BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/YK/2022-23/22671-22678]

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

In respect of:

Noticee No.	Noticee	PAN
1	Secunderabad Healthcare Limited	AACCS8246B
2	SKR Supreme Electronics and Trading Private Limited	AAECS9028D
3	Nishottam Traders Private Limited	AACCN7655D
4	NU Pharmalogics Private Limited	AACCN2913J
5	Jabeen Tradelink Private Limited	AACCJ2408A
6	Gajpal Buildinfra Private Limited	AADCG5699R
7	Nirvana Mall Management Company Private Limited	AACCN2665B
8	Aansal Securities Services Private Limited	AAFCA3926K

(The above-mentioned entities are individually referred to by their respective Noticee No. as assigned above and collectively referred to as ***'Noticees'****)*

In the matter of Secunderabad Healthcare Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an investigation into trading activities in the scrip of Secunderabad Healthcare Ltd. (hereinafter referred to as **'Company/SHL/Noticee No. 1'**) for the period November 01, 2011 to January 15, 2015 (hereinafter referred as **'Investigation Period/IP'**) with a focus to ascertain if there were any violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as **'ICDR Regulations'**) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices)

Regulations, 2003 (hereinafter referred to as **'PFUTP Regulations'**) in the context of the funding of preferential allotees by SHL in the preferential allotment scheme made by the SHL during the year 2010. The shares of the Company are listed on BSE India Limited (hereinafter referred to as **'BSE'**) since February 26, 2001.

2. Pursuant to the investigations, it was alleged that SHL made a preferential allotment of 8,00,00,000 warrants convertible into 8,00,00,000 equity shares of Rs. 10/- each for cash at a premium of Rs. 8.60 per share on preferential basis to 27 non-promoter entities, on October 14, 2010 on the terms of payment mentioned below and the warrants were converted into equity shares in two tranches i.e. on March 02, 2011 and March 31, 2012. Among the aforesaid 27 non-promoter entities, it was observed that Noticees No. 2-8 were allotted 36,25,000 warrants, 29,25,000 warrants, 36,00,000 warrants, 29,00,000 warrants, 17,50,000 warrants, 25,25,000 warrants and 27,50,000 warrants respectively.

Terms of Payment:

(a) At least 25% shall be payable before the allotment of warrants and balance on or before 18 months from the date of allotment or else the money received for the allotment of warrants shall be forfeited by the Company.

(b) In the event convertible warrants are issued, the same shall at the option of the allottee, be converted into equivalent number of equity shares in one or more tranches but before expiry of 18 months from the date of allotment.

3. Pursuant to the conversion of the aforesaid warrants to equity shares on March 02, 2011 and March 31, 2012, the total consideration amount to be paid by the Noticees No. 2 to 8 to SHL for subscription of the aforesaid shares and the actual payment alleged to have been made by the Noticees No. 2 to 8 are summarised here under:

Table No. 1

Noticee No.	Warrant / Shares allotted	Total consideration to be paid	Amount alleged to be paid by the allottees (in INR)	Variation/ Shortfall (in INR)
2	36,25,000	6,74,25,000	1,68,56,250	5,05,68,750
3	29,25,000	5,44,05,000	1,43,28,125	4,00,76,875
4	36,00,000	6,69,60,000	1,67,50,000	5,02,10,000
5	29,00,000	5,39,40,000	5,36,45,000	2,95,000
6	17,50,000	3,25,50,000	3,05,50,000	20,00,000
7	25,25,000	4,69,65,000	4,41,40,000	28,25,000
8	27,50,000	5,11,50,000	4,65,18,750	46,31,250

4. In view of the above, it was alleged that SHL, by issuing equity shares to the Noticees No. 2 to 8 without receiving full consideration amount from them and the Noticees No. 2 to 8 by receiving shares from SHL through preferential allotment without paying full consideration amount, had together violated the provisions of Regulations 77 (1) and 77 (3) of ICDR Regulations. Further, it was alleged that SHL (a listed company on BSE) gave a public impression of capital infusion through preferential allotment, whereas, in reality, SHL, inter-alia, allotted shares to the Noticees No. 2 to 8 without receiving full consideration amount from it for the said allotment. In view of the above, it was alleged that SHL provided benefit to the Noticees No. 2 to 8 through the preferential allotment scheme and hence, SHL along with the Noticees No. 2 to 8 perpetrated fraud on other allotees/shareholders and the ordinary investing public who had transacted in the shares of SHL post preferential allotment. Therefore, it was alleged that the Noticees had also violated the provisions of Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d), and 4(1) of PFUTP Regulations.

5. During Investigation, SEBI advised the Noticee No. 1 to provide information regarding aforementioned variation/shortfall. However, Noticee No. 1 failed to provide the information sought. Hence, it was alleged that the failure to furnish the information by the Noticee No. 1 had hampered the investigation as the complete details with respect to the funds received by the company from the preferential allottees towards the

allotment of shares or otherwise, could not be gathered and investigation had to be concluded based on the available information/documents. Therefore, it was alleged that the Noticee No. 1 had also violated Section 11C(2) and 11C(3) of SEBI Act.

6. In view of the above, SEBI initiated adjudication proceedings against the Noticees under the provisions of Section 15HA and Section 15HB of the SEBI Act and also under the provisions of Section 15A(a) of the SEBI Act against the Noticee No. 1.

APPOINTMENT OF ADJUDICATING OFFICER

7. Dr. Anitha Anoop was appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') in the matter vide communique dated July 29, 2019 under Section 15-I of the SEBI Act read with 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 the provisions of the Section 15A(a), 15HA and 15HB of the SEBI Act, the aforementioned alleged violation of the provisions of law by the Noticees. Pursuant to the transfer of Dr. Anitha Anoop, Shri Suresh B. Menon was appointed vide communique dated October 21, 2020. Thereafter, in view of superannuation of Shri Suresh B. Menon, Dr. Anitha Anoop was again appointed vide communique dated July 26, 2022. Subsequently, the undersigned has been appointed as the AO vide communique dated October 07, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. Show Cause Notice ref no. SEBI/EAD/AA/MKG/147,154-155,159-161,163,167/2019 dated December 31, 2019 (hereinafter referred to as **'SCN/Notice'**) was issued to the Noticees in terms of Rule 4(1) of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticees and why penalty be not imposed on it in terms of the provisions of the Section 15A (a), 15HA and 15HB of the SEBI Act for the violations alleged to have been committed by the Noticees. The SCN, *inter-alia*, alleged the following:

Noticee 1-8

a) *The Noticee No. 2 was allotted 36,25,000 shares pursuant to conversion of warrants. At the issue price of Rs. 18.60/- per share, the total required amount for subscription of the shares was Rs. 6,74,25,000/-. SEBI observed that the Noticee No. 2 had transferred Rs. 1,68,56,250/- (from account 0028CD4119060-Indusind Bank Ltd.) to the bank account of the Noticee No. 1, through multiple transactions between August 14, 2010 and February 02, 2012. SEBI observed that the funds received by the Noticee No. 1 from the Noticee No. 2, are equivalent to only 25% of the subscription amount towards shares upon conversion of the warrants.*

b) *The Noticee No. 3 was allotted 29,25,000 shares pursuant to conversion of warrants. At the issue price of Rs. 18.60/- per share, the total required amount for subscription of the shares was Rs. 5,44,05,000/-. SEBI observed that the Noticee No. 3 had transferred Rs. 1,43,28,125/- (from account 8284000001159-Yes Bank) to the bank account of the Noticee No. 1, through multiple transactions between August 16, 2010 and August 24, 2010. SEBI observed that the funds received by the Noticee No. 1 from the Noticee No. 3, are equivalent to only 26.34% of the subscription amount towards shares upon conversion of the warrants.*

c) *The Noticee No. 4 was allotted 36,00,000 shares pursuant to conversion of warrants. At the issue price of Rs. 18.60/- per share, the total required amount for subscription of the shares was Rs. 6,69,60,000/-. SEBI observed that the Noticee No. 5 had transferred Rs. 1,67,50,000/- (from account 07220100013031-Development Credit Bank) to the bank account of the Noticee No. 1 on August 26, 2010. SEBI observed that the funds received by the Noticee No. 1 from the Noticee No. 5, are equivalent to marginally in excess of 25% of the subscription amount towards shares upon conversion of the warrants.*

d) *The Noticee No. 5 was allotted 29,00,000 shares pursuant to conversion of warrants. At the issue price of Rs. 18.60/- per share, the total required amount for subscription of the shares was Rs. 5,39,40,000/-. SEBI observed that the Noticee No. 6 had transferred Rs. 5,69,85,000/- (from accounts 00602000043872 – HDFC Bank Ltd., 500011041828 & 550011046397 – Kotak Mahindra Bank) to the bank account of the Noticee No. 1 through multiple transactions between August 14, 2010 and July 06, 2011.*

e) SEBI further observed from the bank statements of the Noticee No. 5 that the Noticee No. 1 had also transferred Rs. 33,40,000/- to the Noticee No. 5 [i.e. Rs. 30,00,000/- on February 23, 2012 (before conversion of warrants) and Rs. 3,40,000/- on April 17, 2012 (after conversion of warrants) thereby leading to a shortfall in the subscription amount by Rs. 2,95,000/- (i.e. Rs. 30,45,000/- excess amount received by the Noticee No. 1 from the Noticee No. 5 less Rs. 33,40,000/- returned by the Noticee No. 1 to the Noticee No. 5).

f) *The Noticee No. 6 was allotted 17,50,000 shares pursuant to conversion of warrants. At the issue price of Rs. 18.60/- per share, the total required amount for subscription of the shares was Rs. 3,25,50,000/-. SEBI observed that the Noticee No. 6 had transferred Rs. 4,05,50,000/- (from accounts 6642090000959 – Kotak Mahindra Bank & 23105137949 – Standard Chartered Bank) to the bank account of the Noticee No. 1 through multiple transactions between August 13, 2010 and July 09, 2011.*

g) SEBI further observed from the bank statements of the Noticee No. 6 that the Noticee No. 1 had also transferred Rs. 1,00,00,000/- to the Noticee No. 6 on June 20, 2011 thereby leading to a shortfall in the subscription amount by Rs. 20,00,000/- (i.e. Rs. 80,00,000/- excess amount received by the Noticee No. 1 from the Noticee No. 6 less Rs. 1,00,00,000/- returned by the Noticee No. 1 to the Noticee No. 6).

h) *The Noticee No. 7 was allotted 25,25,000 shares pursuant to conversion of warrants. At the issue price of Rs. 18.60/- per share, the total required amount for subscription of the shares was Rs. 4,69,65,000/-. SEBI observed that the Noticee No. 7 had transferred Rs. 4,85,00,000/- (from accounts 014611023918 – Dena Bank, 550011046404 & 561011014153 – Kotak Mahindra Bank) to the bank account of the Noticee No. 1 through multiple transactions between August 13, 2010 and July 13, 2011.*

i) SEBI further observed from the bank statements of the Noticee No. 7 that the Noticee No. 1 had also transferred Rs. 43,60,000/- to the Noticee No. 7 on April 04, 2012 thereby leading to a shortfall in the subscription amount by Rs. 28,25,000/- (i.e. Rs. 15,35,000/- excess amount received by the Noticee No. 1 from the Noticee No. 7 less Rs. 43,60,000/- returned by the Noticee No. 1 to the Noticee No. 7).

j) The Noticee No. 8 was allotted 27,50,000 shares pursuant to conversion of warrants. At the issue price of Rs. 18.60/- per share, the total required amount for subscription of the shares was Rs. 5,11,50,000/-. SEBI observed that the Noticee No. 8 had transferred Rs. 5,15,18,750/- (from accounts 00602560003610 – HDFC Bank Ltd., 016283900000168 – Yes Bank & 550011045386 – Kotak Mahindra Bank) to the bank account of the Noticee No. 1 through multiple transactions between August 16, 2010 and July 02, 2011.

k) *SEBI further observed from the bank statements of the Noticee No. 8 that the Noticee No. 1 had also transferred Rs. 50,00,000/- to the Noticee No. 8 on August 18, 2011 thereby leading to a shortfall in the subscription amount by Rs. 46,31,250/- (i.e. Rs. 3,68,750/- excess amount received by the Noticee No. 1 from the Noticee No. 8less Rs. 50,00,000/- returned by the Noticee No. 1 to the Noticee No. 8).*

l) Vide various emails and summons, the Noticee No. 1 was advised to provide an explanation with respect to transfers of funds to the Noticees No. 2 to 8. However, the Noticee No. 1 did not provide any specific detail regarding the aforesaid transfers of funds. In view of the aforesaid failure on the part of the Noticee No. 1, it was alleged that the Noticee No. 1 does not have any justification/ explanation with respect to the return of the funds to the Noticees No. 2 to 8. As the consideration received from the Noticees No. 2 to 8 was less than the required amount, it was alleged that the Noticee No. 1, by issuing equity shares to the Noticees No. 2 to 8, without receiving full consideration and the Noticees No. 2 to 8 by receiving shares without paying full consideration, had together violated Regulation 77(1) and 77(3) of ICDR Regulations.

m) It was alleged that as the Noticees No. 2 to 8 did not pay full consideration for the conversion of warrants to equity shares, the aforesaid Noticees No. 2 to 8 were benefited by the company at the loss of other shareholders of the company.

n) It was alleged that Noticees No. 2 to 8 were enjoying connection to the Noticee No. 1 i.e., SHL/promoters of SHL through a network of common directors.

o) When a company raises capital through share issuance, it is a capital infusion and ordinary investor perceives such capital infusion as a measure which strengthens the company's financial fundamentals thereby attracting the investing public to transact in the shares of the company. However, in the instant matter it was alleged that although the listed company i.e. the Noticee No. 1, gave a public impression of such capital infusion through preferential allotment, in reality, the Noticee No. 1, interalia, allotted shares to nine out of the 27 allottees without receiving full consideration. In view of the above, it was alleged that by providing benefit to the Noticees No. 2 to 8 through the preferential allotment scheme, the Noticee No. 1 along with the Noticees No. 2 to 8 had perpetrated a fraud on the other allottees, shareholders and the ordinary investing public who had transacted in the shares post preferential allotment. Therefore, it was alleged that the Noticees have *violated section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) & 4(1) of PFUTP Regulations.*

p) *Noticees No. 2,3,5,6 and 7 had traded in the scrip of SHL wherein the Noticee No. 2 sold all the shares received post conversion of warrants issued in the preferential allotment and Noticees No. 3,5,6 and 7 had sold lesser number of shares than the shares they received in the preferential allotment. Further, Noticees No. 2 and 3 had unlawfully gained INR 10.57 Crore through sell of those shares received by them from the Company for which full consideration was not paid. Hence, it was alleged that the Noticees had participated in perpetrating a fraud on the other allottees, shareholders and the ordinary investing public who had transacted in the shares post preferential allotment and therefore, violated section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) & 4(1) of PFUTP Regulations*

Noticee 1

q) *SEBI sought for the information from the Noticee No. 1 regarding funds received from the aforesaid 27 preferential allottees towards the preferential allotment of warrants as well as subsequent conversion of the warrants into equity shares. However, the Noticee No. 1 had provided complete details of funds only with respect to 15 out of the aforesaid 27 preferential allottees. For the remaining 12 allottees, the Noticee No. 1 provided information only to the extent of receipt of 25% of the consideration towards the preferential allotment of warrants. The Noticee No. 1 did not provide information regarding the receipt of the balance 75% of the consideration from the 12 allottees towards the final allotment of shares upon conversion of warrants.*

r) *SEBI further observed that there were variations (i.e. either excess or shortage of amounts due to refunds of money by the Noticee No. 1 to allottees) with respect to the funds received from certain allottees. SEBI advised the Noticee No. 1 vide several emails dated* August 16, 2018, August 30, 2018, September 05, 2018 *to* *provide information regarding such variations. Further, summons in terms of Section 11(2) and Section 11C (3) of the SEBI Act were issued to the Noticee No. 1 on September 21, 2018, October 01, 2018 and October 23, 2018, seeking information in respect of the total funds received from each of the 27 preferential allottees as well as the variation in the funds received from the allottees. The summons dated September 21, 2018 was duly served upon the Noticee No. 1 on September 27, 2018, whereas the summons dated October 21, 2018 and October 23, 2018 were returned undelivered. However, Noticee No. 1 failed to provide the information sought.*

s) *It was alleged that the failure to furnish the information by the Noticee No. 1 had hampered the investigation as the complete details with respect to the funds received by the company from the preferential allottees towards the allotment of shares or otherwise, could not be gathered and investigation had to be concluded based on the available information/documents. Therefore, it was alleged that the Noticee No. 1 had violated Section 11C(2) and 11C(3) of SEBI Act*.

REPLIES OF THE NOTICEES

9. Vide emails/letters dated January 10, 2022, July 06, 2021, July 8, 2021, November 2, 2022, July 19, 2021, August 12, 2021, July 7, 2021 and July 21, 2021 respectively for Noticee No. 1, 2, 3, 4, 5, 6, 7 and 8, Noticees made the following major submissions in its reply to the SCN: -

   a. *The SCN is issued with a delay of over 9 years from the date of the transactions and on this ground of delay alone the SCN is liable to be set aside.*

   b. *It appears that the SCN was issued to the Noticees on account of non-furnishing of information by SHL, w.r.t. to the considerations received by it from the allottees including the Noticees. As regards non furnishing of information, at the relevant time, the Company was unable to lay its hands on the relevant records as the* *transactions were a decade old and the SCN was issued in 2019. Pertinently, the fact remains that the amount/consideration which was alleged to have not been paid by the Noticees to SHL has actually been paid well before the due dates.*

c. *It appears that there is some miscommunication between SHL and SEBI due to which SEBI was unable to properly examine the records. The Noticees reiterates that there is nothing due and payable to SHL on part of the Noticees w.r.t. the shares allotted to them or otherwise.*

d. *As per the Annual Reports of the SHL for the years 2010, 2011 and 2013 which are available in the public domain (published on the BSE Ltd.) the auditors of the Company had recorded, receipts of the entire consideration by the Company towards issue and conversion of convertible warrants issued by SHL. Moreover, no qualifications have been given by the auditor in the Annual Report w.r.t. conversion of warrants and consideration towards the same.*

e. *While issuing the SCN, SEBI had not considered that there was substantial compliance of applicable provisions of laws on the part of the Noticees and all payments were made by the Noticees to SHL before the due dates. Hence, there are no violations on the part of the Noticees under the ICDR Regulations.*

f. *The Noticees denies that it has received any undue benefit at the cost of other shareholders of the Company and therefore, the Noticees was part of a fraudulent arrangement through which it had perpetuated fraud on the other allottees, shareholders and also on the ordinary investing public who had transacted in the shares of the SHL post issuance of the aforesaid preferential allotment and thereby have explicitly violated the provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992, Regulation 3(a),(b),(c),(d) and 4(1) of the PFUTP Regulations, 2003.*

g. *The allegation made in the SCN showing connection amongst the Noticees, leading to an alleged violation of the PFUTP Regulations by the Noticees, is* *entirely baseless and without any evidence on record or otherwise. Insofar as linkage through common directors is concerned, SEBI had failed to demonstrate as to how the Noticees have acted in concert with such other Noticees for the purpose of non-payment of consideration towards conversion of warrants issued on preferential basis. Therefore, the allegations of the violation of PFUTP against the Noticees as set out in the SCN, do not hold any ground and on this ground alone the SCN may be set aside.*

h. *When the amount of consideration for the issue of warrants is already paid the present SCN does not stand the test of the trite law and had to be disposed of accordingly.*

i. *Without prejudice to the aforesaid, the alleged violations in the SCN if any, is a mere lacuna on the part of the SHL and no wrong doing can be attributed to the Noticees.*

HEARING

10. After receipt of the written reply and in compliance with the principle of natural justice, an opportunity of personal hearing was also granted to the Noticees on November 03, 2022 which was communicated to the Noticees vide hearing notice dated October 19, 2022. On the scheduled date of personal hearing held through video conferencing, the Noticees appeared through their Authorized Representative (AR), R V Legal, Advocates and submitted SEBI Whole Time Member orders dated September 23, 2022, October 3, 2022 and October 20, 2022 wherein the above noticees have been let off by SEBI for the similar allegations in the parallel proceedings under Section 11B of the SEBI Act in the current matter and reiterated the written replies filed with SEBI.

CONSIDERATION OF ISSUES AND EVIDENCE

11. I have carefully perused the charges levelled against the Noticees in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

I. **Whether Noticees had violated Regulations 77(1) and 77(3) of ICDR Regulations and Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), and 4(1) of PFUTP Regulations.**

II. **Whether Noticee No. 1 had violated Section 11C(2) and 11C(3) of SEBI Act.**

III. **Do the violations, if any, on the part of the Noticees attract monetary penalty under sections 15HA and 15HB of SEBI Act on Noticees No. 2-8 and under sections 15A(a), 15HA and 15HB of SEBI Act on Noticee No. 1.**

IV. **If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?**

Issue I. Whether Noticees had violated Regulations 77(1) and 77(3) of ICDR Regulations and Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), and 4(1) of PFUTP Regulations.

12. Before adverting to the factual conspectus of the case, I note that the Noticees had been alleged to had violated applicable provisions of SEBI Act, the PFUTP Regulations and the ICDR Regulations. Therefore, the said provisions are reproduced hereunder for ease of reference and better appreciation:

The SEBI Act, 1992

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

12A. No person shall directly or indirectly—

(a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

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

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

<u>The PFUTP Regulations, 2003</u>

3. Prohibition of certain dealings in securities

No person shall directly or indirectly –

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

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange

in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

Explanation.–For the removal of doubts, it is clarified that any act of diversion, misutilization or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

The ICDR Regulations

77. Payment of consideration

(1) Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allottees at the time of allotment of such specified securities:

Provided that in case of a preferential issue of specified securities pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India, the allottee may pay the consideration in terms of such scheme.

(2) …………………

(3) The balance seventy-five per cent of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.

Noticee 1

13. I note that the Company has now filed reply in rebuttal to the aforesaid allegations made in the SCN stating that the allegation pertaining to allotment of shares pursuant to conversion of warrants without receipt of consideration is wrong. The Company has further submitted that it has duly received remaining consideration of 75% from the entities referred to as Noticee nos. 2 & 3 on or before the due date of March 02, 2011 and on or before March 31, 2012 (as regards to the entities referred to as Noticee nos. 4-8) set out for the payment of consideration as per terms of payment mandated by the Company.

14. From a perusal of the copy of the bank statements furnished by the Company in support of its afore-stated claims of having received the full consideration including the remaining 75% of total consideration against the allotment of warrants and equity share, I find that different sums of money on different dates aggregating to total consideration required to be paid by the Noticee no. 2-8 have indeed been received from the respective bank accounts of these Noticees to the bank account of the Company during the period from August 13, 2010 to March 31, 2012. The said receipt of funds gets corroboration from the amounts paid in tranches by the said Noticee no. 2-8 from their respective bank accounts on the respective dates.

15. The Company has also brought attention to the statement made in its 20th Annual Report for the year 2010-11 in support of the above submission that the auditors had in fact recorded about the receipts of the entire consideration by the Company towards issue and conversion of convertible warrants issued by SHL. Further, it has also been brought to my notice that the Company vide its disclosure dated April 03, 2012 made on the BSE Ltd., while disclosing the outcome of the Board meeting held on March 31, 2012 had duly disclosed that it has decided to issue and allot equity shares in lieu of Convertible Equity Warrants to the allottees consequent to their exercising option to convert warrants against the receipt of balance 75% consideration towards the same.

16. I therefore find that the Company has furnished sufficient evidence in supports of its claim that it had received full consideration from the Noticee no. 2-8 to the bank account of the Company prior to allotment of equity shares to these Noticees upon conversion of warrants.

Noticees 2-8

17. The Noticees (2-8) have submitted that they have already paid remaining consideration of 75% to the Company much before the due date set out for the payment of consideration as per terms of payment mandated by the Company. The aforesaid Noticees have also furnished the details of the total payment which they had made to the Company against the allotment of shares and which are detailed as under:

Table No. - 2

SKR Supreme Electronics & Trading Private Limited - Noticee No. 2			
Date	**Amount (in INR)**	**Due Date**	**Remarks**
August 14, 2010	68,00,000	October 14, 2010	25 percent paid
August 18, 2010	50,00,000	October 14, 2010	
August 18, 2010	49,65,625	October 14, 2010	
October 08, 2010	90,625	October 14, 2010	
November 16, 2010	80,00,000	March 02, 2011	75 percent paid
November 16, 2010	1,00,00,000	March 02, 2011	
November 16, 2010	60,00,000	March 02, 2011	
November 16, 2010	70,00,000	March 02, 2011	
November 18, 2010	75,00,000	March 02, 2011	
November 18, 2010	75,00,000	March 02, 2011	
November 18, 2010	20,00,000	March 02, 2011	
November 19, 2010	25,00,000	March 02, 2011	
February 21, 2011	68,750	March 02, 2011	
Total	**6,74,25,000**		
Nishottam Traders Private Limited - Noticee No. 3			
Date	**Amount (in INR)**	**Due Date**	**Remarks**
August 16, 2010	36,00,000	October 14, 2010	25 percent paid
August 18, 2010	99,28,125	October 14, 2010	
August 24, 2010	8,00,000	October 14, 2010	
October 21, 2010	1,00,00,000	March 02, 2011	75 percent paid

October 21, 2010	40,00,000	March 02, 2011	
October 22, 2010	90,00,000	March 02, 2011	
October 22, 2010	1,70,76,875	March 02, 2011	
Total	**5,44,05,000**		
Nu Pharmalogics Private Limited - Noticee No. 4			
Date	**Amount (in INR)**	**Due Date**	**Remarks**
August 26, 2010	90,00,000	October 14, 2010	25 percent paid
August 26, 2010	76,50,000	October 14, 2010	
October 07,2010	1,00,000	October 14, 2010	
March 15, 2012	69,00,000	March 31, 2012	75 percent paid
March 19, 2012	75,00,000	March 31, 2012	
March 20, 2012	60,00,000	March 31, 2012	
March 21, 2012	63,50,000	March 31, 2012	
March 22, 2012	1,75,00,000	March 31, 2012	
March 23, 2012	50,00,000	March 31, 2012	
March 26, 2012	10,00,000	March 31, 2012	
Total	**6,70,00,000**		
Jabeen Tradelink Private Limited - Noticee No. 5			
Date	**Amount (in INR)**	**Due Date**	**Remarks**
August 14, 2010	35,00,000	October 14, 2010	25 percent paid
August 18, 2010	99,12,500	October 14, 2010	
October 08, 2010	72,500	October 14, 2010	
July 05, 2011	3,50,00,000	March 31, 2012	75 percent paid
July 06, 2011	85,00,000	March 31, 2012	
Total	**5,69,85,000**		
Gajpal Buildinfra Private Limited - Noticee No. 6			
Date	**Amount (in INR)**	**Due Date**	**Remarks**
August 13, 2010	81,00,000	October 14, 2010	25 percent paid
August 20, 2010	5,00,000	October 14, 2010	
July 07, 2011	1,00,00,000	March 31, 2012	75 percent paid
July 07, 2011	1,60,00,000	March 31, 2012	
July 09, 2011	80,00,000	March 31, 2012	
Total	**4,26,00,000**		
Nirvana Mall Management Co. Private Limited - Noticee No. 7			
Date	**Amount (in INR)**	**Due Date**	**Remarks**
August 13, 2010	75,00,000	October 14, 2010	25 percent paid
August 16, 2010	42,00,000	October 14, 2010	
August 17, 2010	50,00,000	October 14, 2010	
August 17, 2010	57,00,000	October 14, 2010	

June 23, 2011	25,00,000	March 31, 2012	75 percent paid
June 23, 2011	30,00,000	March 31, 2012	
July 09, 2011	1,00,00,000	March 31, 2012	
July 11, 2011	31,00,000	March 31, 2012	
July 13, 2011	75,00,000	March 31, 2012	
Total	**4,85,00,000**		
Aansal Securities Services Private Limited - Noticee No. 8			
Date	**Amount (in INR)**	**Due Date**	**Remarks**
August 16, 2010	1,27,18,750	October 14, 2010	25 percent paid
August 17, 2010	50,00,000	October 14, 2010	
August 18, 2010	79,00,000	October 14, 2010	
June 2, 2011	(-)1,50,00,000		
June 14, 2011	1,09,00,000	March 31, 2012	75 percent paid
July 02, 2011	1,50,00,000	March 31, 2012	
July 04, 2011	1,00,00,000	March 31, 2012	
July 05, 2011	1,00,00,000	March 31, 2012	
August 18, 2011	(-)50,00,000		
July 14, 2015	(-)3,68,750		
Total	**5,11,50,000**		

From a perusal of the copy of the bank statements furnished by the Noticees (2-8) in support of their afore-stated claims of having paid full consideration including the remaining 75% of total consideration against the allotment of warrants and equity share, I find that different sums of money on different dates aggregating to total consideration required to be paid by the Noticees as indicated in Table no.- 2 above have indeed been transferred from the respective bank accounts of the Noticees to the bank account of the Company during the period from August 13, 2010 to March 26, 2012. The said receipt of funds gets corroboration from the amounts paid in tranches by the Noticees as shown in the above table from their respective bank accounts on the respective dates. I therefore find that the Noticees have furnished sufficient evidence in supports of their claims that they had paid full consideration to the bank account of the Company.

18. Therefore, having considered the materials on record, I am of the view that the *Noticees* are successful in rebutting the allegations made against them in the SCN by establishing that they had indeed paid full consideration towards the allotment of

warrants as well as the equity shares post the conversion of those warrants. I am therefore, in the absence of any evidence to the contrary on record, inclined to grant exoneration to the *Noticees (2-8)* by accepting their submission that they have actually paid the remaining 75% of the consideration to the *Company* and thus in effect, have paid the full consideration to the *Company* towards this purpose.

19. In view of the above, I conclude that the allegations levelled against the *Noticees* that *Noticees No. 2-8* had received shares from *Company* through preferential allotment without paying full consideration amount and that the *Noticees* perpetrated fraud on other allotees/shareholders and the ordinary investing public who had transacted in the shares of the SHL post preferential allotment, do not stand established and I hold that the *Noticees No. 2 to 8* have paid full and adequate consideration to the *Company* towards allotment of its equity shares as per the terms of payment mandated by the *Company*. Since Noticees 2-8 had paid their full and adequate considerations to the company towards allotment of shares as per the terms mandated by the company, I find allegation levelled against Noticees 1-8 for the violation of Regulation 77(1) and 77(3) of ICDR Regulations 2009 and Section 12A(a) (b) (c) of the SEBI Act read with Regulations 3(a)(b) (c) (d) 4(1) of PFUTP Regulations, does not hold good.

Issue II. Whether Noticee No. 1 had violated Section 11C (2) and 11C (3) of SEBI Act.

20. Before adverting to the factual conspectus of the case, I note that the Noticee No. 1 had been alleged to have violated applicable provisions of SEBI Act. Therefore, the said provisions are reproduced hereunder for ease of reference and better appreciation:

<u>The SEBI Act, 1992</u>

Investigation

11C.

(1) ……………

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

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

21. I note that SCN alleges that Noticee No. 1 was advised to provide information regarding variation (i.e. either excess or shortage of amounts due to refunds of money by the Noticee No. 1 to allottees) in respect to the funds received by Noticee No. 1 from certain allottees vide several emails dated August 16, 2018, August 30, 2018, September 05, 2018. Further, through summons in terms of Section 11(2) and Section 11C (3) of the SEBI Act issued to the Noticee No. 1 on September 21, 2018, October 01, 2018 and October 23, 2018, seeking information in respect of the total funds received from each of the 27 preferential allottees as well as the variation in the funds received from the allottees. However, Noticee No. 1 failed to provide the information sought. Failure to furnish the information by the Noticee No. 1 had hampered the

investigation as the complete details with respect to the funds received by the company from the preferential allottees towards the allotment of shares or otherwise, could not be gathered and investigation had to be concluded based on the available information/documents.

22. The summons dated September 21, 2018 was duly served upon the Noticee No. 1 on September 27, 2018, whereas the summons dated October 21, 2018 and October 23, 2018 were returned undelivered.

23. In view of the above, I conclude that Noticee No. 1 had violated the provisions of Section 11C (2) and 11C (3) of SEBI Act.

24. Noticee 1 in its reply to the SCN had mentioned that at the relevant time it was unable to lay it hands on the relevant records as the transactions were a decade old and the SCN was issued in 2019.

25. I note that details sought by SEBI (in the year 2018) was not a decade old as it pertains to the payment towards preferential allotment done by the company which was finally paid in 2011 and 2012 and information was sought by SEBI while investigating the matter on different dates in the year 2018 however SCN in the matter was issued on Dec 2019. Assuming that the data sought by SEBI was not handy with the company at the relevant time, however I note that the same data was provided to SEBI once SEBI had issued directions against the company under Section 11B of the SEBI Act on April 30, 2021. The above sequence of events reflects lackadaisical attitude of the company towards the regulator as it didn't provide the information sought by SEBI through emails, it didn't provide information sought by issuing summons issued under Section 11C (2)(3) of the SEBI Act, it had provided information only when SEBI had inter alia issued restraining orders against the company vide its order dated April 30, 2021.

26. It is further noted that as the information sought by the Investigating Authority was pertaining to the Noticee and though the same was available with the Noticee, it failed to furnish the said information / documents to Investigation Authority

27. In this context, I would like to also refer to the order of the Hon'ble SAT in the matter of Mr. Jalaj Batra vs. SEBI (Appeal no. 184 of 2010, date of decision: December 06, 2010) wherein it was observed *"......We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non-cooperation with the market regulator has to be viewed seriously. We do not know what else would have come to light if the appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him."*

28. As regards the imposition of monetary penalty for non-compliance of summons, I note that the Hon'ble SAT had the occasion to deal with this issue in the matter of DKG Buildcon Pvt. Ltd. (supra), wherein it observed: *"It was then argued on behalf of DKG that section 15A(a) of the Act does not apply as the Act, Rules or Regulations made thereunder do not per se require the production of documents or furnishing of information and that it was only a direction of the Board contained in the summons that the appellant was required to comply with. The argument indeed is that non-compliance with the directions of the Board would not attract section 15A(a) and that the penalty could be levied under the residuary provision contained in section 15HB. The argument is being noticed only to be rejected. Section 11C of the Act was introduced with effect from 29.10.2002 and sub-section (3) thereof provides that the investigating authority may require any person associated with the securities market*

“to furnish such information, or produce such books, or registers, or other documents, or record before him…”. The power to require a person to furnish any information or record or documents includes the power to require such person to make a statement and give clarifications with regard to the information and documents produced by him. In the absence of such a power the purpose of the legislature in introducing section 11C would be frustrated and the Board will not be able to investigate properly the market irregularities and offences. In order to advance the object of Parliament the language used in sub-section (3) of section 11C has to be given a wider meaning. We are, therefore, of the considered opinion that section 11C(3) gives the power to the investigating authority to call upon any person to make a statement while furnishing any information, document or record."

29. Thus, it is clear that if a person fails to comply with the summonses of Investigation Authority, he is liable for penalty under Section 15A(a) of SEBI Act. As the violation of provisions of section 11C(2) and 11C(3) of SEBI Act by the Noticee No. 1 has been established, I hold that Noticee No. 1 is liable for monetary penalty under section 15A(a) of SEBI Act.

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

31. The aforesaid provisions read as under:

“Penalty for failure to furnish information, return, etc.

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

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

32. While determining the quantum of penalty under section 15A(a), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

    "Factors to be taken into account while adjudging quantum of penalty.

    15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

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

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

    (c) the repetitive nature of the default."

33. I note that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. Also there is no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default. However, it is pertinent to mention here by not submitting complete details to the summons despite having received the summonses compromises the regulatory framework and hampers the investigation. Further, any delay or hurdle in investigation due to non-cooperation by any entity is detrimental to the interest of investors in securities market and the same deserves to be viewed seriously.

34. With regard to non-compliance of SEBI Summons, I would like to rely on Hon'ble SAT's observation in Appeal No. 203/2010 in the matter of M/s Asian Films Production

and Distribution Ltd. Vs SEBI wherein Hon'ble SAT has held that "*Non-compliance with the summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market. We do not know what would have come to light if the company had furnished the information sought from it. In this background, we do not think that the amount of penalty levied by the adjudicating officer is excessive.*"

35. I also note that had Noticee 1 provided desired information sought by SEBI during investigation itself, various proceedings initiated due to lack of information would have been avoided and lot of time and efforts of the various parties involved would have been saved. Facts of the case indicate that the attitude of Noticee 1 was casual, it did not co-operate during investigation period and deliberately avoided any inquiry in the matter until it woke up from hibernation once SEBI started issuing prohibitory orders against it in the matter. Hence the violations committed by the Noticee has to be viewed seriously and attract penalty under Section 15A(a) of the SEBI Act surprisingly.

ORDER

36. In view of the above observations/findings, after considering all the facts and circumstances of the case (such as non-compliance with SEBI investigation and hampering the process of investigation) and exercising the powers conferred upon me under Section 15-I of the Act and Rule 5 of AO Rules, I hereby impose a monetary penalty of Rs. 2,00,000/- (Rupees Two Lacs only) on Secunderabad Healthcare Limited under the provisions of Section 15A(a) of the SEBI Act for their failure to submit the desired details/information/records/documents sought by the Investigating

Authority which resulted in violation of the provisions of Section 11C(2) and 11C(3) of SEBI Act. I am of the view that the said penalty is commensurate with the default committed by the Secunderabad Healthcare Limited.

37. In view of the above observations/findings and in exercise of the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings against the Noticees namely Secunderabad Healthcare Limited, SKR Supreme Electronics and Trading Private Limited, Nishottam Traders Private Limited, NU Pharmalogics Private Limited, Jabeen Tradelink Private Limited, Gajpal Buildinfra Private Limited, Nirvana Mall Management Company Private Limited, and Aansal Securities Services Private Limited vide SCN dated December 31, 2019 for the violation of Regulations 77(1) and 77(3) of ICDR Regulations and Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), and 4(1) of PFUTP Regulations.

38. Payment of penalty can be 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, Noticee may contact the support at portalhelp@sebi.gov.in.

39. The Noticee shall forward the said Demand Draft or the details/ confirmation of payment made in the format as given in table below to "The Division Chief, EFD – DRA - IV, 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)	

40. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date : January 02, 2023 **Sahil Malik**
Place : Mumbai **Adjudicating Officer**