BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[Adjudication Order No: Order/GR/PU/2022-23/17924-17930]

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

In respect of

S.No.	Name of Noticee	PAN
1	Mishka Finance and Trading Ltd.	AAACP2548R
2	Ankit Garodia	ARRPG4567A
3	Jugalkishore Pralhadrai sharma	ABLPS6840A
4	Amit Kumar Vasishtha	AKNPV5025B
5	Rameshwar Manohar Wagh	ABLPW8901G
6	Anand Gupta	AFNPG7938K
7	Vijay Kumar Jain	AAAPJ3197K

In the matter of Mishka Finance and Trading Ltd.,

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted an investigation in the matter of trading activity of certain entities in the scrip of Mishka Finance and Trading Ltd., (hereinafter referred to as '**MFTL/Company**') from February 14, 2013 to December 31, 2014 (hereinafter referred to as '**Investigation Period**') to ascertain whether there were any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**), Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCR Act**"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') and various clauses of Equity Listing Agreement (hereinafter referred to as '**Listing**

Agreement') read with SCR Act. Further, wherever deemed necessary, reference has been made to period outside the investigation period.

2. The investigation inter-alia revealed that MFTL (Noticee No.1) had disclosed wrong shareholding pattern for the quarters ending March 2011, June 2011, September 2011, December 2011 and March 2011, accordingly, SEBI initiated Adjudication proceedings against it for the alleged violation of clause 35 of the Listing Agreement read with Section 21 of SCR Act. Further, the investigation also revealed that MFTL (Noticee No.1) did not submit on a quarterly basis a statement to the exchange indicating the variations between projected utilization of funds stated in the explanatory statement to the notice for the General Meeting for considering preferential issue of securities, and the actual utilization of funds as required under Clause 43 of the listing agreement. Accordingly, SEBI initiated Adjudication Proceedings against MFTL (Noticee No.1) for the alleged violation of provisions of Clause 43 of the Listing Agreement read with Section 21 of SCR Act.

3. Further, the investigation also revealed that the objects of the preferential issue as presented by the Noticees to the shareholders/ filed with MCA in Notice of general Meeting of the members of the company held on September 03, 2012 was not true and was misleading and contained information in a distorted manner. Accordingly, SEBI initiated Adjudication Proceedings against the Noticees for the alleged violation of provisions of Section 12A (a), (b) and (c) of SEBI Act and Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations.

APPOINTMENT OF THE ADJUDICATING OFFICER

4. SEBI appointed Ms. Rachna Anand, as Adjudicating Officer ('**AO**') vide communique dated February 22, 2018 under Section 19 read with 15-I of the SEBI Act, 1992 Section 23-I(1) and 23-I(2) of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCR Act**"), Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules 1995') and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 2005 (hereinafter

referred to as 'Adjudication Rules 2005') to inquire into and adjudge the violations alleged to have been committed by the Noticee. Subsequently, Shri Suresh B. Menon, CGM was appointed as the AO in the matter in the place of Ms. Rachna Anand. Thereafter, pursuant to the transfer of Shri Suresh B. Menon, the undersigned was appointed as the AO vide communique dated April 09, 2019 in the present matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice dated March 29, 2019 (hereinafter referred to as **'SCN'**) was issued by the erstwhile AO Mr. Suresh B. Menon, to the Noticees in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act, 1992 to show-cause as to why an inquiry should not be initiated and penalty be not imposed under Section 23 E of SCRA 1956 and Section 15HA of the SEBI Act, 1992 on the Noticees for the alleged aforesaid violation as specified in the SCN.

6. The details of the SCNs served on the Noticees and the replies, filed are as under;
Table -1

Sr.No	Name of Entity	SCN Delivery status Y/N	Reply Received Y/N
1	Mishka Finance and Trading Ltd.	Yes	No
2	Ankit Garodia	Yes	No
3	Jugalkishore Pralhadrai sharma	Yes	No
4	Amit Kumar Vasishtha	Yes	No
5	Rameshwar Manohar Wagh	Yes	No
6	Anand Gupta	Yes	No
7	Vijay Kumar Jain	Yes	NA

7. The SCNs were issued to the Noticees, by way of SPAD and from the above table it is observed that while SCNs pertaining to Noticee No. 2, 3 and 7 were duly delivered by SPAD, SCNs pertaining to Noticee No. 1, 4-6 had returned undelivered. In response, while the Authorized Representative (AR) of Noticee No.7 (appointed by wife of the Noticee No.7) informed that he had passed away on October 18, 2018 and submitted the copy of the death certificate as a proof. Pursuant to the service of the SCN with regard to Noticee No. 2, & 3, an opportunity of personal hearing was granted to them on May 09, 2022 vide hearing notices that were also duly delivered through SPAD.

8. Thereafter, with regard to Notice No.1, 4 – 6, a copy of the SCN along with hearing notice was served vide newspaper publication done on May 21, 2022 in Hindusthan Times (English- Mumbai Editon), Lokmat (Marathi- Mumbai Edition), Navbharat (Hindi-Mumbai Edition), Times of India (English – Pune-Nashik Edition), Navbharat (Hindi-Pune-Nashik Edition) and Dainik Jagran (Hindi – Delhi edition). Vide the said newspaper publication, the said Noticees were advised to download a copy of the SCN/HN from the SEBI website (www.sebi.gov.in) under the head Enforcement→ Unserved Summons/Notices and Enforcement → Orders that could not be served, or to collect it with Annexures from the Office of the Adjudicating Officer at the address mentioned in the said publication, or to obtain it through e-mail sent to preethiu@sebi.gov.in. Further, vide the said newspaper publication, they were granted an opportunity for personal hearing on May 24, 2022.

9. The details of dates of hearing and their attendance are specified in the table below;
Table -2

Sr.No	Name of Entity	HN Delivery status Y/N	HN Delivery status Y/N	Attended Y/N
1	Mishka Finance and Trading Ltd.	24.05.2022	Yes	No
2	Ankit Garodia	09.05.2022	Yes	No
3	Jugalkishore Pralhadrai sharma	09.05.2022	Yes	No
4	Amit Kumar Vasishtha	24.05.2022	Yes	No
5	Rameshwar Manohar Wagh	24.05.2022	Yes	No
6	Anand Gupta	24.05.2022	Yes	No
7	Vijay Kumar Jain	09.05.2022	NA	NA

10. From the above table, it is observed that Noticee No.1-6 have neither attended the said personal hearing nor submitted their reply in the matter.

11. In respect of Noticee No.7, to continue the proceedings, I relay on the Hon'ble Supreme Court's Order in the case of **Girija Nandini vs. Bijendra Narain Choudhury** (AIR 1967 SC 2110) has stated that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases the maxim "*actio personalis moritur cum persona*" (personal action dies with the death of the person) would apply, and the said

view was subsequently followed by SEBI in the case of **M/s. Sakthi Finance Limited**, wherein Adjudication Proceedings against Late N. Mahalingam were abated. In the present case, I note from the copy of the Death Certificate dated October 23, 2018 issued by the Municipal Corporation of South Delhi that the Noticee had passed away on October 18, 2018. I observe that the Noticee had passed away even before the initiation of the present Adjudication Proceedings against him.

12. Therefore, by relying on the aforementioned Order of Hon'ble Supreme Court, I am of the view that the Adjudication Proceedings initiated against the Noticee No. 7 will not survive and is liable to be abated without going into the merits of the case.

13. As regards to Notice No.1 – 6, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, they were granted an opportunity of personal hearing on May 24, 2022. However, despite serving them the notices through Newspaper publication as the SPAD returned undelivered, they neither attended the personal hearing nor submitted their reply to the SCN till date.

14. In view of the above, I am of the view that principles of natural justice have been duly complied with, as SCN and hearing Notice were duly served upon Noticee No.1- 6 and sufficient opportunity was also granted to them to reply to the SCN and appear for hearing. Thus, in the facts and circumstances of this case, I am of the view that they have nothing to submit and in terms of Rule 4(7) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and the matter can be proceeded ex parte on the basis of material available on record. In the absence of any response from them to the SCN, I presume that Noticee No. 1- 6 have admitted the charges levelled against them.

15. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed that, *"......the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*".

16. Further, the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: "*........... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

17. Additionally, the same position reiterated by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Dave Harihar Kirtibhai vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:
"*...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non- receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...*".

18. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against Noticee No.1 - 6 ex parte, based on the material available on record and in absence of response from them, presume that the allegations/charges have been admitted by them.

19. While deciding the case, I also cannot lose sight of settled position of law that the charge should be established with valid reasons and in accordance with law. I, therefore, deem it necessary to examine the charge levelled against Noticee Nos. 1-6 and supporting material as provided in the SCN.

CONSIDERATION OF ISSUES

20. I have carefully perused the charges levelled against Noticee No. 1-6 and the documents / material available on record. The issues that arise for consideration in the present case are:

   a. ***Whether the Noticee No. 1 has violated the provisions of Listing Agreement and SCRA and Whether Noticee No. 1-6 have violated the provisions of Section 12A(a), (b), and (c) of SBEI Act and Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(f)(k) of PFUTP Regulations, 2003as alleged in the SCN?***
   b. ***Does the violation, if any, attract monetary penalty under Section 23E of SCRA for Noticee No.1 and Section 15 HA of SEBI Act for the Noticee No. 1- 6?***
   c. ***If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23 J of SCRA and Section 15J of SEBI Act?***

21. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of Listing Agreement, SCRA, SEBI Act and PFUTP Regulations alleged to have been violated by the Noticee No 1-6. The same are reproduced below:

SEBI (PFUTP) Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(r) planting false or misleading news which may induce sale or purchase of securities.

SCR Act

Conditions for listing.

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

Equity Listing Agreement

Clause 35

The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely :-

b. On a quarterly basis, within 21 days from the end of each quarter.

Clause 43

a) The Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilisation of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting *for considering preferential issue of securities, and the actual utilisation of funds and/or actual profitability.*

b) The statement referred to in clause (1) shall be given for each of the years for which projections are provided in the prospectus/letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities and shall be published in newspapers simultaneously with the unaudited/audited financial results as required under clause 41.

Issue a: Whether the Noticee No. 1 has violated the provisions of Listing Agreement and SCRA and Whether Noticee No. 1-6 have violated the provisions of Section 12A(a), (b), and (c) of SBEI Act and Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(f)(k) and (r) of PFUTP Regulations, 2003 as alleged in the SCN??

22. It is noted from the investigation report that the scrip of MFTL (Noticee No.1) was listed only at BSE on September 30, 1985. It is further observed that Noticee No. 2 to 7 were the directors of MFTL for various periods during the investigation periods as given below:

Table 3

DIN	PAN	Director's Name	Category of Director	Appointment Date	Cessation Date
05172218	ARRPG4567A	Ankit Om Prakash Garodia	Managing Director	21/02/2012	Continued during IP**
05205981	ABLPS6840A	Jugalkishore Sharma	Whole time Director	21/02/2012	Continued during IP**
05358607	AKNPV5025B	Amit Kumar Vasishtha	Director	30/03/2013	03/03/2015
06413315	ABLPW8901G	Rameshwar Manohar Wagh	Director	30/03/2013	03/03/2015
00649031		Anand Gupta	Director	02/09/2001	30/03/2013
00166175	AAAPJ3197K	Vijay Kumar Jain	Director	01/07/2007	30/03/2013

**IP=Investigation period

23. Further, it is observed that the Shareholding pattern of the Company for the quarter ended September 2011,(as available on the website of BSE), was 4,98,000 shares all of which were held by 4 promoter entities namely Embassy Finance & Consultants Pvt Ltd, Tohee Trading & Agencies Pvt Ltd, Wave Inter Trades Pvt Ltd & Sulabh Impex Limited and 3 public shareholders namely Vijay Kumar Jain (Noticee No. 7), Ankit Jain & Rashmi Jain and entire shares of the Company were in physical mode. It is

further noted that, out of those 4,98,000 shares of the Company, a total of 4,19,700 shares i.e. 84.28% of total shareholding were held by the promoter entities of the company. Further, the remaining 78,300 shares i.e. 15.72% of total shareholding were held by rest of the three persons who were shown as public shareholders of the Company.

24. The share holding of Vijay Kumar Jain (Noticee No.7) and Ankit Jain for the quarter ended March 2011, June 2011 and September 2011(as available on the website of BSE), are given below:

Table 4

Name of Entity (A)	**No. of shares as per shareholding pattern disclosed to BSE for quarter ended March 2011, June 2011 and September 2011 (B)**	**No. of shares received in off-market during the period October 01, 2011 to June 30, 2012 as per RTA Data (C)**	**Cumulative Shareholding (B+C)**	**No. of shares transferred during the period October 01, 2011 to June 30, 2012 as per RTA Data**
Vijay Kumar Jain (**Noticee 7**)	36,000	Nil	36,000	68,000
Ankit Jain	32,000	50,000	82,000	50,000

25. It is noted from the above that, Notiee No. 7 was in possession of 36,000 shares of the Company for quarter ended March 2011, June 2011, September 2011. Further, it is observed from off-market transfer data received from Registrar and Transfer Agent (**RTA**) of the company, namely Universal Capital Securities Pvt. Ltd., that Noticee No. 7 did not receive any share in off-market during the period October 01, 2011 to June 30, 2012. However, he had transferred 68,000 shares of the Company in off-market during the period April 30, 2012 to June 15, 2012 to 101 different entities as shown in table 4 above.

26. In this regard, it is further noted that on inquiry, RTA vide its email dated September 09, 2017, informed SEBI that the following transaction had taken place in favour of Noticee No. 7 on March 31, 2011, when it was not the RTA of the Company:

Table 5

Transfer Date	**Transferor Name**	**Transferee Name**	**No. of Shares Transferred**
31-Mar-2011	Ankit Jain	Vijay Kumar Jain	32,000

Therefore, after aforesaid transfer of 32,000 shares, the correct shareholding of Noticee No. 7 was 68,000 and that of Ankit Jain was Nil.

27. Besides above, I also note that during the investigation, SEBI had issued summons to Noticee No. 7, who in his reply dated August 24, 2017, submitted that he was the Promoter and Director of MFTL and being a promoter and director of the company, he had submitted disclosure to BSE under Regulations 13(4) and 13(4A) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 on March 18, 2012.

28. Contrary to the above, from the shareholding pattern collected from BSE, it was observed that, for the quarters ending December 2010, March 2011 and June 2011, shareholding of Noticee No. 7 was shown under the category "Promoter and Promoter Group" by MFTL. Thereafter, for quarter ending September 2011, December 2011 and March 2012, the shareholding of Noticee 7 was shown under the category "Public shareholding" by MFTL.

29. Further, it is noted from IR that trading in the scrip of MFTL was suspended from January 07, 2002 to May 09, 2012 and the suspension of trading in the scrip was revoked with effect from May 10, 2012 vide BSE Notice No. 20120504-11 dated May 04, 2012 under the condition that 2,98,000 shares of Promoters namely Embassy Finance & Consultants Pvt Ltd, Tohee Trading & Agencies Pvt Ltd and Wave Inter Trades Pvt Ltd (who were the only promoters as declared by the company to BSE and who were holding only 2,98,000 shares at that point of time) would remain under lock-in till August 31, 2012. It was therefore noted that company did not shown shareholding of Noticee No. 7 under "*Promoter and Promoter Group*". Instead, shareholding of Noticee No. 7 was shown under the category "*Public shareholding*". It is further observed that later on, despite being promoter of the company, Noticee No. 7 transferred his shareholding in off-market to other entities when shareholding of other promoters was under lock-in.

30. The above facts clearly establishes that MFTL was showing shareholding of Noticee No. 7 under wrong category for the quarters ending September 2011, December 2011 and March 2012 and also was providing incorrect shareholding of Noticee No. 7 and

Ankit Jain, for the quarters ending March 2011, June 2011, September 2011, December 2011 and March 2012.

31. In this regards, it is pertinent to note that MFTL being a listed Company, was under an obligation in terms of Section 21 of SCRA, 1956, to comply with the conditions of Listing Agreement. Specifically, Clause 35 of Listing Agreement mandates the listed companies to file, inter alia, its shareholding pattern including the shareholding of its promoters, with the exchanges on a quarterly basis. Needless to say, MFTL was required to make true and correct disclosure regarding the shareholding pattern. More particularly, periodic disclosures under Clause 35 of the listing agreement serve a very important purpose of informing the market and the investors about the shareholding pattern of the company i.e. names and holdings of the promoters and significant shareholders. The shareholding and names of promoters and its significant shareholders of MFTL form a very important criterion for the public to make their investment decisions. It is therefore, in terms of Section 21 of SCRA, 1956 and Clause 35 of Listing Agreement, the obligation for compliance is on the Company for such disclosures. Further in terms of Section 23E of SCRA, 1956, the penalty can be levied on the Company for failure to comply with conditions of Listing Agreement. Hence, I find that the act of wrongly classifying the shareholding of Noticee No. 7 as 'public holding' for quarters ending September 2011, December 2011 and March 2012 and by making wrong disclosures of the shareholding of Noticee No.7 and Ankit Jain for the quarters ending March 2011, June 2011, September 2011, December 2011 and March 2012 by MFTL (Noticee No. 1) clearly establishes the violation of provisions of Section 21 of SCRA read with 35 of the Equity Listing Agreement.

32. Apart from the above, I also noted from the IR that MFTL issued 7,93,700 shares on preferential basis on September 24, 2012. MFTL allotted these 7,93,700 shares on preferential basis to 46 entities for a total of Rs. 6,74,64,500 at Rs. 85 per share i.e. each share having a face value of Rs. 10 per share was issued at premium of Rs. 75 per shares. It was observed that Pearl Arcade Trading Private Limited, one of the 46 Preferential Allottees, was introduced as Promoter of the company. The shares issued under preferential allotment were under lock-in till September 23, 2013.

33. In this regard, it is observed that MFTL had received the allotment proceeds in its bank account number 12920200000506 maintained with Bank of Baroda between September 18, 2012 and September 25, 2012 (Copy of bank statement was provided as annexure to the SCN)).

34. From the copy of the notice and copy of resolution of General Meeting of the members of the company held on September 03, 2012 wherein special resolution was passed under Section 81(1A) of the Companies Act, 1956, it is observed that MFTL had disclosed to its shareholders/filed with MCA that aforesaid fund raising through preferential allotment was for the following purposes:

    - Capital expenditure including acquisition of company/business;
    - Funding long term working capital requirements;
    - Marketing
    - Setting up of offices abroad and;
    - For other approved corporate purposes.

    Copy of notice and resolution of General Meeting filed by the company with MCA were obtained from MCA website and was provided along with the SCN.

35. Further, I noted from the IR that the analysis of the Balance Sheet and Profit & Loss Accounts of MFTL for the Financial Year 2012-13 shows that MFTL did not have any fixed assets during the FY 2012-13 and there was no addition to fixed assets during the FY 2012-13. Further, "*Short term loans and advances*" of the company increased to Rs. 10,54,84,140 as on March 31, 2013 from Rs. 34,56,975 as on March 31, 2012. On the other hand, "*Non current Investments*" of the company reduced to Rs. 50,10,416 as on March 31, 2013 from Rs. 4,51,84,166 as on March 31, 2012.

36. Similarly, the analysis of the Balance Sheet and Profit & Loss Accounts of MFTL for the Financial Year 2013-14, shows that MFTL did not have any fixed assets during the Financial Year 2013-14 and also there was no addition to fixed assets during the FY 2013-14. Further, there were no "Long term loans and advances" of the company as on March 31, 2013. However, as on March 31, 2014 the balance under this head was increased to Rs. 4,89,90,212. Further, balance under the head "Short term loans and

advances" of the company March 31, 2014 was Rs. 4,64,91,338. Therefore, the total "Loans and advances" of the company as on March 31, 2014 were Rs. 9,54,81,550. On the other hand, "Non-current Investments" of the company reduced to nil as on March 31, 2014 from Rs. 50,10,416 as on March 31, 2013.

37. Therefore, I note that there was neither addition to the fixed assets of the company nor any mention of capital work-in-progress. Further, the cash flow statements for these years do not have any cash flow relating to acquisition and development of moveable and immovable property (i.e. negative cash flow from investing activities). On the contrary, I note that MFTL sold its existing investments in the Financial Years 2012-13 and 2013-14.

38. Further, from the analysis of the bank statements of MFTL, I note that, out of the proceeds of preferential allotment, MFTL immediately transferred majority of funds to three entities namely CD Equisearch Pvt. Ltd. (Rs. 2,00,00,000), Esha Securities Limited (Rs. 2,21,21,221) and Jitendra Dewoolkar (Rs. 2,00,00,000) on September 25, 2012.

39. In this regard, Regulation 73 of SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009 ('ICDR Regulations') inter-alia states as follows:

73.(1) The issuer shall, in addition to the disclosures required under section 173 of the Companies Act, 1956 or any other applicable law, disclose the following in the explanatory statement to the notice of the general meeting proposed for passing special resolution:

(a) the objects of the preferential issue;

40. From the above, I note that the proceeds of preferential allotment were immediately transferred to various entities on September 25, 2012 and were never retained by MFTL for executing its plans as envisaged in the special resolution passed under section 81(1A) of the Companies Act, 1956. Further, I note that, prior to receipt of the proceeds of the preferential allotments, the funds available in the bank account of the company was not sufficient for transfers to various entities.

41. The aforementioned facts of not having sufficient amount prior to the preferential issue and immediately transferring the proceeds of the preferential issue to various entities establishes the fact that the intention of the preferential issue was only to transfer the proceeds to those entities and not of capital expenditure, acquisition of companies/business, setting office abroad etc., as specified in the objectives of the said preferential issue. I further note that MFTL utilized preferential issue proceeds majorly for extending loans & advances which was not disclosed as objects of the Issues under Regulation 73(1)(a) of ICDR Regulations. Thus, the objects of the issue as presented to shareholders/filed with MCA by MFTL in the Notice of General Meeting of the members of the company held on September 03, 2012 were not true and the same are misleading and contained information in a distorted manner which might have influenced the decision of the investors.

42. Considering the above facts, I note that, there were neither addition to the fixed assets of the company nor any mention of capital work-in-progress while the cash flow statements for these years do not have any cash flow relating to acquisition and development of moveable and immovable property (i.e. negative cash flow from investing activities). I also note that these aforesaid fraudulent acts not only led to the misrepresentation by the Company to the subscribers of shares issued on preferential basis but it has also misled and influenced the shareholders who have provided approval for raising funds through preferential issue and the prospective shareholders. Moreover, as noted from the bank statement of the Company, as and when the proceeds of preferential issue of equity shares were credited to the bank account of the Company, the same were mis-utilized or diverted by it for transactions other than what was disclosed to its shareholders at the time of seeking approval for preferential issue of shares. Additionally, I also note that the act of immediately transferring the proceeds of preferential allotment to various entities on September 25, 2012 and were never retained by MFTL for executing its plans as envisaged in the special resolution passed under Section 81(1A) of the Companies Act, 1956, indicates that MFTL (Noticee No.1) had taken steps for mis-utilization and diversion even before it has received the approval for issuance of shares on a preferential basis. These actions of the company contradicts/ belies what it had promised to its shareholders at the time of seeking their approval.

Thus, I am of the view that MFTL (Noticee No.1) has committed "fraud", as defined under Regulations 2(1)(c) of the PFUTP Regulations.

43. Further, MFTL has employed, in connection with the preferential issue of securities, a manipulative device to defraud the existing and prospective shareholders and has engaged in a practice which has acted as a fraud on them. These acts of MFTL in making such a suggestion are a fraudulent or an unfair trade practice as it knew the same to be not true and was aware that such misleading information would influence the decision of investors and induce them in dealing in securities. Such acts are prevented by the PFUTP Regulations under the provisions of Regulations 3(a), (b), (c) and (d) and Regulations 4 (2)(f), 4(2)(k) and 4 (2)(r).

44. In this regard, I further note that Noticee No. 2 to.7 (including deceased Noticee No.7) were the directors of MFTL during the period 2012-13 or 2013-14 and being directors, they were responsible to make the correct disclosure to exchange with respect to utilization of preferential issue proceeds by the Company. In this regard, it is pertinent to mention that, a Company, though a legal entity, cannot act by itself, it can act only through its directors who are collectively referred to as the Board of Directors. Here I will like to refer to the observations made by the Hon'ble Supreme Court of India in the matter of **N. Narayanan v. Adjudicating Officer, SEBI**, (2013) 12 SCC 152 wherein, while considering the liability of a Whole Time Director of a Listed Company, the Hon'ble Supreme Court has observed the following;

"*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. …….*

……. The facts in this case clearly reveal that the Directors of the company in question had failed in their duty to exercise due care and diligence and allowed the company to fabricate the figures and making false disclosures. Facts indicate that they have overlooked the numerous red flags in the revenues, profits, receivables, deposits etc. which should not have escaped the attention of a prudent person…….

………the subsequent conduct of pledging their shares at artificially created prices, based on inflated financial results and raising loan on them would indicate that they had deliberately and with full knowledge committed the illegality…………."

45. I also note that Noticee No. 2-6, have not submitted any response in support of their defence.

46. In view of the above discussion, I find that Noticee No. 1 to 6 have violated provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

47. As regards the alleged violation of Clause 43 of the Listing agreement, I note that, a listed company is required to furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilisation of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilisation of funds and/or actual profitability. Further I also note that, the said statement is required to be given for each of the years for which projections are provided in the prospectus/letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities. And also, the same statement is required to be published in newspapers simultaneously with the unaudited/audited financial results.

48. In this regard, from the IR, I note that BSE, vide email dated January 21, 2015, has submitted that MFTL did not submit any information as required under clause 43 of the Listing agreement.

49. From the above, I note that MFTL (Noticee No.1) had not taken serious approach towards the Regulatory requirements of Clause 43 of listing agreement. Had it taken a serious view of the same, the statement indicating the variations between project utilization of funds stated in the explanatory statement to the notice for the General Meeting for considering preferential issue of securities, and the actual utilization of funds would have been submitted in a timely manner, periodically and also would have been published newspapers simultaneously with the unaudited/audited financial results. Further, I am also of the view that MFTL did not have proper control mechanism to monitor the same, in which case above mentioned non compliances by MFTL (Noticee

No.1) could have been avoided. Hence, I find that MFTL (Noticee No. 1) has violated Clause 43 of the Listing Agreement read with Section 21 of SCR Act.

Issue b: Does the violation, if any, attract monetary penalty under Section 23E of SCRA for Noticee No.1 and Section 15 HA of SEBI Act for the Noticee Nos 1- 6?

50. I note that Hon'ble Supreme Court of India, in the matter of Chairman, **SEBI vs. Shriram Mutual Fund** *{[2006] 5 SCC 361}* held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".*

51. I also note that in Appeal No. 66 of 2003 – **Milan Mahendra Securities Pvt. Ltd. Vs. SEBI** – the Hon'ble Securities Appellate Tribunal (SAT) has observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market".*

52. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation.

53. In view of the foregoing, I am convinced that the Noticee No. 1 is liable for monetary penalty under Section 23E of SCR Act for the violation of provisions of Clauses 35 and 43 of the Listing Agreement read with Section 21 of SCR Act and Noticee Nos.1-6 are thus liable for monetary penalty under Section 15A(b) of SEBI Act for violation of Section12A (a),(b),(c) of SEBI Act and Regulations 3(a),(b),(c) and (d), 4 (1), 4(2),(f),(k),(r) of PFUTP Regulations. The provisions of Section 23E of SCR Act and Section 15HAof the SEBI Act, 1992 read as under:

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

SCR Act

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

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

Issue c: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23 J of SCR Act and Section 15J of SEBI Act?

54. While determining the quantum of penalty under Section 23 E of SCR Act and Section 15 HA of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 23J of SCR Act and Section 15J of the SEBI Act which reads as under: -.

SEBI Act
Factors to be taken into account by the adjudicating officer.

Section 15J – 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.*

SCR Act

Factors to be taken into account while adjudging quantum of penalty

23J. *While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or 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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

55. 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's failure. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Dissemination of wrong and misleading information to the general public at large should be viewed seriously in view of observations of Hon'ble Supreme Court in the case of Narayanan vs. SEBI cited earlier. Further, it is the responsibility of the Listed Company to furnish correct disclosures to Stock Exchanges which is very vital for the investors / shareholders to enable them to take an informed decision and any such failure on its part is likely to impact the interest of investors / shareholders. Therefore, any lapse on the part of the Listed Company has to be dealt by SEBI seriously in order to protect the interests of investors in securities market. Further, there has not only been diversion and mis-utilization the proceeds received from the preferential issue of shares, it also did not provide the relevant and adequate information to the shareholders when it sought ratification of the diversion and mis-utilization that it had carried out. The Noticees have misled and influenced its shareholders by putting in place a device to manipulate them. Further, such a device was already in place even before the approval of shareholders was sought for making preferential issue. I note that they have not adhered to the high standards of ethics and corporate governance that it is required to meet in order to protect shareholder interest and has instead, put their own interest before the shareholder interest.

ORDER

56. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 23 J of SCR Act and Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 23 I of SCR Act read with Rule 5 of Adjudication Rules, 2005 and Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose the following penalties on the Noticee Nos. 1-6, for the violations as specified in this order:

<table>
<tr><th>Noticee No.</th><th>Noticee Name</th><th>Penal Provisions</th><th>Penalty (Rs.)</th></tr>
<tr><td>1.</td><td>Mishka Finance and Trading Ltd.</td><td rowspan="6">1. Under Sec. 23 E SCR Act for Noticee No.1

2. Under Sec. 15HA of SEBI Act for Noticee No. 1-6</td><td rowspan="6">1. ₹ 3,00,000/- (Rupees Three Lakhs Only) to be paid under Section 23 E of SCR Act by Noticee No.1

2. ₹ 6,00,000/- (Rupees Six Lakhs Only) to be paid jointly and severally under Section 15 HA of SEBI Act by Noticee No. 1 - 6</td></tr>
<tr><td>2.</td><td>Ankit Garodia</td></tr>
<tr><td>3.</td><td>Jugalkishore Pralhadrai sharma</td></tr>
<tr><td>4.</td><td>Amit Kumar Vasishtha</td></tr>
<tr><td>5.</td><td>Rameshwar Manohar Wagh</td></tr>
<tr><td>6.</td><td>Anand Gupta</td></tr>
</table>

57. 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 favor 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

58. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Enforcement Department (EFD1 – DRA II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.”

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

59. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this order, consequential proceedings including, but not limited to, Recovery Proceedings may be initiated under Section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

60. 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: July 14, 2022 **G. Ramar**

Place: Mumbai **Adjudicating Officer**