BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER No. Order/MC/RM/2022-23/20426-20428]

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

In respect of –

1. **Aurelian Suppliers Private Limited (PAN: AAKCA7459G)** having address at P 11, Chitpoore Spur Road**,** Kolkata West Bengal, India **-** 700007
2. **Mr. Prem Chand (PAN: AXNPC3713G)** having address at 2605, Ist Floor, Naya Bazar, Delhi, India - 110006
3. **Tushar India Private Limited (PAN: AABCT5830B)** having address at 1837/ 138, Shanti Nagar, Tri Nagar, Delhi, India - 110035

In the matter of Delta Leasing & Finance Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings against Aurelian Suppliers Private Limited ("**Noticee 1"),** Mr. Prem Chand **("Noticee 2"),** and Tushar India Private Limited **("Noticee 3"),** under Section 15A(a) for the alleged violations Section 11C(2) & 11C(3) of SEBI Act, 1992; under Section 15HA for the alleged violation of Regulation 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"); and Section 23H of Securities Contracts (Regulations) Act (hereinafter referred to as **' SC(R)A'**) for the alleged violations of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000

and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013.

APPOINTMENT OF ADJUDICATING OFFICER

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

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/RM/2022/2370 dated January 19, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('SEBI Adjudication Rules') to show cause as to why an inquiry should not be held and penalty not be imposed against Noticees in terms of Section 15A(a) & 15HA of the SEBI Act and Section 23H of SC(R)A for the aforesaid alleged violations.

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

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

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

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

7. In order to analyze the off market transactions of the Noticees in the scrip of the company, summons were issued to the Noticees, and the target clients of their transactions, seeking information regarding the off market transactions carried out by them in the scrip. Some of the target clients replied to the summons, and provided supporting documents like bank account, demat account statements in respect of the transactions undertaken by them. On examination of the DIS slips of the Noticees (provided as Annexure 2 of the SCN), reply of the target clients (provided as Annexure 3 of the SCN), and other documents like bank account statements, demat account statements, following was observed:

8. Noticee-1 had stated “Loan/Personal Loan” as reason for transfers on DIS Slips for the off market transactions carried out by it. Noticee-1 did not respond to the summons issued to it, however Mr. Arun Chetri who was the target client in two of the off market transactions carried out by Noticee-1, responded to the summons, and submitted the Bank and Demat account statements in reference to the aforesaid off market transactions. The analysis of the aforesaid and DIS Slips of the Noticee-1 revealed that the shares were received by Mr. Arjun Chetri (target client) much after the payment was received by Noticee-1 from Mr. Arjun Chetri. The details of the transactions are tabulated below:

(Table 1)

S.No.	Name of Source client	No. of target clients with whom transacted	Total no. of transactions	Qty of shares transferred		Total Consideration amount received (Rs.)			No. of instances of delay in settlement	Delay/ Range of Delay(no. of days)
				Total qty	Qty in delayed cases	Total Consideration as per DIS	Consideration in delayed cases as per DIS	Consideration in delayed cases as per reply from target clients		
1.	AURELIAN SUPPLIERS PRIVATE LIMITED	4	8	1,73,949	10,500	Not Mentioned	Not Mentioned	84,000	2	21 days to 24 days

9. The details of the transactions carried out by Noticee-1 with delay are as follows:

(Table 2)

Sr. No.	Name, Demat Id of source client	Name, Demat Id of target client	Quantity transferred	Consideration (Rs.) received by source client	Date of payment by target client	Date of transfer of shares by source client	No. of days of delay
1	AURELIAN SUPPLIERS PRIVATE LIMITED 00699077	ARJUN CHETRI 00002811	5500	84000	15.07.2014	06.08.2014	21 days

10. Noticee-2 had stated "Loan/Personal Loan" as the reason for transfers on DIS for majority of off market transactions carried out by him. Noticee-2 did not respond to the summons issued to him. Six of the target clients for the transactions carried out by Noticee-2, responded to the summons issued. In their response these target clients denied that these were loan transactions, and submitted that for these transactions cash payments were made much in advance and the shares were received from Noticee-2 on a later date. The details of the same are tabulated below:

(Table 3)

S.No.	Name of Source client	No. of target clients with whom transacted	Total no. of transactions	Qty of shares transferred		Total Consideration amount received (Rs.)			No. of instances of delay in settlement	Delay/ Range of Delay(no. of days)
				Total qty	Qty in delayed cases	Total Consideration as per DIS	Consideration in delayed cases as per DIS	Consideration in delayed cases as per reply from target clients		
1.	PREM CHAND	13	21	5,23,433	68,150	3,33,00,367	78,88,500	3,72,198	6	394 days to 863 days

11. The details of the transactions carried out by Noticee-2 with delay are as follows:

(Table 4)

Sl. No.	Source Client Name, ID	Target Client Name, ID	No. of Securities	Consideration Amount (as per DIS)	Date of transfer of shares by source client	Date of Payment by target Client	No. of days of delay
1	PREM CHAND (00028471)	RITA KATARIA (10011133)	35000	1,55,198	8/26/13	4/15/11	863
2	PREM CHAND (00028471)	AMANJEET MADAN (00018175)	5500	38,500	5/23/14	4/23/13	394
3	PREM CHAND (00028471)	ANIL NAGPAL (00018308)	6000	42,000	5/26/14	4/26/13	394
4	PREM CHAND (00028471)	BALPREET SINGH MADAN . (00018181)	6000	42,000	6/3/14	4/23/13	405
5	PREM CHAND (00028471)	SAMYAK JAIN (00018268)	13500	--	6/13/14	4/26/13	412
6	PREM CHAND (00028471)	ASHNA GROVER (00031725)	2150	--	6/20/14	4/2/12	808

12. Noticee-3 had stated “Loan/Personal Loan” as the reason for transfers on DIS for majority of the off market transactions carried out by it. Noticee-3 did not respond to the summons issued to it. However ‘Shree Sai City Promoters & Developers Pvt Ltd’ one of target client for Noticee-3 transactions responded to the summons, and submitted the Bank and Demat account statements. The analysis of the aforesaid and DIS Slips of the Noticee-3 revealed that the shares

were received by Shree Sai City Promoters & Developers Pvt Ltd (target client) much after the payment was received by Noticee-3. The details of the same are tabulated below:

(Table 5)

S.No.	**Name of Source client**	**No. of target clients with whom transacted**	**Total no. of transactions**	**Qty of shares transferred**		**Total Consideration amount received (Rs.)**		**No. of instances of delay in settlement**	**Delay/ Range of Delay(no. of days)**
				Total qty	**Qty in delayed cases**	**Total Consideration**	**Consideration in delayed cases**		
1.	TUSHAR INDIA PRIVATE LIMITED AABCT5830B IN30310810125304	8	20	5,24,034	1,00,000	N.A	3,33,000	1	366 days

13. The details of the transaction carried out by Noticee-3 with delay are as follows:

(Table 6)

Sr. No.	**Name, Demat Id of source client**	**Name, Demat Id of target client**	**Quantity transferred**	**Consideration (Rs.) received by source client**	**Date of payment by target client**	**Date of transfer of shares by source client**	**No. of days of delay**
1	TUSHAR INDIA PRIVATE LIMITED IN30310810125304	SHREE SAI CITY PROMOTERS & DEVELOPERS PVT LTD 1202300000129623	100000	3333000	06.03.2013 & 11.03.2013 (Rs. 28,22,000 & Rs. 5,11,000 respectively)	08.03.2014	366

14. Since in all the transactions tabulated above (table 2, 4 and 6) for Noticees, transfers have taken place only in electronic mode and not through physical mode, the exclusion of the actual period taken for dispatch of securities or the remittance of money there for through the post from the computation of the time period taken for transfer (if the parties to the contract do not reside in the same

town or locality" as stipulated in section 2(i)(a) of SC(R)A, 1956) do not arise and therefore the same were not taken in to account.

15. As detailed in above paragraphs, none of the transactions of Noticees tabulated in table 2, 4 and 6 have been settled within the time frame stipulated in Sec.2(i)(a) of SC(R)A, 1956 as the consideration for off market transfer of shares were paid by the target clients first and the shares have been transferred by the Noticees to the target clients after much delay beyond the time frame stipulated in the said provisions.

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

17. The relevant clauses of SC(R)A, and SEBI Notifications are reproduced as under:

SC(R)A:-

2 (i) *In this Act, unless the context otherwise requires,— spot delivery contract" means a contract which provides for,-*

> ***(a)*** *actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;*

13- *If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area and thereupon every contract in such State or States or area which is entered into after the date of the notification* *otherwise than between members of a recognized stock exchange or recognized stock exchanges in such State or States or area or through or with such member shall be illegal.*

16- *If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.*

18- *Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.*

SEBI Notification G.S.R 219(E) dated March 2, 2000-

"In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992, (See [1992] 75 Comp Cas (St.) 216.) and Notification No. 183(E), dated 1st March, 2000, (See page 53 supra.) issued under section 29A of the said Act, Adjudication Order in the matter of Pithampur Steels Ltd., Page 8 of 22 the Securities and Exchange Board of India (hereinafter referred to as "the Board") being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992), and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange.

Provided that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognized stock exchange shall be entered into in accordance with-

(a) *the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the directions issued by the Securities and Exchange Board of India under the said Acts;*

(b) *the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934), or the Banking Regulation Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973), by the Reserve Bank of India;*

(c) *the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956)*

SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013-

In exercise of the powers conferred by subsection (2) of section 28 and sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India notification number S.O. 573(E), dated the 30th July, 1992 issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as 'the Board') hereby rescinds the notification number S.O.184(E), dated the 1st March, 2000, except as respects things done or omitted to be done before such rescission, and declares that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than a contract falling under any one or more of the following, namely:-

(a) *spot delivery contract;*

(b) *contracts for sale or purchase of securities or contracts in derivatives, as are permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange;*

(c) *contracts for pre-emption including right of first refusal, or tag-along or drag along rights contained in shareholders agreements or articles of association of companies or other body corporate;*

(d) *contracts in shareholders agreements or articles of association of companies or other body corporate, for purchase or sale of securities pursuant to exercise of an option contained therein to buy or sell the securities, where-*

- *(i) the title and ownership of the underlying securities is held continuously by the selling party to such contract for a minimum period of one year from the date of entering into the contract;*
- *(ii) the price or consideration payable for the sale or purchase of the underlying securities pursuant to exercise of any option contained therein, is in compliance with all the laws for the time being in force as applicable; and*
- *(iii) the contract is settled by way of actual delivery of the underlying securities:*

Provided that the contracts specified in clauses (a) to (d) above, shall be in accordance with the provisions of the Foreign Exchange Management Act, 1999 and rules or regulations made thereunder:

Provided further that nothing contained in this notification shall affect or validate any contract which has been entered into prior to the date of this notification.

Explanation.- It is hereby clarified that the contracts mentioned in clauses (c) and (d) above shall be valid notwithstanding anything contained in section 18 A read with clause (d) of sub-section (1) of section 23 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956):

Provided also that any contract for sale or purchase of government securities, gold related securities, money market securities, contracts in currency derivatives, interest rate derivatives and ready forward contracts in debt securities entered into on the recognized stock exchange shall be entered into in accordance with, —

(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992(15 of 1992) or the directions issued by the Securities and Exchange Board of India under the said Acts;

(b) the rules made or guidelines or directions issued, under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulations Act, 1949 (10 of 1949) or the Foreign Exchange Management Act, 1999 (42 of 1999), by the Reserve Bank of India;

(c) the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

Failure to reply to Summons

18. During investigation to determine whether the aforesaid off market transactions carried out were as per the time frame stipulated in Sec.2(i)(a) of SC(R)A, summons were issued to Noticees to seek the requisite information. Noticees had allegedly failed to respond to summons issued in any manner. Details of non-compliance of summon by Noticees are as under:

(Table 7)

Sr. no.	**Name of Entity**	**PAN**	**Status of delivery**	**Date of Delivery**	**Proof of Delivery**	**Particulars of Reminders sent**
1.	Tushar India Private Limited	AABCT5830B	Delivered through email to abomcx@yahoo.com and WhatsApp to 9910084708	01.11.2019, 28.02.2020	Email delivery receipt	Reminder mail sent on 11.12.2019 & 02.01.2020
2.	Prem Chand	AXNPC3713G	Delivered through email to poojashribalaji@gmail.com	22.10.2019	Email delivery receipt	Reminder mail sent on 11.12.2019 & 02.01.2020

3.	Aurelian Suppliers Private Limited	AAKCA7459G	Delivered through email to ajay_shreeprint@yahoo.com	24.10.2019	Email delivery receipt	Reminder summons sent on 10.12.2019 & mail sent on 11.12.2019 & 02.01.2020

19. The delivery of summons sent to Noticees through email were confirmed through IT Department-SEBI, vide their email dated 18.12.2019. The email summons were in addition to sending of summons by speed post with acknowledgement due. The scanned copy of the summons were also sent to the e-mail ID of the Noticees registered by them with the Depositories through KYC. No reply was received even after issuance of reminders to the summons as stated above. The reply of the Noticees to the summons was necessary to ascertain the date of settlement of transactions which is crucial to determine whether the transactions carried out were as per the time frame stipulated in Section 2(i)(a) of SC(R)A.

20. The failure to reply to summons impeded the investigation and hence by failing to reply to the summons issued, the Noticees were alleged to have violated Section 11C(2) and 11C(3) of SEBI Act, 1992. The Section11C(2) and 11C(3) of SEBI Act, 1992 are reproduced below:

Securities and Exchange Board of India Act, 1992

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

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

Incorrect information in DIS Slips

21. In terms of Section12 (1) of the Depositories Act, a Beneficial Owner (B.O) may with previous approval of the Depository create a pledge or hypothecation in respect of security owned by him through a depository. Further in terms of sub-section(2) *ibid* every beneficial owner shall give such intimation of pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly. Any entry in the records of depository under sub-section 2 shall be evidence of pledge or hypothecation.

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

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

24. On examination of the DIS slips of Noticees (provided as Annexure 2 of SCN) for the off market transfers, it was observed that almost in all DIS Slips the reason for transfer stated in the DIS Slips was “Loan of Shares or return of loan of shares”. To consider aforesaid transactions as loan transactions, these

transactions ought to have been carried out in the manner provided in Section 12 of the Depositories Act and Regulation 58 of SEBI (Depositories and participants) Regulations 1996.

25. As detailed in above paragraphs, the target clients of the Noticee 1 and 2 denied that these transactions were loan transactions.

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

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

28. Hence, on perusal of the DIS Slips pertaining to the off market transfers of the Noticees**,** it was observed that the Noticees mentioned false and incorrect information in the DIS Slips, to evade regulatory compliances for transfer of shares, and thereby were allegedly committed an act of deceit in violation of Regulation 4(1) of SEBI PFUTP Regulations, 2003, which is reproduced as under:

Sebi (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

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

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

29. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15A(a) & 15 HA of the SEBI Act, 23 H of SC(R)A.

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

(Table 8)

Noticee Name	**SCN/HN delivered by**
Aurelian Suppliers Private Limited	SCN served by email (on email address ajay_shreeprint@yahoo.com) on 19.01.2021 and HN on 07.07.2022 respectively
Mr. Prem Chand	SCN and HN served by email (on email address poojashribalaji@gmail.com) on 04.10.2022
Tushar India Private Limited	SCN served by email (on email addresses abomcx@yahoo.com and surmit93@gmail.com) on 19.01.2021 and HN on 07.07.2022 respectively

31. From the details of delivery of SCN and HN as given in the table above, I note that Noticees did not submit any reply to the SCN, and did not appear for personal hearing, despite being provided with sufficient opportunity for filing the reply to the SCN and to appear for hearing. In these facts and circumstances, with respect to these Noticees, the matter can be proceeded ex-parte on the basis of material available on record in terms of Rule 4(7) of the Adjudication Rules which reads as under: -

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

CONSIDERATION OF ISSUES AND FINDINGS

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

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

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

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

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

33. The first allegation against the Noticees is based on delay in settlement of off-market trades. In this regard, I note that Section 16 of the SC(R)A as well as the SEBI Notification S.O. 184(E) dated March 01, 2000 issued in terms of Section 16*,* emphasizes legislative intent to prevent undesirable speculation in securities, by ensuring that parties to off-market dealings in shares comply with Section 2 (i) of the SC(R)A which in turn required a spot delivery contract to provide for "*actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day".* As per Section 2 (i), it is important to note that the reference to payment of price and delivery of securities is from the date of contract. Further, the duration of 'same day or next day' does not

include *"the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality*". Thus, unavoidable procedural delays due to the process involved in receiving payment for, and transferring shares on account of contract for off-market transaction in shares, have been excluded from the computation of same day or next day in Section 2 (i).

34. I note from the replies of target clients of impugned transactions wherein the Noticees were the source clients, that there was a delay in delivery of shares sold by Noticees of 21 days, 394-863 days, and 366 days for impugned transactions carried out by Noticee 1, 2 and 3 respectively (as detailed in table 1 to 6). Thus, there is a clear failure by Noticees to settle transactions within the timelines stipulated in Section 2(i) of SC(R)A for spot trades, and with such lengthy time taken to settle the trade, it loses the character of a spot trade. **Hence, it is established that the Noticees violated provisions of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013**

35. The second allegation in the SCN pertains to alleged violation of Regulation 4(1) of PFUTP Regulations, 2003 due to incorrect statement by Noticees in the DIS slip that transactions were loan transactions whereas they were sale/purchase transactions.

36. Regulation 4(1) of PFUTP Regulations states that "*no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets".* The issue to be examined here is whether an incorrect reason given in the DIS slip by a transferor amounts to manipulative, fraudulent or unfair trade practice. The Noticees stated that the transactions were for loan whereas they were outright sale and purchase transactions. As per the SCN, Noticees committed an act of deceit by giving a false reason for transfer in the DIS slip. In this regard, I refer to

judgment of Hon'ble SC in the matter of SEBI vs. Kanaiyalal Patel [CA No. 2595 of 2013] of 20.09.2017 wherein the SC held as follows:

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

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

37. Based on the above, incorrect entry in DIS slip does not amount to market manipulation as by itself, it does not affect the market forces of demand and supply. A trade practice would be unfair if it is unfair to the parties involved in the transactions or otherwise affects fairness and integrity in the markets. The wrong entry for reason of sale on a DIS slip, as in this case, has not been shown to have created unfairness for the parties engaged in the transaction. It is also not demonstrated as to whether the fairness or integrity of trading in DLFL is impacted by the wrong entry.

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

"The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities."

39. While the act of giving wrong reason for transfer of shares in a DIS slip may be considered to be deceitful, by itself, it has not been demonstrated as to how this act could induce another person to deal in securities. There is no inference in the

allegation that any person was induced to act in the manner that he did but for the inducement.

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

41. The third allegation against the Noticees is that they did not respond to the summons issued and delivered to them as illustrated in the table above. In this regard, I have perused the documents available on record and note that none of the Noticees responded to the summons during investigations. Further, the Noticees have also failed to respond to SCN and HN issued to them during the instant proceedings.

42. I note that in absence of any response from the Noticees, it is presumed that they have admitted the charge of violation of provisions as alleged in the case. In this regard, it is pertinent to note that the Hon'ble 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*". It is also pertinent to note that 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...*". Therefore, it can reasonably be presumed that the allegations made against them in regard to their failure of reply to summons have been admitted by the Noticees in this case. The material on record does not indicate anything to ex facie hold otherwise.

43. On the basis of documents available on records, I note that the aforesaid Noticees by not responding to summons failed to furnish bank statements/cash receipt/share bills, and other details in respect of their transactions; which would have provided SEBI, crucial and essential information for ascertaining the compliance status of the impugned transactions with the time frame for settlement as stipulated in Section 2(i)(a) of SC(R)A, 1956. Failure on their part to give reply to summons impeded the investigation, as it could not be ascertained as to whether the impugned transactions were carried out in in the manner stipulated in Section 2(i)(a) of SC(R)A and therefore, not in contravention of the provisions of section 13, section 16 & section 18 of SC(R)A, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013.

44. In view of the above, I find that **that Noticees failed to provide information to SEBI upon receipt of summons, and thereby violated Section 11C(2) and 11C(3) of SEBI Act.**

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

45. Since the violation of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013; and violation of Section 11C(2) and 11C(3) of SEBI Act has been established against Noticees, as brought out in the foregoing paragraphs, the Noticees are liable for monetary

penalty under Section 15A(a) of SEBI Act and 23H of SC(R)A which states as follows:

SEBI Act:

Penalty for failure to furnish information, return, etc.

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

(a) *to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

SC(R)A:

Penalty for contravention where no separate penalty has been provided-

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

46. While determining the quantum of penalty under 15A(a) of SEBI Act, and 23H of SC(R)A the following factors stipulated in Section 15J of the SEBI Act and 23J of the SCRA have to be given due regard:

SEBI Act

Factors to be taken into account by the adjudicating officer.

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.

Factors to be taken into account by the adjudicating officer

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

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

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

(c) the repetitive nature of the default.

47. I note that the material on record has not brought out any disproportionate gain made by the Noticees or loss caused to investors by the Noticees. I also note that while the summons were issued in 2019-20, the transactions pertain to the period 2013-14. In view of the above, taking into consideration facts and circumstances of the case and mitigating factors, I am of the view that a penalty of Rs.1,00,000/- each on Noticees under Section 15A(a) of SEBI Act and Rs.50,000/- each on Noticees under Section 23H of SC(R)A will be commensurate with the violations committed by the Noticees.

ORDER

48. After taking into consideration all the facts and circumstances of the case, in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, and section 23-I of the SC(R)A, 1956 read with Rule 5 of the SCR Adjudication Rules, I hereby impose the penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 15A(a) of SEBI Act for violation of Section 11C(2) and 11C(3) of SEBI Act, and Rs.50,000/- (Rupees fifty thousand only) under Section 23H of SC(R)A for violation of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000, SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013 on each

of the following Noticees Aurelian Suppliers Private Limited (“**Noticee 1”),** Mr. Prem Chand **("Noticee 2”),** and Tushar India Private Limited **(“Noticee 3”).**

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

50. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action – IV of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:
    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment –Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

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

DATE: October 18, 2022 **MANINDER CHEEMA**
PLACE: MUMBAI **ADJUDICATING OFFICER**