BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/S./2022-23/18173-18191]

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 No.	Name of Noticees	PAN
1.	Anukaran commercial Enterprise Limited	AABCA2578D
2.	Kushal Shah	AXPPS9103G
3.	Bhavanji Vora HUF	AADHB2575C
4.	Paresh Vora HUF	AAGHP4006F
5.	Jiten Vora HUF	AAAHV9089C
6.	Varsha Vora	AAEPB7941H
7.	Kankuben Vora	AAFPV0269D
8.	Arpita Vora	AAEPV7626D
9.	Bhavanji Vora	AAAPV3822F
10.	Paresh Vora	AAAPV3819J
11.	Jiten Vora	AAAPV3821G
12.	Kapoor Trader (Proprietary concern of Bhavanji Vora)	AAAPV3822F
13.	Vaibhav Enterprise (Proprietary concern of Paresh Vora)	AAAPV3819J
14.	Rajdeep Enterprise (Proprietary concern of Jiten Vora)	AAAPV3821G
15.	Raj Radhika Property Limited	AAECR0913Q
16.	Shri Manoj Shah	AGUPS7516D
17.	Paras Mehta	AAEPM1638C

18.	Faiyaz Rangwala	AADPR8710M
19.	Parag Mehta	AABPM3818R

In the matter of Anukaran Commercial Enterprise Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), was in receipt of references from Department of Income Tax alleging price manipulations in scrip of Anukaran Commercial Enterprises Limited (hereinafter referred to as '**Noticee 1/by name/ACEL/Company**) and use of Stock Exchange mechanism for generating bogus Long Term Capital Gain. Thereafter, SEBI conducted investigation in the matter of ACEL for the period January 01, 2012 to January 06, 2015 (hereinafter referred to as '**Investigation Period/IP'**). Based on investigation, SEBI observed certain violations of provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations I'**) read with Regulations 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations II**') and SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). The shares of the Company are listed at BSE Ltd (hereinafter referred to as "**BSE**").

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated December 29, 2020, SEBI appointed the undersigned as the Adjudicating Officer under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under:
    a. Section 15A(b) of the SEBI Act, the alleged violations of Regulation 13(4) and 13(4A) read with 13(5) of PIT Regulations I read with Regulation 12 of PIT Regulations II by Kushal Shah (hereinafter referred to as '**Noticee 2/by name'**) and Regulation 13(4A) read with 13(5) of PIT Regulations I by Parag Mehta (hereinafter referred to as '**Noticee 19/by name**') (hereinafter, the aforesaid violations are referred to as "**disclosure violations**").

b. Section 15HA of SEBI Act, the alleged violation of Sections 12A(a), (b), (c) of SEBI Act and Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations by (1) Bhavanji Vora HUF, (2) Paresh Vora HUF, (3) Jiten Vora HUF, (4) Varsha Vora, (5) Kankuben Vora, (6), Arpita Vora, (7) Bhavanji Vora, (8) Paresh Vora, (9) Jiten Vora, (10) Kapoor Trader (Proprietary concern of Bhavanji Vora), (11) Vaibhav Enterprise (Proprietary concern of Paresh Vora), (12) Rajdeep Enterprise (Proprietary concern of Jiten Vora), (13) Raj Radhika Property Limited, (14) Manoj Shah, (15) Paras Mehta and (16) Faiyaz Rangwala, (hereinafter referred to as '**Noticees 3 to 18'** or **'by name'**, respectively) and Noticees 1 & 2 (Collectively Noticees 1 to 18 are referred to as '**Noticees**').

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice dated August 03, 2021 (hereinafter referred to as '**SCN I**') and Show Cause Notice dated November 29, 2021 (hereinafter referred to as '**SCN II**') (both Show Cause Notices are collectively referred to as '**SCNs**') were issued to Noticees under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them under the provisions of Sections 15A(b) and 15HA of SEBI Act, as applicable, for the aforesaid violations alleged to have been committed by them.

4. The allegations levelled against Noticees 1 to 18 in the SCN I are as under:

A. ***ALLEGED VIOLATION OF SECTION 12A(a), (b), (c) OF SEBI ACT, READ WITH REGULATIONS 3(a), (b), (c), (d) and 4(1) OF PFUTP REGULATIONS BY NOTICEES***

a) *"Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received references from Department of Income Tax alleging price manipulations in scrip of Anukaran Commercial Enterprises Limited (hereinafter referred to as '**Noticee 1/by name/ACEL/Company**) and use of Stock Exchange mechanism for generating bogus Long Term Capital Gain."*

b) *"The Company made preferential allotment on March 02, 2012, and issued 50,00,000 shares of face value of Rs. 10/- at Rs. 30/- (including premium of Rs. 20/-) to 47 non-promoter entities. The shares of the company are listed on BSE Ltd. (hereinafter referred to as '**BSE**')."*

c) *"SEBI observed that Noticee 1 i.e. Company had transferred Rs. 3.03 Crore to Noticee 12, Rs. 3.20 Crore to Noticee 13 and Rs. 4.24 crores to Noticee 14. SEBI further observed that out of this, Noticees 12 to 14 transferred moneys to Noticees 3 to 11, as depicted in the previous paragraphs above. SEBI further observed that Noticees 3 to 11 transferred the aforesaid funds to the designated bank account of Company i.e. Noticee 1, as preferential allotment proceeds in respect of preferential allotment dated March 02, 2012."*

d) *"Noticee 1 in its reply to SEBI vide mail dated August 16, 2019, stated that it had transferred the funds to Noticee 14, i.e., M/s Rajdeep Enterprise, Noticee 12, i.e., M/s Kapoor Traders and Noticee 13, i.e., M/s Vaibhav Enterprise during the period, January 2012 to March 2012. Noticee 1 also informed that the funds were transferred under MOUs dated 12/01/2012 with Noticee 12, dated 12/01/2012 with Noticee 13, dated 14/10/2011 with Noticee 14 respectively for the purpose of bidding for tenders of infrastructure job works like road, storm water drains with Municipal Corporation of Greater Mumbai."*

e) *"SEBI observed from the bank account statements of Noticees 12 to 14 that said monies were returned in the month of March, 2013 as submitted by Noticee 1 in its aforesaid letter to SEBI. SEBI further observed from the bank statements of Noticees 12 to 14 that immediately prior to the return of the funds by Noticee 12, 13 & 14 to Noticee 1, they had received funds from Noticee 15, who, in turn had received the said funds from Noticee 1."*

f) *"In view thereof, it is alleged that Noticee 1 had provided funds to nine preferential allottees i.e. Noticees 3 to 11, to enable those allottees to subscribe to its preferential allotment dated March 02, 2012. In view thereof, it is further alleged that Noticees 12 to 15 acted as conduits and facilitated Noticee 1 in funding the preferential allottees by allowing their bank accounts for routing the funds to the preferential allottees, i.e., Noticees 3 to 11. It is also alleged that Noticee 3 to 11, who had receive funds from Noticee 1 and used the same for the purpose of purchase of shares allotted to them on a preferential basis by Noticee 1 on March 02, 2012…it is alleged that the all the non-independent directors of Noticee 1 i.e. Noticee 2, Noticees 16 to 18, were involved in day to day business of the company including the preferential allotment process."*

g) *"it is alleged that the company i.e. Noticee 1, along with its management i.e. Noticee 2 & Noticees 16 to 18 and the nine preferential allottees i.e. Noticees 3 to 11 along with the conduits i.e. Noticees 12 to 15 who received such funds from the company, are involved in this fraud. Thus, it is alleged that Noticees 1 to 18 have violated Sections 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) & 4(1) of PFUTP Regulations... The aforesaid alleged violation, if established, makes the Noticees liable for monetary penalty under Section 15A(b) and 15HA of SEBI Act."*

B. ALLEGED VIOLATION OF REGULATION 13(4) AND 13(4A) READ WITH 13(5) OF PIT REGULATIONS I BY NOTICEE 2

a) *"SEBI observed that Noticee 2, who was promoter-cum-director of the Company, sold 49,010 shares of the Company during the IP. The Noticee 2, being a promoter and director of the Company was required to make disclosures in terms of 13(4) and 13(4A) read with 13(5) of PIT Regulations in respect of the aforesaid transaction. The details are as under:*

Name of the promoter entity	Date of transaction	Holding before transaction (number of shares and %)	Acquired/sale (number of shares)	Holding Post Transition (number of shares and %)	Disclosure required under PIT Regulations	Required Date of Disclosure to the Company and the Exchange	Actual date of disclosure to the exchange	Actual date of disclosure to the Company	Remarks , if any
Kushal Pravin Shah	07/02/2014	7257405 (3.75)	Sold (49010) (0.03%)	7208395 (3.72%)	13(4) & 13(4A) of PIT Regulations	11/02/2014	Not submitted	Not submitted	Not disclosed u/r 13(4), 13(4A) of PIT Regulations

"

b) *"However, BSE vide its e-mail dated August 09, 2019 replied that it had not received any disclosure under PIT Regulations from Noticee 2 with respect to sale of 49,010 shares of ACEL by him on February 07, 2014. Further, with regard to the aforesaid sale, the company did not mention anything in its reply letter dated September 27, 2019 to SEBI. Thus, it is alleged that for the change in his shareholding on February 07, 2014, Noticee 2 failed to file any disclosures to the company as well as to BSE as required under Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015."*

c) *"In view of the above, it is alleged that the Noticee 2 has violated the provisions of Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations* *read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015. The aforesaid alleged violation, if established, makes Noticee 2 liable for monetary penalty under Section 15A(b) of SEBI Act."*

5. The allegations levelled against Noticee 19 in SCN II are as under:

A. ***ALLEGED VIOLATION OF 13(4A) READ WITH 13(5) OF PIT REGULATIONS I***

a) *"It is alleged in SCN II that Noticee 19 transacted in the shares of the company on two (2) days through stock exchange mechanism, which required him to make necessary disclosures under PIT Regulations I, however Noticee 19 failed to make the requisite disclosures. The details of the impugned transactions and the compliance status of the same, as per the SCN, are as follows:*

Date of transaction	**Holding before transaction (number of shares and %)**	**Acquired/sale (number of shares and %)**	**Holding Post Transition (number of shares and %)**	**Disclosure required under PIT Regulations I**	**Required Date of Disclosure to the Company and the Exchange**	**Actual date of disclosure to the exchange**	**Actual date of disclosure to the Company**
03/02/2012	188734 (3.28%)	Sold (50000) (0.87%)	138734 (2.41%)	Reg. 13(4A)	07/02/2012	18/02/2012	18/02/2012
10/02/2012	138734 (2.41%)	Sold (138734)	NIL	Reg. 13(4A)	14/02/2012	18/02/2012	18/02/2012

"

b) *"It was observed from the above table that during the IP, Noticee, who was a promoter of ACEL, sold his entire holding i.e. 208374 shares (around 3.62% of the total share capital of ACEL) in three tranches i.e. on 20/01/2012, 03/02/2012 and 10/02/2012. In terms of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, Notices was required to disclose change in shareholding exceeding Rs. 5 lakhs or 25,000 shares, whichever is lower, within 2 working days of such transactions to the company and BSE".*

c) *"Therefore, in respect of sale of 50,000 shares on 03/02/2012 and sale of 1,38,374 shares on 10/02/2012, Noticee, being a promoter of ACEL, was required to make requisite disclosures in terms of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, to the company and BSE within two working days of such transactions."*

d) *“In this regard, information was sought from BSE regarding details about the disclosure(s) made under PIT Regulations by the promoters of the ACEL during the IP. In response to the same, BSE, vide e-mail dated 16/07/2019, informed SEBI that the promoter, Parag Mehta, had submitted the disclosures under PIT Regulations. Copies of the replies of BSE and disclosures are enclosed at* ***Annexure-3.*** *From the aforesaid details, it was observed that for sale of shares on 03/02/2012 and 10/02/2012, Noticee filed the disclosures under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations on 18/02/2012 i.e. with a delay of 10 trading days from the sale of shares on 03/02/2012 and with a delay of 4 trading days from the sale of shares on 10/02/2012.”*

e) *“Thus, it is alleged that for the change in his shareholding beyond the threshold limits on February 03, 2012 and February 10, 2012, Noticee filed delayed disclosures under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015, to the company as well as to BSE.”*

6. SCN I was sent to the Noticees through Speed Post Acknowledgement Due (SPAD) and Digitally signed email dated August 03, 2021, and was duly served on Noticees. Noticees were given fifteen (15) days’ time to make submissions in respect of the allegations made in the SCN. Thereafter, Noticees 1 and 2, vide emails dated September 01, 2021 and October 01, 2021, respectively, requested for inspection of documents which were referred to and relied upon in the SCN I and they were granted inspection of documents sought, on June 02, 2022. Thereafter, Noticees 1 and 2 made specific request vide emails dated June 03, 2022, seeking a copy of the Investigation Report in the matter. The said request was acceded to and a copy of the Investigation Report was provided to Noticees 1 and 2 vide email dated June 06, 2022. Thereafter, Noticees 1 and 2 submitted their replies vide letter dated June 20, 2022 vide email dated June 23, 2022, and letter dated July 29, 2022. Thereafter, vide Hearing Notice dated June 23, 2022, which was duly served through SPAD and Digitally signed email, Noticees 1 and 2 were granted an opportunity of hearing which was scheduled on June 30, 2022, to be conducted online through videoconferencing on the Webex platform. Noticees 1 and 2, vide email dated June 29, 2022, sought a short adjournment of the aforesaid hearing. On the basis of the aforesaid request, the scheduled hearing was adjourned to July 08, 2022, and communicated to them vide email dated June 29, 2022. Noticees 1 and 2 availed the opportunity of hearing, being represented by RV Legal, their Authorised Representative (“**AR**”) on the scheduled date. During the hearing,

Noticees made their submissions, reiterating their earlier replies dated June 20, 2022 and June 29, 2022. Noticee 1 requested for time to make additional submissions in the matter and the said request was acceded to. Subsequently, Noticee 1 filed its additional submissions vide letter dated July 13, 2022.

7. Noticees 3 to 14, vide emails dated August 13, 2021, sought extension of time to reply to SCN I. Subsequently vide email dated August 18, 2021, Noticee 10 submitted the copy of Death Certificate of Noticee 8 and requested extension of time to submit reply to SCN I. Noticees 3 to 14 submitted their replies vide their common letter dated October 16, 2021. Thereafter, vide Hearing Notice dated May 24, 2022 which was duly served on Noticees 3 to 14 through SPAD and Digitally signed email, Noticees 3 to 14 were granted an opportunity of hearing on June 08, 2022. Noticees 3 to 14 sought inspection of documents vide their letter dated May 30, 2022, which was acceded to and they were provided inspection of documents, including the Investigation Report and all annexures to the SCN I, on June 22, 2022. Thereafter, Noticees 3 to 14 submitted their reply vide email and letter dated July 09, 2022. Vide Hearing Notice dated June 28, 2022, which was duly served on Noticees 3 to 14 through SPAD and Digitally signed email, Noticees 3 to 14 were granted another opportunity of hearing on July 15, 2022 to be conducted online through videoconferencing on the Webex platform. Mr. Kunal Katariya, AR of Noticees 3 to 14, attended the scheduled hearing on July 15, 2022. During the hearing, the AR reiterated the earlier submissions made by Noticees 3 to 14 vide letters dated October 16, 2021 and July 09, 2022. Subsequent to the hearing, Noticees 3 to 14 also filed additional copies of letters which had been earlier submitted by them and are part of the extant record in the matter.

8. Noticee 15 had requested for extension of time to file reply to SCN I vide emails dated August 13, 2021 and September 06, 2021. Vide SEBI’s email dated September 08, 2021, the aforesaid request was acceded to and Noticee 15 was granted time to file reply to SCN I on or before September 22, 2021. Thereafter, vide Hearing Notice dated May 24, 2022, which was duly served on Noticee 15 through SPAD and Digitally signed email, Noticee 15 was granted an opportunity of hearing as well as an opportunity of submitting its reply to the SCN I on June 08, 2022. Subsequently, Noticee 15 requested for a short adjournment in the matter vide email dated June 08, 2022. The aforesaid request for adjournment was acceded to and the matter was scheduled for hearing on June 16, 2022. Thereafter, the Noticee again requested for another adjournment vide email dated June 16, 2022. In view of the same, vide SEBI’s email dated June 21, 2022, Noticee 15 was granted a final opportunity of hearing on July 12, 2022 to be conducted online through

videoconferencing on the Webex platform. Noticee 15 submitted its reply vide email and letter dated July 11, 2022. Noticee 15 attended the aforesaid hearing on the scheduled date, being represented by RV Legal, the AR of Noticee 15. During the hearing, the AR reiterated the earlier reply filed by Noticee 15 on July 11, 2022.

9. Noticee 16 filed its reply to the SCN I vide letter dated August 20, 2021. Thereafter, vide Hearing Notice dated May 24, 2022, which was duly served on Noticee 16 through SPAD and Digitally signed email, the Noticee was granted an opportunity of hearing which was scheduled on June 08, 2022. Noticee 16 attended the scheduled hearing, conducted online through videoconferencing on the Webex platform, being represented by Mr. Kunjal Dalal, the AR of Noticee 16. During the hearing, the AR reiterated the submissions made in the reply of Noticee 16 dated August 20, 2021.

10. Noticee 17, vide email dated August 13, 2021, requested for extension of time to submit reply to SCN I. Thereafter, vide Hearing Notice dated May 24, 2022 which was duly served on Noticee 17 through SPAD and Digitally signed email, the Noticee was granted an opportunity of hearing on June 08, 2022. However, Noticee 17 failed to appear on the scheduled date of hearing. Thus, vide Hearing Notice dated June 23, 2022, Noticee 17 was granted a final opportunity of hearing on July 12, 2022 and of submitting a reply to SCN I if any. Noticee 17 furnished its reply to SCN I vide email dated July 11, 2022 and enclosed letter dated July 10, 2022. Noticee 17 attended the aforesaid hearing on the scheduled date, conducted online through videoconferencing on the Webex platform, being represented by RV Legal, the AR of Noticee 17. During the hearing, AR reiterated the submissions made in the reply of Noticee 17 vide letter dated July 10, 2022.

11. Noticee 18, vide email dated October 16, 2021 and enclosed letter dated August 20, 2021, submitted his reply to the SCN I. Thereafter, vide Hearing Notice dated May 24, 2022 which was duly served on Noticee 18 through SPAD and Digitally signed email, Noticee 18 was granted another opportunity of hearing on June 08, 2022. Noticee 18 requested for adjournment of the scheduled hearing vide email dated June 07, 2022. Subsequently, vide SEBI's email dated June 08, 2022, Noticee 18 was granted another opportunity of hearing on June 16, 2022. However, Noticee failed to appear for hearing on the scheduled date. Thereafter, vide SEBI's email dated June 22, 2022, Noticee 18 was granted a final opportunity of hearing on July 12, 2022. Noticee 18 requested for another adjournment vide email dated July 13, 2022 and the said request was acceded to and Noticee 18 was granted an opportunity of hearing on July 14, 2022, to be conducted online through videoconferencing on the Webex platform. Noticee 18 attended the hearing, being

represented by Mr. Chidanand Kapil and Ms. Shilpa Kapil, the ARs of Noticee 18. During the hearing, the ARs reiterated the earlier submissions of Noticee 18 made vide letter dated August 20, 2021.

12. The SCN II was duly served on Noticee 19 by Hand Delivery and Digitally Signed Email dated December 06, 2021. Noticee 19 failed to submit any reply within 15 days as stipulated in the SCN II. Thereafter, vide Hearing Notice dated June 23, 2022, which was duly served on Noticee 19 through SPAD and Digitally signed email, Noticee 19 was granted an opportunity of hearing on June 30, 2022. Subsequently, Noticee 19 requested for adjournment of the aforesaid scheduled hearing and extension of time for filing reply vide email dated June 30, 2022. Accordingly, vide email dated July 01, 2022, Noticee 19 was granted a final opportunity of hearing on July 12, 2022 to be conducted online through videoconferencing on the Webex platform. Noticee 19 furnished its reply to SCN II vide email dated July 11, 2022 and enclosed letter dated July 10, 2022. Noticee 19 attended the hearing, being represented by RV Legal, the AR of Noticee 19. During the hearing, the AR reiterated the submissions made in the reply dated July 10, 2022 by Noticee 19.

13. The relevant extracts of the submissions made by Noticees 1 and 2 vide replies dated June 20, 2022, June 29, 2022 and additional submissions July 13, 2022 are given hereunder:-

1. <u>Preliminary Submissions</u>

i *"The allegations framed in the SCN relate to the preferential allotment which transpired in the year 2012, which was more than 9 years since the issuance of the SCN. The SCN does not provide any explanation to justify the inordinate delay in initiation of proceedings against Noticee No. 1. It is respectfully submitted that the initiation of proceedings by SEBI after such a long delay, severely prejudices the ability of Noticee No. 1 to put up an adequate response to the allegations made by the SEBI."*

ii *"In support of its contentions, Noticees placed reliance upon the judgements of the Hon'ble Supreme Court of India in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim and the judgement of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of HB Stockholdings Ltd. v. SEBI, Sanjay Soni v. SEBI, Libord Finance Ltd. v. Whole Time Member, SEBI, and Rajeev Bhanot and Ors v. SEBI"* iii *"SEBI shared the investigation report in redacted form. Interestingly, the investigation report is mostly redacted with no text visible. As a result, the sharing of investigation report is nothing but lip service to natural justice."*

iv *"The allegations in the SCN appear to be superficial and without any basis. SEBI merely makes blanket statements without providing any reasons or factual data for coming to the conclusion. The SCN has failed to draw any connection between Noticee No. 1 and the preferential allottee. Even the funds given to Noticee Nos. 12 to 14 (through whom the SEBI alleges that Noticee No. 1 gave funds to the preferential allottee) were returned to Noticee No. 1. Thus, the charge of funding the allottee is not maintainable. The so-called irregularities alleged in the SCN do not point to the facts or evidence on the basis of which such draconian conclusions are being drawn by the SEBI. It is respectfully submitted that in absence of a specific charge being spelt out with respect to the alleged non-compliance of the SEBI laws, the SCN stands vitiated and is liable to be set aside."*

v *In view of what is stated above, it is submitted that on the ground of delay alone, it is just and equitable that the SCN be quashed and set aside and the present proceedings be dismissed."*

2. Submissions regarding the alleged violation of Sections 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) & 4(1) of PFUTP Regulations

i *"Noticee Nos. 12 to 14 were paid a total INR 3,03,50,500/-, INR 3,19,99500/- and INR 4,24,00,000/-, respectively by Noticee No. 1 for legitimate purpose. Noticee No. 1 wanted to apply for municipal tenders . Thus, Noticee No. 1 engaged the services of Noticee Nos. 12 to 14 for obtaining these tenders. Noticee Nos. 12 to 14 would act as facilitators. In this regard, Noticee No. 1 entered into memorandum of understanding with each of Noticee Nos. 12 to 14 separately and kept funds mentioned hereinabove with them."*

ii *"These funds were not meant for paying for Noticee No. 1 to fund its own preferential allotment. As such, from the records provided by SEBI, it appears that (a) Noticee No. 12 provided a total of approximately INR 1,14,00,000/- to Noticee Nos. 3, 7 and 9; (b) Noticee No. 13 provided a total of approximately INR 1,24,50,000/- to Noticee Nos. 4, 8 and 10; and (c) Noticee No. 14 provided a total of approximately INR 1,14,00,000/- to Noticee Nos. 5, 6 and 11."*

iii *"There is a huge difference between the funds given to Noticee No. 12 to 14 by Noticee No. 1 and onward lending by Noticee Nos. 12 to 14 to Noticee Nos. 3 to 11. This shows that there was no matching of fund transfers between the parties.*

In any event, Noticee Nos. 12 to 14 repaid the monies to Noticee No. 1 as the tenders had failed… the SCN errs in holding that Noticee No. 1 funded its own preferential allotment by transfer funds to Noticee Nos. 3 to 11 through Noticee Nos. 12 to 14."

iv *"As such, the ICDR Regulations does not prescribe any prohibition for a company to fund its own preferential allotment. Thus, it is not clear as to how the allegation in the SCN results in violation of PFUTP Regulations. In the circumstance, this SCN is ex facie without any basis and due to misinterpretation of the PFUTP Regulations. Accordingly, the present proceedings ought to be dropped."*

3. <u>Submissions regarding the alleged violation of Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations I:-</u>

i "*With respect to the allegation that Noticee No. 2 failed to make disclosures under Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations for sale of 49010 (0.03%) shares of the Company on February 7, 2014.*"

ii *"Noticee No. 2 would like to bring to your notice that disclosure in terms of Regulations 13 (4) and 13(4A) read with Regulation 13(5) of PIT Regulations was filed by Noticee No. 2 to BSE Limited and the Company once he became aware of violation."*

iii *"It is respectfully submitted that the disclosure lapse was purely a technical and venial breach. As such, no harm has been caused to any of the investors or securities market. In any event, the disclosure violation, if any, had occurred more than 7 years ago. Thus, this belated action against Noticee No. 2 suffers from delay and laches. In the circumstance, it is humbly submitted that the Learned AO considers the delay before imposing monetary penalty. The Hon'ble SAT in multiple cases have held that no monetary penalty or minimum monetary penalty is attracted in case of delay in initiation of proceedings for alleged disclosure violation."*

4. **<u>Submissions regarding Mitigating factors</u>**:-

i "*Noticees No. 1 and 2 have not taken the present regulatory proceedings in a nonchalant manner. The Company is not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law. Noticees No. 1 and 2 have not acted in defiance of law. The actions of Noticee No. 1 and 2 are not in any manner detrimental to the securities market and Noticee No. 1 and 2 have* *conducted all their operations with integrity and in the best interest of its shareholders.*"

- ii "*Noticee No. 1 and 2 have not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise. Further, no loss has been caused to any investor or group of investors as a result of the alleged default. In fact, the present proceeding is the first time that a regulator has questioned Noticee No. 1.*"
- iii "*Any monetary penalty will have a catastrophic effect on Noticee No. 1 and its public shareholders, including a possibility of shutting down operations thereby, causing loss of employment and monetary losses to the public shareholders. Thus, for these reasons alone no penalty is called for*."
- iv "*It is further submitted that the discretion granted by Parliament in terms of Section 15J of the SEBI Act only means that there has to be a reasonable exercise of it, rather than mechanically impose penalty regardless of the circumstances. Accordingly, the Hon'ble Supreme Court's ruling in SEBI v Bhavesh Pabari squarely applies to the present case. Accordingly, the SCN ought to be discharged vis-à-vis Noticees No. 1 and 2*."

14. The relevant extracts of the submissions made by Noticees 3 to 14 vide replies dated October 18, 2021 and July 09, 2022 are given hereunder:-

1. <u>Preliminary Submissions</u>

- i *"The SCN ought to be quashed and set aside and the present proceedings ought to be dismissed on account of the gross and inordinate delay in the issuance of the SCN."*
- ii *"In support of this submission reliance was placed on the judgements of Hon'ble SAT in the matters of Ashlesh Gunvantbhai Shah vs. SEBI."*

2. <u>Submissions regarding the alleged violation of Sections 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) & 4(1) of PFUTP Regulations</u>

- iii *"With respect to the contents of paragraph 3 of the SCN the same correctly states that the preferential allotment was done to 47 non promoter entities. The Noticees submit that they are being singled out of a large group for no reason and therefore the SCN is liable to be dropped on the grounds of parity."*

iv *“The Noticees applied for the preferential allotment of ACEL as they believed that ACEL had good growth prospects and the same provided a good business opportunity.”*

v *“It is reiterated that Vora Family's primary business is working as civil contractors. All the proprietary concerns, i.e. Noticee Nos. 11 to 13 are "AA" category registered contractors with MCGM and have been doing civil contract work with MCGM for almost 3 decades. In fact, ACEL approached Vora family for Joint Venture, Noticee Nos. 12 and 13 were already working with MCGM in different wards of Mumbai, on a tender awarded by MCGM for Civil works contract for building repair works and it's allied work including slum improvement work etc.”*

vi *“MOU was entered into between Noticee No.13 and ACEL on 14/10/2011, whereby ACEL agreed to invest in the business of executing works for MCGM as per tenders… This clearly shows that the purpose of making payment by ACEL to Noticee 11 to 13 was towards the MOU and not for any preferential allotment of shares. For the same purpose, MOUs were also signed between ACEL and Noticee No. 11 and 12 on 12.01.2012 and accordingly ACEL started paying on account amounts to Noticee Nos. 11 and 12 towards the purpose of the MOUs. Since the exact payment to be paid could only be quantified at the time of the tender, no specific amount could be written in the MOU and amounts were received by the Vora family from time to time on the basis of EMD and ASD in the earlier tender so as to secure the investment from ACEL.”*

vii *“Noticees 3 to 14 have furnished copy of proof of payment of Earnest Money Deposit and Security Deposit, copy of sample work order, letter to MCGM enclosing copy of the Memorandums of Understanding (‘**MOUs**’), copy of probable list of contractors, copy of Joint Representation for Notification of Award, copy of Show Cause Notice from MCGM for not starting work and reply to the same, copy of joint representation for refund and copy of proof of refund of security deposit.”*

viii *“Noticees have contended that they had applied for tenders of MCGM in pursuance of the MOUs. I note that although Noticees 1, 2 and Noticees 3 to 14 have admitted that the Company had transferred the funds as alleged in the SCN, they have denied the allegation that such funds were intended for the purpose of subscription to the preferential allotment on the grounds that the quantum of funds received from the Company by Noticee 12, 13 and 14 was much greater than the value of shares issued to allottee Noticees in the Preferential allotment.”*

ix *“The transactions which took place between Noticees 12 to 14 and the allottee Noticees were separate transactions in which there was no role played by the Noticees 1 and 2.”*

x *"The funds transferred to Noticees 12 to 14 were subsequently returned to the Company on account of the fact that the eventually the tender was not finally awarded to MCGM. In this regard Noticees 3 to 11 have submitted that ACEL had sought refund of the entire amount transferred to Noticees 12, 13 and 14. Thus, it has been contended that Noticees 12 and 13 had borrowed funds as a loan from Noticee 14 and thereafter, returned the funds which were earlier received from the Company."*

xi *"It is respectfully submitted that the Noticees 11 to 13 had refunded the entire moneys received from ACEL towards the MOU. If the allegation of SEBI of ACEL financing purchase of its share was true then the Noticees 11 to 13 would have refunded only the moneys received over and above the purchase price of shares paid by Noticees."*

15. The relevant extracts of the submissions made by Noticee 15 vide reply dated July 11, 2022 are given hereunder:-

1. <u>Preliminary Submissions</u>

i *"At the outset, the Show Cause Notice issued by SEBI suffers from delay and latches which is against the principal of natural justice and has caused prejudice to the Noticee. The impugned transactions pertain to March 2012 .Whereas the SCN is issued on 03.08.2021 and hence there is a delay of more than 9 years in issuance of SCN."*

ii *"In support of this contention reliance was placed on judgement of Hon'ble Supreme Court in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim [(1997) 6 SCC 71] and judgements of Hon'ble Securities Appellate Tribunal ("**Hon'ble SAT**") in the matter of HB Stockholdings Ltd. vs. SEBI (Order Dated August 27, 2013), Parag Sarda vs. SEBI (Order dated November 12, 2020), Sanjay Soni vs. SEBI (Order dated November 14, 2019), Libord Finance Ltd. v. Whole Time Member, SEBI (Order dated March 3, 2008) and Rajeev Bhanot v. SEBI (Order dated July 09, 2021)."*

2. <u>Submissions regarding the alleged violation of Sections 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) & 4(1) of PFUTP Regulations</u>

i. *"The Notiee states that at the further outset, each and every statement in allegation is denied in toto The SCN only makes broad and loose statements in* *relation to violations by Noticee. It is impossible to decipher the underlying basis on which the SCN attempts to allege wrongdoings at paragraph 5.13, 5.15 & 5.18. The allegation suffers from the vice of being ambiguous and vague and not supported by any documents/ information. In this regard, compelling the Noticee to respond to the said allegation is gross violation of the basic principles of natural justice."*

ii. *"The Noticee submits that Noticee is engaged in the business of Real Estate Development & Construction Business/ was. Noticee had received INR 11, 75, 00,000 from Noticee 1 namely Anukaran Commercial Enterprise Limited which was to be utilized towards acquisition and development of a plot situated at TPS Scheme V of prabhat colony, Santacruz (East), Mumbai 400 055 for which Noticee paid an amount of INR 51, 00,000 as a token payment towards acquisition of property whose worth was approximately 20 Cr. However, the deal did not materialize on account of non-submission of certain documents by the seller Ms. Vandana Joshi."*

iii. *"Noticee states that it had temporarily deployed funds as a loan to Noticee 12 viz., Kapoor Traders, Noticee 13 viz., Vaibhav enterprise and Noticee 14 viz., Rajdeep Enterprises amounting to INR 3,00,00,000, INR 3,00,00,000 and INR 5,75,00,000 respectively from its Bank of Baroda Account (A/c no. 08970200001449) as funds were lying idle in the Bank Account of the Noticee. These funds were given out in order to gain interest from the funds lying with the Noticee. The Noticee was not aware about the further deployment of these funds and their uses and the Noticee cannot be held liable. Noticee would like to bring to your notice that the amount was repaid by Noticee 12, 13 and 14 with interest in the month of May, June and July 2013. Noticee has not provided any funding or acted as a conduit w.r.t the preferential allotment as alleged in the SCN."*

3. Submissions regarding Mitigating factors:-

i. *"Noticee states that there has been no violation of securities law by the Noticee and SEBI has no jurisdiction on our transactions. Noticee further states that the transactions were genuine and there is no fraud on part of the Noticee."*

ii. *"Noticee has not taken the present regulatory proceedings in a nonchalant manner. The Company is not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law. Noticee has not acted in defiance of law. The actions of Noticee are not in any manner detrimental to the securities market* *and Noticee has conducted all their operations with integrity and in the best interest of its shareholders.”*

iii. *“Noticee has not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise. Further, no loss has been caused to any investor or group of investors as a result of the alleged default. In fact, the present proceeding is the first time that a regulator has questioned Noticee.”*

iv. *“Any monetary penalty will have a catastrophic effect on Noticee and its public shareholders, including a possibility of shutting down operations thereby, causing loss of employment and monetary losses to the public shareholders. Thus, for these reasons alone no penalty is called for.”*

v. *“It is further submitted that the discretion granted by Parliament in terms of Section 15J of the SEBI Act only means that there has to be a reasonable exercise of it, rather than mechanically impose penalty regardless of the circumstances. Accordingly, the Hon’ble Supreme Court’s ruling in SEBI v Bhavesh Pabari squarely applies to the present case. Accordingly, the SCN ought to be discharged vis-à-vis Noticee.”*

16. The relevant extracts of the submissions made by Noticee 16 vide reply dated August 20, 2021 are given hereunder:-

1. <u>Submissions regarding the alleged violation of Sections 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) & 4(1) of PFUTP Regulations</u>

i. *“I was associated as Non Executive director of ACEL during the period 08/09/2009 to 03/07/2014. I hold 16,800 equity shares of Rs. 10/- each, since 2009-10. My holding was increased to 18,14,400 equity share of Rs. 01/- each on account of Bonus and Split of shares by the company. I have not sold or acquired any shares of company other than what is stated above. I was not allottee in the Preferential allotment of shares by the company.”*

ii. *“It appears from the observations made in paragraph 5.17 of the notice that the notice has been issued to me on the grounds that, since I have attended all the board meetings of ACEL during the Financial Year 2011-12 I become the part of the management and liable for alleged violation.”*

iii. *“At the outset it is denied that as Non Executive Director of the company or any other capacity I was aware of the entries in the books of Allottees to Preferential Allotment narrated in the Show Cause Notice. The Notice no where gives any* *evidence regarding my involvement in the transactions among the other Noticees. As a Director of ACEL while considering the preferential Allotment due care was taken that the provisions of the companies act and SEBI regulations was complied with. It was also ensure that the funds have been received by ACEL from the accounts of the respective allottees. It is on record that the funds have been received by the company against which the allotment has been made. It was beyond the scope of directors to verify the bank accounts of the applicants and to trace the source of funds. No adverse remark were made by the statutory auditors or by company secretary in various returns filed with the regulators. Under the circumstances I cannot behold responsible for any alleged violations in which I am not the party and I was not aware of. A Non Executive director cannot be considered as part of management of the company only because he sincerely attend all the board meetings of the company during the year."*

iv. *"It is noticed that the preferential allotment of 5000000 shares of Rs. 10/- each was made to 47 allottees and the irregularities in funding of allotment has been alleged in respect of 09 allottees, who have been allotted 1180000 equity shares. The allotment was considered by the board for 47 allottees and no irregularities have been found in respect of 39 allottees. The undersigned has relied upon the books of entries and documents produced before him for agreeing to the preferential allotment. There was no necessity for inquiry about the source of funding for 47 allottees including 9 allottes against whom the allegations have been made. Merely by remaining present in the board meeting it cannot be concluded that the undersigned was engaged in any act or practice amounting to fraud upon any person in relation to issue of securities and it is therefore denied that the undersigned has not violated any provisions of SEBI act or PFUTP regulations as per the show cause notice issued."*

17. The relevant extracts of the submissions made by Noticee 17 vide reply dated July 10, 2022 are given hereunder:-

1. <u>Preliminary Submissions</u>

i *"The SCN ought to be quashed and set aside and the present proceedings ought to be dismissed on account of the gross and inordinate delay in the issuance of the SCN."*

ii *"In support of this contention reliance was placed on judgement of Hon'ble Supreme Court in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai*

*Ibrahim [(1997) 6 SCC 71] and judgements of Hon'ble Securities Appellate Tribunal ("**Hon'ble SAT**") in the matter of HB Stockholdings Ltd. vs. SEBI (Order Dated August 27, 2013), Parag Sarda vs. SEBI (Order dated November 12, 2020), Sanjay Soni vs. SEBI (Order dated November 14, 2019), Libord Finance Ltd. v. Whole Time Member, SEBI (Order dated March 3, 2008) and Rajeev Bhanot v. SEBI (Order dated July 09, 2021).."*

2. **<u>Submissions regarding the alleged violation of Sections 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) & 4(1) of PFUTP Regulations</u>**

i. "*SEBI has not demonstrated the exact role or involvement of Noticee in relation to the alleged violations in the SCN. Thus it appears that SEBI has proceeded against Noticee only on account of him being the Executive Director of Noticee No. 1 at the relevant time under the principle of vicarious liability. Reliance is placed upon the judgements of Hon'ble Supreme Court in Sunil Bharti Mittal v. Central Bureau of Investigation and Chintalapati Raju v. SEBI*."

ii. *"Noticee states that Noticee Nos. 12 to 14 were paid in respect of tenders. Noticee No. 1 wanted to apply for municipal tenders. These funds were not meant for paying for Noticee No. 1 to fund its own preferential allotment. As such, from the records provided by SEBI, it appears that (a) Noticee No. 12 provided a total of approximately INR 1,14,00,000/- to Noticee Nos. 3, 7 and 9; (b) Noticee No. 13 provided a total of approximately INR 1,24,50,000/- to Noticee Nos. 4, 8 and 10; and (c) Noticee No. 14 provided a total of approximately INR 1,14,00,000/- to Noticee Nos. 5, 6 and 11."*

iii. *"There is a huge difference between the funds given to Noticee No. 12 to 14 by Noticee No. 1 and onward lending by Noticee Nos. 12 to 14 to Noticee Nos. 3 to 11. This shows that there was no matching of fund transfers between the parties. In any event, Noticee Nos. 12 to 14 repaid the monies to Noticee No. 1 as the tenders had failed… the SCN errs in holding that Noticee No. 1 funded its own preferential allotment by transfer funds to Noticee Nos. 3 to 11 through Noticee Nos. 12 to 14."*

iv. *"As such, the ICDR Regulations does not prescribe any prohibition for a company to fund its own preferential allotment. Thus, it is not clear as to how the allegation in the SCN results in violation of PFUTP Regulations. In the circumstance, this SCN is ex facie without any basis and due to misinterpretation of the PFUTP Regulations. Accordingly, the present proceedings ought to be dropped."*

18. The relevant extracts of the short submissions made by Noticee 18 vide reply dated August 20, 2021 are given hereunder:-

1. **<u>Submissions regarding the alleged violation of Sections 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) & 4(1) of PFUTP Regulations</u>**

i "*In this regard it is respectfully submitted that I, Mr. Faiyaz Rangwala was appointed as Executive Director in the company but I had never involved in any of the day to day transactions of the company nor in the preferential allotment process of the company.*"

ii "*Even no preferential allotment was made to me even such issued of preferential shares was not in my knowledge.*"

iii "*I have never attended the Board Meetings and no document was signed by me.*"

19. The relevant extracts of the submissions made by Noticee 19 vide reply dated July 10, 2022 are given hereunder:-

1. **<u>Preliminary Submissions</u>**

i *"The SCN ought to be quashed and set aside and the present proceedings ought to be dismissed on account of the gross and inordinate delay in the issuance of the SCN."*

ii *"In support of this contention reliance was placed on judgement of Hon'ble Supreme Court in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim [(1997) 6 SCC 71] and judgements of Hon'ble Securities Appellate Tribunal ("**Hon'ble SAT**") in the matter of HB Stockholdings Ltd. vs. SEBI (Order Dated August 27, 2013), Parag Sarda vs. SEBI (Order dated November 12, 2020), Sanjay Soni vs. SEBI (Order dated November 14, 2019), Libord Finance Ltd. v. Whole Time Member, SEBI (Order dated March 3, 2008) and Rajeev Bhanot v. SEBI (Order dated July 09, 2021)."*

2. **<u>Submissions regarding the alleged violation of Regulations 13(4A) read with Regulation 13(5) of PIT Regulations I:-</u>**

i "*With respect to the allegation that Noticee failed to make disclosures under Regulations 13(4A) read with Regulation 13(5) of PIT Regulations to the company and SSE within two working days for sale of 50,000 (0.87%) shares on 03/02/2012 and sale of 1,38,374 (2.41%) shares on 10/02/2012 of the Company.*"

ii *"It is respectfully submitted that the disclosure lapse was purely a technical and venial breach. As such, no harm has been caused to any of the investors or securities market. In any event, the disclosure violation, if any, had occurred more than 9 years ago. Thus, this belated action against Noticee suffers from delay and !aches. In the circumstance, it is humbly submitted that the Learned AO considers the delay before imposing monetary penalty. The Hon'ble SAT in multiple cases have held that no monetary penalty or minimum."*

iii *"Noticee has not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise. Further, no loss has been caused to any investor or group of investors as a result of the alleged default. In fact, the present proceeding is the first time that a regulator has questioned Noticee."*

iv *"It is respectfully submitted that the alleged violation has not resulted in any harm or loss caused to the securities market. No such allegation sits in the SCN as well."*

v *"It is further submitted that the discretion granted by Parliament in terms of Section 15J of the SEBI Act only means that there has to be a reasonable exercise of it, rather than mechanically impose penalty regardless of the circumstances. Accordingly, the Hon'ble Supreme Court's ruling in SEBI v Bhavesh Pabari squarely applies to the present case. Accordingly, the SCN ought to be discharged vis-à-vis Noticee."*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

20. I have carefully perused the charges levelled against Noticees, replies/submissions filed by Noticees and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

1) a) Whether Noticees 1 to 18 have violated Section 12A(a), (b), (c) of SEBI Act, read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?
   b) Whether Noticee 2 has violated Regulation 13(4), 13(4A) read with Regulation 13(5) of PIT Regulations I read with Regulation 12 of PIT Regulations II?
   c) Whether Noticee 19 has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations I?

2) Does the violation, if any, attract monetary penalty under Section 15(A)(b) and Section 15HA of SEBI Act?

3) If the answer to the aforesaid issues is in affirmative, then what should be the quantum of monetary penalty?

21. The relevant provisions of the PIT Regulations I, PIT Regulations II and PFUTP Regulations, which were in force at the time of the merger, are reproduced as under:

PIT Regulations I

"Regulation 13(4)

Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub- regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower."

"Regulation 13(4A)

Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower."

"Regulation 13(5)

(5) The disclosure mentioned in sub-regulations 54[(3), (4) and (4A)] shall be made within two working days of:

- *(a) the receipts of intimation of allotment of shares, or*
- *(b) the acquisition or sale of shares or voting rights, as the case may be."*

PIT Regulations II

"Regulation 12:

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) *Notwithstanding such repeal,—*

(a) *the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*

(b) *anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

(3) *After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations."*

Issue No. 1 (a) - Whether Noticees 1 to 18 have violated Section 12A(a), (b), (c) of SEBI Act, read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?

22. Before going into the merits, I note that the Noticees 1 to 15, and Noticees 17 and 19 have made a preliminary objection that there has been an inordinate delay in the issuance of SCN, which has prejudiced them and, on this ground, the SCN ought to be dropped. It has been contended by the aforesaid Noticees that the events to which the SCN pertains, particularly the alleged delay in filing of disclosures on part of Noticee No. 2 and 19, transpired during the period between Financial Years ("**FY/FYs**") 2013-2014 and 2011-2012 respectively and the preferential allotment by Noticee 1 was completed in the FY 2011-2012. In this regard, I note that the investigation in the matter pertained to the period from January 01, 2012 to January 06, 2015. The investigation was initiated on June 07, 2017 and was completed on December 12, 2019. The investigation involved analysis of

transactions in the scrip of the Company and transactions pertaining to share allotment as well as Bank transactions of all the allottees in the preferential allotment made by the Company. On December 31, 2019, pursuant to the completion of investigation, adjudication proceeding was approved against Noticees 1 to 18, and against Noticee 19, in case Noticee 19 failed to conclude a settlement proceeding to be initiated against it. Thereafter, summary settlement proceedings were initiated against Noticee 19 by way of Notice of Summary Settlement issued to Noticee 19 vide letter dated January 03, 2020. However, Noticee 19 failed to file any settlement application within the time stipulated in the aforesaid Notice of Summary Settlement. Thus, adjudication proceedings were also approved against Noticee 19 on March 02, 2020 and vide Order dated April 07, 2020, Shri B.J. Dilip was appointed Adjudicating Officer for commencing adjudication proceeding against the Noticees. Consequent upon the transfer Shri B.J. Dilip, the undersigned was appointed as Adjudicating Officer in the matter vide order dated December 29, 2020 and the SCNs were issued to Noticees 1 to 18 on August 03, 2021 and to Noticee 19 on November 29, 2021.

23. In view of the aforesaid chronology of events, I find that SCNs in the present proceeding have been issued within a reasonable period of time and there has been no delay in issuance of SCN. In this regard, I note that Noticees have placed reliance upon the judgement of Hon'ble Supreme Court in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim [(1997) 6 SCC 71] and judgements of Hon'ble Securities Appellate Tribunal ("**Hon'ble SAT**") in the matter of HB Stockholdings Ltd. vs. SEBI (Order Dated August 27, 2013), Parag Sarda vs. SEBI (Order dated November 12, 2020), Sanjay Soni vs. SEBI (Order dated November 14, 2019), Libord Finance Ltd. v. Whole Time Member, SEBI (Order dated March 3, 2008) and Rajeev Bhanot v. SEBI (Order dated July 09, 2021). I note that in the case of Bharat J Patel & Others vs. SEBI, decided vide order dated September 8, 2020, the Hon'ble SAT ('Hon'ble Securities Appellate Tribunal') had emphatically iterated that "whether delay has caused prejudice to the parties would depend on the facts of each case." I note that the Noticees 1 to 15, and Noticees 17 and 19, have merely stated that prejudice has been caused to them due to the alleged delay. However, the aforesaid Noticees have failed to state as to what record/document/evidence could not be accessed/obtained by them because of the alleged passage of time. After issuance of SCNs, adequate opportunities were granted to Noticees to represent their cases and Noticees were provided with all the relevant material with respect to the charges levelled in the SCNs, to form a definite defense to the charges in the SCNs, which the Noticees have provided through their respective replies. Thus, looking at the material available at the disposal of the Noticees, I find that Noticees have been provided with all

the material that would have been abundantly adequate to facilitate recollection of events or collection of relevant data and thereby enabling them to form a definite defense to the charges in the SCN, which Noticees have provided through their respective replies, as noted earlier. Hence, I note that Noticees have failed to show that, how delay, if any, in the instant matter has prejudiced their interest. Therefore, I do not find any merit in the contention raised by Noticees that there has been inordinate delay in issuance of SCN due to which prejudice has been caused to them.

24. In this regard, I place reliance on the judgement of the Hon'ble Supreme Court in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (decided on February 28, 2019) in which it was held that:

    "*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc*."

25. I also place reliance on the judgement of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Girrajkumar Gupta HUF (Appeal No. 424/ 2019) dated August 11, 2021, wherein Hon'ble SAT held that, "*We find that the investigation started in the year 2015 which involved examining several entities in the order logs, trade logs, off market transactions and gathering evidence from the Stock Exchange. The show cause notice was issued in the October, 2017 and accordingly we find that there is no inordinate delay in the initiation of the proceedings. The contention raised is, thus, erroneous and cannot be accepted*."

26. Thus, in view of aforesaid facts and placing reliance on the aforesaid judgments, I find that instant adjudication proceeding has been initiated within a reasonable period of time and no prejudice has been caused to the Noticees. I also note that the facts and circumstances of the present proceedings are not similar to those in the judgments quoted by Noticees because there has been no delay in the initiation of the present proceeding as already stated above. Therefore, I conclude that I do not find any merit in the contention raised by Noticees that there has been inordinate delay in issuance of SCN due to which prejudice has been caused to them.

27. I also note that Noticee 1 has contended that SEBI has not shared the complete investigation report with Noticee 1. In this regard, I note that Noticees 1 and 2, vide emails dated September 01, 2021 and October 01, 2021, respectively, requested for inspection

of documents which were referred to and relied upon in the SCN I and they were granted inspection of the documents sought, on June 02, 2022. Thereafter, Noticees 1 and 2 made specific request vide emails dated June 03, 2022, seeking a copy of the entire Investigation Report in the matter. The said request was acceded to and a copy of the entire Investigation Report was provided to Noticees 1 and 2 vide email dated June 06, 2022, as per specific request and in accordance with the law laid down in Hon'ble Supreme Court's judgement in T. Takano v. SEBI (Civil Appeal Nos. 487-488 of 2022; Judgement dated February 18, 2022).

28. I now proceed to deal with the merits of the case in respect of the alleged contraventions by Noticees.

29. It has been alleged in SCN I that Noticee 1 had also transferred funds to Noticee 15 which had, in turn, transferred funds to Noticees 12, 13, and 14 so as to enable Noticees 12, 13, and 14 to return the aforesaid funds to ACEL (hereinafter, Noticees 12-15 are referred to as "**conduit Noticees**"). It has also been alleged that the Noticees 2, 16, 17 and 18, who were directors on the Board of the Company as per annual report of the Company for the Financial Year 2011-2012, facilitated the subscription of shares by Noticees 3 to 11 in the preferential allotment of shares by Noticee 1 by transferring funds from ACEL to Noticees 3 to 11 through the accounts of Noticees 12, 13 and 14. Thus, it was alleged that the Noticees 1-18 were involved in a fraudulent scheme by ACEL to enable the subscription of its preferential allotment using funds of the Company and thereby violated Section 12A(a), (b), (c) of SEBI Act, read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

30. From the documents placed on record, I note that a Resolution was passed at the Meeting of the Board of Directors of ACEL on March 02, 2012 and a Special Resolution dated January 27, 2012 (hereinafter referred to as "**Allotment Resolutions**"), was passed at the Extra-Ordinary General Meeting of the Company, stating that the Company had undertaken Preferential allotment of 50,00,000 shares of face value of Rs.10/- at Rs.30/- (including premium of Rs.20/-) to 47 non-promoter entities. Pursuant to the above, preferential allotment of shares of ACEL was made to 47 non-promoter entities on March 02, 2012. As a result, a total subscription amount of Rs. 15 crores was raised by the Company. I note that Noticees 3 to 11 (hereinafter referred to as "**allottee Noticees**") were part of the group of 47 allottees. The amount of shares issued in the aforesaid preferential allotment to the allottee Noticees was in the range of 1,00,000 to 1,40,000 shares and the amount of money deposited by each allottee towards allotment of shares was in the range

of Rs. 30,00,000 to 42,00,000 per allottee. The total amount deposited by the allottee Noticees towards preferential allotment was Rs. 3,42,00,000.

31. I have perused the Allotment Resolutions and the Bank statements as well as the Company's letter dated September 07, 2019 placed on record. From the aforesaid records, I note the following details pertaining to the subscription by allottee Noticees under the aforesaid preferential allotment:

Noticee 3: From the Bank statement of Noticee 12, I observe that it had received Rs. 3,03,50,500/- from Noticee 1. Further, from the Bank Account statement of Noticee 3, I observe that Noticee 3 had received Rs. 30,00,000/- from Noticee 12 prior to the aforesaid preferential allotment, after Noticee 12 received 3,03,50,500/- from Noticee 1. I also observe that Noticee 3 was allotted 1,00,000 shares in the preferential allotment and it had transferred Rs. 30,00,000/- from its Canara Bank a/c no 225101038122 to the designated bank account of Noticee 1 in three tranches i.e. on 27/01/2012, 28/01/2012 and 08/02/2012.

Noticee 4: From the Bank Account statement of Noticee 13, I observe that it had received Rs. 3,19,99,500/- from Noticee 1. Further, from the Bank Account statement of Noticee 4, I observe that Noticee 4 had received Rs. 30,00,000/- from Noticee 13 prior to the aforesaid preferential allotment, after Noticee 13 received Rs. 3,19,99,500/- from Noticee 1. I also observe that Noticee 4 was allotted 1,00,000 shares in the preferential allotment and it had transferred Rs. 30,00,000/- from its Canara Bank a/c no 225101038042 to the designated bank account of Noticee 1 in three tranches i.e. on 24/01/2012, 01/02/2012, and 07/02/2012.

Noticee 5: From the Bank Account statement of Noticee 14, I observe that it had received Rs. 4,24,00,000/- from Noticee 1. Further, from the Bank Account statement of Noticee 5, I observe that Noticee 5 had received Rs. 30,00,000/- from Noticee 14 prior to the aforesaid preferential allotment, after Noticee 14 received Rs. 4,24,00,000/- from Noticee 1. I also observe that Noticee 5 was allotted 1,00,000 shares in the preferential allotment and it had transferred Rs. 30,00,000/- from its Canara Bank a/c no 225101038161 to the designated bank account of Noticee 1 in three tranches i.e. on 24/01/2012, 30/01/2012, 31/01/2012 and 05/03/2012.

Noticee 6: From the Bank Account statement of Noticee 14, I observe that it had received Rs. 4,24,00,000/- from Noticee 1. Further, from the Bank Account statement of Noticee 6, I observe that Noticee 6 had received Rs. 42,00,000/- from Noticee 14 prior to the aforesaid preferential allotment, after Noticee 14 received Rs. 4,24,00,000/- from Noticee 1. I also observe that Noticee 6 was allotted 1,40,000 shares in the preferential allotment and she had transferred Rs. 42,00,000/- from its Canara Bank a/c no 225101036991 to the designated bank account of Noticee 1 in two tranches i.e. on 30/01/2012 and 05/03/2012.

Noticee 7: From the Bank statement of Noticee 12, I observe that it had received Rs. 3,03,50,500/- from Noticee 1. Further, from the Bank Account statement of Noticee 7, I observe that she had received Rs. 42,00,000/- from Noticee 12 prior to the aforesaid preferential allotment, after Noticee 12 received Rs. 3,03,50,500/- from Noticee 1. I also observe that Noticee 7 was allotted 1,40,000 shares in the preferential allotment and she had transferred Rs. 42,00,000/- from its Canara Bank a/c no 225101013677 to the designated bank account of Noticee 1 in four tranches i.e. on 25/01/2012, 28/01/2012, 30/01/2012 and 08/02/2012.

Noticee 8: From the Bank Account statement of Noticee 13, I observe that it had received Rs. 3,19,99,500/- from Noticee 1. Further, from the Bank Account statement of Noticee 8, I observe that she had received Rs. 42,00,000/- from Noticee 13 prior to the aforesaid preferential allotment, after Noticee 13 had received Rs. 3,19,99,500/- from Noticee 1. I also observe that Noticee 8 was allotted 1,40,000 shares in the preferential allotment and she had transferred Rs. 42,00,000/- from its Canara Bank a/c no 225101037260 to the designated bank account of Noticee 1 in three tranches i.e. on 28/01/2012, 30/01/2012 and 11/02/2012.

Noticee 9: From the Bank Account statement of Noticee 12, I observe that it had received Rs. 3,03,50,500/- from Noticee 1. Further, from the Bank Account statement of Noticee 9, I observe that he had received Rs. 39,00,000/- from Noticee 12 prior to the preferential allotment, after Noticee 12 had received Rs. 3,03,50,500/- from Noticee 1. I also observe that Noticee 9 was allotted 1,40,000 shares in the preferential allotment and he had transferred Rs. 42,00,000/- from its Canara Bank a/c no 225101000203 to the designated bank account of Noticee 1 on 28/01/2012, 30/01/2012, 03/02/2012, and 08/02/2012.

Noticee 10: From the Bank Account statement of Noticee 13, I observe that it had received Rs. 3,19,99,500/- from Noticee 1. Further, from the Bank Account statement of Noticee 10, I observe that he had received Rs. 52,50,000/- from Noticee 13 prior to the preferential allotment, after Noticee 13 had received Rs. 3,19,99,500/- from Noticee 1. I also observe that Noticee 10 was allotted 1,40,000 shares in the preferential allotment and he had transferred Rs. 42,00,000/- from its Canara Bank a/c no 225101015856 to the designated bank account of Noticee 1 in four tranches i.e. on 28/01/2012, 02/02/2012, 07/02/2012 and 11/02/2012.

Noticee 11: From the Bank Account statement of Noticee 14, I observe that it had received Rs. 4,24,00,000/- from Noticee 1. Further, from the Bank Account statement of Noticee 11, I observe that he had received Rs. 42,00,000/- from Noticee 14 prior to the aforesaid preferential allotment, after Noticee 14 had received Rs. 4,24,00,000/- from Noticee 1. I also observe that Noticee was allotted 1,40,000 shares in the preferential allotment and he had transferred Rs. 42,00,000/- from its Canara Bank a/c no. 225101022181 to the designated bank account of Noticee 1 in two tranches i.e. on 06/02/2012 and 05/03/2012.

32. I note from the foregoing that out of the total amount received from the Company, Noticees 12 to 14 transferred moneys to Noticees 3 to 11, and thereafter Noticees 3 to 11 transferred part of the aforesaid funds to the designated bank account of Company i.e. Noticee 1 in separate tranches, as preferential allotment proceeds in respect of preferential allotment. From available records, I note that Noticees 12, 13, and 14 were proprietorship concerns of Noticees 9, 10 and 11. Noticees 3, 4, and 5 were the HUFs of Noticees 9, 10 and 11. Noticee 6, 7 and 8 were relatives of Noticees 9, 10 and 11. Noticees 3 to 11 have not disputed the aforesaid facts. Thus, I find from the bank statements of the allottee Noticees vis-à-vis the bank statements of Noticees 1, 12, 13 and 14, that prior to the receipt of aforesaid funds from Noticee 1 through Noticees 12, 13, and 14, the balance in the bank accounts of the allottee Noticees was negligible or insufficient for them to be able to transfer money to the Company as subscription money towards the aforesaid preferential allotment. In this regard, I note from the letter filed by Noticee 11 dated September 13, 2019, that Noticee 11 had admitted that the funds of Noticees 12, 13 and 14 were transferred to Noticees 3 to 11 for the purpose of subscribing to the shares of the Company.

33. I also note from the bank statements of Noticees 12 to 15 and bank statements of the Company, that the Company had transferred funds to the tune of Rs. 11.75 crores to Noticee 15 from March 08, 2013 to March 22, 2013 and from May 28, 2013 to May 29, 2013 in separate tranches. The aforesaid funds were further transferred to Noticee 12, 13, and 14 from March 09, 2013 to March 22, 2013 and on May 27, 2013. I note from the bank statements of Noticee 12, 13 and 14, that on receipt of the aforesaid amount in their accounts, Noticees 12, 13, and 14 transferred a total amount of Rs. 11,91,30,000 to the Company in separate tranches, either on the same day or on the subsequent day of receipt of funds from Noticee 15.

34. I further note that Noticee 1 had by way of separate tranches from November 23, 2011 to March 14, 2012, transferred a total amount of Rs. 3.03 Crore to conduit Noticee 12, Rs. 3.20 Crore to conduit Noticee 13 and Rs. 4.24 crores to conduit Noticee 14. Thus, I note that a total amount of Rs. 10,47,50,000 was transferred by the Company to Noticees 12, 13 and 14. I note that after the receipt of a particular tranche of funds from the Company, the conduit Noticees transferred the said funds to the allottee Noticees either on the same

day or the next day. Thereafter, the allottee Noticees were able to transfer the said funds to the account of the Company. The total amount deposited by the allottee Noticees towards the preferential allotment was Rs. 3,42,00,000. I note from the bank statements of Noticees 1 to 14 that the aforesaid pattern of routing funds was followed repeatedly by Noticees 1 to 14. I note that following the said pattern of transactions by Noticees 1 to 14, the funds of the Company were utilized by Noticees 3 to 11 for the purpose of subscription to the preferential allotment.

35. As an illustration of the aforesaid pattern of transactions, I note from the Bank Statement of Noticee 13 that on January 27, 2012 Noticee 13 received Rs.25,00,000 from ACEL and on the same day (i.e. January 27, 2012) it transferred the entire amount to Noticee 10 (Rs. 12,50,000) and Noticee 8 (Rs. 12,50,000). Subsequently from the Bank statements of Noticee 10, I observe that on January 28, 2012 (i.e. the next day) Rs.12,50,000 was transferred to ACEL towards subscription of preferential allotment of ACEL. Similarly, from the Bank statements of Noticee 8, I observe that on January 28, 2012, Rs.12,50,000 was transferred to ACEL towards subscription of preferential allotment of ACEL. On analysis of the bank statements of all the allottees Noticees and Noticees 1, 12, 13 and 14, I observe that the aforesaid pattern was followed by all the said Noticees for routing of funds towards preferential allotment. I further note that Noticee 13 received a total of Rs. 3,19,99,500 in 12 tranches between January 23, 2012 to March 14, 2012. I also observe that on receipt of a particular tranche of funds from the Company, the said funds were transferred by Noticee 13 to Noticees 4, 8, 10 who further transferred the said funds to the Company either on the same day or on the subsequent day. The details of the aforesaid transfer of funds are as under:

Transfer of Funds between Vaibhav Enterprise (Noticee 13) and 3 allottee Noticees (Noticees 4, 8 and 10)

DATE	VAIBHAV ENTERPRISE TO ARPITA VORA (in ₹)	DATE	ARPITA VORA TO ACEL (in ₹)
27/01/2012	12,50,000	28/01/2012	12,50,000
30/01/2012	21,00,000	30/01/2012	21,00,000
10/02/2012	8,50,000	11/02/2012	8,50,000
	42,00,000		**42,00,000**
	VAIBHAV ENTERPRISE TO PARESH VORA (in ₹)		**PARESH VORA TO ACEL (in ₹)**

27/01/2012	12,50,000	28/01/2012	12,50,000
01/02/2012	10,00,000	02/02/2012	10,00,000
06/02/2012	13,50,000	07/02/2012	13,50,000
10/02/2012	16,50,000	11/02/2012	6,00,000
	52,50,000		**42,00,000**
	VAIBHAV ENTERPRISE TO PARESH VORA HUF (in ₹)		**PARESH VORA HUF TO ACEL (in ₹)**
23/01/2012	7,50,050.00	24/01/2012	7,50,050.00
31/01/2012	11,00,050.00	01/02/2012	11,00,050.00
06/02/2012	11,50,050.00	07/02/2012	11,50,050.00
	30,00,150.00		**30,00,150.00**
TOTAL	**1,24,50,150**	**TOTAL**	**1,14,00,150**

36. I note from the foregoing that Noticees 12, 13 and 14 transferred funds to the allottee Noticees, which were received from the Company, in separate tranches either on the same day of receipt of funds or subsequent day after receipt of funds, prior to the payment of subscription money by the allottee Noticees. I also note from the letter filed by Noticee 11 dated September 13, 2019, that Noticee 11 had admitted to the fact that the funds of Noticees 12, 13 and 14 were transferred to Noticees 3 to 11 for the purpose of subscribing to the shares of the Company. Therefore, I note that during the period prior to the aforesaid preferential allotment, ACEL had high value transactions in which funds of the Company were transferred to the allottee Noticees through the conduit Noticees 12, 13, and 14 and the aforesaid funds were utilized by the allottee Noticees to subscribe to the preferential allotment. I note that a total amount of Rs. 10,47,50,000 was transferred by the Company to Noticees 12, 13 and 14. Thereafter, a total amount of Rs. 3,42,00,000 was transferred by Noticees 12, 13 and 14 to the allottee Noticees, prior to the deposit of subscription amount towards the aforesaid preferential allotment. Thereafter, a total amount of Rs. 3,42,00,000 was transferred by the allottee Noticees to the Company towards aforesaid preferential allotment. As noted earlier, the funds of the Company to the tune of Rs 11.75 crores had been routed to Noticees 12, 13 and 14 through Noticee 15, after the preferential allotment. Thereafter, Noticees 12, 13, and 14 returned funds to the tune of Rs. 11.91 crores to the Company. Therefore, I find that the Company funded the total subscription amount for the preferential allotment of shares to the allottee Noticees. Thus, I find from the pattern of transactions between the Company, Noticees 12, 13 and 14, and the allottee

Noticees, that the Company, the Noticees 12, 13 and 14, along with the allottee Noticees were part of a deliberate scheme in which the Company funded its preferential allotment by routing funds, through Noticees 12, 13, and 14, to the allottee Noticees and the allottee Noticees were able to acquire shares of the Company without paying any consideration on their part.

37. Noticees 1, 2 and Noticees 3 to 14, in their replies, have contended that funds were transferred by the Company for the purpose of enabling Noticees 12, 13 and 14 for the purpose of applying for tenders by Municipal Corporation of Greater Mumbai ("**MCGM**") because Noticees 12, 13 and 14 were involved in the business of executing work in MCGM tenders. In support of the aforesaid contention, Noticees 3 to 14 have furnished copy of proof of payment of Earnest Money Deposit and Security Deposit, copy of sample work order, letter to MCGM enclosing copy of the Memorandums of Understanding ('**MOUs**'), copy of probable list of contractors, copy of Joint Representation for Notification of Award, copy of Show Cause Notice from MCGM for not starting work and reply to the same, copy of joint representation for refund and copy of proof of refund of security deposit. The aforesaid Noticees have contended that they had applied for tenders of MCGM in pursuance of the MOUs. I note that although Noticees 1, 2 and Noticees 3 to 14 have admitted that the Company had transferred the funds as alleged in the SCN, they have denied the allegation that such funds were intended for the purpose of subscription to the preferential allotment on the grounds that the quantum of funds received from the Company by Noticee 12, 13 and 14 was much greater than the value of shares issued to allottee Noticees in the Preferential allotment. In its reply the Noticees 1 and 2 have submitted that the transactions which took place between Noticees 12 to 14 and the allottee Noticees were separate transactions in which there was no role played by the Noticees 1 and 2. In support of the aforesaid contentions, aforesaid Noticees provided the MOUs dated October 14, 2011 and January 12, 2012 between the Company and Noticees 12 to 14, in which the Company agreed to provide finance to Noticees 12 to 14 for the purpose of applying for tenders by MCGM to be opened at a future date.

38. In regard to the above contentions, I note that even though Noticees 1, 2 and Noticees 3 to 14 have stated that the Company transferred the aforesaid funds for the purpose of applying for tenders by MCGM, the transfer of such huge amount of funds, for the purpose of tenders which were not yet awarded to Noticees 12, 13 and 14, was devoid of any economic rationale for the Company. I note that as per the aforesaid Noticees, the Company transferred a huge sum of money in respect of an absolutely uncertain future event which defies any economic or commercial sense for the Company. I have perused

the documents furnished by the aforesaid Noticees in support of their contentions. I note that the said documents pertain to the application for tender made by Noticees 12, 13 and 14 to MCGM with respect to tender which opened much later, i.e., on April 21, 2012. I note that the Company had transferred a huge sum of money to the tune of Rs. 10,47,50,000 from November 23, 2011 to March 14, 2012, to Noticee 12 to 14 and at the time of transferring such huge funds to Noticees 12 to 14, Noticees 12 to 14 had not been awarded any tender by MCGM. Thus, I note that the aforesaid documents are not relevant to the allegations made in the SCN I. Therefore, I find no merit in the aforesaid contention of Noticees 1, 2 and 3 to 14. I also note from the letter filed by Noticee 11 dated September 13, 2019, that Noticee 11 had admitted that the funds of Noticees 12, 13 and 14 were transferred to Noticees 3 to 11 for the purpose of subscribing to the shares of the Company. The aforesaid Noticees have also contended that the quantum of funds provided by the Company to Noticees 12, 13 and 14 was much greater than the value of shares allotted to the allottee Noticees. In this regard, I note that each tranche of transfer of funds from the Company to Noticee 12, 13 and 14 and thereafter to the allottee Noticees took place either on the same day or on the subsequent day. It also appears that the quantum of funds received by Noticees 12, 13, and 14 was greater than the value of shares allotted to the allottee Noticees facilitated the concealment of the true modus operandi which was intended to enable the Company to fund the aforesaid preferential allotment of its shares. As noted earlier, the pattern of transactions between the Company, Noticees 12, 13 and 14, and the allottee Noticees, shows that the Company and the aforesaid Noticees along with the allottee Noticees were part of a deliberate scheme in which the Company funded its preferential allotment by routing funds, through Noticees 12, 13, and 14, to the allottee Noticees and the allottee Noticees were able to acquire shares of the Company without paying any consideration on their part. Thus, I find that the aforesaid contentions of Noticees 1, 2 and Noticees 3 to 14 are devoid of merits.

39. Noticees 1, 2 and Noticees 3 to 14 have also contended that the funds transferred to Noticees 12 to 14 were subsequently returned to the Company on account of the fact that the eventually the tender was not finally awarded to MCGM. In this regard Noticees 3 to 11 have submitted that ACEL had sought refund of the entire amount transferred to Noticees 12, 13 and 14. Thus, it has been contended that Noticees 12 and 13 had borrowed funds as a loan from Noticee 14 and thereafter, returned the funds which were earlier received from the Company. I note that the aforesaid transaction between Noticees 12-13 and Noticee 14 were separate transactions which are not relevant to the allegations made in the SCN I. I further note that Noticees 3 to 14 have referred to a loan transaction between Noticees 12-13 and Noticee 14. However, I find that the aforesaid Noticees have

not furnished any loan agreement in support of the aforesaid transaction. I also note that the purported loan transaction between the Noticees 12-13 and Noticee 14 is not relevant with respect to the preferential allotment of shares ACEL. Therefore, the contention of the aforesaid Noticees in this regard is devoid of any rationale and is not relevant to the allegations made in the SCN I in respect of the preferential allotment by the Company. Thus, I do not find any merit in the contentions of Noticees 1, 2 and Noticees 3 to 14 in this regard. Thus, I reject the aforesaid contentions of Noticees 1, 2 and Noticees 3 to 14.

40. Noticee 15 has contended in its reply that it had received funds from the Company for the purpose of investment in real estate. Noticee 15 has contended that the funds were received from ACEL for the purpose of acquisition and development of a plot situated at Santacruz (East) Mumbai worth Rs. 20 crores. Noticee 15 has submitted that the said acquisition did not go through despite payment of Rs. 51,00,000 towards token payment towards the acquisition of the plot. Noticee 15 has further contended that the transfer of funds to Noticees 12, 13, and 14 were made as loans so as to earn interest from funds which were lying idle in its account and that Noticee 15 was not liable for the further deployment of the aforesaid funds by Noticees 12, 13, and 14. I note from the contentions of Noticee 15, that it has admitted the fact that it had received funds from the Company and that it transferred these funds to Noticee 12, 13, and 14. In this regard, I also note that the aforesaid contentions of Noticee 15 fail to explain why only a small fraction of the amount received from the Company i.e. only Rs. 51,00,000 were utilised by Noticee 15 for the purpose of investment in real estate, if at all, the funds were meant to be utilised for that purpose. I note that Noticee 15 has not furnished any loan agreement in support of its contentions that it had provided funds as loans to Noticees 12, 13, and 14. I also note that there is no evidence furnished by Noticee 15 to show payment of interest by Noticees 12, 13 and 14. Therefore, I find that Noticee 15 has not been able to provide any cogent reason for the transfer of funds to Noticees 12, 13 and 14 and the pattern of transactions have clearly established that the funds of the Company were being routed through Noticee 15 to Noticees 12, 13 and 14. Thus, I find no merit in the aforesaid contentions of Noticee 15. Thus, I reject the aforesaid contentions of Noticee 15.

41. Therefore, in view of the foregoing findings, I find that the Company transferred Rs. 10,47,50,000 to the allottee Noticees through the conduit Noticees 12, 13, and 14 and out of the aforesaid funds Rs. 3,42,00,000 were transferred to the allottee Noticees who utilised the same to subscribe to the preferential allotment. I find that after the receipt of funds from the Company, the conduit Noticees transferred the said funds to the allottee Noticees either on the same day or the next day. Further, the quantum of funds transferred

to the conduit Noticees which were further transferred to the allottee Noticees exactly matched with the subscription amounts deposited by the allottee Noticees towards the preferential allotment of shares by the Company. Therefore, I find that the Company funded the total subscription amount for the preferential allotment of shares to the allottee Noticees and thereby created a false impression that genuine capital infusion was being brought into the Company. I also find that shares of the Company were issued to the allottee Noticees without any payment of consideration on their part and the funds of the Company returned to the Company in a roundabout manner. After the conclusion of preferential allotment in 2012, in the year 2013, the funds of the Company to the tune of Rs 11.75 crores were routed to Noticees 12, 13 and 14 through Noticee 15, and thereafter Noticees 12, 13, and 14 returned funds to the tune of Rs. 11.91 crores to the Company. At this juncture, I find it pertinent to refer to the order dated April 07, 2021 passed by Hon'ble SAT in the matter of Shri Bakul Ramniklal Parekh vs. SEBI (Appeal No. 527 of 2019) in which Hon'ble SAT had held the issuer company along with its directors and the preferential allottees liable for fraud for participating in a scheme of funding the preferential allotment using the Company's funds. I find that Hon'ble SAT had held as under:

"*…we find that the Company had transferred its funds to the preferential allottees to enable them to subscribe to the Company's shares. This fact has not been disputed and, the only contention raised was that it was an advance. Some of the appellants contended that it was a loan and according to appellant no. 7 it was an advance towards professional fees to be adjusted in future… We are of the opinion that when a Company raises its capital, issuance of shares is considered as capital infusion and an ordinary investors perceives it as a capital infusion which is essential for strengthening the Company's financial fundamentals. When a preferential allotment is made by a listed Company it gives an impression that genuine capital infusion is being brought into the Company. When the Company uses its own funds and distributes it to the allottees for the purpose of subscribing to the shares, it deceives the genuine investors and in fact falsely leads them to invest in the shares of the Company. Thus, we are of the opinion that the Company along with the management and allottees receiving such funds from the Company were perpetuating a fraud on the ordinary investing public who were deceived to invest in in the securities of the Company… The action on the part of the Company, its management and the allottees including the appellants in particular have made fraudulent acts which is an unfair device, to deceive the investors. Such acts, omissions and concealment is prohibited under Section 12A of the SEBI Act read with Regulation 3 and 4 of the PFUTP Regulations*."

42. Thus, I observe that the Company along with Noticees 3 to 15 had executed elaborately routed transactions for the purpose of funding its own preferential allotment and thereby, created a false impression that genuine capital infusion was being brought into the Company. In view of the above, and placing reliance on the aforesaid judgement, I find that Noticee 1 and Noticees 3 to 15 had committed a fraudulent act of perpetrating a scheme of funding of preferential allotment of a company using the company's own funds and thereby violated Sections 12A(a), (b), (c) of SEBI Act, and Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

43. I further note that as per the reply submitted on behalf of Noticees 3 to 14, Noticee 9, i.e. Shri Bhavanji Vora, had passed away on April 07, 2021 and that the instant adjudication proceeding stood abated in respect of Noticee 9. In this regard, the Death Certificate dated April 15, 2021 issued in respect of Noticee 9 has been furnished. It has also been submitted in the aforesaid replies that Noticee 9 was the Karta of Noticee 3 i.e. Shri Bhavanji Vora HUF and the sole proprietor of Noticee 12, i.e. Kapoor Trader, which was a Proprietorship concern and therefore, on the death of Noticee 9, the proceedings against Noticees 3 and 12 would also stand abated. In this regard, the GSTIN surrender request submitted vide GST REG-16 form in respect of Noticee 12, PAN surrender request made to the Income Tax Department in respect of Noticee 3 and the affidavit of the surviving members of Shri Bhavanji Vora HUF concerning the partition and dissolution of Noticee 3 have been placed on record. I have perused the documents placed on record, including the Death Certificate of Noticee 9, and I note that the death of Noticee 9 occurred prior to the issuance of the SCN I. I further note the judgement of the Hon'ble Supreme Court in Girijanandini vs Bijendra Narain (AIR 1967 SC 2110), in which it was held as follows, "*The maxim "actio personalis moritur cum persona"-a personal action dies with the person operates … where actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory*." It is also relevant to refer to the decision of Hon'ble Securities Appellate Tribunal in *Chandravadan J. Dalal vs. SEBI* (Appeal No. 35/2004 decided on June 15, 2005) wherein it was held that: *"The appeal abates since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates."* Therefore, in view of the above and placing reliance on the aforesaid judgements, I find that the proceedings stand abated with respect to Noticee 9.

44. I also note that Noticee 9 was the sole proprietor of Noticee 12. In this regard, I note the judgement of Hon'ble Supreme Court in the matter of Laxmi Pat Surana vs. Union Bank

of India (Civil Appeal No. 2734 of 2020; Decided on 26.03.2021) wherein it was held as follows, "*Legally, a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business. Due to this, proprietorships are usually not defined in statutes*." Thus, placing reliance upon the foregoing judgement, I find that a proprietorship concern does not have any legal existence after the death of its proprietor. Thus, in view of the death of Noticee 9, who was the sole proprietor of Noticee 12, I find that the proceedings against Noticee 12 also stand abated. I also note the judgement of the Hon'ble Supreme Court in the matter of Vineeta Sharma vs. Rakesh Sharma and Ors (Civil Appeal No. 32601 of 2018; Decided on 11.08.2020) wherein it was held that, "*There is a general presumption that every Hindu family is presumed to be joint unless the contrary is proved... It may be inferred from how their family business was carried on after one coparcener was separated from them*." Thus, placing reliance on the aforesaid judgement, I note that, as regards the existence of an HUF, it may be established by way of facts on record that an HUF stands dissolved owing to the separation of coparceners and their business from an HUF. I note from the records that Noticee 9 was survived by his sons i.e. Paresh Vora (Noticee 10) and Jiten Vora (Noticee 11) and his wife Kankuben Vora (Noticee 7). I note from the records that after the death of Noticee 9, Noticees 10 and 11 have constituted separate HUFs in their own names and therefore, Noticee 3 stood dissolved owing to the absence of any Karta. Therefore in view of the foregoing findings and placing reliance on the aforesaid judgements, I find that the instant adjudication proceedings stand abated with respect to Noticees 3, 9 and 12.

45. I note that the Noticees 2, 16, 17 and 18 were Executive Directors of the Company as per the annual report of the Company for the Financial Year 2011-2012 ("**Annual Report**"). As per the Annual Report, Noticee 2 was the Managing Director and Noticees 16, 17 and 18 were Executive Directors of the Company. I also note that Noticees 2, 16, 17 and 18 being members of the Board of Directors were parties to the Special Resolution dated January 27, 2012 pertaining to the aforesaid preferential allotment, passed at the Extra-Ordinary General Meeting of the Company. I note that the aforesaid preferential allotment has been disclosed in the "Directors' Report" presented by the Directors of ACEL, found in the Annual Report. I also note that the designated bank account of Noticee 1 was opened on June 10, 2011 and Noticees 2, 16 & 17 were the authorized signatories to operate the designated bank account. Thus, I note that the Noticees 2, 16, 17 and 18 were involved in and aware of daily business and operation of the company including the aforesaid preferential allotment process.

46. In respect of the allegation in SCN I, Noticee 2 has contended that the exact role or involvement of Noticee 2 has not been demonstrated in the SCN I, in regard to the preferential allotment of shares of ACEL. Noticee 2 has contended that no specific act or wrongdoing has been attributed to Noticee 2 in the SCN I, and merely because Noticee 2 was the Managing Director of ACEL, he cannot be held liable with respect to the allegations made in regard to the preferential allotment of shares of ACEL. In support of his contention, Noticee 2 has placed reliance on the judgements of Hon'ble Supreme Court in the matter of Sunil Bharti Mittal v. Central Bureau of Investigation, and Hon'ble SAT in the matters of Rahul Shah v. SEBI and Home Trade Limited. Noticee 2 has contended that no liability can be imputed to it in the instant adjudication proceedings. I further note that Noticees 16, 17 and 18 have similarly contended that they cannot be held liable with respect to the allegations pertaining to the preferential allotment of shares of ACEL merely because they were directors of the Company and that the SCN fails to demonstrate their exact role or involvement in relation to the allegations made in the SCN I pertaining to the Company's preferential allotment. Noticee 17 has placed reliance upon the judgements of Hon'ble Supreme Court in the matter of Chintalapati Raju v. SEBI and Sunil Bharti Mittal v. Central Bureau of Investigation. Noticee 16 has contended that he was appointed as a Non-Executive Director of the Company during the period September 08, 2009 to July 03, 2014 and that he was aware of the aforesaid preferential allotment and had ensured that the funds have been received by ACEL from the accounts of the respective allottees. It has been further contended that it was beyond the scope of directors to verify the bank accounts of the applicants and to trace the source of funds. Noticee 16 has also contended that merely because he was present in the board meeting, it cannot be concluded that the undersigned was engaged in any act or practice amounting to fraud. Noticees 2 and 17 have also contended that the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 do not prescribe any prohibition against a company funding its own preferential allotment. Thus, I note that Noticee 2 has denied that there was any wrongdoing on its part as regards the aforesaid preferential allotment, while Noticees 16, 17 and 18 have denied their involvement in the preferential allotment of the Company.

47. I note that Noticee 16 has contended that he was appointed as a Non-Executive Director in the Company. However, I note from the Annual Report of the Company for the FY 2011-2012 that Noticees 2 was the Chairman and Managing Director of the Company and Noticees 16, 17 and 18 were executive directors of the Company at the time of the passing of Special Resolution dated January 27, 2012 approving the aforesaid preferential allotment of the Company. Therefore, the aforesaid contention of Noticee 16 is patently wrong and unacceptable. I also note that during FY 2011-12, the Board of Directors of

ACEL met 9 times for board meetings and Noticees 16 had attended all board meetings and Noticees 17 and 18 had attended 8 out of 9 board meetings. The aforesaid facts are a matter of record and have not been disputed by the aforesaid Noticees. Therefore, being executive directors of the Company, the Noticees 16, 17 and 18 were involved in and aware of daily business and operation of the company including the aforesaid preferential allotment process. I further note that the Allotment Resolutions were signed by Noticee 2. Thus, I note that Noticee 2, being the Chairman and Managing Director of the Company, was aware of and actively involved in the daily business and operation of the Company. I also note from the Directors' Report, presented as part of the Annual Report of the Company, that all the Directors of the Company had approved the aforesaid preferential allotment of the Company. Therefore, I find no merit in the contentions of the Noticees 2, 16, 17 and 18 that they did not have any role to play in the aforesaid preferential allotment. I find that the aforesaid Noticees have placed reliance upon various judgements of the Hon'ble Supreme Court and Hon'ble SAT in support of their contentions. However, since in the instant proceedings, Noticees 2, 16, 17 and 18 were executive directors and the material on record establishes that they were not only aware of but also involved in the process of aforesaid preferential allotment, I find that the facts and circumstances of the present proceedings are different from those in the judgments quoted by the aforesaid Noticees. I find that such an elaborate scheme of the Company for funding its own preferential allotment could not have been perpetrated without the awareness and involvement of the Company and its Executive Directors. In this regard, I find it pertinent to refer to the order dated October 05, 2012 passed by Hon'ble Securities Appellate Tribunal (SAT) in the matter of Shri N. Narayanan vs. SEBI (Appeal No. 29 of 2012) wherein it was held as under*:*

"...The role of a whole time director is very significant and material in running day to day affairs of a company. His role and responsibility are equivalent to that of a managing director in as much as he is expected to spend his whole time in the management of the company. This implies a high level of accountability and knowledge of the overall functioning of the company..."

48. Therefore, placing reliance upon the aforesaid judgement, I find that the executive directors of the Company are liable for the acts of omission and commission done by the Company. I also find it pertinent to refer to the judgement of the Hon'ble Supreme Court in the matter of N Narayanan vs. Adjudicating Officer, SEBI (Civil Appeal Nos. 4112-4113 of 2013 (Decided on 26.04.2013) wherein the aforesaid order of Hon'ble SAT was upheld by the Hon'ble Apex Court and it was held as under:

"*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.*"

49. I also place reliance upon the following judgement of the Hon'ble Supreme Court in the matter of Official Liquidator, Supreme Bank Ltd. vs. P.A. Tendolkar (Dead) by Lrs. and Ors (Civil Appeal Nos. 195-197, 234 and 300 of 1967; Decided On: 19.01.1973) wherein it was held as under:

"*A Director may be shown to be so 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 the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company.*"

50. In view of the foregoing findings and placing reliance upon the aforesaid judgements, I find that Noticees 2, 16, 17 and 18 are liable for the fraud committed by the Company and have thereby violated Sections 12A(a), (b), (c) of SEBI Act, and Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

51. Therefore, in view of the foregoing, I find that the allegation that Noticees 1, 2, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17 and 18, have violated Sections 12A(a), (b), (c) of SEBI Act, and Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations stands established.

Issue No. 1 (b) - Whether Noticee 2 has violated Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations I read with Regulation 12 of PIT Regulations II?

52. Before moving forward, it is pertinent to refer to the aforesaid provisions of law which are reproduced hereunder:

PIT Regulations I

Continual Disclosure

13. (3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights* *held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

13. (4) *Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

(4A) *Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

(5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*

(a) *the receipts of intimation of allotment of shares, or*

(b) *the acquisition or sale of shares or voting rights, as the case may be.*

PIT Regulations II

Repeal and Savings

12(2) *Notwithstanding such repeal, —*

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

53. It is alleged that Noticee 2 transacted in the shares of the company on one occasion through stock exchange mechanism, which required him to make necessary disclosures under PIT Regulations I. The details of the impugned transaction and the compliance status of the same, as per the SCN, are as follows:

Date of transaction	**Holding before transaction (number of shares and %)**	**Acquired/sale (number of shares and %)**	**Holding Post Transition (number of shares and %)**	**Disclosure required under PIT Regulations I**	**Required Date of Disclosure to the Company and the Exchange**	**Actual date of disclosure to the exchange**	**Actual date of disclosure to the Company**
07/02/2014	7257405 (3.75%)	Sold (49010) (0.03%)	7208395 (3.72%)	Reg. 13(4) & 13(4A)	11/02/2014	N.A.	N.A.

54. I note from the shareholding pattern of the company, as placed on record that Noticee 2 was a promoter as well as director of the company at the relevant time. On perusal of statements submitted by the Registrar and Share Transfer Agent of company, I note that Noticee 2 had sold shares of ACEL in excess of 25,000 on February 07, 2014. Therefore, for the aforesaid transaction, in terms of Regulation 13(4) read with Regulation 13(5) of PIT Regulations I, Noticee 2, as a director of the company, was required to make necessary disclosures to company as well as to BSE and in terms of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations I, as a promoter of the company, Noticee 2 was required to make necessary disclosures to the company and BSE under the aforesaid regulations within 2 working days of the transaction.

55. However, I note from BSE's reply placed on record that no disclosure had been received by BSE from Noticee 2 under Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations I. I also note that no response was received from ACEL in this regard.

56. In this regard, in his submissions, Noticee 2 has stated that he had not made any disclosures to BSE and ACEL as required under Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations I as he was not aware of the same and the disclosures were subsequently filed by him once he became aware of the violation. He has also submitted copies of the aforesaid documents along with his reply which show the aforesaid disclosures were made by Noticee 2 only on June 6, 2022. In this regard, I note that statement made by Noticee is not justified. As postulated by legal maxim "*ignorantia juris non excusat*", ignorance of law is no excuse and everyone is presumed to know the law of the land. A person cannot defend his illegal actions by stating that he was not aware his actions were illegal, even if he honestly believed that they were not breaking the law. Therefore, I do not find any merit in this contention of Noticee. Therefore, I find that Noticee 2 failed to file the requisite disclosures under PIT Regulations I in respect of his aforesaid transaction in the scrip of ACEL.

57. In view of the aforesaid findings and of admission of default by Noticee 2 himself, I conclude that the allegation that Noticee 2 has violated Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations I, stands established.

Issue No. 1 (c) - Whether Noticee 19 has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations I read with Regulation 12 of PIT Regulations II?

58. It is alleged in SCN II that Noticee 19 transacted in the shares of the company on two (2) days through stock exchange mechanism, which required him to make necessary disclosures under PIT Regulations I, however Noticee 19 failed to make the requisite disclosures. The details of the impugned transactions and the compliance status of the same, as per the SCN, are as follows:

Date of transaction	Holding before transaction (number of shares and %)	Acquired/sale (number of shares and %)	Holding Post Transition (number of shares and %)	Disclosure required under PIT Regulations I	Required Date of Disclosure to the Company and the Exchange	Actual date of disclosure to the exchange	Actual date of disclosure to the Company
03/02/2012	188734 (3.28%)	Sold (50000) (0.87%)	138734 (2.41%)	Reg. 13(4A)	07/02/2012	18/02/2012	18/02/2012
10/02/2012	138734 (2.41%)	Sold (138734)	NIL	Reg. 13(4A)	14/02/2012	18/02/2012	18/02/2012

59. I note from the shareholding pattern of the company, as placed on record, that Noticee 19 was a promoter of the company during the IP. On perusal of transaction statements submitted by the Registrar and Share Transfer Agent of ACEL, I note that Noticee 19 had sold 50,000 shares of ACEL on February 03, 2012 and 1,38,734 shares of ACEL on February 10, 2012. I observe that on both the occasions, the number shares transacted by Noticee exceeded 25,000. Therefore, in terms of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations I, Noticee 19, being a promoter of the company, was required to make requisite disclosures to ACEL and to BSE, for each of the aforesaid transactions within two (2) working days. However, it is observed from response received from BSE that in respect of both the transactions, Noticee 19 filed the requisite disclosures to BSE on 22/02/2012, i.e., with a delay. I do not find any documents placed on record to indicate the disclosures made by Noticee 19 to ACEL in this regard.

60. Noticee 19, in his submissions, has accepted that there was delay on his part in making the necessary disclosures to BSE and ACEL, albeit calling it a technical breach only. He has also submitted copies of the documents in regard to disclosures filed with BSE along with his reply. Therefore, I find that Noticee 19 has admitted to the default on his part that he had failed to file the requisite disclosures under the aforesaid PIT Regulations I within the stipulated time period. Therefore, I find that Noticee 19 failed to file the requisite disclosures under PIT Regulations I in respect of his aforesaid transactions in the scrip of ACEL.

61. In view of the aforesaid findings and of admission of default by Noticee 19 himself, I conclude that the allegation that Noticee 19 has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations I, stands established.

<u>Issue No. 2- Does the violation, if any, attract monetary penalty under Sections 15HA and 15A(b) of SEBI Act?</u>

62. It has been established in the foregoing paragraphs that the Noticees 1, 2, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17 and 18, have violated Sections 12A(a), (b), (c) of SEBI Act, and Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations. It has also been established that Noticee 2 has violated Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations I and Noticee 19 has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations I. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: "*In our considered opinion, penalty is*

attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established..….."

63. Therefore, in view of the findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violations of Sections 12A(a), (b), (c) of SEBI Act, and Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations will attract monetary penalty under Section 15HA of the SEBI Act and the violation of Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations I committed by the respective Noticees, as stated above, will attract monetary penalty under Section 15A(b) of the SEBI Act. The respective provisions as applicable at the time of the violations are reproduced as under:

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.*

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Issue No.3 - What should be the quantum of monetary penalty?

64. While determining the quantum of penalty under Section 15HA and Section 15A(b) of the SEBI Act, it is important to consider the factors as stipulated in 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.

65. Noticees 1, 2, 15, 17 and 19 have contended that the actions of the aforesaid Noticees were not detrimental to the securities market and that the said Noticees not obtained any unfair advantage or made any disproportionate gain, whether quantifiable or otherwise. The aforesaid Noticees also contended that no loss has been caused to any investor or group of investors as a result of the alleged default and that the instant proceeding was the first instance that a regulator had proceeded against them.

66. However, with respect to the violations committed by 1, 2, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17 and 18 I note that even though there is no material on record to establish repetitive default or quantify the unfair advantage or disproportionate gain made by the Noticees, the Company had the most solemn and onerous obligation to have an upright conduct as a listed entity, and comply with all applicable regulations and laws. I note that any fraudulent conduct as established above would adversely affect the integrity of securities market and interest of investors. I note that the aforesaid Noticees had perpetrated a fraudulent scheme of funding of preferential allotment of a company using the company's own funds and thereby created a false impression that genuine capital infusion was being brought into the Company. Therefore, it is incumbent upon SEBI to take a stern view with regard to fraudulent practices, particularly when persons tasked with protecting the interest of the company and its shareholders are themselves involved in perpetrating fraud. Thus, I find that the aforesaid violations were detrimental to the integrity of securities market and therefore, the quantum of penalty must be commensurate with the serious nature of the aforesaid regulatory violations in order to serve as a deterrent example against such violations.

67. In regard to the disclosure violations committed by Noticees 2 and 19, I note that it is not possible from the material on record to establish repetitive default or quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee in making disclosures or the consequent loss caused to investors as a result of the default. However, I note that the purpose of these disclosures is to bring about transparency in the transactions of Directors/ Promoters/Acquirers/employees and assist the Regulator to

effectively monitor the transactions in the market. Hon'ble SAT in the case of M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs. SEBI (Appeal No. 209 of 2014 order dated August 11, 2014), has held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Hon’ble SAT, in the aforesaid order, has articulated the importance of true and timely disclosures. Thus, I find that the aforesaid violations were detrimental to orderly flow of information in the securities market and therefore, the quantum of penalty must be commensurate with the serious nature of the aforesaid regulatory violations in order to serve as a deterrent example against such violations.

ORDER

68. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticees and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalties on Noticees 2 and 19, individually, under Section 15A(b) of SEBI Act and Noticees 1, 2, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17 and 18, jointly and severally, under Section 15HA of SEBI Act:

Penalty for violation of PFUTP Regulations and PIT Regulations

Name of Noticee	Penalty under Section 15 HA of SEBI Act	For the violation of following provisions
Anukaran commercial Enterprise Limited	Rs. 30,00,000/- (Rupees Thirty Lakhs only) jointly and severally	Sections 12A(a), (b), (c) of SEBI Act, and Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations
Kushal Shah		
Paresh Vora HUF		
Jiten Vora HUF		
Varsha Vora		
Kankuben Vora		
Arpita Vora		
Paresh Vora		
Jiten Vora		
Vaibhav Enterprise (Proprietary concern of Paresh Vora)		
Rajdeep Enterprise (Proprietary concern of Jiten Vora)		
Raj Radhika Property Limited		
Shri Manoj Shah		

Paras Mehta		
Faiyaz Rangwala		
Name of Noticee	**Penalty under Section 15A(b) of SEBI Act**	**For the violation of following provisions**
Kushal Shah	Rs. 1,00,000/- (Rupees One Lakh only) individually	Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations I
Parag Mehta	Rs. 1,00,000/- (Rupees One Lakh only) individually	Regulation 13(4A) read with Regulation 13(5) of PIT Regulations I

69. Noticees (except Noticees 3, 9 and 12) 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. In case of any difficulties in payment of penalties, said Noticees may contact the support at portalhelp@sebi.gov.in.

70. The Noticees (except Noticees 3, 9 and 12) shall forward said Demand Draft or the said confirmation of e-payment made in the format as given in table below which should be sent to "The Division Chief, EFD – DRA - 4, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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

71. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees (except Noticees 3, 9 and 12).

72. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: July 29, 2022 **ADJUDICATING OFFICER**