BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SD/KS/2022-23/18542]

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) RULES, 1995.

In respect of:

1) **Esaar India Limited (PAN- AABCE0478J)** having address at 204 B-Wing, New Prabhat SRA CHS Ltd., Chikuwadi, Plot-115, Next to Bisleri Factory, W.E. Highway, Andheri (East) Mumbai, MH – 400 099 IN

In the matter of
M/s Esaar India Limited

Facts of the Case in Brief

1. Securities and Exchange Board of India (hereinafter be referred to as, "**SEBI**") initiated adjudication proceedings under Section 15HA of SEBI Act, 1992 (hereinafter be referred to as, the **"SEBI Act)** against **Esaar India Limited** (PAN- AABCE0478J), (hereinafter be referred to as, **Noticee")** for the alleged violation of Section 12A (a), (b), (c) of the Securities and Exchange Board of India Act, 1992(SEBI Act) r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as '**PFUTP Regulations**')

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer, vide communique dated August 23, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the

provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. Show Cause Notices ref. SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/2/2021,dated October 20, 2021 (hereinafter referred to as '**SCN'**) were issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act, 1992

4. The allegations levelled against the Noticee in the SCN, *inter alia*, mentioned as below-:

i. *During the examination stage it was observed that there was preferential allotment of 31,77,000 equity share of ₹.10/- each issued at a premium of ₹.40/- per share to 44 non-promoter entities in the scrip Esaar (India) Ltd on May 25, 2011 and these shares were listed on BSE on August 4, 2011. Total 31,77,000 equity share were in lock in till May 24, 2012. Also, during the period from May 24, 2012 to October 20, 2014) 41 allottees have sold 2,34,17,000 shares out of which 37 allottees are appearing as counterparties of connected entities. These 37 allottees sold 2,21,67,000 shares and out of which 1,40,86,874 (63.55%) shares were sold to connected entities. Total selling by allottees to connected entities i.e. 1,40,86,874 shares are 44.34% of allotted shares (3,17,70,000).*

ii. *With regard to preferential allotment of 31,77,000 equity shares by EIL on May 25, 2011 to 44 non-promoter entities, aggregating to ₹.15,88,50,000, analysis of Bank statements of all the 44 preferential allottees regarding fund flow was carried out. On analysis of the Bank statements it was observed that there are certain violations made by Noticees pertaining to fund flow*

iii. *It is observed that Geetaben Joshi and Shivshankar Joshi were allotted 60,000 shares in the preferential allotment for which they had transferred ₹.15,00,000/- each from Account numbers 014400100001324 and 014400100001343 maintained with Dhanlaxmi Bank. It is also observed from the analysis of the bank statement of Shivshankar Joshi that the bank account with account number 014400100001324 had received ₹30,00,000 from bank account with account number 910020041102497 maintained with Axis Bank. On further analysis, it is observed that the account is belongs to Surface Finance Private Ltd and the Authorized signatories for the said bank account are Surface Finance Private Limited., Avinash Arvind Jagushte., Vijay Agarwal., Pradeep Dhanuka*

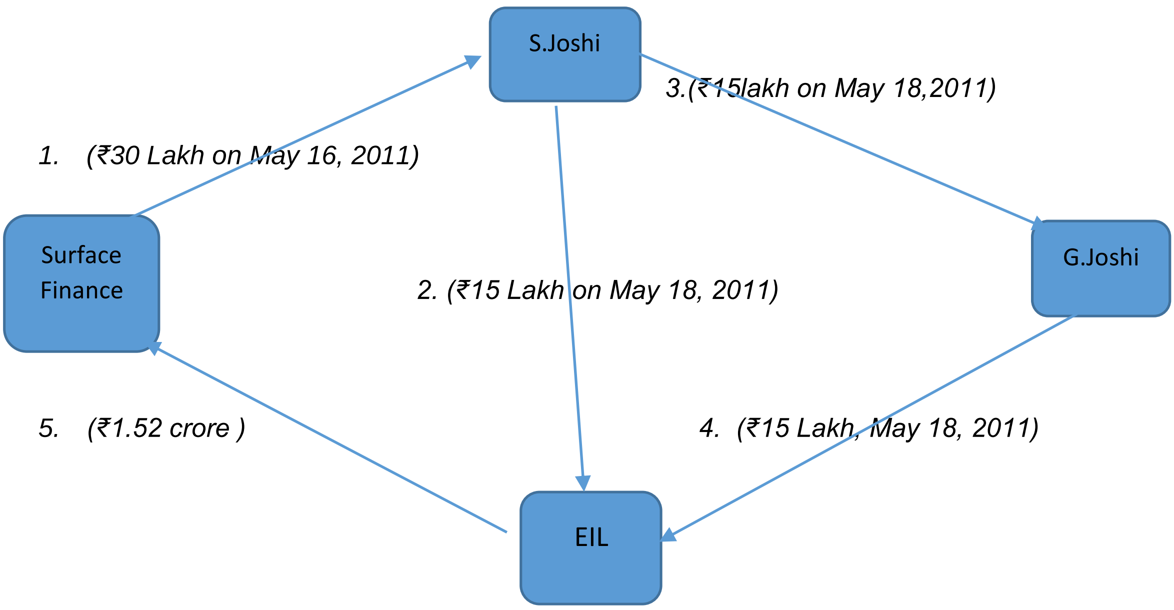
iv. *It was also observed that the registered e-mail address mapped to the said account is gkagrawal1@gmail.com. As per Form 32 data this email account belongs to Giriraj Kishore*

Agrawal. It was also observed that Giriraj Kishore Aggrawal was one of the directors of Esaar India Limited for the period of July 2010- March 2011. Thereafter, from the information on MCA website it was observed that the company named Surface Finance Pvt Ltd has been struck-off.

v. *It is also observed that pursuant to receipt of Rs 30,00,000/- from Surface Finance Private Ltd. by Shivshankar Joshi, an amount of ₹15,00,000 was then transferred by him to his wife i.e. Geetaben Joshi in her bank account with account number 014400100001343 maintained with Dhanlaxmi Bank and the same amount was transferred to EIL(the company) from account number 014400100001343.*

vi. *Further, it is observed that EIL vide it letter dated September 19, 2019 informed that Surface Finance received ₹1,52,00,000 from the proceeds of preferential allotment during the period of May 20,2011- May 30, 2011.*

vii. *The same is summarized diagrammatically as under where the number indicates the chronology of fund flow:*



viii. *From the analysis it is observed that Surface Finance Pvt Ltd financed the subscription amount paid by the two allottees i.e., Noticcee-1and Noticee-2 and subsequently Surface Finance Pvt Ltd had received ₹1.52 crore out of the Issue Proceeds Amount from the company EIL thereby funding the preferential allotment dated May 25,2011 to the extent of ₹30,00,000.*

ix. *In this regard, SEBI vide email dated June 18, 2021 sought details from the company Surface finance about the reason for transfer of ₹30,00,000 to Shiv Shankar Joshi and also reasons and supporting documents substantiating for nature of inward credit of ₹1,52,00,000 from EIL. Further,* *SEBI had also sought the information about Nature of Relationship / Association (Professional or Personal, Past / Present) between following entities:*

a. *Surface Finance Private Ltd & Shiv Shankar Joshi.*
b. *Surface Finance Private Ltd & Esaar India Limited.*
c. *Giriraj Agarwal and Surface Finance Private Ltd.*

However, it was observed that no reply has been received in this regard from Surface Finance Ltd.

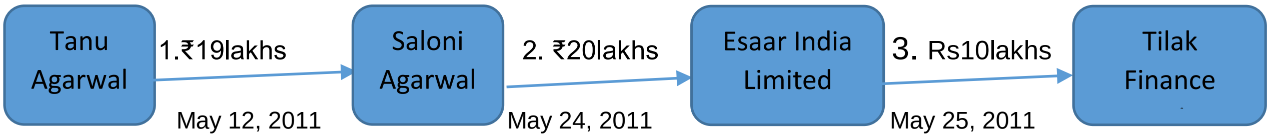
x. *It is observed that SEBI vide e-mail dated June 18, 2021 had also sought information from Shivshankar Joshi and Geetaben Joshi about receipt of amount ₹30,00,000 from Surface Finance Private Ltd and nature of their association with the Surface Finance. However, no reply has been received in this regard from them.*

xi. *In view of these transactions during preferential allotment, it is alleged that Noticee along with Shivshankar joshi and Geetaben joshi have violated Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003 for financing the subscription amount paid by the two allottees to the extent of ₹30,00,000 and Subsequently received ₹1,52,00,000 out of Issue Proceeds A/c from the company EIL thereby funding the preferential allotment dated May 25,2011 to the extent of ₹30,00,000*

xii. *It is observed that Saloni Agarwal (ANUPA1692D) was allotted 40,000 shares in the preferential allotment for which she had transferred ₹20,00,000 to the company on May 24, 2011 from her account number 653010100015002 maintained with Axis Bank. On perusal of her bank account statement, it was observed that she had received ₹19,00,000 on May 12,2011, from Tanu Agarwal having account number 653010100015002 maintained with Yes Bank.*

xiii. *From the perusal of Ministry of Corporate Affairs database it is observed that Mrs. Tanu Agarwal and Mr. Giriraj Kishore Agarwal were director in Esaar India Ltd (EIL) till March 2011 and are also directors in Tilak Finance Ltd,. Further, it is observed that Saloni Agarwal is the daughter of Tanu Giriraj Agarwal and Giriraj Kishore Agarwal. From the replies of Axis Bank it is also observed that Giriraj Kishore Agarwal was authorized signatory for Account number 910020036881554 from September 28, 2010 to May 09, 2014 and the said Bank account pertains to Esaar India Limited in which the proceeds of EIL's preferential allotment dated May 25, 2011 were parked.*

xiv. *Further, it is observed that Tanu Agarwal Ex-director of Esaar India Limited routed ₹19,00,000 through the account of Allottee (Saloni Agarwal) to enable payment of subscription amount to EIL. Pursuant thereof the entity Tilak Finance Ltd wherein Tanu Agarwal is one of the directors, received ₹10,00,000 on May 25,2011 from the proceeds of the preferential allotment thereby partially funding the EIL's Preferential allotment dated May 25, 2011 to the extent of amount financed* *towards payment of subscription money by the said allottee (₹19,00,000). The flow of fund in the above matter is depicted below:*



xv. *In this regard, SEBI vide email dated June 18, 2021 sought information from Saloni Agarwal about the reasons for receipt of ₹19,00,000 on May 12, 2011 from Tanu Agarwal and her relationship/association (past/present) with the company EIL and Tanu Agarwal.*

xvi. *It was observed that further to that the following additional details were sought:*

xvii. *Reasons for inward credit of ₹10,00,000 received by Tilak Finance Ltd. from the Company EIL and Nature of Relationship / Association (Professional or Personal, Past / Present) between Tilak Finance Ltd and EIL, Surface Finance Ltd and Giriraj Agarwal and also about reason for Mr. Giriraj Agarwal being the authorized signatory for the account of Esaar India Limited even after his resignation as the director of the company after March 2011. However, it was observed that no reply has been received in this regard.*

xviii. *Thus, by for financing the subscription amount paid by the allottee Saloni Agarwal and subsequently transferring ₹10,00,000 to entity Tilak Finance Ltd, wherein Tanu Agarwal & Giriraj Kishore Agarwal are directors, out of Issue Proceeds amount thereby funding the preferential allotment dated May 25,2011 to the extent of amount financed i.e. ₹ 10,00,000/-, it is alleged that the entities Noticee No.1, Noticee No.2, Noticee No.3, Noticee No.4 and company Esaar India Limited(EIL), have violated the Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003*

5. SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/2/2021, dated October 20, 2021 was issued to the Noticee via Speed Post Acknowledgement Due (SPAD), which was returned undelivered. However, the said SCN was delivered to Noticee by way of hand delivery.

6. In response to the said SCN, vide email dated August 01, 2022, Mr. Shantibhushan Nirmal, (Profess Law Associates) i.e. Authorized representative of Noticee has submitted reply, wherein they *inter-alia* made the following submissions:

Reply of Esaar India Limited

i. *At the outset and without prejudice to what has been stated hereinafter we deny all the contentions, observations and allegations levelled against us in the SCN. Nothing contained therein shall be deemed to be admitted by us on account of non-travers, unless the same is specifically admitted in this reply. We vehemently deny that we have violated any provisions of Regulations Section 12 A of the SEBI Act 1992 or Regulations 3 and 4 of the PFUTP Regulations Act, 2003 as alleged. We submit that we have not indulged in any fraudulent and unfair trade practices relating to the securities so as to warrant any kind of penalty to be imposed u/s 15 HA of the SEBI Act.*

ii. *Noticee submitted that Investigation Report and other documents were not provided it during the proceedings.*

iii. *Noticee submitted that inordinate delay of more than 10 years after the impugned transaction happened in issuance of SCN and the delay has not been explained by SEBI. On this ground alone the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped. Noticee also submitted the various case laws viz., Shriram Insight Share Brokers V/s. SEBI decided on January 4, 2022 in Appeal No.559 of 2020 and Order passed on January 31, 2020 by the Hon'ble Securities Appellate Tribunal in the matter of Ashlesh Gunvantbhai Shah Vs SEBI (SAT Appeal no 169 of 2019):, Order passed on September 04, 2019 by the Hon'ble Securities Appellate Tribunal in the matter of AstraZeneca Pharma India Ltd and Anr. Vs SEBI (SAT Appeal no 358 of 2018):, November 5, 2008 by the Hon'ble Securities Appellate Tribunal in the matter of Shri. Ashok K Chaudhary Vs SEBI and other case laws.,*

iv. *Noticee inter-alia submitted that our company is a Non-Banking Financial Company registered with Reserve Bank of India and its business is giving loans and dealing in shares and securities which is permitted under our Object Clause 3(f) and Clause 3(m) of our Memorandum of Association ("MOA"). We have been in the normal course of our business giving loans to various entities to earn interest and investing and trading in shares, similarly we have done lending and share transactions which are subject matter of the SCN and therefore they are explained accordingly herein below considering the allegation made by SEBI on the basis of the same.*

v. *We state that we are not aware of or concerned with any transfer of Rs.30 Lakh by Surface to preferential allottees namely Shivshankar Joshi or Geetaben Joshi and therefore, we state that we have not funded said preferential allottees to the extent of Rs.30 Lakh, which is alleged by SEBI merely on the basis of fact that :-*

On 16/05/2011 Surface transferred Rs.30 Lakh to Mr. Shivshankar Joshi - (hereinafter "Shivshankar"), On 18/05/2011 Shivshankar transferred Rs.15 Lakh to his wife Geetaben Joshi - (hereinafter "Geetaben"), On 18/05/2011 both Shivshankar and Geetaben transferred Rs.15 Lakh each (i.e. 30 Lakh) to our Company towards subscription money of preferential allotment of 60,000 share to them, Thereafter our Company transferred Rs. 1.52 Crore (i.e.

Rs.36 Lakh on 20/05/2011, Rs.11 Lakh on 27/05/2011. Rs.57 Lakh on 31/05/2011 and Rs.48 Lakh on 31/05/2011) to Surface.

vi. *Further, in order to show connection between Surface and our Company, it is alleged that Girraj Kishore Agarwal was the director in our Company during period July 2010- March-2011 and his e-mail address (gkagrawal1@gmail.com) was alleged mapped to the bank account of Surface.*

vii. *On the basis of the aforesaid transactions and allegation, SEBI firstly concludes in Para 11 of the SCN that, Surface by receiving amount of Rs.1.52 Core from our Company out of issue proceeds has allegedly funded the preferential allotment to the extent Rs.30 Lakh. Later, allegedly a general conclusion is made in Para 14 of SCN that Shivhankar, Geetaben, Surface and our Company have financed the subscription amount paid by two allottees (Shivshankar and Geetaben) to the extent of Rs.30 Lakh.*

viii. *However, SEBI before arriving at such conclusion has failed to consider our letter dated September 19, 2019 and the annexed bank statement of our Company, wherein it is clearly mentioned that the amount of Rs.1.52 Crore transferred to Surface in May 2011 was towards loan repayment/ advance. Nowhere SEBI records the said fact. Infact, the part of the said amount of Rs.1.52 Crore (i.e.Rs.50 Lak) was towards repayment of loan given by us and remaining part amount (i.e. 1.02 Crore) was given to Surface as advance to purchase shares which has been repaid back to us by Surface, as shares could not be bought due to market conditions and other reason and therefore, the question of funding does not arise at all, as no money lies with surface.*

ix. *The actual fact is that initially Surface had represented that it has expertise in dealing in shares with proper analysis and also does financial assistance, therefore we took their assistance for purchasing/investing in shares through them since October 2010 which continued till March 2012 and for the said purpose we have transferred advance funds from time to time, as under:-*

x. *Initially, on October 29,2010 we had paid advance of Rs. 10 Lakh for which they purchased shares for us of Rs. 10 Lakh.*

xi. *Thereafter, on February 21, 2011 we paid advance Rs.45 lakh to them for purchasing shares, but as the shares could not be purchased due to market condition/any other reason, the said amount was taken back from Surface on March 3, 2011.*

xii. *Thereafter, on two occasions we had also taken short term finance from them of total Rs.2 Crore (on March 18, 2011 and March 25, 2011, which was much prior to preferential issue of May 2011) for business purpose, but as all amount could not be utilized we returned back Rs.1.5 Crore to them within five days (on March 29, 2011 and March 30, 2011) leaving balance of Rs.50 Lakh.*

xiii. *Thereafter, the said balance Rs.50 Lakh was returned to Surface between May 20, 2011 to May 31, 2011 and simultaneously on May 31, 2011 we had also transferred additional amount of Rs.1.02 Crore as advance to Surface for purchasing the shares on our behalf (i.e. in total the said amounts together forms a part of Rs,1.52 Crore. which is allegedly relied upon by*

SEBl to arrive at conclusion of funding Rs.30 Lakh). But since the shares could not be purchased, out of Rs. 1.02 Crore we took back Rs.,53 Lakh from Surface on June 25, 2011 and kept balance for share purchase

xiv. *Similarly, thereafter in the normal course from June 25, 2011 to March 31,2012 we had transferred advance funds to Surface from time to time for purchasing shares for us and have also taken back the same from Surface in short span, as shares were not purchased due to market condition or any other reasons. Lastly, on March 22, 2012 we have bought shares through Surface for Rs. 1,47,50,000/- and balance amount of Rs. 11.50 Lakh was taken back from Surface on March 31, 2012. Details of shares are reflected in the ledger statement.*

xv. *A copy of the ledger statement of Surface maintained by us for period April 2010 to March 2012 reflecting aforesaid transactions, is enclosed herewith as Annexure-H.*

xvi. *Hence, the aforesaid transactions apparently shows that we were already doing independent share trading transactions through Surface since October 2010 and the same has been continued till March 2012. Further, it shows that the financial assistance was taken in March 2011 i.e. much prior to issue and immediately*

xvii. *within five day we made repayment upto Rs.1.5 Crore and thereafter balance Rs.50 Lakh was re-paid between May 20,2011 to May 31, 2011 and simultaneously from May 31, 2011 we have made advance payments for purchase of shares or have taken back those amount if shares were not purchase.*

xviii. *Despite there being independent transactions and despite that Surface has repaid/returned all amounts back to us or given shares to us, SEBI cannot presume / infer on the basis of the said transfers that we paid Rs.30 Lakh to Surface which Surface had already in advance transferred to Shivshankar and Geetaben for payment of subscription money. Infact, the said transaction cannot be even linked to subscription of preferential allotment, but SEBI has baselessly linked the same. Hence, the said allegation of funding does not sustain in light of aforesaid facts and submissions.*

xix. *Further, SEBI has not even considered that in case of funding, funds should be transferred in advance so that later it can be used for subscription money. But here it is not the case of SEBI at all and infact there is not a single sentence in SCN that we had transferred any amount to Surface or Shivshankar or Geetaben prior to payment of subscription money by Shivshankar and Geetaben. Hence, in that case, the entire allegation of funding is false, baseless and only based on presumption.*

xx. *Further, though SEBI is referring to transfer of Rs.1.52 Crore as against Rs.30 Lakh to substantiate its unverified allegation of*

xxi. *funding; but, the question arises that why would our Company then pay additional amount of Rs.1.22 Crore if assuming we intended to fund only Rs.30 Lakh, and there is no consideration to it by SEBI anywhere.*

xxii. *Further, the said transfer of Rs.1.52 Crore has nothing to do with the preferential allotment. If at all assuming that Rs.30 Lakh is returned back to Surface who has funded subscription, then there was no reason for our Company to keep the shares lying in the name of Shivshankar and Geetaben, as ultimately the same will belong to us considering funds were given by us. But this is not the case of SEBI anywhere in the SCN and therefore the SCN is totally defective and the proceeding based on the same is also defective which needs to be dropped.*

xxiii. *Infact, the factum of return of all amount by Surface to our Company (way back in 2011-12) completely destroys the allegation that our Company has financed the preferential allottees viz. Noticee Nos.10 and 11 through Surface. Crucially, the said repayments had happened much prior to the investigations commenced by SEBI. Fact is SEBI has unfairly connected completely intendent financial transactions, in order to draw adverse inference of financing of preferential allotment by our Company.*

xxiv. *Infact, it is not even a case of SEBI anywhere in SCN that we were aware of the transaction of Rs.30 Lakh paid by Surface to Shivshankar and Geetaben and for what reason and even it is not*

xxv. *a case of SEBI that on our instructions Surface has paid Rs.30 Lakh to Shivshankar and Geetaben to pay subscription money.*

xxvi. *Further, SEBI has tried to allegedly show connection between Surface and our Company by allegedly referring to period of directorship of Mr. Girraj Kishore Agarwal in our Company i.e. period July 2010-March-2011 and relying upon Form 32 of our Company of the said period reflecting his e-mail address as "gkagrawal1@gmail.com" and also relying upon Current account opening form of Surface with Axis Bank reflecting same e-mail address which is signed by its Directors Mr. Avinesh Arvind Jagushte and Mr. Manju Sunil Bahar. In this regard, we deny that we are aware of the same and for what reason Surface has used the said email id illegally and it is the said directors of Surface, who have signed the said form, are liable to answer the same. Hence, we deny any inference made by SEBI for connecting our Company with Surface in any manner for the alleged funding.*

xxvii. *Further, it is not even a case of SEBI in the SCN that the said preferential allottees Shivshankar and Geetaben did not had substantial funds in their bank accounts prior to transfer of funds by Surface and therefore they had obtained funds from Surface for purpose of making payment towards preferential share allotment of our Company.ence, as our Company is not aware of or concerned with the alleged transfer of Rs.30 Lakh by Surface to Shivshankar and Geetaben and as SEBI has not been able to establish that we were aware of the same or it was done our instruction or it has any connection with us, the allegation levelled by SEBI proves to be false, unsubstantiated, based on presumption and needs to struct down.*

xxviii. *Writ respect to allegation of funding of Rs.10 Lakh by virtue of transfer of Rs.19 Lakh by Ms. Tanu Agarwal (Noticee No.3) to Ms. Saloni Agarwal (Noticee No.4) who thereafter transferred Rs.10 Lakh to our Company and thereafter our Company transferred Rs10 Lakh to Tilak Finance Ltd. (Noticee No.5) where Tanu is one of the Director, we submit that:*

xxix. *a) We deny that, after we received Rs.20 Lakh as subscription amount from preferential allottee Ms. Saloni Agarwal - Noticee No.4 (hereinafter "Saloni") we had refunded subscription amount to the extent of Rs.10 Lakh by transferring the same to Tilak*

xxx. *Finance Ltd.- Noticee No.5 (hereinafter "Tilak") where Ms. Tanu Agarwal- Noticee No.3 (hereinafter "Tanu") was the director who had initially given Rs.19 Lakh to Ms. Saloni Agrawal before allotment.*

xxxi. *Noticee submitted that it was unaware about any transfer of Rs.19 Lakh by Tanu to preferential allottee Saloni (i.e. transaction between mother and daughter) and therefore it had not funded the said preferential allottee to the extent of Rs.10 Lakh*

Further, in order to allege connection of Mr. Girraj, it has been alleged by SEBI on the basis of Replies of Axis Bank that Mr. Girraj was the authorized signatory for our Company's Account No.910020036881554 from September 28, 2010 to May 9, 2014 in which proceeds of preferential allotment dated May 25, 2011 were parked.

xxxii. *On the basis of the aforesaid transaction and allegations, SEBI firstly concludes in Para 22 of the SCN that, Tanu (Ex-Director of Esaar) routed Rs.19 Lakh through the account of Saloni to enable payment of subscription amount to our Company and by doing so she has funded the preferential allotment to the extent of Rs.19 Lakh. However, later, a general conclusion is made in Para 25 of SCN that our Company alongwith Girraj, Tanu and Saloni has funded the preferential allotment to the extent of Rs.10 Lakh.*

xxxiii. *However, SEBI before arriving at such conclusion has failed to consider our letter dated September 19, 2019 and the annexed bank statement of our Company, wherein it is clearly mentioned that the amount of Rs.10 Lakh transferred to Tilak (formerly "Out of City Travel Solutions Ltd.") on May 25,2011 was towards Loan. Nowhere SEBI records the said fact. In fact, the said loan has been repaid back to us by Tilak and therefore the question of funding does not arise at all.*

xxxiv. *The actual fact is that we have been dealing with Tilak since 2010 and in the normal course of our business we have been giving loans to Tilak on interest which they have been repaying back. Similarly, as per requirement of Tilak on May 25, 2011 our Company had given them a loan of Rs.10 Lakh and in the normal course Tilak has made repayment of the same on September 9, 2011 along with other loan amount (i.e. Rs.19.50 Lakh) which they had taken. The transaction of giving loan by our Company and repaying the same has been even thereafter continued in the normal course of its business, as can be seen from the ledger statement maintained by our Company. A copy of the said ledger statement of Tilak maintained by us for period April 2010 to March 2015 reflecting aforesaid transactions*

xxxv. *Hence, the aforesaid transactions apparently shows that we were already doing independent transactions with Tilak since 2010 and the same has been continued even till 2015. Further, it needs to be noted that subscription amount of Rs.20 Lakh was paid by Saloni on May 24, 2011 whereas loan was given to Tilak by our Company thereafter on May 25, 2011 in the normal course of its business which is post preferential allotment.*

xxxvi. *Despite there being independent transactions and despite that Tilak has repaid the said loan of Rs.10 Lakh back to us, SEBI cannot presume / infer on the basis of the said transfers that we have funded the subscription amount upto Rs.10 Lakh by transferring the same to Tilak where Tanu was Director who had initially transferred Rs.19 Lakh to Saloni. Infact, the said loan transaction cannot be even linked to subscription of preferential allotment, but SEBI has baselessly linked the same. Hence, the said allegation of funding does not sustain in light of aforesaid facts and submissions.*

xxxvii. *Further, SEBI has not even considered that in case of funding, funds should be transferred in advance to the allottee so that later it can be used for subscription money. But here it is not the case of SEBI at all and infact there is not a single sentence in SCN that we had transferred any amount to Saloni prior to payment of subscription money by her. Hence, in that case, the entire allegation of funding is false, baseless and only based on presumption.*

xxxviii. *Further, the said transfer of Rs.10 Lakh has nothing to do with the preferential allotment. If at all assuming without admitting that Rs.10 Lakh is returned back to Tanu (through Tilak) who infact has funded subscription, then there was no reason for our Company to keep half of the shares lying in the name of Saloni, as ultimately the same will belong to us considering half of the funds were given/refunded by us. But this is not the case of SEBI anywhere in the SCN and therefore the SCN is totally defective and the proceeding based on the same is also defective which needs to be dropped.*

xxxix. *Infact, the factum of return of loan amount by Tilak to our Company (way back in 2011) completely destroys the allegation that our Company has financed the preferential allottee viz. Saloni - Noticee No.4 to the extent of Rs.10 lakh through Tanu and Tilak. Crucially, the said repayment had happened much prior to the investigations commenced by SEBI. Fact is SEBI has unfairly connected completely intendent financial transactions, in order to draw adverse inference of financing of preferential allotment by our Company.*

xl. *Infact, it is not even a case of SEBI anywhere in SCN that we were aware of or concerned with the transaction of Rs.19 Lakh paid by Tanu to Saloni (mother to daughter) and for what purpose, and even it is not even a case of SEBI that it was on our instructions Tanu has paid Rs.19 Lakh to Saloni to pay subscription money. It is Tanu and Saloni who are liable to explain about the said transaction, purpose and restrictions in doing it before subscribing the preferential allotment by Saloni.*

xli. *Further, it is not even a case of SEBI in the SCN that the said preferential allottee Saloni did not had substantial funds in her bank account prior to transfer of funds by Tanu and therefore she had obtained funds from Tanu on our instructions for making payment towards preferential share allotment of our Company.*

xlii. *Further, we deny the allegation that Mr. Girraj was connected to our company even after he resigned as director in March 2011 as has been inferred / alleged by SEBI on the basis of Replies of Axis Bank that Mr. Girraj was the authorized signatory for our Company's Account No.910020036881554 from September 28, 2010 to May 9, 2014 in which proceeds of* *preferential allotment dated May 25, 2011 were parked. As per records, Mr. Girraj had submitted his resignation from our Company on March 18, 2011 and he had also submitted a letter dated March 18, 2011 to our company to remove his name as authorized signatory from Company's bank account. It appears that the new directors / officials who had joined at that point of time lost sight of / could not have updated the signatory details in bank due to some issue and they might have no option but to use old signed forms or cheques or slips in the normal course to continue business of the company. The present directors and officials who are now handling company are unable to traceout old records in respect thereof and they are unable to submit any documents in that regard.*

xliii. *With reference to Paragraph Nos.1,2 and 3 of the SCN, we deny that we have violated any provisions of SEBI Act or PFUTP regulations as alleged and therefore, the present enquiry and adjudication against us is unwarranted for the reasons set out hereinabove. We are not aware of a concern with other Noticees having committed any violation, as alleged. However, we have not been provided with copy of the investigation report.*

xliv. *With reference to Paragraph No.4 of the SCN, we state that the observations made in the said para pertains to details of preferential allotment made by our Company, its listing and sale of shares. However, we are not aware of or concerned with sale of shares by connected entities, as alleged on the basis of investigation by SEBI.*

xlv. *With reference to Paragraph No.5 of the SCN, we state that the same pertains to preferential allotment process which was informed to exchange and therefore, we have no comments on the same.*

xlvi. *With reference to Paragraph No. 6 of the SCN, we state that the fact with respect to preferential allotment to 44 non-promoter entities of 31,77,000 equity shares at aggregate of Rs.15,88,50,000/- on May 25, 2011 and the analysis of the bank statements of the 44 allottees pertaining to fund flow leading to certain violations by then is nothing but a general statement without any specific allegation against us therein, apart from no such analysis report is provided to us so as to deal with in our reply. Therefore, we deny that we have committed any violation.*

xlvii. *With reference to Paragraph No.7 of the SCN, we state that the observations with reference to transfer of subscription money by Shivshankar Joshi and Geetaben Joshi (Noticee 10 and 11) is a matter of record; however, we are not aware of or concerned with transfer of Rs.30 Lakh by Surface to Shivshankar Joshi, as alleged.*

xlviii. *With reference to Paragraph No.8 of the SCN, we state it is alleged that email address of our Ex-Director Mr. Girraj is mapped with account of Surface, however, we deny that we are aware of the same and for what reason Surface has used the said email id illegally and it is the directors of Surface, who have signed the bank account opening form, are liable to answer the same. It is pertinent to note that during his tenure our then Director was not associated in any manner with Surface or its Directors.*

xlix. *With reference to Paragraph No.9 of the SCN, we state that we are not aware of or concerned with the fact about transfer of Rs.30 Lakh by Surface to Shivshankar and then Rs.15 Lakh by Shivshankar to Geetaben except to the fact that Shivshankar and Geetaben have paid the subscription money from their account.*

l. *With reference to Paragraph Nos.10 and 11 of the SCN, we state that the letter dated September 19, 2019 submitted to SEBI by us is a matter of record, but the fact therein have not been considered while issuing SCN. Further with respect to transfer of Rs.1.52 Crore by our Company to Surface, we state that the said transaction is totally independent pertaining to loan repayment and advance which have been already taken back by us and the same is explained in detail in the above Paragraph No. 9(a) to 9(m) and Annexures therein and we repeat, reiterate and confirm the same and be treated part of this paragraph so as to avoid repetition. Hence, considering that repayment of loan done and advances given to Surface were retuned back to our company at that point of time or shares were purchased for us, the allegation of funding does not sustain in law or fact. Therefore, we deny that we have funded the preferential allotment through Surface, Shivshankar or Geeta to the extent of Rs.30 Lakh, as alleged.*

li. *With reference to Paragraph Nos.12 and 13 of the SCN, we state that the fact with respect to SEBI's e-mail dated June 18,2021 seeking details from Surface Finance Pvt. Ltd. or Shivshankar Joshi and Geetaben Joshi doesn't relate to us. Hence, we have no comments on the same. However, we have not been provided SEBI's e-mail dated June 18, 2021 to Surface Finance and SEBI's e-mail dated June 18, 2021 to Shivshankar Joshi and Geetaben Joshi, which have been relied upon by SEBI.*

lii. *With reference to Paragraph No.14 of the SCN, in light of the aforesaid submission we vehemently deny that we have committed any violation of provisions of SEBI Act or PFUTP Regulations alongwith Noticee Nos. 9, 10, and 11 for alleged financing the subscription amount and funding preferential allotment dated May 25, 2011 to the extent of Rs.30 Lakh. Hence, we deny the same.*

liii. *With reference to Paragraph No.20 of the SCN, we say that the facts therein pertains to allotment of shares to Saloni Agrawal and payment by her of subscription amount to our Company which is a matter of record. However, we are not concerned with or aware of transferred of Rs.19 Lakh by her mother Tanu to Saloni, as it is irrelevant to us. Hence, we deny any inference based on the same.*

liv. *With reference to Paragraph No.21 of the SCN, we say that the database of directors of our Company available on MCA is a matter of record. With respect to alleged fact on the basis of replies of Axis bank that, the authorised signatory for Account No.910020036881554 from September 28, 2010 to May 9, 2014 of our Company was Mr. Girraj, we state and submit that, as per records, Mr. Girraj had submitted his resignation from our Company on March 18, 2011 and he had also submitted a letter dated March 18, 2011 to our company to remove his name as authorized signatory from Company's bank account. It appears that the new directors /*

officials who had joined at that point of time lost sight of/ could not have updated the signatory details in bank due to some issue and they might have no option but to use old signed forms or cheques or slips in the normal course to continue business of the company. The present directors and officials who are now handling company are unable to traceout old records in respect thereof and they are unable to submit any documents in that regard.

lv. *With reference to Paragraph No.22 of the SCN, we vehemently deny the allegation of funding on the basis of the alleged fact of transfer of funds of Rs.19 Lakh from Tanu (Ex-director of our Company) to Saloni and Rs.20 Lakh from Saloni (allottee) to our Company and thereafter transfer Rs.10 Lakh on May 25, 2011 from our Company to Tilak (where Tanu was one of the director) from allotment proceeds, as we are not concerned with transaction between Tanu and Saloni, whereas transfer of Rs.10 Lakh to Tilak is concerned, the same was a loan and Tilak has already repaid it, as had been explained in detail in above Paragraph No. 9(a) to 9(m) and Annexures therein and we repeat, reiterate and confirm the aforesaid submissions and be treated part of this paragraph so as to avoid repetition. Therefore, we deny the allegation that we have partially funded the preferential allotment to the extent of Rs.10 Lakh.*

lvi. *With reference to Paragraph No.23 and 24 of the SCN, we say that the fact with respect to SEBI's e-mail dated June 18, 2021 seeking details from Saloni Agrawal about the reason for receipt of Rs.19 Lakh on May 12, 2011 from Tanu Agarwal and her relationship/association (past/present) with the EIL and Tanu Agarwal, doesn't relate to us. Further, we are not aware of the additional details sought by SEBI, which has not been replied such as (a) Reasons for inward credit of Rs.10 Lakh received by Tilak from our Company, (b) Nature of Relationship/Association (professional or personal, past/present between Tilak and EIL (c) Reason for Mr. Girraj Agarwal being the authorized signatory for the account of our Company even after his resignation as the director of EIL after March 2011. However, we have hereinabove made our submissions in respect of the said required detail as far as they are concerned with our Company.*

lvii. *With reference to Paragraph No.25 of the SCN and in light of the aforesaid submissions we deny the allegation that we have financed the subscription amount paid by Saloni by subsequently transferring the said amount to Tilak where Tanu and Girraj were Directors and therefore we deny that we have funded the preferential allotment dated May 25 2011 to the extent of Rs.10 Lakh. We therefore deny that we have violated Section 12A(a), (b), (c) of SEBI Act r/w. Regulations 3(b),(c),(d) & 4(1) of PFUTP Regulations.*

lviii. *With reference to Paragraph Nos.26 and 27 of the SCN, we deny that we have committed any violation of aforesaid provisions of SEBI Act or PFUTP Regulations. We submit that the allegations and observations in the said SCN do not show, even prima facie, that we had any role or there was any alleged funding and/or we had indulged in fraudulent or unfair trade practices relating to securities so as to warrant any kind of monetary penalty under section 15HA of SEBI Act.*

lix. It is reiterated that the serious and grave allegations of indulging in fraudulent and unfair trade practices as levelled in the SCN are totally unfounded and unsubstantiated and completely contrary to factual position and documents on record. Further, the same are product of mere surmises and conjectures. It is reiterated that we have not funded any preferential allottee (either Noticees 10 and 11 to the extent of Rs.30 Lakh. Noticees 6. 7 and 8 to the extent of Rs.35 Lakh or Noticee 4 to the extent of Rs.10 Lakh, as alleged. Had the theory of funding been correct, there would have been transfer of fund by our Company to allottees prior to payment of subscription amount which is not the case, and assuming there was funding there was no reason for our Company for refunding extra amount i.e. Rs.1.22 Crore to Surface in the case of Noticees 10 and 11 as against only 30 Lakh, and even there was no reason for refunding only part amounts i.e. Rs.35 Lakh to Jaidev Gupta in the case of Noticees 6. 7 and 8 as against 45 Lakh and Rs.10 Lakh to Tilak in the case of Saloni as against Rs.20 Lakh for which there is no explanation given by SEBI in SCN and there the SCN proves to be defective in nature and allegation falls disproved.

lx. It is respectfully submitted that in the true and correct facts and circumstances as stated hereinbefore, it is clear that the allegations in the SCN do not flow out of the factual position and are based on mere surmises and conjectures and cannot be legally sustained. Therefore, imposition of any monetary penalty, would be unjustified and unwarranted.

lxi. In view of the above, we state that all allegations/charges in the said SCN leveled against us does not hold good and therefore we request that the same may be dropped against us and we may be discharged from the present proceedings.

lxii. We reserve out right to file additional submission, as and when required. We further request that an opportunity of personal hearing be given before passing of any order in the present proceeding.

lxiii. In view of the aforesaid facts and submission, we deny that we have violated the provisions of Section 12A(a),(b),(c) of SEBI Act r/w. Regulations 3(b), 3(c), 3(d) & 4(1) of PFUTP Regulations or any other provision thereof. We further submit that we have not indulged in any fraudulent and unfair trade practices relating to the securities so as to warrant any kind of punitive directions and even there is no prima facie case made out against us so as to continue with the present adjudication proceeding.

lxiv. In view of the aforesaid submission, we most humbly pray to your goodself that the present proceeding be dropped against us and we may be discharged from the present proceedings.

7. Thereafter, In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide Hearing Notice dated June 10, 2022, the Noticee was granted an opportunity of Personal Hearing in the matter on July 07, 2022. Mr. Shantibhushan Nirmal, (Profess Law Associates) i.e. Authorized Representative (“AR”) of Noticee vide email dated July 05, 2022 sought adjournment

of Personal Hearing. In this regard, vide email dated July 06, 2022 another opportunity of Personal Hearing was granted to Noticees on July 20, 2022 and AR again requested for adjournment of the hearing. Thus, vide email dated July 20, 2022 another opportunity of Personal Hearing was granted to Noticee on August 02, 2022 through the online Cisco Webex platform. During the said Personal Hearing held on August 02, 2022, AR of the Noticee reiterated the submissions made in their earlier replies dated August 01, 2022.

8. Further, during the Personal Hearing the AR was advised to submit additional documents viz., loan agreement between Esaar India Limited and Tilak Finance Limited; (ii) Letter of communication to Jaidev Gupta about acceding his request for not paying the interest part; (iii) Details of Action taken by Company after receipt of letter by Giriraj Agarwal for removing his name as authorized Signatory that required in the proceedings latest by August 12, 2022 and vide email dated August 02, 2022 the same was also communicated to AR along with minutes of Personal Hearing. However, the AR had failed to submit the said documents.

CONSIDERATION OF ISSUES AND FINDINGS:

9. I have taken into consideration the facts and circumstances of the case, the material available on record.

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

Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of SEBI Act, 1992? And

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? Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

11. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are reproduced below:--

<u>Relevant Provisions of Securities and Exchange Board of India Act, 1992</u>

12A. ***No person shall directly or indirectly***—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Relevant provisions of PFUTP Regulations:

3. ***Prohibition of certain dealings in securities***
No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on

a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

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.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security

12. Before proceeding with the matter on merits, I first deal with the preliminary submission of the Noticees that there has been an unexplained inordinate delay in issuance of SCN, proceedings did not initiate within reasonable time, and this delay has made it difficult for Noticees to retrieve data and offer submissions effectively. In this regard, I note that the investigation in the matter for period April 01, 2011 to February 28, 2015. The aforesaid investigation was concluded in July 2021, and in August, 2021 competent authority approved adjudication proceedings in respect of Noticees. The undersigned was appointed Adjudicating Officer in the matter in August, 2021 and the SCN was issued in October, 2021. Considering the time taken to complete the investigation, I do not find that there is inordinate delay in initiation of the proceedings. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act or Regulations which may have the effect of prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case.

13. In this regard, I am inclined to rely upon the decision of Hon'ble SAT in the matter of Bipin R Vora vs SEBI held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve*

collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market'.

14. Further, I note that in Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 08, 2013, Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI(Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)reported in2003 (158) ELT 129 (S.C.),held as under:

"....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."

15. The decision of Hon'ble SAT in the aforesaid case, were reiterated by it, in a subsequent order in the matter of Kunal Pradip Savla & Ors. v. SEBI (Appeal no. 231 of 2017) decided on April 13, 2018.

16. Further, I note that in Rajendra Aggarwal. v. SEBI(Appeal No. 552/ 2019) decided on September 17, 2021, Hon'ble SAT held that

"*On issue of delay, we find that the show cause notice was issued in the year 2013 and the trades were executed in 2009. The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay in the delivery of the impugned order after the last date of hearing by the AO. We are of the opinion that after the conclusion of the* *arguments the data of 35 entities was required to be analysed and collated which took time and, therefore, we do not see any reason to vitiate the judgment only on the ground of delay in delivering the order. In any case, such delay in the delivery of the judgment does not cause any prejudice to the appellants"*

17. The Hon'ble SAT in the matter of M/s Adamina Traders P. Ltd (Appeal No. 331/2020) decided on December 15, 2021 held that

    "We find that the trades in question are of the year 2013. The show cause notice was issued on September 28, 2017 by the WTM and January 18, 2018 by the AO. We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected."

18. In view of aforesaid Judgments, I conclude that there is no merit in the preliminary objections made by Noticee, regarding the delay in issuance of SCN in the instant proceedings.

19. I note that Noticees have contended that Investigation Report was not provided to them during the instant proceedings. In this regard, I note that in Shruti Vora matter, the Hon'ble SAT has clearly mentioned that "the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence". Thus, I note that all documents relied upon for the present proceedings have been shared with the Noticees along with SCN as per the ratio mentioned in the Shruti Vora matter in the backlight of principles of natural justice.

20. Further, the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that "the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".

21. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticees along with SCN as annexures, I am of the opinion that principles of natural justice have been duly

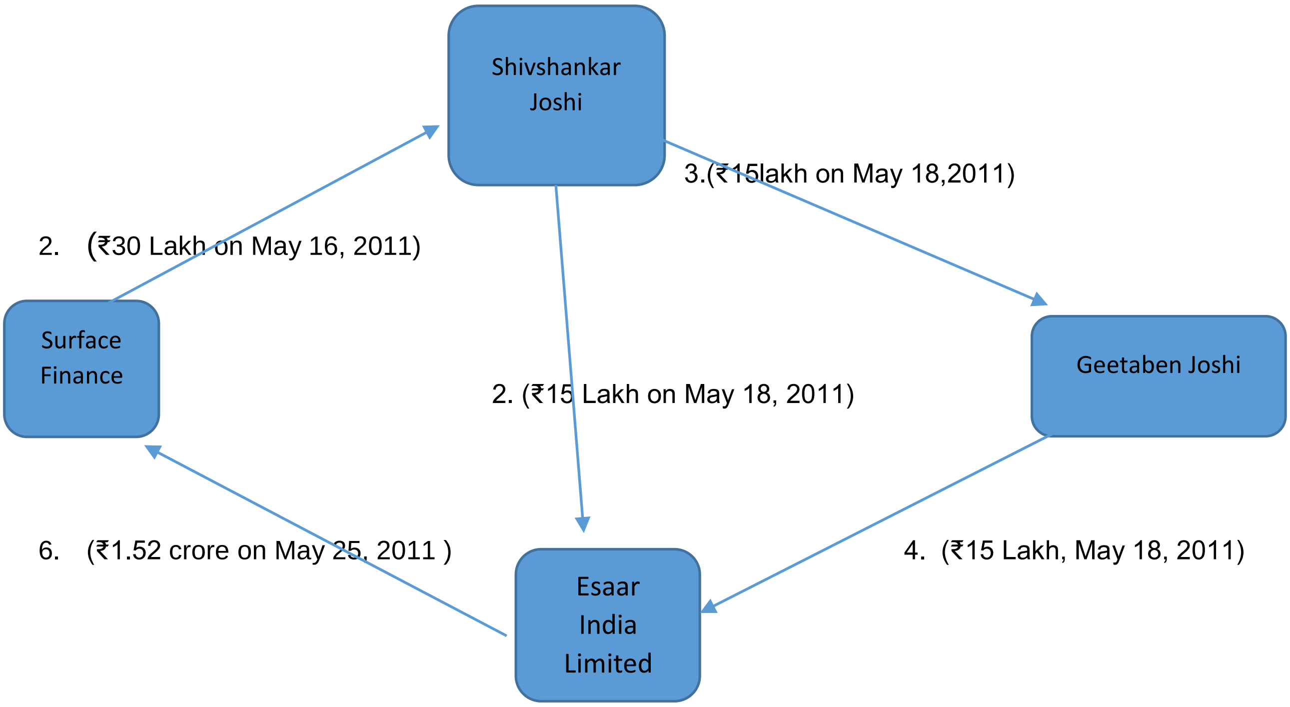
complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticees. Having decided the preliminary objections raised by the Noticees, now I proceed to deal with the merits of the matter.

22. I note from the SCN that ***Geetaben Joshi*** and ***Shivshankar Joshi*** were allotted 60,000 shares in the preferential allotment for which they had transferred ₹.15,00,000/- each from their Account numbers 014400100001343 and 014400100001324 maintained with Dhanlaxmi Bank. In this regard, I note from the bank statement of the Shivshankar Joshi that he had received ₹30,00,000/- from Surface Finance Private Limited through its Axis bank account bearing number 910020041102497. Further, I found that the Authorized signatories for the said bank account are Surface Finance Private Limited("Surface Finance")., Avinash Arvind Jagushte., Vijay Agarwal., Pradeep Dhanuka

23. I also note that the registered e-mail address mapped to the said account is **gkagrawal1@gmail.com**. As per Form 32 data this email account belongs to Giriraj Kishore Agrawal. It was also observed that Giriraj Kishore Aggrawal was one of the director of Esaar India Limited for the period of July 2010- March 2011. Thereafter, from the information on MCA website it was observed that the company named Surface Finance Pvt Ltd has been struck-off.

24. Pursuant to receipt of Rs 30,00,000/- from Surface Finance Private Ltd. by Shivshankar Joshi, an amount of ₹15,00,000/- was then transferred by him to Ms. Geetaben Joshi in Dhanalaxmi bank account bearing number 014400100001343 and the same amount of ₹15,00,000/- was transferred to EIL(the company) i.e. Noticee.

25. I note from the available records that Noticee vide it letter dated September 19, 2019 informed that Surface Finance received ₹1,52,00,000 from the proceeds of preferential allotment during the period of May 20,2011- May 30, 2011. The same is summarized diagrammatically as under where the number indicates the chronology of fund flow:



26. From the above diagram, It has been seen that Surface Finance Pvt Ltd had transferred Rs. 30 Lakhs to Shivshankar Joshi and in turn he had transferred Rs. 15 lakhs to his wife i.e. Geetaben Joshi and both of them have paid subscription amount to Noticee Viz. EIL. It has been further seen that Surface Finance Private Limited has received Rs. 1.52 Crores from Noticee, including Rs. 30 lakhs which were paid as the subscription amount paid by the two allottees i.e., Geetaben and Shivshankar Joshi.

27. In this regard, I note that funding of preferential allotment by the company would mean flow of money for buying preferentially allotted shares from the Company to the allottees (Geetaben Joshi, Shivshankar Joshi and Surface Finance), which is then used by allottees for payment to the company towards purchase of preferentially allotted shares. This would result in flow of money back to the Company, while giving an impression of capital infusion through preferential allotment.

28. Further, I note from the above diagram that the reference can easily be drawn regarding aforesaid transfers of funds were adjusted for the purpose of applying for preferential allotment. This can also be inferred based on circumstantial evidence that the funds received from Surface Finance Private Limited were used by Geetaben Joshi and Shivshankar Joshi for applying for preferential allotment.

29. I note that Noticee has contended that it was unaware about transfer of Rs. 30 lakhs to Shivshankar Joshi by Surface Finance Pvt Ltd to preferential allotment of Shivshankar and Geetaben Joshi. Noticee was also submitted that the amount of Rs. 1.52 crores to Surface Finance by it was part of loan and the same was repaid back to it by Surface Finance Ltd. However, the Noticee had failed to provide the loan agreement between Surface Finance Pvt ltd and Noticee itself. Further, I cannot ignore the fact that nowhere in the Bank Statements of the Noticee, I found any entry of interest received by Noticee from Surface Finance Private Limited for such loan, more particularly, when the loans given to Surface Finance Private Limited were not interest free and the Surface Finance had failed to pay the interest on such loan. At this juncture, I find that Noticee had not submitted supporting documents for the steps to recover the interest amount from Surface Finance.

30. Further, I note that Noticee has neither made any efforts for the recovery of interest on such huge amount nor adopted any legal recourse. I note that Noticee contended that no connection was alleged/established between Geetaben Joshi, Shivshankar Joshi and the Noticee in the SCN. However, there is no direct evidence to infer that the aforesaid trasfers from Esaar India Ltd were made for the purpose of passing on to Shivshankar Joshi and Geetaben Joshi for applying for preferential allotment, the same can be inferred based on circumstantial evidence and the principle of prepeonderence of probability that the Noticees have given loans to Surface Finance Private Limited and the Surface Finance Private Limited has transferred the exact amount Rs. 30 lakhs, which was used by Shivshankar and Geetaben Joshi for Preferential allotment by Esaar India Limited during the same period of preferential allotment of Esaar India Limited. I also note that there is no loan agreement was produced between of Shivshankar Joshi and Surface Finance Pvt Ltd.

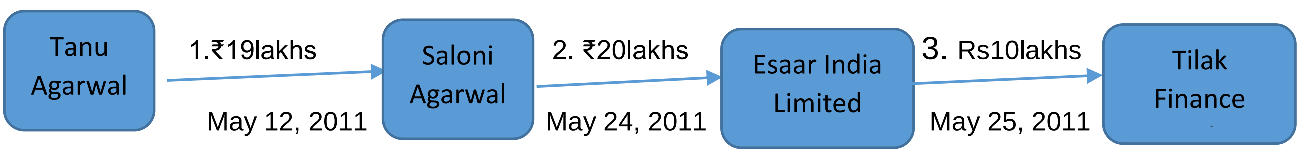
31. In this regard, I am constrained to view based on the facts and material available on record that the aforesaid transactions of Noticee and Shivshankar Joshi, Geetaben Joshi were for meant only funding of preferential allotment giving an impression of capital infusion in the company through preferential allotment, wherein EIL was routed the allotment amount through Surface Finance Limited, and not for the purposes as claimed by the Noticees.

32. Therefore, I conclude that that Noticee had financing the subscription amount paid by the two allottees Shivshankar Joshi and Geetaben Joshi to the extent of ₹30,00,000 and Subsequently transferred ₹1,52,00,000 out of Issue Proceeds A/c from the company EIL thereby funding the preferential allotment dated May 25,2011 to the extent of ₹30,00,000.

33. I note from the SCN that Saloni Agarwal was allotted 40,000 shares in the preferential allotment for which she had transferred ₹20,00,000 to the Noticee on May 24, 2011 from her account maintained with Axis Bank. On perusal of her bank account statement, it was observed that she had received ₹19,00,000 on May 12,2011, from Tanu Agarwal having account maintained with Yes Bank.

34. From the perusal of Ministry of Corporate Affairs database it is observed that Mrs. Tanu Agarwal and Mr. Giriraj Kishore Agarwal were Directors in Esaar India Ltd (EIL) and are also Directors in Tilak Finance Ltd,. Further, I note from the SCN that Saloni Agarwal is the daughter of Tanu Giriraj Agarwal and Giriraj Kishore Agarwal. Upon perusal of the replies of Axis Bank available on records, I observed that Giriraj Kishore Agarwal was authorized signatory for Account number 910020036881554 from September 28, 2010 to May 09, 2014 and the said Bank account pertains to Noticee i.e. Esaar India Limited in which the proceeds of EIL's preferential allotment dated May 25, 2011 were parked.

35. It is alleged in the SCN that Tanu Agarwal Ex-director of Esaar India Limited routed ₹19,00,000 through the account of Allottee (Saloni Agarwal) to enable payment of subscription amount to EIL. Pursuant thereof the entity Tilak Finance Ltd wherein Tanu Agarwal is one of the directors, received ₹10,00,000 on May 25,2011 from the proceeds of the preferential allotment thereby partially funding the EIL's Preferential allotment dated May 25, 2011 to the extent of amount financed towards payment of subscription money by the said allottee (₹19,00,000). The flow of fund in the above matter is depicted below:



36. I also note from the SCN that the registered e-mail address mapped to the account of Surface Finance Pvt Ltd is **gkagrawal1@gmail.com.** As per Form 32 data this email account belongs to Giriraj Kishore Agarwal. It was also observed that Giriraj Kishore Agarwal was one of the directors of Esaar India Limited for the period of July 2010-March 2011.

37. I note that funding of preferential allotment by the company would mean flow of money for buying preferentially allotted shares from the Company to the allottee (Saloni Agarwal) through its conduits (Tanu Agarwal and Tilak Finance Limited), which is then used by allottee for payment to the company towards purchase of preferentially allotted shares. This would result in flow of money back to the Company, while giving an impression of capital infusion through preferential allotment. In the instant case, in respect of fund transfers post to preferential allotment, I note that, there is transfer of funds from Esaar India Limited to Tilak Finance Limited, wherein Giriraj Agarwal and Tanu Agarwal were directors.

38. I note that Noticees in it reply contended that the said transfer of Rs. 10 lakhs from Esaar India Limited to Tilak Finance Limited was a part of loan transaction and the same was repaid back by Tilak Finance Limited. However, it is neither supported by any document nor supported by copy of Loan Agreement between Esaar India Limited and Tilak Finance Limited. Further, no transaction record was observed from available records to prove the repayment of loan between Esaar India Limited and Tilak Fiance Ltd. It is observed that Tanu Agarwal transferred Rs. 19 lakhs to Saloni Agarwal, which was used by her for the preferential allotment and by considering of preponderance of probability, it is noted that Rs. 10,00,000/- out of that Rs. 19 lakhs was routed by Esaar India Limited to Tilak Finance Limited, of which Tanu Agarwal was director.

39. The Noticee has contended that Tanu has paid Rs. 19 lakhs to Saloni to pay subscription money and Tanu and Saloni were liable to explain about the said transanction. In this regard, I note that Saloni Agarwal in her reply submitted that the amount of Rs. 19,00,000/- taken by Saloni Agarwal from Tanu Agarwal on May 12, 2011, was a loan and same was from the own funds of Tanu Agarwal and has not taken any funds from Tilak Finance Limited or Esaar (India) Limited.

40. As far as transfer of Rs. 19 lakhs from Tanu Agarwal to Saloni Agarwal is concerned, although Saloni Agarwal was provided the copy of Loan Agreement between her and Tanu Agarwal, it is prima facie suspicious because the Loan Agreement provided by her neither bear any stamp duty nor has signature of witnesses. Therefore, I do not agree with the contention of the Noticee.

41. I also note that Giriraj Agarwal was director of Esaar India Limited, just before the period of preferential allotment and he and his wife i.e. Tanu Agarwal were directors of the Tilak Finance Limited. Therefore, it may not be wrong to infer that the funds of Rs. 10,00,000/- transferred from Esaar India Limited to Tilak Finance Limited is post preferential issue and is not part of the loan transaction.

42. Further, I note that Noticee had contended that Giriraj had submitted a letter to Esaar India Limited to remove his name and email id from authorized signatory of account from which preferential allotment proceeds were carried out. However, the fact that Giriraj Agarwal was authorized signatory of the Noticee i.e. Esaar India Limited(EIL) till May, 2014 i.e. during and post the preferential allotment by the company. The Noticee, in this regard submitted that the new directors/officials who had joined at that point of time lost sight of and could not have updated the signatory details in bank due to some issue. Further, I note that the request of removal as authorised signatory cannot be considered as completed unless and until EIL removes Giriraj Agarwal as authorised signatory. However, it is admitted fact and a matter of record that till May, 2014 Giriraj Agarwal was an authorised signatory. Thus, I do not agree with the submission of the Noticee.

43. I have perused the documents available on record, Investigation Report and the submission of the Noticee, and I note that material on record establish based on preponderance of probability that the aforesaid transactions of Saloni Agarwal was indirectly used from the company i.e. Esaar India Private Limited for preferential allotment.

44. An allegation of Noticee engaging in fraudulent scheme by giving an impression of capital infusion through preferential allotment, while in reality company's own funds were used by allottees is a serious allegation and upon perusal of material on records and replies of the Noticee, I observe that the payments made by Saloni Agarwal to

Esaar India Private Limited towards preferential allotment were actually the funds of Esaar India and routed through Tilak Finance Limited and Saloni Agarwal indirectly.

45. Therefore, in view of the above, I find that from material on record that the involvement of Esaar India Limited in the preferential allotment of Esaar India Limited by funding to a extent of Rs. 10,00,000/- to Saloni Agarwal conduits in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as 'PFUTP Regulations').

Issue No. II *If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of SEBI Act, 1992?*

46. I am of the view that the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, which reads as under :

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

47. 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…………...*"

Issue No. III *If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules? Issue No. I Whether Noticee is in violation of provisions of Section*

12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

48. 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.

49. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, and suffered by the investors as a result of the Noticee's failure. I also note that no prior default of the Noticee is available on record. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. In this case, I find that the act of Noticee to involve in false representation through preferential allotment has the potential to mislead and induce genuine investors to trade in the scrip and harm them and, thus, violate the fundamental tenets of market integrity. Such acts of Noticee, If dealt with lightly, could seriously undermine investors' confidence in the securities market and therefore, deserve suitable penalty commensurate with such serious violations

ORDER

50. Having considered all the facts and circumstances of the case, the material available on record and 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 following penalties under the provisions of Section 15HA of the SEBI Act on the Noticee.

Name of the Noticee	Provisions Violated	Penalty
Esaar India Limited (PAN-AABCE0478J)	*Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003*	Rs. 5,00,000 (Rupees Five Lakhs only)

51. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

52. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the 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 the said DD should be forwarded to the Division Chief, Enforcement Department - I (EFD), Division of Regulatory Action - I [EFD1-DRA-2] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

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)	

OR

Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

53. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

54. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Esaar India Limited (PAN- AABCE0478J) and also to Securities and Exchange Board of India.

Place: Mumbai
Date: August 25, 2022

SANDEEP P DEORE
ADJUDICATING OFFICER