEBI vs. Kanaiyalal Patel(supra), it is held that
"The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities."

42. While the act of giving wrong reason for transfer of shares in a DIS slip may be considered to be deceitful, by itself, it has not been demonstrated as to how this act could induce another person to deal in securities. There is no inference in the allegation that any person was induced to act in the manner that he did but for the inducement.

43. In view of the above, **I find that violation of Regulation 4(1) of SEBI PFUTP Regulations, 2003 against Noticees on account of giving wrong reason for sale in DIS slip is not established.**

44. The third allegation against the Noticees is that they failed to give complete reply to the summons (issued and delivered to them as illustrated in the table 3 above), hence did not provide crucial information sought by SEBI through summon and failed to furnish bank statements/cash receipt/share bills in respect of their

transactions, and hence they have only partially responded to the summons issued.

45. In this regard I have perused the replies submitted by the Noticees and the material on records, and note the following:

46. **Noticee 1:** from the records it is observed that vide email dated December 26, 2019 Noticee had informed SEBI that the transactions not specified in his bank statement were made in cash, and the records being old required more time to retrieve. Further, the Noticee had replied to SEBI summons and emails and also provided bank account statement. I have perused the material and note that the Noticee claimed these transactions to be in cash, and there being no material on records to indicate otherwise, it is not is not established that the Noticee 1 did not comply with the summons and submitted partial information. **Accordingly, it is not established that Noticee 1 violated Section 11C(2) and 11C(3) of SEBI Act.**

47. **Noticee 2:** I have perused the documents available on record and note that Noticee vide letter dated November 02, 2019 informed SEBI that it received shares on behalf of one 'Vinod Garg' to be returned subsequently to clients of 'Vinod Garg', for which it earned 25 paise per share. The Noticee also provided dates, mode of consideration in its reply to SEBI, along with its demat transaction statement. In view of the same, I note that the Noticee sufficiently responded to summons, and did not hamper the investigation. Accordingly, **it is not established that Noticee 2 violated Section 11C(2) and 11C(3) of SEBI Act.**

48. **Noticee 3:** From the records it is observed that vide email dated January 03, 2020 Noticee had informed SEBI regarding the impugned transactions settled with delay that the delay in settlement was on account of Noticee's medical reasons during the period and there was no objection raised by the transferee during the period of delayed settlement. There is no record of SEBI posing further queries raised to the Noticees. Hence, it is not is not established that the Noticee

3 did not comply with the summons and submitted partial information thereby impeding investigation. **Accordingly, it is not established that Noticee 3 violated Section 11C(2) and 11C(3) of SEBI Act.**

49. **Noticee 4:** From the records it is observed that Noticee provided certain information to SEBI and vide email dated December 26, 2019 sought extension of another two weeks from SEBI on account of transactions being old. As per records, no further communication by SEBI was issued to Noticee pursuant to the Noticee's aforesaid email. I note that, Noticee provided part of the information sought and failed to provide some specific information despite seeking extension of time to submit the reply. I also note that the transactions pertained to year 2013, which was more than 6 years old at the time of issuance of summons, and there is a probability that the Noticee did not have details of the transactions available with her. In view of the above, as Noticee responded to the summons and provided substantial information and for remaining information sought more time, and since SEBI did not pursue the matter further beyond sending the first set of emails, the material on record is not sufficient to hold that the responses of aforesaid Noticee were such as it hampered the investigation in the matter. In view of the above, **it is not established that Noticee 4 violated Section 11C(2) and 11C(3) of SEBI Act.**

50. **Noticee 5:** From the records it is observed that vide emails dated November 16, 2019 and March 18, 2020 Noticee provided the bank account statement, demat account statement and reply to the queries of SEBI. Further the Noticee vide email dated March 18, 2020 had requested that the records are old and in view of Covid, Noticee requested further time for retrieval of records. There is another email on record which is corrupt and there is no record of SEBI posing further queries raised to the Noticee. Hence, it is not established that the Noticee 5 did not comply with the summons and submitted partial information thereby impeding investigation. **Accordingly, it is not established that Noticee 5 violated Section 11C(2) and 11C(3) of SEBI Act.**

51. **Noticee 6:** From the records it is observed that vide letter dated November 16, 2019, Noticee provided demat account statement, and bank account statement to SEBI. Further, vide email dated November 26, 2019 the Noticee had informed that the consideration for the impugned transactions were received in cash. I have perused the material and note that the Noticee claimed these transactions to be in cash, and there being no material on records to indicate otherwise, it is not is not established that the Noticee did not comply with the summons and submitted partial information. **Accordingly, it is not established that Noticee 6 violated Section 11C(2) and 11C(3) of SEBI Act.**

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 23H of SCR(A)?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 23J of SC(R)A read with Rule 5(2) of the SCR Adjudication Rules?

52. Since the violation of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013 by Noticees 1, 3, 4 and 6 as brought out in the foregoing paragraphs, the Noticees are liable for monetary penalty under 23H of SC(R)A which states as follows:

> <u>*SC(R)A:*</u>
>
> ***Penalty for contravention where no separate penalty has been provided-***
>
> ***23H-*** *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognized stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

53. While determining the quantum of penalty under 23H of SC(R)A the following factors stipulated in Section 23J of the SC(R)A have to be given due regard:

<u>SC(R)A</u>

<u>Factors to be taken into account by the adjudicating officer</u>

23J. *While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

54. I note that the material on record has not brought out any disproportionate gain made by the Noticees or loss caused to investors by the Noticees. In view of the above, taking into consideration facts and circumstances of the case and mitigating factors, I am of the view that a penalty of Rs.50,000/- each on Noticees 1, 3, 4 and 6 under Section 23H of SC(R)A will be commensurate with the violations committed by the Noticees.

ORDER

55. After taking into consideration all the facts and circumstances of the case, in exercise of the powers conferred upon me under section 23-I of the SC(R)A, 1956 read with Rule 5 of the SCR Adjudication Rules, I hereby impose the penalty of Rs.50,000/- (Rupees fifty thousand only) on Noticee Mr. Archit Jindal (**Noticee 1),** Mr. Laxman Singh Satyapal **(Noticee 3),** Ms. Meera Mishra **(Noticee 4**), and Mr. Pradeep Kumar Jindal **(Noticee 6)** under Section 23H of SC(R)A for violation of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000, SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013.

56. The Noticees 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.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

57. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action – IV of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment –Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

58. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: October 18, 2022
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER