BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SPV/DT/2022-23/24390-24396]

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

In respect of

1.	**Manpasand Beverages Ltd.** **PAN - AAHCM1210E**	**2.**	**Shri Dhirendra Singh** **PAN – ABTPS3636E**
3.	**Shri Abhishek Singh** **PAN – BGZPS2752R**	**4.**	**Shri Dhruv Agrawal** **PAN – ACKPA1653M**
5.	**Shri Milind Babar** **PAN - ABDPB5999H**	**6.**	**Shri Chirag Doshi** **PAN - AEGPD2611G**
7.	**Shri Paresh Thakkar** **PAN - ACQPT7457C**		

(Entities 1 to 7 above are collectively referred hereinafter to as 'Noticees' and individually by their names or respective Noticee nos.)

In the matter of

Manpasand Beverages Limited

BACKGROUND

1. M/s Deloitte Haskins & Sells ('Deloitte'), the statutory auditor of Manpasand Beverages Limited (Manpasand/company) resigned from their position as statutory auditors with immediate effect on May 26, 2018. The reason for resignation was cited as failure of Manpasand in providing certain information to Deloitte. Deloitte had been the statutory auditor of Manpasand for the preceding 8 years before its resignation. Consequent to the aforesaid resignation, Manpasand appointed M/s Mehra Goel & Co. ('New Auditors') as statutory auditor and they completed the audit for FY2017-18. The audited financial results for FY2017-18 were declared on June 27, 2018.

2. Securities and Exchange Board of India ('SEBI'), conducted an investigation inter alia into the matter with respect to the possible misstatement/ manipulation of the reported financial statements of Manpasand. The period of investigation was considered as financial years ending March 31, 2017 & March 31, 2018 ('Investigation Period/IP'). However, whenever deemed necessary, references were also made to events/timeframes outside that period.

3. The investigation observed that Manpasand was engaged in the manufacture and distribution of fruit-based beverages. Manpasand's manufacturing facilities are located at Vadodara in Gujarat, Varanasi in Uttar Pradesh and at Dehradun in Uttaranchal. Manpasand had raised Rs 400 crore through an IPO in June 2015 and Rs 500 crore through Qualified Institutional Placement (QIP) Issue in September 2016. The shares of Manpasand are listed at The BSE Limited (BSE) and the National Stock Exchange of India Limited (NSE).

4. During investigation, an independent auditor, CHOKSHI & CHOKSHI LLP **('forensic auditor')**, was appointed as forensic auditor for conducting forensic examination of the books of accounts of Manpasand for financial years ending March 31, 2017 & March

31, 2018. The terms of reference for the said forensic audit included (i) verification of revenue records, (ii) verification of receipts from operations and payments to vendors and related matters i.e tax, GST, etc (iii) diversion of funds through related party transactions and (iv) verification of assets including bank and cash balances. The forensic auditor submitted its audit report (**audit report**) to SEBI on March 5, 2019 identifying certain lapses in the financial statements/books of Manpasand. Upon receipt of the audit report, the company was provided with an opportunity to make its submissions on certain specific observations made by the forensic auditor and the investigation considered the comments received from the company while concluding its findings.

5. The investigation revealed that Manpasand **(Noticee 1)** and its directors namely, Dhirendra Singh **(Noticee 2),** Abhishek Singh **(Noticee 3),** Dhruv Agrawal **(Noticee 4),** Milind Babar **(Noticee 5),** Chirag Doshi **(Noticee 6)** and its Chief Financial Officer **(CFO)** Paresh Thakkar **(Noticee 7)** have *inter alia* violated the provisions of section 11C (2) and (3) Securities and Exchange Board of India Act, 1992 (**SEBI Act**), regulations 4(1)(c), 32(1), 32(4), 33 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**), read with section 21 of Securities Contract (Regulation) Act, 1956 (**SCRA**) and Part C of Schedule II read with regulation 18(3) and paragraph (a) (6) of Part C Schedule II of LODR Regulations and regulation 4(2)(f) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (**PFUTP Regulations**) r/w section 12A(a),(b),(c) of SEBI Act. The investigation revealed that the Noticees have *inter alia* misutilised the QIP proceeds, failed to make disclosures regarding deviations in the utilization of the QIP proceeds, failed to review with the management the misutilisation of QIP Proceeds, failed to ensure sufficient internal controls, facilitated executive functions to be performed by a Non- Executive Director, failed to furnish information sought during investigation and published misleading financial statements.

APPOINTMENT OF ADJUDICATING OFFICER

6. Based on the findings of the investigation, SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as Adjudicating Officer ('**AO**') *vide* order dated July 22, 2021 under section 15-I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (**'SEBI AO Rules'**) and section 23-I of SCRA and Rule 3 of SCRA (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (**SCRA AO Rules**) read with Section 19 of the SEBI Act to enquire and adjudge under sections 15A(a), 15HA and 15HB of the SEBI Act and under sections 23E and 23H of the SCRA, the aforesaid alleged violations committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. A common show cause notice dated December 31, 2021 (**SCN**) was issued to the Noticees under rule 4(1) of SEBI AO Rules and rule 4(1) of SCRA AO Rules to show cause as to why an inquiry should not be held against them and why a penalty should not be imposed against them under the provisions of section 15A (a), 15HA and 15HB of the SEBI Act and sections 23E and 23H of the SCRA. The SCNs were delivered to the Noticees as shown in the table below:

Sr. No	Noticee Name	Mode of SCN delivery
1.	Manpasand Beverages Limited	Delivered by Speed Post.
2.	Chirag Doshi	Delivered by Speed Post.
3.	Dhruv Agrawal	Delivered by Speed Post.
4.	Dhirendra Singh	Delivered by Speed Post.
5.	Abhishek Singh	Delivered by Speed Post.
6.	Paresh Thakker	SCN affixed at the last known address of the Noticee.
7.	Milind Babar	SCN was hand delivered at the address of the Noticee.

8. Even though the SCN was delivered on Manpasand, no reply has been filed by it. The Interim Resolution Professional (IRP), vide e-mail dated 31.08.2021 intimated that the company is undergoing Corporate Insolvency Resolution Proceedings (CIRP) and he is acting as IRP. Even though, vide e-mail dated January 10, 2023, Noticee 1 and the IRP were advised to provide the updated status of the matter, no response has been received from the company. However, Noticee 2 and 3 who are the MD and Chairman of Noticee 1 and Executive Director of Noticee 1 have, vide email dated January 31, 2023, confirmed that Noticee 1 is still undergoing CIRP.

9. Noticees 2, 3 and 7 i.e, Dhirendra Singh, Abhishek Singh and Paresh Thakkar vide letter dated April 21, 2022 submitted a common reply contenting inter alia the following:

    i. The company is under CIRP and the Hon'ble National Company Law Tribunal (**NCLT**), Ahmedabad vide its order dated March 01, 2021 has declared moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 (**IBC**). It is further submitted that since the company is under CIRP, the noticees have no access to the documents and records of the company and in the absence of the documents and records, they cannot effectively defend themselves from the allegation made in the SCN.

    ii. The Hon'ble Securities Appellate Tribunal (**SAT**), in its order dated October 09, 2020 in the matter of Dewan Housing Finance Corporation Ltd vs SEBI (**DHFL**), has held that where a moratorium has been declared, under section 14 of IBC, the authority will have no jurisdiction to institute any proceedings. The Noticees have submitted that the SCN is illegal and perverse and is directly against the judgment of the Hon'ble Supreme Court in the case of Alchemist Asset Reconstruction Company Ltd. vs. Hotel Gaudavan Pvt. Ltd &Ors. (2018) 16 SCC 94 and of Rajendra K. Bhuta vs. Maharashtra Housing and Area Development Authority (2020) SCC Online 292 and keeping these judgments and also the order of Hon'ble SAT in the matter of DHFL, the instant SCN is liable to be withdrawn.

iii. SEBI Investigation Report is wholly based on the Forensic Audit Report prepared by Chokshi & Chokshi LLP and SEBI has not done any independent investigation in the matter. Considering that the Forensic Audit Report is nothing more than an opinion of a Chartered Accountant, request to cross examine Mr. Nilesh Joshi who has prepared the Forensic Audit Report.

iv. The said Noticees have also contended that the communique dated July 23, 2021 indicates that the Competent Authority has appointed the AO vide some other order dated July 22, 021and therefore the entire communique is misleading.

v. With respect to the allegation of misutilization of QIP Proceeds, the said Noticees have submitted that:

- Manpasand has not deviated from the disclosed object while utilizing the QIP Proceeds on the said two instances, as alleged in the SCN.
- The long term FD gives better interest yield as compared to short term FD. Further, the company has set aside QIP proceeds amounting to Rs. 64 crores in FD/OD account and the company has not surrendered the limit.
- The utilization of QIP proceeds towards objects of the QIP has been appropriately captured in the utilization statement. Further, "interest or dividend bearing instruments and securities" is a very broad phrase and the NCD of Aspire Home Finance Corporation Ltd., fall within the ambit of the phrase "interest or dividend bearing instruments and securities". Manpasand, in its QIP Placement Document under the head "Use of Proceeds-Purpose of Issue" at page 69 had very clearly disclosed that subject to compliance with applicable laws and regulations, the company

intends to use the Net Proceeds inter alia, for enhancing the company's competitiveness by investing in growth opportunities, funding expansion plans of the company and for general corporate purposes. The QIP Placement Document also discloses that subject to the review of company's Audit Committee, in accordance with the decision of company's Board as required under the SEBI LODR Regulations, the Company's management will have the flexibility in deploying the Net Proceeds. Clearance of outstanding OD Balance was in the interest of the shareholders. Further, the QIP Placement Document does not say that pending utilization of the net proceeds, the company would only invest in fixed income securities. Without prejudice to the same, even if the said instrument is a market linked instrument, the investment would still be within the disclosed methods of investment pending utilization, as in the QIP Placement Document. Further, the details about the investment in NCD were also disclosed in the audited financial statements for the year ended March 2017 and March 18.

vi. With respect to the allegation of non-disclosure of utilization of QIP Proceeds, the Noticees have submitted that the company has never admitted that it had deviated from the disclosed methods of utilization of QIP proceeds. Though there was certain timing mismatch in recording the entries for genuine QIP utilization, the same was reconciled at the yearend (FY 17-18). Regulations 32(1) and 32(4) of LODR Regulations require the listed entity to disclose category wise deviations, if any, in the use of proceeds from the objects stated in the offer document. Considering that Manpasand did not deviate in use of the QIP proceeds from the object stated in the QIP Placement Document, there was nothing to be disclosed under regulations 32(1) and 32(4) of LODR Regulations, to the stock exchange or to furnish explanation in the directors' report in the annual report.

vii. With respect to the allegation of deficiencies in internal control, the Noticees have submitted that the audit committee had reviewed the statement of uses of funds raised through QIP issue and did not find anything amiss. The Noticees have further submitted that neither the internal auditor nor the statutory auditor has made any such remarks with respect to the book entry. The alleged mistake in the book entries are trivial in nature and do not violate any of the accounting standards. In fact, SEBI investigation does not even allege that the company has violated any of the accounting standards by making the alleged mistake in the book-keeping. The Noticees have also submitted that Audit Committee is not supposed to be a blood hound and looking for errors in the book entries made by the company. The inadvertent error in the name of the company with respect to the purchase of the plots in Varanasi has been cured by taking a NOC from the seller company confirming the said clerical error. Such error has neither caused any loss to the company nor resulted in any violation of any of the securities laws or accounting standards.

viii. With respect to the allegation pertaining to balance confirmation, the Noticees have submitted that balance as mentioned in the SCN also includes the balance for which the parties who have not replied or letters addressed to the parties could not be delivered. The Noticees have further submitted that it is not required for listed company to periodically collect KYC documents of its debtors and creditors. In all probability the addresses of such debtors and creditors for the FY 2016-17 and 2017-18 who could not be contacted by SEBI in the year 2020, would have changed in the intervening period. If the letters issued during November 2019 to February 2020 to few of debtors of the company in the FY 2016-17 and 2017-18, could not be delivered, no adverse observation should have been made as has been made in the SEBI investigation. In absence of receipt of confirmation from the entities, SEBI has presumed that such entities do not exist or do not have such balance of payment due to / from Manpasand. Further, in all probability when these few debtors and creditors would be confronted and details of such balances would have been asked by SEBI, the deviations between their record and books of accounts of Manpasand would have come to zero. SEBI Investigation Report has observed that reasonable number of creditors and debtors have replied back and confirmed their respective balance and most of the items in the books of accounts are established. Thus, the Noticees have submitted that just for the reason that out of many debtors and creditors of the company, very few entities who were debtors and creditors of the company in the FY 2016-17 and 2017-18, have in their reply indicated a balance which is marginally different from the amount reflected in the books of accounts of Manpasand, the company and its directors ought not be alleged to have violated regulations 4(2)(f) of PFUTP Regulations read with section 12A(a),(b) and (c) of the SEBI Act. It is further submitted that regulation 4(2)(f) of PFUTP Regulations can be alleged to have been violated only when the entity knowingly publishes financial results, financial statements etc. which is not true or which the entities does not believe to be true and it has not been brought out by SEBI as to whether the company was aware that its financial statement was not true.

ix. With respect to the allegations pertaining to designation and roles performed by non-executive director, the said Noticees have submitted that Dhruv Agrawal neither did devote his whole time of working hours to the company nor had significant personal interest in the company as his source of income. Further, only in few cases where certain heads of items post their approval by the management were observed by him as part of overall governance and to utilize his expertise in guiding the company on improving the control. Merely because Dhruv Agrawal contributed to the company in improving the control and appropriate fee was paid to him for being non-executive director, he does not turn into an Executive Director of the company. In this regard, the Noticees have placed reliance on the judgment of Hon'ble Delhi High Court in the matter of Sai Girdhar Raj Kumar vs. Arun Kapoor and Ors.CRL.M.C. 3864/2018 & CRL.M.A. 29159/2018.

x. With respect to the allegation of non-furnishing of information by Manpasand, Noticee 2, 3 and CFO, the said Noticees have submitted that vide letter dated August 27, 2019, the company submitted the information sought by SEBI. Therefore, the requirement for furnishing the same information by Dhirendra Singh and Shri Abhishek Singh, as submitted by the company may be construed to be complied with. With respect to summons dated July 09, 2019 and August 20, 2019, Shri Dhirendra Singh and Shri Abhishek Singh they have submitted that Audit Committee was neither headed by them. Therefore, it was not within their power to arrange to provide the comments of audit committee. The said Noticees have further contended that under section 11C(3), the Investigating Authority (**IA**) has been empowered to require any person associated with the securities market to furnish such information or produce such books before him. However, section 11C (3) does not empower IA to summon someone to arrange to provide the comments of by some committee.

10. Noticee 4, Dhruv Agrawal, vide letter dated February 04, 2022 submitted the following:

i. That he was appointed as a Non-Executive Non Independent Director of the company with effect from September 17, 2015 and he resigned from the directorship of the company with effect from May 26, 2019 and has also produced DIR-12 in this regard.

ii. With respect to the allegation of discrepancy in balance confirmations, he has submitted that he was a non-executive non-independent director and his role was that of an Investor Relationship Professional and as an investment coordinator on behalf of the company. In the company his role was: -

- Arranging and coordinating meetings
- Co-ordination of Plant visits
- Facilitate calls and discussion with CMD and ED
- Gathering business plans, details and presentations from the MBL team
- Earning calls between the company and investors
- Investor conferences along with CMD at various locations.

iii. That at no point in time he was involved in the finance function of handling invoices or making up the financial statements and had no clues as to what was the financial position of the company at any point in time.

iv. That he was not a promoter of the company and also was not part of the Audit Committee.

v. The Noticee has also relied on the order of Hon'ble Supreme Court in the matter of Chintalapati Srinivas Raju, wherein the Apex Court has stated "……Non-executive directors are, therefore, persons who are not involved in the day to day affairs of the running of the company and are not in charge of and not responsible for the conduct of the business of the company". He has therefore claimed that he was not responsible for the vouchers/confirmations from the debtors and creditors and variations in such documents.

vi. With respect to the allegations that from records, books of account and documents pertaining Internal Financial Controls, certain executive functions had been entrusted / performed by Noticee 4, the Noticee has submitted that he has not cleared any vouchers/entries. The only items/entries that have been cleared by him were reimbursement of travel expenses, hotel expenses while entertaining investors in accordance with the role assigned to him.

vii. Noticee nos. 5 and 6, Chirag Doshi and Milind Babar, vide letters dated 31.02.2022 and 05.02.2022 respectively submitted as under:

- That they were independent directors of the company and had no role in the day-to-day management of the company and have discharged their duties as independent directors with diligence.

- That with respect to the allegation of misutilisation of QIP Proceeds, the said Noticees have submitted that the QIP proceeds were used for the clearance of OD balance created against FD and for investment in the NCDs of Aspire Home Finance Limited was brought to the knowledge of the Audit Committee only after the investment was made and they cannot be held liable for the decisions made by the company without their knowledge. The Noticees have also placed reliance on Regulation 25(5) of LODR Regulations which states that an Independent Director should only be made liable in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. The Noticees have also placed reliance on MCA Circular dated July 29, 2011 which states that Independent Directors shall not be made liable for any violation which has occurred without their knowledge.

- With regard to the allegations regarding deficiencies in internal controls, the Noticees have submitted that no such deficiency was pointed out in the internal audit reports as submitted by the Internal Auditors on a quarterly basis. In the absence of any red flags that would be available or presented in any internal audit report, it would be impossible for an independent director who is not in charge of the day-to-day administration or management of the Company to identify any deficiency in internal controls. In this regard, the said Noticees have placed reliance on the order of the Hon'ble Whole Time Member in the matter of Acropetal Technologies Limited.

11. In the interest of Principles of Natural Justice, an opportunity of personal hearing was granted to the Noticees viz. Milind Babar, Abhishek Singh and Dhirendra Singh on March 22, 2022. Noticees viz. Dhruv Agrawal, Chirag Doshi and Manpasand Beverages Ltd were granted an opportunity of personal hearing on March 23, 2022 and Paresh Thakker on March 30, 2022. On March 22, 2022, Authorized Representatives (**ARs**) appeared on behalf of Noticees viz. Abhishek Singh, Dhirendra Singh and Paresh Thakker. The ARs submitted a copy of the Supreme Court Order in the matter of T Takano v. Securities and Exchange Board of India & Ors, (decided on February 18, 2022) and requested for inspection of documents. The request for inspection of documents was acceded to and the ARs were advised to avail inspection of the documents on March 30, 2022. Accordingly, on March 30, 2022 an inspection of documents was conducted in the matter and a copy of the investigation report along with the Annexures were provided to the ARs of Noticees viz. Abhishek Singh, Dhirendra Singh and Paresh Thakker. Pursuant to the inspection of documents, the Noticees viz. Abhishek Singh, Dhirendra Singh and Paresh Thakker were granted another opportunity of personal hearing on April 21, 2022. On the date of the hearing i.e, April 21, 2022 the ARs submitted written submissions dated April 21, 2022 on behalf of the Noticees viz. Abhishek Singh, Dhirendra Singh and Paresh Thakker. The AR also sought time till May 2, 2022 to make further submissions in the matter, if any. Subsequently, vide email dated January 10, 2023 the said Noticees were advised to file additional submissions, if

any and vide email dated January 31, 2023, said Noticees have submitted additional submissions reiterating the submissions made earlier.

12. On March 23, 2022, AR of the Noticees viz. Milind Babar, Chirag Doshi and Dhruv Agrawal attended the personal hearing. The AR reiterated the submissions made by the abovementioned Noticees vide reply dated February 5, 2022, January 31, 2022 and February 4, 2022, respectively. Further, vide email dated January 11, 2023, the AR submitted that the Noticees have already made all the submissions and they have no further submissions to make.

CONSIDERATION OF ISSUES AND FINDINGS.

13. Taking into consideration the facts and material available on record, I note that the issues that arise for consideration in the instant matter are:

I. **Whether the Noticees have violated the provisions of section 11C (2) and (3) of the SEBI Act, regulation 4(2)(f) of the PFUTP Regulations read with Section 12A(a), (b), (c) of SEBI Act, regulation 4(1)(c), 32(1) & 32(4), 33 read with section 21 of SCRA and Part C of Schedule II read with regulation 18(3) and paragraph (A)(6) of Part C Schedule II of SEBI (LODR) Regulations?**

II. **Do the violations if any, attract monetary penalty under Sections 15A(a), 15HA and 15HB of the SEBI Act and sections 23E and 23H of SCRA?**

III. **If the answer to Issue No. II above is in affirmative, then what should be the quantum of monetary penalty?**

14. For ready reference, the relevant provisions of SEBI Act, SCRA, PFUTP Regulations, LODR Regulations alleged to have been violated by the Noticees, are reproduced as under: -

SEBI Act

Section 11C (2) and (3) of SEBI Act.

(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.

(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.

Prohibition of manipulative and deceptive devices, insider training and substantial acquisition of securities or control

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;

PFUTP Regulations

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1)……..

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves: —

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

SCRA

Conditions for listing.

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

LODR Regulations

Principles governing disclosures and obligations.

4. (1) the listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a)….

(b)….

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

Statement of deviation(s) or variation(s).

32. (1) The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc. ,-

(a) Indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b) Indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.

(2)….

(3)….

(4) The listed entity shall furnish an explanation for the variation specified in sub-regulation (1), in the directors' report in the annual report.

Financial results.

33. (1) while preparing financial results, the listed entity shall comply with the following:

(a) The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.

(b) The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/ Ind AS 34 – Interim Financial Reporting), as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable.

(c) The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India:

Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.

(d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself [/herself] to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.

(e) The listed entity shall make the disclosures specified in Part A of Schedule IV.

(2) The approval and authentication of the financial results shall be done by listed entity in the following manner:
(a) The quarterly financial results submitted shall be approved by the board of directors:
Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.
(b) The financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.
(c) The limited review report shall be placed before the board of directors, at its meeting which approves the financial results, before being submitted to the stock exchange(s).
(d) The annual audited financial results shall be approved by the board of directors of the listed entity and shall be signed in the manner specified in clause (b) of sub-regulation (2).

(3) The listed entity shall submit the financial results in the following manner:

(a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

(b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity [shall] also submit quarterly/year-to-date consolidated financial results [.]

[***]

(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.

(ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

(d) The listed entity shall submit [annual] audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and [Statement on Impact of Audit Qualifications (applicable only] for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and [Statement on Impact of Audit Qualifications (applicable only] for audit report with modified opinion) [:]

[Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.]

(e) The listed entity shall also submit the audited [or limited reviewed] financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.

(f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.

[(g) The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.

(h) The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.

(i) The listed entity shall disclose, in the results for the last quarter in the financial year, by way of a note, the aggregate effect of material adjustments made in the results of that quarter which pertain to earlier periods.]

(4) The applicable formats of the financial results and [Statement on Impact of Audit Qualifications (for audit report with modified opinion)] shall be in the manner as specified by the Board [***].

(5) For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which has listed their specified securities on SME Exchange shall be respectively read as "half yearly/half year" and the requirement of submitting 'year-to-

date' financial results shall not be applicable for a listed entity which has listed their specified securities on SME Exchange.

(6) [***]

(7) [***]

(8) The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/ companies whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the Board on this matter.]

Audit Committee.

18. (3) the role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.

Schedule II

PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE {See Reg. 18(3)}

A. The role of the audit committee shall include the following:

(6) reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the board to take up steps in this matter.

15. Before moving forward on merits, it is pertinent to deal with the preliminary issues raised by certain Noticees. The same is being dealt with as under:

15.1 I note that the Noticee no.1, even though the SCN was delivered upon it, has not submitted any reply. I also note that Noticee nos. 2, 3 and 7, have contended that the company, (Noticee No.1) is under CIRP and the Hon'ble NCLT, Ahmedabad vide its order dated March 01, 2021 has declared moratorium under section 14 of IBC. I also note the contention of the said Noticees that the Hon'ble SAT, in its order dated October 09, 2020 in the matter of DHFL, has held that *'where a moratorium has been declared, under section 14 of IBC, the authority which in the instant case is SEBI/ AO will have no jurisdiction to institute any proceedings"*.

15.2 In this regard, I place reliance on the decision of the Hon’ble Supreme Court in Sundaresh Bhatt vs Central Board of Indirect Taxes and Customs, 2022 SCC Online SC 1101 wherein the Hon’ble Supreme Court has held as under:

> *“46. Therefore, this Court held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.*
>
> *56. On the basis of the above discussions, following are our conclusions:*
>
> *i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.*
>
> *ii) After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority...”*

15.3 Having placed reliance on the aforesaid order of Hon’ble Supreme Court, I find that the limited purpose of these proceedings is to determine if the

Noticee 1 has violated the provisions of PFUTP Regulations, LODR Regulations, SCRA and SEBI Act, as alleged in the SCN, and to assess the penalty, if any, in order to enable SEBI to crystalize its claim.

15.4 I also note that the order of the Hon'ble SAT in DHFL matter has been challenged by SEBI before the Hon'ble Supreme Court and the same is pending. In view thereof, I note that the instant proceedings qua the Noticee 1 can be continued to determine if the Noticee has violated the aforesaid provisions of law as alleged in SCN and if so, assess and determine the penalty.

15.5 Another preliminary issue raised by Noticees 2 and 3 is that SEBI has not conducted any independent investigation in the matter and has relied on the forensic audit report submitted by the forensic auditor appointed by SEBI. In this regard, I note that Deloitte, who had been the statutory auditor of Manpasand for 8 years resigned from their position as statutory auditors with immediate effect on May 26, 2018 citing reasons of failure on the part of Manpasand in providing certain information to them. Consequent to the resignation of Deloitte, Manpasand appointed M/s Mehra Goel & Co., as statutory auditors and they completed the audit for FY2017-18. The audited financial results for FY2017-18 were declared on June 27, 2018. SEBI initiated investigation in light of the above developments and as part of the investigation, appointed an independent auditor, CHOKSHI & CHOKSHI LLP as forensic auditor for conducting a forensic examination of the books of Manpasand for financial years ending March 31, 2017 & March 31, 2018. I note that the terms of reference for the said forensic audit included (i) verification of revenue records, (ii) verification of receipts from operations and payments to vendors and related matters i.e. tax, GST, etc. (iii) diversion of funds through related party transactions and (iv) verification of assets including bank and cash balances. The forensic auditor submitted the report to the IA and the said report was considered by the IA during the investigation while reaching into a conclusion with respect to the books of the company. The report submitted by the forensic auditor was made available to the company and the company had been given an opportunity by the IA to submit its response vis-à-vis the observations made by the forensic auditor. Thus, during investigation, IA has examined and considered the observations of the forensic auditor and the response of the company with respect to the same while concluding the findings of the investigating. In view of the same the contention of the aforesaid Noticees that SEBI has not done any independent investigation and the powers of investigation was delegated to an external agency is devoid of merit.

15.6 I note that the Noticees have made a request to cross examine the forensic auditor. With respect to the same, I note that the forensic auditor has neither been made a witness by the IA not his statement has been recorded during the course of investigation. As noted above, the observations made by the forensic auditor *vis-a-vis* the comments of the company were considered by the IA and IA has not taken into account any oral statement of the forensic auditor. As mentioned above the report submitted by the forensic auditor was made available to the company and the company has also filed its responses to the observations of the forensic auditor. Further, the report of the forensic auditor was available to the Noticees as part of Annexure to SCN. Thus, I note that no prejudice has caused to the Noticees by not having cross-examined the forensic auditor and hence the said request is not acceded to.

15.7 Another preliminary contention raised by the Noticees is that the communique appointing AO in the matter is illegal as the communique dated July 23, 2021 (**Communique**) indicates that the Competent Authority has appointed the AO vide order dated July 22, 2021 and therefore the entire communique is misleading. In this regard, I note that the communique contains the details of the Noticees and the particulars of the violations levelled against them along with the relevant penalty provisions. The order dated July 22, 2021 is the internal noting appointing the AO for the particulars contained in the Communique. Therefore, I do not find merit in the contention of the Noticees that the Communique is misleading.

16. Now, I deal with the contentions made by the Noticees with respect to the allegations made in the SCN.

Misutilization of QIP proceeds.

16.1 With respect to the allegation of misutilization of QIP Proceeds, I note that, in September 2016, the company raised Rs. 500,00,00,000/- (Rupees Five Hundred Crores) by way of QIP. The purpose of the QIP issue was for enhancing competitiveness of the company by investing in growth opportunities, funding expansion plans of company and for general corporate purposes. It was further stated that subject to the review of Audit Committee, in accordance with the decision of the Board as required under the LODR Regulations, the management of the company will have the flexibility in deploying the Net Proceeds and pending utilization of the Net Proceeds, the company intends to invest the funds in interest or dividend bearing instruments and securities, including deposits with banks and investment in mutual funds. In this regard, I note that it was alleged in the SCN that Manpasand has deviated from the disclosed objects while utilizing the QIP proceeds by utilizing the QIP fund amounting to Rs. 64 crore was for clearance of outstanding OD balance created against fixed deposit (FD), which was not specifically mentioned in the purpose of utilization of fund received for QIP proceeds. The company had also invested the QIP proceeds in non-convertible redeemable debentures issued by Aspire Home Finance Corporation Ltd., wherein the coupon rate was based on performance of the Nifty index and payable on maturity. Thus, the allegation in the SCN was that the company and its audit committee failed to perform the responsibilities casted upon them as per the relevant provisions of LODR Regulations. Accordingly, the company and Noticee nos. 2, 5 and 6 i.e, Dhirendra Singh, Milind Babar and Chirag Doshi who were part of the Audit Committee were alleged to have violated the provisions of regulation 18(3) read with para (A)(6) of Part C of Schedule II of LODR Regulations.

16.2 In response to the said allegation, I note that Noticee 2 has contended that Manpasand has not deviated from the disclosed object while utilizing the QIP Proceeds on the aforesaid two instances. He has also contended that long-term FD gives better interest yield as compared to short term FD. Further, the company has set aside QIP proceeds amounting to Rs. 64 crores in FD/OD account and the company has not surrendered the limit. It has further been contended that the utilization of QIP proceeds towards objects of the QIP has been appropriately captured in the utilization statement. Further, "interest or dividend bearing instruments and securities" is a very broad phrase and the NCD of Aspire Home Finance Corporation Ltd., fall within the ambit of the phrase "interest or dividend bearing instruments and securities". I also note the contention of the Noticees that the company, in its QIP Placement Document under the head "Use of Proceeds-Purpose of Issue" had very clearly disclosed that subject to compliance with applicable laws and regulations, the company intends to use the Net Proceeds inter alia, for enhancing the company's competitiveness by investing in growth opportunities, funding expansion plans of the company and for general corporate purposes. The QIP Placement Document also discloses that subject to the review of company's Audit Committee, in accordance with the decision of company's Board as required under the LODR Regulations, the Company's management will have the flexibility in deploying the Net Proceeds. It is also the contention of the said Noticee that even if the said instrument is a market linked instrument, the investment would still be within the disclosed methods of investment pending utilization, as in the QIP Placement Document and the details about the investment in NCD were disclosed in the audited financial statements for the year ended March 2017 and March 18. I also note that the company, in its response to the IA had stated that the aforesaid investment led to a return of 9% which was better than the fixed deposit returns, which in turn led to maximization of shareholder wealth.

16.3 With respect to the violation alleged and the contentions of the Noticees, I note the investment made by Manpasand is not in line with the declared utilization as was stated in the Offer document of the QIP. I note that such investments in market linked instruments as against the fixed return instrument would not be construed as interest bearing securities as the returns on the investment in Non-Convertible Redeemable Debentures were dependent on the performance of the NIFTY. In this regard, I note that QIP proceeds must have been utilized strictly in line with the disclosure made in the QIP document and in case Manpasand believed that shareholders' value could be maximized by any other alternative, relevant approvals should have been obtained for deviating from the disclosed utilization plan. From the disclosures made in the audited financial statements for the years ended March 2017 and March 2018, I note that the coupon rate on NCD of Aspire Home Finance Corporation Limited was based on performance of the Nifty index and payable on maturity. Thus, as the said investment is in the nature of market linked instruments, I note that the investment cannot be considered as an investment in interest bearing securities as contended by the Noticees. Thus, I note that the company has deviated from the stated objectives/purpose of utilization of QIP proceeds in the said two instances which is in violation of the relevant provisions of LODR Regulations.

16.4 In this regard, I further note that it was stated in the placement document that subject to the review of Audit Committee, in accordance with the decision of Board as required under the LODR Regulations, the management of the company will have the flexibility in deploying the Net Proceeds and pending utilization of the Net Proceeds, the company intends to invest the funds in interest or dividend bearing instruments and securities, including deposits with banks and investment in mutual funds. Thus, the company was required to seek the review of the Audit Committee, and the Audit Committee was required to make appropriate representation to the Board of Directors. In this regard, I note that there is nothing on record to show that the decision of the company to make investments in deviation of the purpose as stated in the Placement Document has been reviewed by the Audit Committee for making appropriate representation to the Board of Directors. Thus, I note that the contention that the investment as aforesaid led to maximization of shareholder wealth will not hold good in my opinion, as the same was not reviewed by the Audit Committee. In this regard, I note that from the respective replies filed by Noticee nos 5 and 6 i.e, Chirag Doshi and Milind Babar who were part of the Audit Committee during the relevant time that said alleged violation was brought to the notice of the committee only after the investment was made, and therefore, they cannot be held liable. The said Noticees have contended that they had no role in the day-to-day management of the company and have discharged their duties as independent directors with diligence. I also note that Noticee Nos. 5 and 6 have also placed reliance on regulation 25 (5) of LODR Regulations which states an Independent Director should only be made liable in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. The said Noticees have also placed reliance on MCA Circular dated July 29, 2011 which states that Independent Directors shall not be made liable for any violation which has occurred without their knowledge. In this regard, I note that Noticee Nos. 5 and 6 were having the dual role of independent directors as well as the Chairman and member respectively of the audit committee. Being the part of the audit committee and being the directors of the company, the said Noticees ought to have been more diligent while fulfilling their responsibility. The contention of the Noticees that they were made aware of the investment post the actual investment is devoid of merit in the absence of any noting in this regard in the minutes of the audit committee meeting. Moreover, for any listed company, an audit committee, which is an operating committee comprising of its directors plays a pivotal role in the corporate governance process since it has the charge of reviewing financial reporting and disclosure. Further, as per the submissions of the company to IA, Noticee 2, who was the Managing Director and Chairman of the company as well as a member of Audit Committee was present in all the 9 meetings of the Audit committee. In this regard, I note that as per the provisions of regulation 18(3) read with para (A)(6) of Part C of Schedule II of LODR Regulations, Audit committee is required to review, with the management, the statement of uses / application of funds raised through an issue, the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilization of proceeds of an issue, and making appropriate recommendations to the Board to take up steps in this matter. I note that the Audit Committee has failed to monitor the utilization of the issue proceeds. Thus, I am not inclined to accept the contention of the Noticees in this regard and am of the view that Manpasand, Dhirendra Singh, Milind Babar and Chirag Doshi i.e Noticees nos. 1, 2, 5 and 6 have violated the provisions of regulation 18(3) read with para (A) (6) of Part C of Schedule II of LODR Regulations.

Non-disclosure of utilization of IPO proceeds

16.5 With respect to non-disclosure of utilization of IPO proceeds, I note that it was alleged in the SCN that the details of investments made out of QIP proceeds were not disclosed in the quarterly statement for utilization of QIP proceeds submitted to the Board of Directors and that the details of investments were not disclosed in Director's Report. It was also alleged that certain differences were noted in the quarterly statements which included mismatch in Capital Advances as per Books of Account and quarterly statements placed before Board of Directors and refund of Capital Advance arising out of advances given from QIP funds were not adjusted in QS for Q4-2017-18. I note that said difference was to the tune of Rs. 38.66 Crores as shown under:

SR. No.	Period	Particulars	As per books of account	As per QS working	Difference
1	Q3_2016-17	Various parties	46.10	64.83	(18.72)
2	Q4_ 2016-17	Various parties	17.08	23.05	(5.97)
3	Q1_2017-18	Various parties	3.12	5.29	(2.17)
4	Q2_2017-18	Various parties	5.30	3.80	1.50
5	Q3_2017-18	Various parties	55.38	55.79	(0.41)
6	Q4_2017-18	Various parties	58.11	71.00	(12.89)
	Total		**185.09**	**223.76**	**(38.66)**

16.6 I note from the material available on record that the company, while responding to the IA, stated that there had been certain timing mismatch in recording the entries for QIP utilization in the earlier statements submitted to the Board as the company was in the process of receiving/verifying the bills from various parties in normal course of business and the same was disclosed at the end of the year by the company. In this regard, Noticee nos 2 and 3 have contended that though there was certain timing mismatch in recording the entries for genuine QIP utilization, the same was reconciled at the year-end (FY 17-18). They have further contended that regulations 32(1) and 32(4) of LODR Regulations require the listed entity to disclose category wise deviations, if any, in the use of proceeds from the objects stated in the offer document and considering that Manpasand has not deviated in use of the QIP proceeds from the object stated in the QIP Placement Document, there was nothing to be disclosed under regulations 32(1) and 32(4) of LODR Regulations, to the stock exchange or to furnish explanation in the directors' report in the annual report. As the company itself has accepted that there was timing mismatch in recording the entries for QIP utilization in the statements submitted, I do not find merit in the contention of Noticee 2 and 3 in this regard. Therefore, I note that the company has violated the provisions of regulations 4(1) (c), 32(1) & 32(4) of LODR read with Regulations 21 of SCRA.

Deficiencies in Internal Control

16.7 I note that it was alleged in the SCN that there were certain deficiencies in internal control in the company such as:

- Deficiency in the Tally ERP which defeated proper audit trail. Also inventory details maintained in Tally were not updated on daily basis and the same are maintained in spread sheets which are not password protected.
- Receipts & Payments in cash were accounted as direct receipts and payments in Bank instead of routing it through cash book. The narrations of these entries were not self-explanatory. In some cases, the PAN details of the parties were not available.
- For each factory in Tally during pre-GST period and opened separate entity code for each state in tally for post GST period. The same is leading to preparation of financial statements through consolidation of trial balance for each factory /state. Also, there is no evidence of maker checker control at consolidation stage. This practice was followed even though the option of branch-wise tally is available which gives a consolidated balance sheet
- Usage of “Suspense account” for adjustment and writing off/writing back of balances in various Debtors, Creditors and other account balances respectively without specifying any policy specifying guidelines for writing off/ writing back balances of debtors, creditors, advances, etc.

- An analysis of debtors revealed that receivable balances were adjusted either with receipt from some other inter-party or with payable to some other inter-party.
- Discrepancies in the purchase of properties (two plots) in the name of the company.
- Discrepancies in purchase invoices.

16.8 With respect to the said allegation of deficiencies in internal control systems, it was alleged in the SCN that as per Part C of Schedule II read with Regulation 18(3) of LODR Regulations, the audit committee is expected to review with the management, adequacy of the internal control systems. Accordingly, it was alleged that the company (Noticee 1) and its audit committee members i.e, Dhirendra Singh (Noticee 2), Milind Babar (Noticee 5) and Chirag Doshi (Noticee 6) had failed to perform their duties and therefore has alleged to have violated the provisions of Part C, para A(6) of Schedule II read with regulation 18(3) of LODR Regulations.

16.9 I note that the Noticee no.2 i.e Dhirendra Singh has contended that the SCN just mentions the findings of forensic auditor and comments of Manpasand in the tabular form and SEBI investigation has not indicated as to why it did not find the submission of the company satisfactory. Also, most of the observations of the forensic auditor are with respect to certain book entries and clerical error which are trivial in nature. The Noticees have also submitted that Audit Committee is not supposed to be a blood hound and looking for errors in the book entries made by the company. Noticee nos. 5 and 6 have contended that no such deficiency was pointed out in the internal audit reports as submitted by the Internal Auditors on a quarterly basis. It was further contended that in the absence of any red flags that would be available or presented in any internal audit report, it would be impossible for an independent director who is not in charge of the day-to-day administration or management of the Company to identify any deficiency in internal controls. I also note that the Noticees 5 and 6 have placed reliance on the order of the Hon'ble Whole Time Member in the matter of Acropetal Technologies Limited, in this regard.

16.10 I do not find merit in the aforesaid contention of the Noticees because, in the instant matter Noticee no.2 was the chairman and managing director of the company and also member of the audit committee. Noticee nos. 5 and 6 are the chairman and member of audit committee respectively. Being part of the audit committee, the responsibility and accountability of these Noticees are on a higher pedestal than that of the independent directors. Further, Noticee no.2 who was the Chairman and MD of the company was the part of the audit committee and hence the audit committee should have been more integral as far as financial disclosures and internal control systems are concerned. Further, the observations of the forensic auditor in this regard were made available to the company during investigation and as seen from the response of the company as given in the SCN, the company has accepted the observations of the forensic auditor and none of the observations had been adequately addressed by the company. Instead, it has been responded in a very casual manner without explaining the cause for the observation of the forensic auditor. Hence, I do not find merit in the contention of Noticee no. 2 that SCN just mentions the findings of forensic auditor and comments of Manpasand in the tabular form and SEBI investigation has not indicated as to why it did not find the submission of the company satisfactory. In view of the above, I find that the Noticee 1,2, 5 &6 i.e., the company and its audit committee members have violated the provisions of Part C of Schedule II read with Regulation 18(3) of LODR Regulations.

Balance Confirmation

16.11 I note that it has been alleged in the SCN that there were certain discrepancies in the balance confirmations and since those items were part of the financial results of Manpasand, it has violated regulation 33 of LODR Regulations read with Section 21 of

SCRA. It was also alleged in the SCN that considering that the said misleading financial results were published, Manpasand (Noticee 1), Dhirendra Singh (Noticee 2), Abhishek Singh (Noticee 3) and Dhruv Agrawal (Noticee 4) have violated the provisions of regulation 4(2)(f) of the PFUTP Regulations read with sections 12A(a), (b)& (c) of SEBI Act.

16.12 In this regard, I note that it has been detailed in the SCN that balance/ sample transactions confirmation were requested from 129 parties, the break-up of which is as under:

Sr. No.	Particulars	Creditor/ Debtor	Number of Parties	For the year ended 31st March 2017	For the year ended 31st March 2018	Total
1	Confirmation sent	Creditor	82	46.63	54.45	101.08
		Debtor	47	2.39	5.40	7.80
2	Confirmation received	Creditor	57	18.03	27.28	45.31
		Debtor	37	2.01	4.48	6.49
3.	Confirmation undelivered	Creditor	7	5.25	4.40	9.65
		Debtor	4	0.21	0.14	0.35
4.	Confirmation not received	Creditor	18	23.34	22.78	46.12
		Debtor	6	0.17	0.78	0.95

16.13 I also note that the balance confirmed by some of the parties are different from the amounts reflected in the books of accounts of Manpasand. The total amount of such items in the books of accounts was found to be around Rs. 6.29 cr. in FY 2016-17 and Rs. 1.07 cr. In FY 2017-18 as shown under:

Financial Year	Total Debtors and Creditors (Rs. Cr.)	Variation observed (Rs. Cr.)	% Variation
FY 2016-17	142.42	6.29	4.42%
FY 2017-18	189.87	1.07	0.56%

16.14 With respect to the aforesaid allegation, the Noticees have contended that the balance as mentioned in the SCN also includes the balance for which the parties have not replied or letters addressed to the parties could not be delivered and in all probability when these few debtors and creditors would be confronted as details of such balances would have been asked by SEBI, the deviations between their record and books of accounts would have become zero. The Noticees have further contended that investigation itself has observed that these items are not material. It is also submitted by the Noticees that regulation 4 (2) (f) of PFUTP Regulations can be alleged to have violated only when the company knowingly publishes financial results and statements which is not true or which the entities does not believe to be true. The Noticees have also submitted that no evidence has been shared with the notices to suggest that the company had any reason to believe that its financial statement was not true.

16.15 With regard to this allegation, I note that a reasonable number of creditors and debtors from whom the confirmation was sought from has been replied back and have confirmed their respective balance. I also note that the investigation has noted that these items even though were part of the financial results of Manpasand were not material. Accordingly, the allegation of violation of regulation 4(2) (f) of the PFUTP Regulations read with sections 12A(a), (b)& (c) of SEBI Act and regulation 33 of LODR Regulations are not established against the aforesaid Noticees and has been dropped.

16.16 Another allegation in the SCN is that Noticee 4, Dhruv Agrawal had been disguised as a "Non-Executive Director" on the Board of Manpasand, while in essence he had been performing executive functions. With respect to the said allegation Noticees 2 and 3 have contended that Noticee 4 neither did devote his whole time of working hours to the company nor had significant personal interest in the company as source of income and hence he cannot be called as executive director. To further this contention, the Noticees have relied on the judgment of Hon'ble Delhi High Court in the matter of Sai Girdhar Raj Kumar vs. Arun Kapoor and Ors.CRL.M.C. 3864/2018 & CRL.M.A. 29159/2018. I also note the contention of the Noticees that only in few cases where certain heads of items post their approval by the management were observed by Shri Dhruv Agrawal as part of overall governance and to utilize his expertise in guiding the company on improving the control and merely because Shri Dhruv Agrawal contributed to the company in improving the control and appropriate fee was paid to him for being non-executive director, he does not turn into an Executive Director of the company. With respect to the said allegation, Noticee 4 has contended that he was a non-executive non-independent director and his role was that of an Investor Relationship Professional and as an investment coordinator on behalf of the company. He has further submitted that in the company his role was: -

- Arranging and coordinating meetings
- Co-ordination of Plant visits
- Facilitate calls and discussion with CMD and ED
- Gathering business plans, details and presentations from the MBL team
- Earning calls between the company and investors
- Investor conferences along with CMD at various locations.

16.17 Noticee 4 further contended that at no point in time he was involved in the finance function of handling invoices or making up the financial statements and had no clues as to what was the financial position of the company at any point in time. He further submitted that he was not a promoter of the company and also was not part of the Audit Committee. To further his contention, he has relied on the order of Hon'ble Supreme Court in the matter of Chintalapati Srinivas Raju, wherein the Apex Court has stated "……*Non-executive directors are, therefore, persons who are not involved in the day to day affairs of the running of the company and are not in charge of and not responsible for the conduct of the business of the company".*

16.18 In this regard, I note that as per records filed with the Registrar of Companies, Noticee 4 had been appointed as Non Independent Non- Executive Director of Manpasand on September 17, 2015. Even though, he was appointed as a Non Independent Non-Executive Director, I note that he was actually performing certain executive functions which included approval of expenses and other entries as is evident from the snapshots of the tally showing remarks against various expenses as approved by him. I note from the risk control matrix that Noticee 4 was identified as responsible for managing certain risks which including:

- Cash flow statement is not prepared as per IND AS-7 – Review and sign off.
- Finalized financial statements and Notes to Accounts – Sign off and discussion with CFO
- Reporting of Related Party Transactions – Review
- Calculation of Defer tax assets/ Defer tax liability" – Signing off the calculations
- Remuneration Calculation" – Review and sign off
- Significant Accounting Policies" – Sign off

16.19 Thus, I note that Noticee 4, even though was designated as a Non-Executive Non Independent Director on the Board of Manpasand, in essence he was performing executive functions at the company and was therefore responsible for various such executive functions. I also note that Noticee 4 is the only Non-Executive Non Independent Director who has been paid a commission which very hefty compared to the non-executive role claimed to have been played by him and also in contrast to the payment to other Non-Executive Directors. Further, the company itself had identified Noticee 4 as Executive Director responsible for variety of executive functions such as signing off of financial statements and notes to accounts, calculations of deferred tax assets/ liabilities, individual remuneration calculations, signing off of significant accounting policies etc. I also note that the Tally records of the company also shows that Noticee 4 has approved certain expenses. As such, I am of the view that the contention of Noticee 4 that he was not involved in the day-to-day functions of the company is not tenable and facts discussed above proves his involvement in various activities of the company and he has also received a hefty amount in return to his role played in the company. Therefore, I am of the view that the case laws cited by the

Noticees would not support the contention made by them in the facts and circumstances of the case. Therefore, I find that Manpasand (Noticee 1), Dhirendra Singh (Noticee 2), Abhishek Singh (Noticee 30 and Dhruv Agrawal (Noticee 4) have violated the provisions of regulations 4(1)(c) of LODR Regulations, 2015 read with section 21 of Securities Contracts (Regulation) Act, 1956.

Non-furnishing of Information

16.20 I note that it has been alleged in the SCN that Manpasand (Noticee 1), Dhirendra Singh (Noticee 2), Abhishek Singh (Noticee 3) and Paresh Thakkar (Noticee 7) had not complied with Summons(s) issued by the IA during investigation and has therefore violated the provisions of sections 11C (2) and (3) of the SEBI Act. In this regard, I note that vide summons dated July 09, 2019 and August 20, 2019, Noticee 1, Noticee 2 and Noticee 3 were sought to furnish the details as per the Annexure to the Summons(s). Further, vide Summons dated March 02, 2020 Noticee 1, Noticee 2, Noticee 3 Noticee 7 were sought to furnish the information on 'differences in balance confirmations'. In this regard, I note that the Noticees have contended that the SCN has not provided the information sought to be furnished from the Noticees. The Noticees have further contended that Summons dated March 02, 2020 was not delivered on the Noticees. These contentions of the Noticees are not tenable because along with the SCN the relevant Summons(s) were made available to the Noticees. Further, the Noticees themselves have referred to the information sought from them vide the said Summons(s). I also note the contention of the Noticees 2 and 3 that since the same set of information was sought from them and the company and the company had furnished the information vide letter dated August 27, 2019 and the same to be treated as compliance by the said Noticees also. In this regard, I note that the Noticees, vide summons(s) dated July 09, 2019 and August 20, 2019 were sought to furnish information which had already been asked from the Noticees vide emails dated March 28, 2019, April 22, 2019 and May 16, 2019. I perused the letter dated August 27, 2019 of the company and I note that the company has not furnished the required information sought vide the said Summons. Thus, I note that the Noticees have not given complete information sought vide Summons(s) dated July 09, 2019 and August 20, 2019 and has not furnished the information sought vide summons dated March 02, 2020 and have therefore not complied with the summons issued to them under SEBI Act. I also note the contention of the Noticees that IA has no powers to summon someone to arrange to provide the comments of some committee and I am of the view that the said contention is not material because in the instant matter Dhirendra Singh is the MD and Chairman of the company and also member of audit committee, Abhishek Singh is also a director of the company and Paresh Thakkar is the CFO of the company. Therefore, I find that Manpasand, Dhirendra Singh, Abhishek Singh and Paresh Thakkar (Noticee 1-3 and 7) have violated the provisions of sections 11C (2) and 11C (3) of the SEBI Act. I note that the information sought from the Noticees was very relevant to the investigation and the non-compliance and non-co-operation by the Noticees have hampered the investigation. In this regard, the observations of Hon'ble SAT in case of Mr. Yadunath Singh vs SEBI in Appeal No. 27 of 2023 decided on 30.01.2023 are relevant wherein it held thus: "……. *Non-submission of requisite information as desired by the Investigating Authority affected the investigation process. The information and the records sought are pre-requisite of a meaningful investigation. Since the appellant did not co-operated in the investigation it hampered the investigation and, consequently, proceedings were rightly initiated for violation of Section 11C (3) and 11C(5)"*

17. Thus, from the discussion in the foregoing paragraphs, it is established that Manpasand has violated the provisions of regulations 4(1)(c), 32(1) & 32(4) of LODR Regulations read with section 21 of SCRA and section 11C (2) & (3) of SEBI Act. At the relevant time, Noticee 2 was the MD and Chairman of Manpasand, Noticee 3 was the executive director of the company, Noticee 4 even though was designated as non-executive non-independent director, was performing executive functions at Manpasand. A company acts through its directors who are responsible for the acts of omission and commission by the company. It

is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. In this regard, it is relevant to note the observations of Hon'ble SAT with respect to the liability of directors in its order dated June 10, 2022 in the matter of Dhyana Finstock Limited that "*The Company being an artificial juridical person acts through its Board of Directors. ………we are of the opinion that the Directors were in full control of the activities of the Company and were responsible for the management and business affairs of the Company. Any violation committed by the Company, which is fraudulent, in nature has to be attributed to the individual acting as a Director at the relevant moment of time".* The said observations of the Hon'ble SAT are squarely applicable to the said Noticees because they were the executive directors involved into the day-to-day operations of the company. Thus, I find that Noticees 2-4 have also violated the provisions violated by Manpasand i.e regulations 4(1)(c), 32(1) & 32(4) of LODR Regulations read with section 21 of SCRA.

18. It is also established that Noticee 5, 2 and 6 being the Chairperson and members respectively of the Audit Committee of Manpasand have violated the provisions of Part C of Schedule II read with regulation 18(3) and paragraph (A) (6) of Part C Schedule II of LODR Regulations. It has also been established that Noticees 1, 2, 3 and 7 have violated the provisions of sections 11C (2) & 11C (3) of the SEBI Act. For the reasons stated in paragraph. 16.15 hereinabove, the allegation of violation of regulation 4(2) (f) of the PFUTP Regulations read with sections 12A(a), (b)& (c) of SEBI Act and regulation 33 of LODR Regulations are dropped.

II. Do the violations, if any, attract monetary penalty under Sections 15A(a) and 15HB of the SEBI Act and sections 23E and 23H of SCRA?

III. If the answer to Issue No. II above is in affirmative, then what should be the quantum of monetary penalty?

19. Since it is established that the Noticees have violated provisions of regulations 4(1)(c), 32(1) & 32(4) of LODR Regulations read with section 21 of SCRA, Part C of Schedule II read with regulation 18(3) and paragraph (A) (6) of Part C Schedule II of LODR Regulations, sections 11C (2) & 11C (3) of the SEBI Act, they are liable for monetary penalty under section15A (a) and 15HB of the SEBI Act and sections 23E and 23H of SCRA. The said provisions read as under:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,-*

(a)to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less".

15HB.Penalty for contravention where no separate penalty has been provided.

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall beliable to a penalty which may extend to one crore rupees.

23E. Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.

23H. ***Penalty for contravention where no separate penalty has been provided***

Whoever fails to comply with any provision of this Act, the rules or articles orbye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be 132[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees

20. With respect to the imposition of penalty under Section 23E of SCRA against the company in the facts and circumstances as of the instant case, I note that the same is the subject matter of the Civil Appeal No. 4741 of 2021 filed by SEBI before Hon'ble Supreme Court against the order dated May 03, 2021 passed by Hon'ble SAT in the matter of Suzlon Energy Ltd. and Ors (**Suzlon**). vs. SEBI (Appeal No. 201 of 2018). A stay application was also filed by SEBI with respect to the findings of Hon'ble Tribunal. The aforesaid stay application and appeal are pending before Hon'ble Supreme Court. It is relevant to note that vide orders in the matter of M/s NDTV vs. SEBI (Appeal No. 358 of 2015) dated 07.08.2019, and Oasis Securities Ltd. & Ors. vs. SEBI (Appeal No. 316 of 2018) dated 17.03.2020, the Hon'ble SAT had upheld the imposition of penalty under section 23E of SCRA for the violation of clauses of the Listing Agreement and LODR Regulations. The limited purpose of going into the issue of violation of LODR Regulations by Noticee-1 here is to determine whether it has violated the provisions of the said Regulations, and if so, to impose penalty, however, the enforcement of penalty with respect to the violation under section 23E of SCRA shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court.

21. While determining the quantum of penalty under the aforementioned provisions, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

Section 15J.Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

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

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

(c) the repetitive nature of the default.100.

22. 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. It is noted that the Noticees were obliged to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls which they failed to do. The Noticees have also hampered the investigation by not co-operating with the investigating Authority.

ORDER

23. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act as enumerated above, I in exercise of powers conferred upon me under section 15-I of the SEBI Act and Section 23-I of the SCRA, hereby impose following penalty under sections 15A(a), 15HB of the SEBI Act and section 23E and 23H of SCRA on the Noticees as under:

Name of the Noticee	Violation	Penal Provision	Amount of Penalty(in Rs.)
Manpasand Beverages Limited (Noticee1)	4(1)(c), 32(1) & 32(4) of LODR Regulations read with section 21 of SCRA,	Section 15HB of SEBI Act	2,50,000/-
		Section 23E of SCRA	2,50,000/-
	sections 11C(2) & 11C(3) of the SEBI Act	Section 15A(a) of SEBI Act	5,00,000/-
Dhirendra Singh (Noticee 2) Abhishek Singh (Noticee 3) Dhruv Agrawal (Noticee 4)	4(1)(c), 32(1) & 32(4) of LODR Regulations read with section 21 of SCRA	Section 15HB of SEBI Act and Section 23H of SCRA	5,00,000/- (jointly and severally)
Dhirendra Singh (Noticee 2) Abhishek Singh (Noticee 3)	Sections 11C(2) & 11C(3) of the SEBI Act	Section 15A(a) of the SEBI Act	5,00,000/- each
Milind Babar (Noticee 5)	Part C of Schedule II read with	Section 15HB of SEBI Act	2,00,000/-

	regulation 18(3) and paragraph (A)(6) of Part C Schedule II of SEBI (LODR) Regulations.	and Section 23H of SCRA	
Chirag Doshi (Noticee 6)	Part C of Schedule II read with regulation 18(3) and paragraph (A)(6) of Part C Schedule II of SEBI (LODR) Regulations.	Section 15HB of SEBI Act and Section 23H of SCRA	2,00,000/-
Dhirendra Singh (Noticee 2)	Part C of Schedule II read with regulation 18(3) and paragraph (A)(6) of Part C Schedule II of SEBI	Section 15HB of SEBI Act and Section 23H of SCRA	2,00,000/-

	(LODR) Regulations.		
Paresh Thakkar (Noticee 7)	section 11C (2) and (3) of SEBI Act.		2,00,000/-

24. As mentioned in the foregoing paragraph nos. 15.1-15.4 hereinabove, with respect to Noticee1, the limited purpose of the instant proceedings is to determine if it has violated the relevant provisions of SEBI Act and LODR Regulations read with SCRA as alleged in the SCN and if so, to assess and determine the penalty in order to enable SEBI to crystallize its claim. Further, as mentioned in paragraph 20 herein above, the enforcement of penalty with respect to the violation under section 23E of SCRA shall be subject to the outcome of the appeal filed by SEBI in the matter of Suzlon before the Hon'ble Supreme Court.

25. Noticee Nos 2-7 shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor 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.** In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

26. The said Noticees shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, Division of Regulatory Action-5 (EFD-1 – DRA-5) SEBI Bhavan II, Plot No. 7,'G' Block, Bandra Kurla Complex, Mumbai -400051 and also send an email to tad@sebi.gov.in with the following details:

Case name	
Name of Payee	
Date of Payment	
Amount paid	
Transaction No.	
Bank Details in which payment is made	
Payment is made for	Penalty

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order by Noticees 2-7, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of their movable and immovable properties.

28. In terms of rule 6 of the SEBI Penalty Rules, copies of this order are sent to the Noticees and SEBI.

DATE: March 02, 2023
PLACE: MUMBAI

SAKKEENA PV
ADJUDICATING OFFICER