BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/UR/2022-23/20471-20474]

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

In respect of

Noticee Name	PAN
Trinity Tradelink Limited	AAFCS8117C
Vikrant Kayan	AFJPK8437M
Sukumar Das	AEJPD0435R
Sharad Jhunjhunwala	ACVPJ0763C

In the matter of Trinity Tradelink Limited.

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted investigation in the in the scrip of Trinity Tradelink Limited (hereinafter referred to as "**Noticee 1/TTL**") with respect to allotment of equity shares to more than 49 persons during 2011-12 and to ascertain whether there was any violation of the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations 2009**") and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations 2018**").

2. Based on the findings of the investigation, it was alleged that Noticee 1, Mr. Vikrant Kayan (hereinafter referred to as "**Noticee 2**"), Mr. Sukumar Das (hereinafter referred to as "**Noticee 3**") and Mr. Sharad Jhunjhunwala (hereinafter referred to as "**Noticee 4**"). (hereinafter collectively referred to as "**Noticees**") had violated the provisions of Regulations 4(2)(d), 4(2)(e), 5(1), 5(2), 5(5), 5(7), 6(1), 7, 26(1), 26(2), 32(1), 36, 37, 46(1), 47(1), 49(1), 57(1), 58(1), 58(2) and 63 of ICDR regulations 2009 read with Regulation 301 of ICDR Regulations 2018.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as "**AO"**) under Sub-section 1 of Section 15-I of SEBI Act, 1992 read with Section 19 of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') conveyed vide communique dated November 03, 2021, to inquire into and adjudge under the aforesaid alleged violations against the Noticees, and if satisfied that the Noticees are liable, impose such penalty as it deems fit in terms of Rule 5 of Adjudication Rules and Section 15HB of the SEBI Act.

SHOW CAUSE NOTICE, SUPPLEMENTARY SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice dated March 24, 2022 (hereinafter referred to as '**SCN**') bearing reference no. SEBI/EAD-3/BM/UR/12451/2022 was issued to the Noticees under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('**Adjudication Rules'**) to show cause as to why an inquiry should not be initiated against them and penalty if any, not be imposed upon them for the aforesaid violations alleged to have been committed by them. The said SCN was delivered to the Noticees vide Speed Post Acknowledgement Due (hereinafter referred to as "**SPAD**").

5. Subsequently, Supplementary SCN (hereinafter referred to as "**SSCN**") dated August 19, 2022 bearing reference no. SEBI/EAD-3/BM/UR/44109/2022 was issued to the Noticees whereby it was clarified that paragraph 12 of the SCN shall be read as follows:

   "In view of the above, Noticees are required to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication rules, 1995 read with section 15-I of the SEBI Act, 1992 and penalty, if any, be not imposed under section 15HB of the SEBI Act, 1992 for the alleged contravention of the

aforesaid provisions of the SEBI (ICDR) Regulations 2009 read with Regulation 301 of SEBI (ICDR) Regulations 2018."

6. The allegations levelled against the Noticees in the SCN are reproduced as below:

7. Erstwhile TTL was an unlisted company and was incorporated on May 01, 2007. Erstwhile TTL was merged with a listed company, namely, Omnitech Petroleum Limited (registered on March 30, 1985, and earlier known as Sharp Trading and Finance Ltd.), through a scheme of arrangement/ amalgamation, which was sanctioned vide order dated January 10, 2014, passed by the Hon'ble High Court of Bombay. The name of Omnitech Petroleum Limited (hereinafter referred to as "**Omnitech**") was later changed to Trinity Tradelink Limited (Noticee 1) vide RoC certificate dated March 28, 2014.

8. Details of the directors / promoters of Noticee 1 (prior to amalgamation with Omnitech Petroleum Limited) during the year 2011-12 (period of raising money) are as under -:

Sr No.	Director Name	Address	Designation	PAN
1	Vikrant Kayan	9, Sunny Park, Kolkata 700019	Promoter Director	AFJPK8437M
2	Sukumar Das	15, Harish Chatterjee Street, Kolkata 700025	Promoter Director	AEJPD0435R
3	Sharad Jhunjhunwala	GD-39, Salt Lake City, Sector III, Kolkata 700016	Director	ACVPJ0763C

Sr No.	Director Name	Address	Designation	PAN
4	Tanvi Kayan Privilage Trust (Trustees: Vikrant Kayan and Shaleni Kayan)	9, Sunny Park, Kolkata 700019	Promoter	AACTT0064B
5	Devansh Kayan Beneficiary Trust (Trustees: Vikrant Kayan and Shaleni Kayan)	9, Sunny Park, Kolkata 700019	Promoter	AABTD6118R
6	Dunhil Healthcare Private Limited	238B, AJC Bose Road, Unit 4B, 4th Floor, Kolkata 700020	Promoter	AADCD332Q

9. **<u>Details of Equity Shares Issued bv the company:</u>**

It was observed that erstwhile TTL allotted shares on a continuous basis to 48/49 persons from December 13, 2011 to March 28, 2012 (23 instances). In total erstwhile TTL allotted shares to around 978 allottees aggregating up to approx Rs. 25.99,30,550/- crores by issuing equity shares to 978 investors.

10. Erstwhile TTL got merged with Omnitech Petroleum Limited, which was listed company, on January 10, 2014. As per Clause 6.1(a) of the Scheme of Arrangement between erstwhile TTL and Omnitech Petroleum Limited, all the liabilities of the erstwhile TTL stood transferred to Omnitech Petroleum Limited with effect from the appointed date. Section 394 (4) (a) of the Companies Act, 1956 clarifies that "liabilities" include duties of every description. Thus the liabilities of erstwhile TTL got transferred to Omnitech Petroleum Limited (presently known as Trinity Tradelink Limited/Noticee 1).

11. Further it was observed that Noticee 2, Noticee 3 and Noticee 4 were the officers in default under Section 5 (a) of the Companies Act, 1956 and as such were jointly and severally liable along with Noticee 1.

12. It was thus alleged in the SCN that there was an obligation on the Noticee 1 and its directors i.e. Noticee 2 to 4 to file prospectus in connection with the issue of securities and get the securities listed on the Stock Exchange. In the view of the same, it was alleged that the Noticee 1 to 4 have violated Regulations 4(2)(d), 4(2)(e), 5(1), 5(2), 5(5), 5(7), 6(1), 7, 26(1), 26(2), 32(1), 36, 37, 46(1), 47(1), 49(1), 57(1), 58(1), 58(2), and 63 of the ICDR Regulations, 2009 read with Regulation 301 of the ICDR Regulations, 2018.

13. Vide E-mail dated April 30, 2022, Noticees requested for extension of 6 weeks to reply to the SCN. In this regard Noticee was given 15 days' time to file reply and further it was intimated that it is final opportunity given to reply. Vide letter dated May 15, 2022 Noticees sought extension of 4-6 weeks to file your reply. In this regard, Noticees were informed that their request for extension of 4-6 weeks is not being acceded to and further they are being provided with final opportunity to reply within 2 weeks. Noticees vide email dated June 07, 2022, requested 4 week time to file reply to the SCN, whereby Noticees were informed that their reply should reach by June 29, 2022. Noticees again vide email dated June 30, 2022 and July 04, 2022, requested for extension to file their reply to the SCN on the grounds that possession of their office was taken over by a Secured Creditor and u/s 17 of the SARFAESI Act before the Ld. DRT - 3, Kolkata. In view of aforesaid request of the Noticees, following information was sought from the Noticees to the SCN by the End of the Day i.e. July 04, 2022:

    a. Information regarding secured creditor and its legible evidence.
    b. When was the possession of your office taken and its legible evidence.
    c. Copy of case filed under section 17 of SARFAESI Act.

In regard to the information sought Noticees submitted vide email dated July 04, 2022 as follows:

1. Secured Creditor: ICICI Bank Ltd. Copies of the Sanction Letters are attached herewith as evidence.
2. Possession of the office was taken on 23.11.2021. Documents evidencing the same are attached herewith
3. Case Documents: It is too voluminous and shall take time to scan and send to you. However, attached herewith is a letter from our Advocate appearing for us before the Ld. Tribunal summarising therein the details of the proceedings. However, we shall require reasonable time to scan the Case Papers and mail to you or send physically, for which kindly confirm.

14. Vide letter dated August 16, 2022, Noticees submitted their reply to the SCN. The submissions made by the Noticees are summarized as below:

Incorrect charging provision

- *Noticees submitted that SCN relates to allegation of violation of the ICDR Regulations and not in respect of the contravention of SEBI (PFUTP) Regulations, 2003 and given that there is no allegation in the SCN relating to fraud by the Noticees, Section 15HA of the SEBI Act is not applicable in the present proceedings.*

Delay in initiating proceedings

- *Noticees submitted that the allegations framed in the SCN relate to the issuance of equity shares to 978 allottees almost 11 years ago. The SCN does not provide any explanation to justify the inordinate delay in initiation of proceedings against the Noticees and SEBI has already penalized the Noticees through the WTM Order. Initiating adjudication proceedings under Section 15I at such belated stage is prejudicial to the Noticees.*
- *In regard to delay, Noticees relied upon the order of the Hon'ble Supreme Court of India in the matter of* ***Mohamad Kavi Mohamad Amin v. Fatmabai***

__Ibrahim__ (1997) 6 SCC 71, whereby Hon'ble apex court has held that wherever a power is vested in a statutorily authority without prescribing any time-limit, such power should be exercised within a reasonable time.

- *Further Noticees relied upon order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the matter of **HB Stockholdings Ltd. V. SEBI** dated August 27, 2013, whereby it was held as under:*

> *"11. Having heard the learned counsel for the parties at some length we find that the respondent had investigated the scrips of Shree Global Tradefin Ltd. for the period March 1, 2009 to January 10, 2011 in September 2011. Pursuant thereto, a show cause notice dated April 20, 2012 was issued for the violation found during the investigated period March 1, 2009 to November 30, 2009. The respondents thereafter waited for another five years to issue a second show cause notice dated July 20, 2017 for the investigated period April 1, 2010 to January 10, 2011 which had been investigated in September 2011. We find that the respondents were aware of the alleged violation and thus there is no justification for waiting for more than five years to issue the second show cause notice dated July 20 2017. In our view there is an inordinate delay in initiating the proceedings.*
> *…*
> *The Tribunal on account of an inordinate delay in initiating the proceedings had quashed the penalty order. The same view was reiterated by this Tribunal in Ashok Shivlal Rupani & Anr. vs SEBI decided on August 22, 2019.*
> *13. As a result, without going into the question of res judicata or estoppel raised by the appellants we are of the opinion that on account of the inordinate delay in initiating the proceedings, the impugned penalty order cannot be sustained."*

- *Noticees also relied upon the orders of the SAT in the matter of **Libord Finance Ltd. v. Whole Time Member, SEBI, Rajeev Bhanot and Ors v. SEBI, Ashok Shivlal Rupani vs. SEBI** and **Rakesh Kathotia v. SEBI.***
- *Noticees also submitted that as ICICI Bank has taken physical possession of the premises of TTL, Noticees do not have access to any documents which they may require to put in an adequate defense against the allegations made in the SCN and there has been existence of unnatural and unexplained delay of almost 11 years and thus the SCN stands vitiated and is liable to be set aside for violation of the principles of natural justice.*

<u>Multiple Proceedings</u>

- *Noticees submitted that multiple enforcement actions, one after the other in sequence has been initiated against the Noticees with respect to the same cause* *of action. First, a show cause notice under Sections 11(1), 11(4), & 11 B of SEBI Act in 2019-20 was issued and then the present SCN dated March 24, 2022 under Rule 4 of SEBI (procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules 1995 was issued against the Noticees. In this regard, Noticees relied upon the order of the Hon'ble SAT in the matter of* ***P G Electroplast Ltd. & Ors. Vs. SEBI*** *dated August 2, 2019.*

- *Noticees further submitted that they have already been subjected to the proceedings before the Learned Whole Time Member in 2019-20. At the said time, when the show cause notice was issued, the SEBI had granted powers to the Learned Whole Time Member to impose monetary penalty. Categorically, the SEBI chose to not initiate proceedings under the adjudication rules for monetary penalty. Thus, having decided to pursue the matter in a manner to only issue directions under Section 11B and not under Section 11B(1), the SEBI is now barred under the principles of res judicata from pursuing the present SCN. In this regard Noticee relied upon the order of the Hon'ble SAT in the matter of Vital Communications v. SEBI, wherein it was held as under:*

> *"30. From the aforesaid, it is clear that the Supreme Court held that the doctrine of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. The main object of the doctrine is to promote a fair administration of justice and to prevent abuse of process of the court on the issues which have become final between the parties on the principle that no person should be vexed twice in a litigation for the same cause of action.*
>
> *31. In this regard, Explanation IV of Section 11 of the Code of Civil Procedure is also relevant. The fact that an order of disgorgement was not passed in the first round of litigation in the order of WTM dated July 31, 2014 does not entitle the WTM to pass a subsequent order for disgorgement on the same cause of action. The principle evolved in Explanation IV of Section 11 of the Code of Civil Procedure is constructive res judicata which is fully applicable in the instant case.*
>
> *32. In Aditya Birla Money Limited vs National Stock Exchange of India Limited & Ors. (2020 SCC OnLine Mad 1082) a complaint was decided by the Investor Grievance Redressal Panel. The complainant made another application to reexamine the complaint which was rejected. The Madras High Court held that the second application was barred by the principles of res judicata. The said decision is fully applicable in the instant case. In the light of the aforesaid, if SEBI has chosen to deal with its show cause notice in one particular manner and issue direction under Section 11 and 11B of the SEBI Act, it cannot thereafter bring the same transaction as a cause for issuing a fresh show cause notice, on the same cause of action and, issuing further directions under Section 11 and 11B. In our opinion once an adjudication is concluded it becomes final not only as to the actual matter determined but as to every other matter which the SEBI might or ought to have litigated or could have been decided as incidental to or connected with subject matter and every other matter coming into the legitimate purview of the original action."*

No violation of ICDR Regulations

- *Noticees submitted that the board of Trinity had hired professionals to oversee the issuance of equity shares to various entities (including the promoters/ directors of Trinity). It is only on the advice of such professionals, the issuance and allotment was undertaken by Trinity. As such, the allotment of shares was carried out in compliance with Section 67 of the Companies Act, 1956. Full disclosures were made to all the relevant authorities and, in fact, no such authorities raised any grievance for the same. Further, under the Companies Act, 1956 there was no cap on the number of times the issuances and allotments could be undertaken by a company in a financial year and the restriction on aggregate allotment to 200 allottees in a financial year was only after introduction of the Companies Act, 2013 and thus there was no breach due to the Relevant Allotments.*
- *Noticees also submitted that pursuant to the merger of erstwhile TTL and erstwhile Omnitech (Noticee No. 1), the shares of Noticee 1 got listed on BSE Limited ("BSE"). At such time, TTL had obtained approval from the BSE for the merger and consequent listing. As a matter of process, the BSE would have consulted the SEBI before granting an approval. At all points of the time, the details of the Relevant Allotments were disclosed to the BSE and the SEBI. It was only after consideration of all the information did the BSE (in consultation with the SEBI) accorded their consent to the scheme of arrangement of merger vide letter dated July 22, 2013. Noticee further submitted that if there was a breach of Section 67 of the Companies Act, 1956, the BSE/SEBI would have raised a concern, especially since the Sahara India Real Estate v. SEBI judgement of the Hon'ble Supreme Court ("Sahara Case") was already in existence.*
- *In regard to the aforesaid, Noticee relied upon the order of Hon'ble Allahabad High Court in the matter of Khunno Lal v. Union of India wherein the Hon'ble Allahabad High Court had examined a situation where the petitioner who had been granted a license to import certain goods, was subsequently barred from importing the same. In this context, the Hon'ble Allahabad High Court had observed as follows:*

"The Supreme Court while dealing with a similar question under the Imports and Exports Control Act, 1947 in the case of the Union of India v. Anglo Afghan Agencies (AIR 1968 SC 718) held that even assuming that the provisions relating to the issue of trade notices offering inducement to the prospective exporters R in character executive, the Union Government and its officers are, on the authorities of this Court, not entitled at their mere whim to ignore the promises made by the Government. It further held that where a person has acted upon the representations made in an Export Promotion Scheme, that import licence up to the value of the goods exported would be issued and had imported goods, his claim for import license for the maximum value permissible by the scheme would not be arbitrarily rejected. This view has recently been affirmed by the Supreme Court in Century Spg. And Mfg. Co. Ltd. v. The Ulhasnagar Municipal Council, where it was held in paragraph 11: "Public bodies are as much bound as private individuals to carry out the representations of facts and promises made by them relying on which other persons have altered their positions to their prejudice... A public body is in our judgement, not exempt from liability to carry out its obligations arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

...

12. That apart, it is not disputed that the petitioner did submit an application for importing "open type of condensing units run by 1 H.P., 2 H.P., 3 H.P., 4 H.P. and 5 H.P. without motor." This description remained unchanged and it is not the case of the opposite parties that any amendment application was filed giving a different description of the goods sought to be imported... In these circumstances it cannot be accepted that the deputy chief controller granted the licence on some other representation"

Noticees in regard to aforementioned Khunnu Lal Case stated that the findings of the above mentioned Case squarely applies to the present matter. The Noticees had acted on the permission granted by the BSE and the SEBI and the entire merger of Trinity and Omnitech (as known prior to merger) was based on the approval granted by the relevant authorities after reviewing the entire set of documents before it. Noticee further submitted that applying the principles of legitimate expectation, is a settled position in law that a party is legitimately expected to being accorded certain treatment based on previous approval from government authority. Thus the Noticees have had no reason to believe that the relevant and allotments were in violation of the ICDR Regulations or Companies Act, 1956.

- *Noticees further submitted that Chapter VIII of the ICDR Regulations is not applicable in cases where preferential issue of equity shares is made pursuant to a scheme approved by a High Court under Section 391-394 of the Companies Act, 1956. Hence, ICDR Regulations is not applicable in this case.*

WTM Order concludes that no prejudice is caused

- *Noticees submitted that the Relevant Allotments have not caused any prejudice to any of the shareholders of Trinity or Noticee No. 1 as the shares of Noticee No. 1 were listed at a price much higher than price at which they had subscribed to the shares. Noticees also quoted the relevant extracts of the WTM order in the same matter, which is as follows:*

> *"65. I note that the original entities were allotted equity shares in the erstwhile Trinity at Rs. 10/- for each share. After the merger with Omnitech, these shares were listed on the stock exchange from February 07, 2014, and the original allottees in the erstwhile Trinity had the opportunity to exit the shares at a profit vis-à-vis the price at which they had acquired these shares. If these shareholders had made an exit between February 10, 2014, and May 22, 2014, the profit that they would have made would be greater than the subscription money plus the applicable interest rate. From May 23, 2014 onwards, atleast for a year, these shareholders could still have exited at a profit.*
>
> *66. The effect of ensuring compliance with the provisions of Section 73(2) of the Companies Act, 1956, is to ensure that the subscribers to the deemed public issue of the erstwhile Trinity are repaid the subscription money with applicable interest rate in case of issuer company is not giving exit opportunity to the shareholders by way of compulsory listing of shares issued in deemed public issue in stock exchange. At the same time, the capital that was raised by way of the deemed public issue is now with TTL by virtue of the merger and TTL cannot be permitted to retain the same. The method adopted to provide a way for these shareholders to list i.e., listing through merger with a listed company, is not in accordance with the provisions of Section 73 of the Companies Act, 1956; however, as already mentioned above, the shareholders in the deemed public issue have been provided the opportunity to exit and may have done so at a profit more than the subscription price plus interest. I find that these shareholders have not been caused any substantial prejudice due to the non-compliance with the provisions of Section 73 of the Companies Act, 1956.*
>
> *67. Hence, given the facts and circumstances of the case and considering that the shares were listed pursuant to merger and that the shareholders had atleast 18 months to exit at a profit, I am of the view that the investors in the deemed public issue of the erstwhile Trinity have not been substantially prejudiced due to the non-compliance with the provisions of Section 73 of the Companies Act, 1956. Hence, the directions relating to buy-back of securities and providing exit option to investors may not be relevant now."*

- *Noticees also submitted that Hon'ble SAT through various decisions have deemed it fit to not impose a monetary penalty on parties which are already undergoing debarment/ suspension. In this regard Noticees relied upon the order of the Hon'ble SAT in the matter of PG Electroplast Ltd. & Ors. v. SEBI, whereby Hon'ble SAT has held as follows:*

> *"16. Since the appellant had already undergone a considerable period of debarment pursuant to the order of SEBI, the Tribunal reduced the debarment from ten years to seven years for the partial*

disclosure of information in the prospectus. In the ultimate analysis, the order of debarment was for violation of partial disclosure in the prospectus and not for violation of PFUTP Regulations. The AO while imposing the penalty has not factored this debarment while fixing the quantum of penalty. Further, in our opinion, the factors contemplated under Section 15J was also not considered by the AO in the right perspective.

…

18. Penalty can be imposed for failure to carry out a statutory obligation under the SEBI's Act. Factors contemplated under Section 15J are required to be taken into consideration before imposing a penalty. If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act. The above was precisely held by the Supreme Court in M/s.

Hindustan Steel Ltd. vs. State of Orissa, 1969(2) SCC 627.

…

21. In our view this is a fit case where no penalty could be imposed and the question of imposing the maximum penalty in the given facts and circumstance does not arise. The AO has clearly exceeded its power in imposing the maximum penalty. The AO has misinterpreted the order of Securities Appellate Tribunal (SAT)."

<u>Noticee Nos. 2 to 4 ought not be penalised</u>

- *Noticees submitted that in the SCN there are no allegations of wrongdoings at individual levels by Noticee 2 to 4 and the SCN has attempted to bring into the fold Noticee Nos. 2 to 4 by holding them vicariously liable. Noticees however contended that merely being a director on the board of a company, cannot lead to the inference that the said director is controlling the affairs of the company or that he/ she is involved in the day-today decision making process of the company. In this regard, Noticees relied upon the order of the Hon'ble Supreme Court in the matter of SMS Pharmaceuticals Ltd. v. Neeta Bhalla and Anr, wherein Hon'ble Apex court considered the issue of liability of directors for actions of a company and observed as under:*

"There is nothing which suggests that simply by being a director in a Company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about day-to-day functioning of the company. As a director he may be attending meetings of the Board of Directors of the Company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint

subcommittees consisting of one or two directors out of the Board of the Company who may be made responsible for day-to-day functions of the Company. These are matters which form part of resolutions of Board of Directors of a Company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs.... Liability is cast on persons who may have something to do with the transactions complained of. A person who is in charge of and responsible for conduct of business of a Company would naturally know why the cheque in question was issued and why it got dishonoured..."

- *Noticees also submitted that the SCN does not spell out any role or involvement or knowledge on the part of Noticee Nos. 2 to 4 with regards to the Relevant Allotment. There was no intention to circumvent the ICDR and the SCN has not adduced any evidence or documents substantiating the allegations contained therein and thus Noticee Nos. 2 to 4 cannot be held liable for any alleged contravention/ violation merely because of their position as directors in Noticee No. 1. In regard to aforesaid, Noticees relied upon the order of Hon'ble Supreme Court in the matter of Sunil Bharti Mittal v. Central Bureau of Investigation, wherein it was held that vicarious liability cannot be imposed unless first, it is statutorily provided for, and secondly, there is a specific act attributable to an individual upon which such liability may be fastened. In fact, the SEBI Act at the relevant time did not impose such strict vicarious liability. The Hon'ble SAT in the matter of Rahul Shah v. SEBI has also held that the concept of strict vicarious liability does not exist. Similarly, the Hon'ble Whole Time Member of SEBI, in the matter of Home Trade Limited , held that the directors of the company would not be liable unless "there has to be a modicum of evidence linking the said directors with manipulation and in its absence, complicity cannot be presumed.".*
- *Noticees thus finally contended that it is settled position in law that directors/ key managerial personnel cannot be automatically held responsible for the actions of a company, given that there is no specific provision under the SEBI Act making the directors/ key managerial personnel automatically liable for the offences allegedly committed by the company. In the present case, other than being on the board of erstwhile TTL at the time of Relevant Allotments, SEBI has not adduced any document/ evidence to demonstrate that the Noticees was part of some scheme to manipulate and/ or defraud the securities market. Hence, in view*

of the above it is submitted that the SCN issued to Noticee Nos. 2 to 4 does not attribute any wrongdoing. Given that there is no lapse on the part of Noticee Nos. 2 to 4, no liability can be imputed to them.

15. Vide hearing notice (hereinafter referred to as "**HN**") dated June 02, 2022, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, the Noticees were granted an opportunity of Personal Hearing in the matter on June 16, 2022 through the online Webex platform and the Noticees were also reminded that they have not submitted the reply to the SCN. The Noticees did not appear for the hearing opportunity scheduled on June 16, 2022. Vide HN dated August 04, 2022, Noticees were again provided with opportunity of hearing on August 18, 2022, however vide email dated August 17, 2022, SSCN was issued and the hearing scheduled on August 18, 2022 was postponed which was informed to the Noticees. Vide HN dated September 16, 2022, Noticees were given with final opportunity of hearing scheduled on October 13, 2022.

16. The A.R of the Noticees appeared for the aforesaid hearing on scheduled day and time, and submitted that Noticee 3 was an independent director and in support of the same he sought time till October 14, 2022 to submit the relevant documents. The minutes in this regards are on record. I also note that, the date in the hearing minutes was inadvertently mentioned as September 14, 2022, which should be read as October 14, 2022

CONSIDERATION OF ISSUES AND FINDINGS

17. I have carefully perused the charges levelled against Noticees in the SCN, their reply and the materials documents available on record. The issues that arise for consideration in the instant matter are:

Issue no. 1: Whether the Noticee 1 and its Officers in default i.e. Noticee 2, Noticee 3 & Noticee 4 had issued equity shares to total of 978 investors from December 13, 2011 to March 28, 2012. Further Noticee 1 and its Officers in default i.e. Noticee 2, Noticee 3 & Noticee 4 did not file prospectus and did not get securities listed with the Stock Exchanges and thus have violated Regulations

4(2)(d), 4(2)(e), 5(1), 5(2), 5(5), 5(7), 6(1), 7, 26(1), 26(2), 32(1), 36, 37, 46(1), 47(1), 49(1), 57(1), 58(1), 58(2) and 63 of ICDR Regulations read with Regulation 301 of ICDR Regulations 2018.

Issue no. 2: Does the violations, if any, on the part of the Noticees attract monetary penalty under section 15HB of the SEBI Act?

Issue no. 3: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

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

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009

General conditions.

4. (2) *No issuer shall make a public issue or rights issue of specified securities:*

(d) *unless it has made an application to one or more recognised stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:*

Provided that in case of an initial public offer, the issuer shall make an application for listing of the specified securities in at least one recognised stock exchange having nationwide trading terminals;

(e) *unless it has entered into an agreement with a depository for dematerialisation of specified securities already issued or proposed to be issued;*

Appointment of merchant banker and other intermediaries.

5. (1) *The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.*

(2) The issuer shall in consultation with the lead merchant banker, appoint only those intermediaries which are registered with the Board.

(5) The issuer shall enter into an agreement with the lead merchant banker in the format specified in Schedule II and with other intermediaries as required under the respective regulations applicable to the intermediary concerned:

Provided that such agreements may include such other clauses as the issuer and the intermediary may deem fit without diminishing or limiting in any way the liabilities and obligations of the merchant bankers, other intermediaries and the issuer under the Act, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder or any statutory modification or statutory enactment thereof:Provided further that in case of ASBA process, the issuer shall take cognisance of the deemed agreement of the issuer with Self Certified Syndicate Banks.

(7) The issuer shall appoint a registrar which has connectivity with all the depositories:

Provided that if issuer itself is a registrar to an issue registered with the Board, then another registrar to an issue shall be appointed as registrar to the issue:

Provided further that the lead merchant banker shall not act as a registrar to the issue in which it is also handling the post issue responsibilities.

Filing of offer document.

6. (1) *No issuer shall make,*

(a) a public issue; or

(b) a rights issue, where the aggregate value of the specified securities offered is fifty lakh rupees or more,

unless a draft offer document, along with fees as specified in Schedule IV, has been filed with the Board through the lead merchant banker, at least thirty days prior to registering the prospectus, red herring *prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be.*

In-principle approval from recognised stock exchanges.

7. *The issuer shall obtain in-principle approval from recognised stock exchanges as follows :*

(a) *in case of an initial public offer, from all the recognised stock exchanges in which the issuer proposes to get its specified securities listed; and*

(b) *in case of a further public offer and rights issue :*

(i) where the specified securities are listed only on recognised stock exchanges having nationwide trading terminals, from all such stock exchanges;

(ii) where the specified securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchanges in which the specified securities of the issuer are proposed to be listed;

(iii) where the specified securities are listed on recognised stock exchanges having nationwide trading terminals as well as on the recognised stock exchanges not having nationwide trading terminals, from all recognised stock exchanges having nationwide trading terminals

Conditions for initial public offer.

26. (1) *An issuer may make an initial public offer, if:*

(a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets: Provided that if more than fifty per cent. of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project;

[Provided further that the limit of fifty per cent. on monetary assets shall not be applicable in case the public offer is made entirely through an offer for sale.

(b) it has a track record of distributable profits in terms of section 205 of the Companies Act, 1956, on both stand-alone as well as consolidated basis for at least three out of the immediately preceding five years;]

Provided that extraordinary items shall not be considered for calculating distributable profits;

Provided further that an issuer who had subsidiary/ subsidiaries for a period lesser than five years, shall have net profits on a consolidated basis in atleast one year for which consolidated accounts are prepared.

(c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each);

(d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;

(e) if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

***(2)** An issuer not satisfying any of the conditions stipulated in sub-regulation (1) may make an initial public offer if:*

(a) (i) the issue is made through the book building process and the issuer undertakes to allot at least fifty per cent. of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers ;

Or

(ii) at least fifteen per cent. of the cost of the project is contributed by scheduled commercial banks or public financial institutions, of which not less

than ten per cent. shall come from the appraisers and the issuer undertakes to allot at least ten per cent. of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make the allotment to the qualified institutional buyers;

Minimum promoters' contribution.

32. (1) *The promoters of the issuer shall contribute in the public issue as follows:*

(a) in case of an initial public offer, not less than twenty per cent. of the post issue capital,

(b) in case of a further public offer, either to the extent of twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post-issue capital;

(c) in case of a composite issue, either to the extent of twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post-issue capital excluding the rights issue component.

Lock-in of specified securities held by promoters.

36. *In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated hereunder:*

(a) minimum promoters' contribution shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;

(b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year:

Provided that excess promoters' contribution as provided in proviso to clause (b) of regulation 34 shall not be subject to lock-in.

Explanation: For the purposes of this clause, the expression "date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

Lock-in of specified securities held by persons other than promoters.

37. *In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year:*

Provided that nothing contained in this regulation shall apply to:

(a)equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII;

(b)equity shares held by a venture capital fund or a foreign venture capital investor for a period of at least one year prior to the date of filing the draft prospectus with the Board

Explanation: For the purpose of clause (b), in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period and convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid and no further consideration is payable at the time of their conversion.

Period of subscription.

46*.(1)[Except as otherwise provided in these regulations] a public issue shall be kept open for at least three working days but not more than ten working days including the days for which the issue is kept open in case of revision in price band.*

Pre-issue advertisement for public issue.

47*. (1)Subject to the provisions of section 66 of the Companies Act, 1956, the issuer shall, after registering the red herring prospectus (in case of a book built issue) or prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue advertisement in one English national daily newspaper with wide circulation, Hindi national daily* *newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.*

Minimum application value.

***49**.(1)The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of five thousand rupees to seven thousand rupees.*

Manner of disclosures in the offer document.

***57.** (1)The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.*

Abridged prospectus, abridged letter of offer and ASBA.

***58.** (1) The abridged prospectus shall contain the disclosures of the memorandum prescribed under sub-section (3) of section 56 of the Companies Act, 1956 and additional disclosures as specified in Part D of Schedule VIII.*

(2)The abridged letter of offer shall contain the disclosures as specified in Part F of Schedule VIII.

Appointment of Compliance Officer.

***63.** The issuer shall appoint a compliance officer who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors' grievances.*

Explanation: For the purpose of this regulation, the term "securities laws" means the Companies Act, 1956, the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder and the regulations, general or special orders, guidelines or circulars made or issued by the Board.

Repeal and Savings

301. *(1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations 2009 shall stand rescinded.*

(2) Notwithstanding such rescission:

a)anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.

b)any offer document, whether draft or otherwise, filed or application made to the Board under the said Regulations and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations

Issue no. 1: Whether the Noticee 1, Noticee 2, Noticee 3 & Noticee 4 had issued equity shares to total of 978 investors from December 13, 2011 to March 28, 2012. in violation of Regulations 4(2)(d), 4(2)(e), 5(1), 5(2), 5(5), 5(7), 6(1), 7, 26(1), 26(2), 32(1), 36, 37, 46(1), 47(1), 49(1), 57(1), 58(1), 58(2) and 63 of ICDR Regulations 2009 read with Regulation 301 of ICDR Regulations 2018.

19. Before proceeding with the matter on merits, I would first deal with the contention of delay of almost 11 years in initiation of proceedings. In this regard, I observe from the records that the complaint in the instant matter was received on August 20, 2014 regarding rigging of the share price in the scrip of erstwhile TTL. In pursuance of which vide letter dated October 16, 2015, information was sought from Noticee 1 regarding issuance of equity shares and/or convertible securities by erstwhile Trinity. In this regard, Noticee 1 vide letter dated November 02, 2015

submitted the details regarding allotment of shares on continuous basis on 23 instances. Subsequent to the information submitted by Noticee 1 and investigation in the scrip, proceedings under Sections 11, 11(4), 11A and 11B of the SEBI Act were initiated. Accordingly SCN dated August 16, 2017 and another SCN dated April 04, 2019 were issued. Subsequent to which order dated March 19, 2020 was passed by WTM under Sections 11, 11(4), 11A and 11B of the SEBI Act, debarring and restraining Noticee 1 to Noticee 4 from dealing in the securities market. Subsequent to the order of WTM adjudication proceedings were initiated and approved and the undersigned was appointed as the Adjudicating officer vide order dated March 23, 2022. Hence there was no delay in initiation of the proceedings. In this regard, I note that neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities law. Further, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities law (**Vaman Madhav Apte and Ors. V. SEBI**, SAT Appeal 449 of 2014 decided on 04.03.2016).

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

21. Noticees have also interalia contended '*At the said time, when the show cause notice was issued, the SEBI had granted powers to the Learned Whole Time Member to impose monetary penalty. Categorically, the SEBI chose to not initiate proceedings under the adjudication rules for monetary penalty'.* From the records available it is observed that at the time of initiation of action was recommended in 2016 under section 11(1), 11(4), 11A and 11B of SEBI Act, 1992 when the Whole Time Member did not have the power to impose monetary penalty. However it is not within my remit.

22. Now I shall proceed to deal the matter on the merits and on the contentions raised by the Noticees.

23. It is admitted fact that equity shares of Rs. 25,99,30,550/- were issued by erstwhile TTL to 978 allottees during the period December 13, 2011 to March 28, 2011. I note that erstwhile TTL had allotted shares on a continuous basis to 48/49 persons as tabulated below:

Date of Board Resolution for Allotment	**No. of Allottees**	**Number of equity shares**
13/12/2011	01	32250
09/01/2012	49	1243700
19/01/2012	49	388750
29/01/2012	49	1448500
10/02/2012	49	1092800
14/02/2012	49	632775
18/02/2012	49	486250
22/02/2012	49	820480
27/02/2012	49	584000
02/03/2012	49	516000
07/03/2012	49	645000
08/03/2012	49	677900
09/03/2012	49	552500
10/03/2012	49	571000
11/03/2012	48	1176000
12/03/2012	49	667000
13/03/2012	48	7908750
14/03/2012	49	757900
17/03/2012	49	1366000
23/03/2012	49	1325000
24/03/2012	49	1420500
28/03/2012	8	180000

24. At this juncture I would like to make reference to section 67 of the Companies Act 1956, which reads as follows:

67. CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC

(1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances - (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation ; or (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation :

[Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more :

Provided further that nothing contained in the first proviso shall apply to the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).

(3A) Notwithstanding anything contained in sub-section (3), the Securities and Exchange Board of India shall, in consultation with the Reserve Bank of India, by notification in the Official Gazette, specify the guidelines in respect of offer or invitation made to the public by a public financial institution specified under section 4A or non-banking financial company referred to in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934).]

(4) Without prejudice to the generality of sub-section (3), a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded in the manner set forth in that sub-section.

(5) The provisions of this Act relating to private companies shall be construed in accordance with the provisions contained in sub- sections (1) to (4).

I note that Hon'ble Supreme Court in the matter of ***Sahara India Real Estate Corporation Limited & Ors. v. SEBI*** (Civil Appeal no. 9813 and 9833 of 2011) has held in regard to Section 67 of the Companies Act, 1956, which is as follows:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation."

Further Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in ***Neesa Technologies Limited vs. SEBI*** vide Appeal No. 311 of 2016, dated April 28, 2017 has held as follows:

"In terms of Section 67(3) of the Companies Act any issue to '50 persons or more'is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".

25. Therefore I note that Section 67(3) of Companies Act, 1956, provides for situations when an offer is not to be construed as an offer to public. As per the said sub-section, of the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic of the person making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. As per the first proviso to Section 67(3) of Companies Act 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons.

26. In the instant case, I note that erstwhile TTL has made allotment of equity shares to 978 allotees and had raised Rs. 25.99 crore as a result and the Noticees have not denied this fact. Hence the issuance of the shares cannot be considered as private placement of shares as it was offered to more than fifty persons. Even in case where the allotments are considered separately, reference may be made to Sahara case wherein it was held that under 67(3)of the Companies Act, 1956, the 'Burden of proof is entirely on Saharas to show that the investors are/were their employees/ workers or associated with them in any other capacity which they have not discharged. Fact finding authorities have clearly held that Saharas had not discharged their burden which is purely a question of fact.' In the instant case, the Noticees have not placed any document on record that the allotment made by erstwhile TTL was in satisfaction of Section 67(3)(a) or 67(3)(b) of the Companies Act, 1956 i.e. it was made to the known associated persons or domestic concerns. Therefore I conclude that the said issuance cannot be private placement. I find that the allotment of equity shares by erstwhile TTL falls within the first proviso of Section 67(3) of the Companies Act, 1956. Hence the same is deemed to be a public issue and erstwhile Trinity was mandated to comply with the public issue norms as prescribed under the Companies Act, 1956.

27. I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. Hon'ble Apex court has also in the matter of Sahara India Real Estate Corporations Limited & Ors. Vs SEBI & Anr (supra) has conclusively held that SEBI has the power to administer the provisions referred to in section 55A which relate to issue and transfer of securities and non-payment of dividend by public companies, which have issued securities to fifty persons or more, though not listed on a recognized stock exchange and whether they intend to list their securities or not. The following observations of Hon'ble Supreme Court in this regard are worth noting:

"The main part of Section 55A confers jurisdiction on SEBI with regard to three categories i.e. issue of securities transfer of securities and non-payment of dividend. The expression “all other matters” mentioned in the explanation would refer to powers other than the above mentioned categories. Further, it may also be remembered that the explanation does not take away the powers conferred on SEBI by other sections of the Companies Act. At the same time, matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares be exercised by the Central Government, Tribunal, Company Law Board, Registrars of Companies, as the case may be. Further, Section 60B(9) clearly indicates that upon closing of the offer of securities, a final 'prospectus' has to be filed in the case of listed company with SEBI and Registrar, hence the explanation to Section 55A can never be constructed or interpreted to mean that SEBI has no power in relation to the prospectus and the issue of securities by an unlisted public company, if the securities are offered to more than forty nine persons."

28. I further note that Section 73(1) of the Companies Act, 1956 requires a company offering shares or debentures to the public to apply to a recognized stock exchange for permission for the shares or debentures to be dealt with in the stock exchange. I note that as the erstwhile Trinity allotted shares to more than 50 persons, and as it was deemed to be a public issue, it was required to apply to recognized stock exchange for permission of shares to be dealt in stock exchange. The following observations of the Hon’ble Supreme Court made in the Sahara Order in this regard are noteworthy:

".....Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally

obliged to make an application for listing its securities on a recognized stock exchange."

"…. after the amendment to the Companies Act, 1956 on 13.12.2000, every private placement made to fifty or more persons becomes an offer intended for the public and attracts the listing requirements under Section 73(1). Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange."

29. I further note that Section 11A authorizes SEBI to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities. In view of which ICDR regulations 2009 and 2018 are made in exercise of powers conferred under section 30 of the SEBI Act. The aforesaid regulations required erstwhile TTL to comply with certain requirements before making public issuances of equity shares, which are as follows:

- Application for listing of specified securities on one or more recognized stock exchange;
- Appointment of merchant banker and other intermediaries;
- filing of draft offer document with SEBI and the designated stock exchange and ROC;
- Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed;
- Satisfy the conditions of initial public offer;
- Minimum Promoters' contribution;
- Lock-in of specified securities held by promoters and persons other than promoters;

- Keeping the public issue open for the specified period;
- Pre issue advertisement for public issue;
- Minimum application value;
- Manner of disclosures in the offer documents;
- Abridged prospectus and abridged letter of offer;
- Appointment of Compliance Officer

30. As can be seen from above, erstwhile TTL issued shares to more than 50 persons and as erstwhile TTL was obligated from the applicability of the public issue norms under the Companies Act, 1956.

31. Noticees had contended that the allotment of shares was carried out in compliance with Section 67 of the Companies Act, 1956. Full disclosures were made to all the relevant authorities and, in fact, no such authorities raised any grievance for the same. Further, under the Companies Act, 1956 there was no cap on the number of times the issuances and allotments could be undertaken by a company in a financial year and the restriction on aggregate allotment to 200 allottees in a financial year was only after introduction of the Companies Act, 2013 and thus there was no breach due to the Relevant Allotments. However in view of the observations made in the foregoing paras the contention of the Noticees are not tenable. Further I also note that companies with an intent to circumvent public issue norms adopt different modus operandi and allot shares to large no. of persons in the garb of private placement. In this regard, it is pertinent to note that The Hon'ble Supreme Court in the matter of Sahara India Real Estate Corporation Ltd. & Ors. vs. SEBI & Anr. (supra), inter alia, held as under:

> *"95.The maxim 'acta exterior indicant interior secreta' (external action reveals inner secrets) applies with all force in the case of Saharas, which I have already demonstrated in facts as well as on law. Conduct and actions of Saharas indicate their intention, we have to judge their so called intention*

from their subsequent conduct. Subsequent illegality shows that Sahara's contemplated illegality....".

"…93. Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a 99 recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts…."

"…..98…. from the years 1988 to 2000, private placement of preferential allotment could be made to fifty or more persons if the requirements of Clauses (a) 103 and (b) of Section 67(3) are satisfied. However, after the amendment to the Companies Act, 1956 on 13.12.2000, every private placement made to fifty or more persons becomes an offer intended for the public and attracts the listing requirements under Section 73(1). Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange."

Placing reliance upon said judgment and the facts mentioned in above para's I am of the view that the limit of 49 allottees cannot be breached or bypassed by making multiple allotments which individually may fall within the limit but cumulatively exceed 49 in number.

32. Noticees further submitted that Chapter VIII of the ICDR Regulations is not applicable in cases where preferential issue of equity shares is made pursuant to a scheme approved by a High Court under Section 391-394 of the Companies Act, 1956. Hence, ICDR Regulations is not applicable in this case. In this regard I note that Chapter VIII of the ICDR Regulations 2009 provides for Qualified Institutions Placements and not in regard to preferential issue of equity shares. I further note that Chapter VII of the ICDR Regulations 2009 provides for preferential issue and the aforesaid chapter does not apply where the preferential issue of equity shares is made pursuant to a scheme approved by a High Court under section 391 to 394 of the Companies Act 1956. Nevertheless regarding the contention of the Noticees that ICDR regulations are not applicable in the instant case since preferential issue of equity shares is made pursuant to a scheme approved by a High Court under Section 391-394 of the Companies Act, 1956, I would like to refer to Section 2(z) of the ICDR Regulations, which defines "preferential issue" as follows:

(z) *"preferential issue" means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis and does not include an offer of specified securities made through a public issue, rights issue, bonus issue, employee stock option scheme, employee stock purchase scheme or qualified institutions placement or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities;*

33. From the aforesaid I note that allotment of the equity shares by the erstwhile TTL does not fall within the definition of "preferential issue", as has been contended by Noticees. Therefore I do not find any merits in the aforesaid contention of the Noticees.

34. It was also observed that erstwhile TTL had merged with Omnitech Petroleum Limited, which was a listed company. As per Clause 6.1(a) of the Scheme of Arrangement, all liabilities of the erstwhile TTL stood transferred to Omnitech Petroleum Limited with effect from the appointed date. In this regard I note that

Section 394 (4) (a) of the Companies Act, 1956 clarifies that “liabilities” include duties of every description.

35. I note that the shares of the erstwhile TTL were never listed on the stock exchange. Instead the erstwhile TTL has amalgamated itself with a listed entity, Omnitech, and by virtue of the same, the applicants in the deemed public issue of erstwhile TTL became shareholders in Omnitech and these shares got listed on the stock exchange. I note here that Section 73 does not provide for such a mechanism, wherein the body corporate that has issued securities can merge itself with a listed entity and then list the allotted shares.

36. As narrated above the offering of equity shares by the erstwhile TTL does not fall within the definition of “preferential issue”. It has already been held to a deemed public issue and as such erstwhile TTL was required to comply with the following Regulation of ICDR Regulations 2009:

General conditions.

4. (2) *No issuer shall make a public issue or rights issue of specified securities:*

(d) *unless it has made an application to one or more recognised stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:*

Provided that in case of an initial public offer, the issuer shall make an application for listing of the specified securities in at least one recognised stock exchange having nationwide trading terminals;

(e) *unless it has entered into an agreement with a depository for dematerialisation of specified securities already issued or proposed to be issued;*

Appointment of merchant banker and other intermediaries.

5. (1) *The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.*

(2) *The issuer shall, in consultation with the lead merchant banker, appoint only those intermediaries which are registered with the Board.*

(5) *The issuer shall enter into an agreement with the lead merchant banker in the format specified in Schedule II and with other intermediaries as required under the respective regulations applicable to the intermediary concerned:*

Provided that such agreements may include such other clauses as the issuer and the intermediary may deem fit without diminishing or limiting in any way the liabilities and obligations of the merchant bankers, other intermediaries and the issuer under the Act, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder or any statutory modification or statutory enactment thereof:Provided further that in case of ASBA process, the issuer shall take cognisance of the deemed agreement of the issuer with Self Certified Syndicate Banks.

(7) *The issuer shall appoint a registrar which has connectivity with all the depositories:*

Provided that if issuer itself is a registrar to an issue registered with the Board, then another registrar to an issue shall be appointed as registrar to the issue:

Provided further that the lead merchant banker shall not act as a registrar to the issue in which it is also handling the post issue responsibilities.

Filing of offer document.

6. (1) *No issuer shall make,*

(a) a public issue; or

(b) a rights issue, where the aggregate value of the specified securities offered is fifty lakh rupees or more,

unless a draft offer document, along with fees as specified in Schedule IV, has been filed with the Board through the lead merchant banker, at least thirty days prior to registering the prospectus, red herring *prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be.*

In-principle approval from recognised stock exchanges.

7. *The issuer shall obtain in-principle approval from recognised stock exchanges as follows :*

(a) *in case of an initial public offer, from all the recognised stock exchanges in which the issuer proposes to get its specified securities listed; and*

(b) *in case of a further public offer and rights issue :*

(i) where the specified securities are listed only on recognised stock exchanges having nationwide trading terminals, from all such stock exchanges;

(ii) where the specified securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchanges in which the specified securities of the issuer are proposed to be listed;

(iii) where the specified securities are listed on recognised stock exchanges having nationwide trading terminals as well as on the recognised stock exchanges not having nationwide trading terminals, from all recognised stock exchanges having nationwide trading terminals

Conditions for initial public offer.

26. (1) *An issuer may make an initial public offer, if:*

(a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets: Provided that if more than fifty per cent. of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project;

[Provided further that the limit of fifty per cent. on monetary assets shall not be applicable in case the public offer is made entirely through an offer for sale.

(b) it has a track record of distributable profits in terms of section 205 of the Companies Act, 1956, on both stand-alone as well as consolidated basis for at least three out of the immediately preceding five years;]

Provided that extraordinary items shall not be considered for calculating distributable profits;

Provided further that an issuer who had subsidiary/ subsidiaries for a period lesser than five years, shall have net profits on a consolidated basis in atleast one year for which consolidated accounts are prepared.

(c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each);

(d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;

(e) if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

***(2)** An issuer not satisfying any of the conditions stipulated in sub-regulation (1) may make an initial public offer if:*

(a) (i) the issue is made through the book building process and the issuer undertakes to allot at least fifty per cent. of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers ;

Or

(ii) at least fifteen per cent. of the cost of the project is contributed by scheduled commercial banks or public financial institutions, of which not less than ten per cent. shall come from the appraisers and the issuer undertakes

to allot at least ten per cent. of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make the allotment to the qualified institutional buyers;

Minimum promoters' contribution.

32. (1) *The promoters of the issuer shall contribute in the public issue as follows:*

(a) in case of an initial public offer, not less than twenty per cent. of the post issue capital,

(b) in case of a further public offer, either to the extent of twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post-issue capital;

(c) in case of a composite issue, either to the extent of twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post-issue capital excluding the rights issue component.

Lock-in of specified securities held by promoters.

36. *In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated hereunder:*

(a) minimum promoters' contribution shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;

(b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year:

Provided that excess promoters' contribution as provided in proviso to clause (b) of regulation 34 shall not be subject to lock-in.

Explanation: For the purposes of this clause, the expression "date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

Lock-in of specified securities held by persons other than promoters.

37. *In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year:*

Provided that nothing contained in this regulation shall apply to:

(a)equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII;

(b)equity shares held by a venture capital fund or a foreign venture capital investor for a period of at least one year prior to the date of filing the draft prospectus with the Board

Explanation: For the purpose of clause (b), in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period and convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid and no further consideration is payable at the time of their conversion.

Period of subscription.

46*.(1)[Except as otherwise provided in these regulations] a public issue shall be kept open for at least three working days but not more than ten working days including the days for which the issue is kept open in case of revision in price band.*

Pre-issue advertisement for public issue.

47*. (1)Subject to the provisions of section 66 of the Companies Act, 1956, the issuer shall, after registering the red herring prospectus (in case of a book built issue) or prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue advertisement in one English national daily newspaper with wide circulation, Hindi national daily* *newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.*

Minimum application value.

***49**.(1)The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of five thousand rupees to seven thousand rupees.*

Manner of disclosures in the offer document.

***57.** (1)The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.*

Abridged prospectus, abridged letter of offer and ASBA.

***58.** (1) The abridged prospectus shall contain the disclosures of the memorandum prescribed under sub-section (3) of section 56 of the Companies Act, 1956 and additional disclosures as specified in Part D of Schedule VIII.*

(2)The abridged letter of offer shall contain the disclosures as specified in Part F of Schedule VIII.

Appointment of Compliance Officer.

***63.** The issuer shall appoint a compliance officer who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors' grievances.*

Explanation: For the purpose of this regulation, the term "securities laws" means the Companies Act, 1956, the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder and the regulations, general or special orders, guidelines or circulars made or issued by the Board.

37. It was further alleged in the SCN that Noticee 2, Noticee 3 and Noticee 4 were the officers in default under Section 5 (a) of the Companies Act, 1956 and thus they had obligation alongwith Noticee 1 to file prospectus in connection with the issue of securities and get securities listed on the stock exchange. I note that Section 5(a) of the Companies Act, 1956, provides as follows:

MEANING OF "OFFICER WHO IS IN DEFAULT"

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely :
(a) the managing director or managing directors ;
(b) the whole-time director or whole-time directors ;
(c) the manager ;
(d) the secretary ;
(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act ;
(f) any person charged by the Board with the responsibility of complying with that provision :
Provided that the person so charged has given his consent in this behalf to the Board ;
(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors :
Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.]

38. I note that any incorporated body cannot function independently and all the actions executed in its name are done by the natural persons who by their own minds and wisdom, are controlling the affairs and management of such artificial juristic person (company) in the capacity of its Directors. I note that the position of a ‘Director’ in a company comes along with various onerous responsibilities and compliances under law that are associated with such position, which have to be adhered to by such Director and in case of default, he / she has to face the consequences thereof. The Directors of a company are persons appointed to manage and direct the affairs of the company. They are expected to diligently perform their duties with honesty, fairness, skill and care in administering the

affairs of the company. Such a duty requires the Directors to devote adequate time and attention to the affairs of the company so as to be able to take decisions that do not expose the company to unnecessary risks / actions by enforcement agencies. This implies a high degree of accountability and knowledge of the overall functioning of the company. Therefore, the Director cannot wriggle out from his / her liability arising out of any wrongdoing by the company. Noticee 4 had contended that it was independent director at the relevant time and the liability cannot be fastened upon him. In this regard I note from the documents available before me that during the relevant time i.e. at the time of issuance and time of allotment of shares of TTL Noticee 4 was a director in erstwhile TTL and he became Independent Director of erstwhile TTL on June 28, 2012 i.e. much after the issuance was over. The same has also been confirmed by the A.R. of the Noticee vide email dated October 19, 2022. Thus the contention of Noticee 6 is not tenable.

39. As stated above Section 5 of the Companies Act 1956 states that *an officer of the company who is in default including the managing director or managing directors shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise.*

40. Thus I note that Noticee 2 to Noticee 4 being directors of Noticee 1 were officers in default were equally liable for the offence made by Noticee 1. Here, it will be relevant to quote the order of Hon'ble Supreme Court of India in the matter of ***N. Narayanan* vs*. Adjudicating Officer**, SEBI* (2013) 12 SCC 152, wherein it was held that:

"33…. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the

company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

41. In this regard, Hon’ble SAT has held in the matter of ***Mr. Girishchandra Mukundram Baluni Vs. SEBI*** (Appeal No. 569 of 2020) dated 17.06.2022, has held as follows:

“…..16. It can be seem from the record besides the present OCDs, the company had also issued Non-Convertible Debentures (hereinafter referred to as ‘NCDs’) in violation of the same provisions. Therefore, various orders against the company as well as some of the present noticees who were alleged to be director during the period was initiated by respondent SEBI. Respondent SEBI ultimately held the company as well as the directors responsible for violation of the provisions of the Companies Act and ICDR Regulations. Similarly, various appeals were preferred before this Tribunal. This Tribunal on the basis of the provisions of Section 5 of the Companies Act held all the directors liable…..”

In **Pritha Bag vs Securities and Exchange Board of India** (Appeal No. 291 of 2017 decided on February 14, 2019) Hon’ble SAT had held:-

“10. A perusal of the aforesaid provision indicates that the expression “officer who is in default” would mean the following officers, namely, the managing director or managing directors, whole time director or whole time directors, the manager, the secretary or any person in accordance with whose directions or instructions the Board of Directors of the company accustomed to act and would also include any person charged by the Board of responsibility of compliance with the provisions of Act. Section 5(g) of the Act further stipulates that where the company does not have any of these officers specified in clauses (a) to (c) in which case all the directors would be deemed to be an officer in default.”

42. From the aforesaid I find that Noticee 2, Noticee 3 and Noticee 4 were officers in default as stipulated in Section 5 of the Companies Act, 1956 and thus were also liable for the contraventions/violations being directors in Noticee 1.

28. Thus I conclude that the allotment of equity shares by the erstwhile TTL is a deemed public issue and thus Noticee 1 and its directors, who are officers in default, have violated Regulations 4(2)(d), 4(2)(e), 5(1), 5(2), 5(5), 5(7), 6(1), 7, 26(1), 26(2), 32(1), 36, 37, 46(1), 47(1), 49(1), 57(1), 58(1), 58(2) and 63 of ICDR Regulations, 2009 read with Regulation 301 of ICDR Regulations 2018.

Issue no. 2: Does the violations, if any, on the part of the Noticees attract monetary penalty under section 15 HB of the SEBI Act?

29. As has been established in foregoing paragraphs that Noticee 1 to Noticee 4 have violated Regulations 4(2)(d), 4(2)(e), 5(1), 5(2), 5(5), 5(7), 6(1), 7, 26(1), 26(2), 32(1), 36, 37, 46(1), 47(1), 49(1), 57(1), 58(1), 58(2) and 63 of ICDR Regulations, 2009 read with Regulation 301 of ICDR Regulations 2018. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** *interalia* held "once *the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."*

30. Therefore, I am convinced that it is a fit case for imposition of monetary penalty under the provisions of Section 15 HB of SEBI Act. The text of Section 15 HB of SEBI Act reads as follows:

> ***SEBI Act, 1992***
>
> ***15HB****. 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 be liable to a penalty which may extend to one crore rupees.*

Issue no. 3: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

31. While imposing monetary penalty it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under :

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."

32. I note that the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees' and the loss, if any, and suffered by the investors as a result of the Noticees' failure. I also note that no prior default of the Noticees' is available on record. I observe that case pertains to 2011-2012 i.e. 10-11 years old. Further from the order no. WTM/MPB/EFD-DRA-III/113/2020 dated March 19, 2020 of Whole tome Member I note that no prejudice has been caused to the investors. I would consider this as the mitigating factors while imposing penalty on the Noticees

ORDER

33. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, the purpose of Companies Act, 1956 and ICDR Regulations 2009, taking note of Section 15HB of the SEBI Act, considering the mitigating factors and also taking into account judgement of the Hon'ble Supreme Court in **SEBI vs. Bhavesh Pabari** (2019) 5 SCC 90 and in exercise of power conferred upon me under

section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HB of the SEBI Act, 1992 on the Noticees:

Sr. No.	Noticee Name	Penal Provisions	Penalty
1.	Trinity Tradelink Limited	Section 15HB of the SEBI Act, 1992	Rs. 1,00,000/- (Rupees One Lakh only)
2.	Vikrant Kayan	Section 15HB of the SEBI Act, 1992	Rs. 1,00,000/- (Rupees One Lakh only)
3.	Sukumar Das	Section 15HB of the SEBI Act, 1992	Rs. 1,00,000/- (Rupees One Lakh only)
4.	Sharad Jhunjhunwala	Section 15HB of the SEBI Act, 1992	Rs. 1,00,000/- (Rupees One Lakh only)

34. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

35. The aforesaid Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.” The Noticees shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

36. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

37. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: October 19, 2022	**BARNALI MUKHERJEE**
Place: Mumbai	**ADJUDICATING OFFICER**