BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/VS/2022-23/16591]

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

In respect of –

Tirupati Fincorp Ltd. (AADCS4520R) having addresses at PN-1 Telephone Colony, Tonk Phatak, Jaipur : 302 015 and Plot No.D 37, Sector 9, B1 Basement Floor, Chitrakut Yojna, Vaishali Nagar, Jaipur : 302 021

In the matter of Tirupati Fincorp Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings against Tirupati Fincorp Ltd. ("hereinafter together referred to as "**the Noticee**"/ "**Tirupati"**) under Section 23E of the Securities Contracts (Regulation) Act, 1956 ("hereinafter referred to as the "**SCRA**") and Sections 15HA of the Securities and Exchange Board of India Act, 1992 ("**the SEBI Act**") for alleged violation of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 ("**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer ("AO") under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") vide order dated September 7, 2020 to inquire into, and adjudge under Sections 15HA and 15 HB of the SEBI Act, the aforesaid alleged violations of the Noticees. The appointment of the undersigned as AO was communicated vide order dated October 16, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice ("**SCN**") No. EAD5/MC/VS/2138 dated 04.03.2021 was issued to the Noticee for alleged violation of the LODR Regulations and the PFUTP Regulations by the Noticee.

4. The allegations levelled against the Noticee in the SCN are summarized as follows:-

5. SEBI investigated suspected misutilisation of funds raised by Tirupati Fincorp Ltd. ("**TFL**"/"**the Company**"/ "**Noticee**") through preferential allotment of equity shares made on 07.01.2013.

6. The period of Investigation has been taken from January 05, 2013 to December 24, 2015 (hereinafter referred to as "**investigation period" / "IP**").

7. The findings of the investigation are given below:

8. TFL is an India-based non-banking finance company ("**NBFC**"). The Company is engaged in providing financial services. The Company provides various types of financial products and secured loans. Its services include loan against property, unsecured loans, loan against shares and business loan.

9. TFL was incorporated in 1982 under the name and style of "Surya Globefin Limited" and the name of the Company was changed to Tirupati Fincorp Limited

from January 2013. The registered address of the company is PN-1, Telephone Colony Tonk Phatak, Jaipur, Rajasthan- 302 015. The company is listed at BSE since March 2015. However, the present status of listing as per BSE website is: "*Trading Restricted - On account of GSM, Suspended due to Penal reasons, Suspended - Surveillance Measure".*

Management of the company:

10. During the investigation period, the directors of TFL were as follows:

Table-1

DIN	Name	Designation	Begin Date	End Date
02910252	Kusum Jain	Director	04-Jan-2010	26-Sep-2014
02910260	Hitsharan Jain	Director	04-Jan-2010	25-Mar-2017
06462955	Saurabh Gandhi	Director	27-Dec-2012	26-Sep-2014
06962259	Murugan Gayathri	Director	01-Sep-2014	08-Apr-2015
06970069	Senthilkumar Tappali Devadoss	Director	01-Sep-2014	30-Apr-2015
07322250	Beena Jain	Director	25-Sep-2015	11-Aug-2017
06604513	Prafulla Subhashchandra Bhat	Director	14-Nov-2015	11-Mar-2016
01227408	Bhupendra Ratilal Kadhi	Director	22-Feb-2014	14-Jun-2014
02392119	Arvind Jethalal Gala	Director	30-Apr-2015	6-Feb-2019
02709047	Chanakya Arvind Dhanda	Director	14-Jan-2016	11-Mar-2016
02208146	Bhavesh Premji Mamania	Director	07-Jun-2014	Continued
07184815	Sudhir Bhikhalal Parekh	Director	30-Apr-2015	Continued
06683130	Parth Dineshbhai Kanabar	Addl Director	19-Apr-2017	Continued
08364948	Sheetal Mitesh Shah	WT Director	30-Apr-2015	Continued

Note: It is also noted from the minutes of the various meetings submitted by the Company, that a person by the name "Ms. Chanchal Dalmia" was present during the meetings in the capacity as "Director". However, name of the entity does not appear in the records of MCA/Zaubacorp as a director of the Company.

Investigation into the utilization of the proceeds of Preferential Allotment

11. Vide the "Notice of Extra Ordinary General Meeting" dated November 30, 2012 *(Annexure-1a to the SCN)* issued by the Company for the Extra Ordinary General Meeting ("**EGM**") of its members held on January 5, 2013, preferential issue was proposed as a Special Business. Further, the Explanatory Statement

in terms of Section 173(2) of the Companies Act, 1956 under the head: "Disclosures prescribed under the SEBI ICDR Regulations, 2009, set out the following as the objects of the preferential issue:

- In order to generate long term resources for implementing future growth plans, it is proposed to issue equity shares on preferential basis;
- The proceeds of proposed preferential allotment will strengthen the financial position of the company;
- The object of the equity shares on preferential basis is to augment the capital base of the company and also to meet working capital requirement of the company.

12. The Resolution dated January 05, 2013 was passed by the Board of Directors of the Company for issue on preferential basis of 20,00,000 equity shares of Rs.10/- each at a premium of Rs.11/- per equity share aggregating to Rs.4,20,00,000/-. Accordingly, the preferential allotment by TFL was made on January 07, 2013.

13. The Company in its EGM of the members held at its Regd. Office at: E-7 Ram Sharan Dham, Jagdamba Nagar, Ajmer Road, Jaipur, on January 5, 2013, passed the resolution containing the details of the allotment and the objects of the preferential issue. Further, as per the copy of the relevant extract of the Minutes of the EGM of members of the Company held on, January 5, 2013 (*Annexure – 2 to SCN*) the aforesaid Resolution, there was no mention about any modification made to the Objects of the Preferential Issue as set out in the "Notice of Extra Ordinary General Meeting" dated November 30, 2012.

14. The details of the preferential allotment, as submitted by the company are as follows:-

Table-2

Sr. No	Date of allotment	No. of allottees	No of shares	Issue Price (in Rs)	Issue Proceeds (in Rs)
1.	January 07, 2013	27	20,00,000	21	4,20,00,000/-

15. The details of allottees, no. of shares allotted, and subscription money received from them are given in Table below:-

Table-3

Sl. No.	Name and address of the Allottee	Address of the Allottee	No. of Shares allotted for	Amount Payable @ Rs.21 per share	Date of Receipt of Subscription moneys	Amount
1	G K Dalmia	1, Gracehill Road, Coonoor, Tamilnadu : 643 101	95,238	1999998	30-Nov-12	20,00,000
2	Navin Gupta	33, Indraprasth Colony, Ram Nagar, Sodala, Jaipur : 302 006	47,618	999978	31-Dec-12	50,000
					31-Dec-12	50,000
					31-Dec-12	50,000
					31-Dec-12	50,000
					31-Dec-12	50,000
					31-Dec-12	50,000
					31-Dec-12	50,000
					31-Dec-12	50,000
					31-Dec-12	50,000
					31-Dec-12	50,000
					14-Nov-19	5,00,000
3	Krishan Kant	1-3/21-26 Gurukrupa Building, Kamakoti Nagar, Vijayawada, Andhra Pradesh	95,238	1999998	14-Dec-12	20,00,000
4	Gajanand Sharma	22, Kartik Nagar, Akera Dungri Road No.17, VKI Area, Jaipur	71,429	1500009	14-Dec-12	15,00,000
5	Subhash Chand Chaudhary	55, Balaji Vihar, 18 Murlipuar Ajmer Bypass, Jaipur	71,429	1500009	17-Dec-12	15,00,000
6	Hitsaran Jain	B-41 Mandir Road, Vidhyadhar Nagar, Jaipur	71,429	1500009	30-Nov-12	15,00,000
7	Mahavir Singh Panwar	Plot No.146/79, Lower Attadi, Coonoor, Nilgris : 643 104	47,618	999978	17-DE-12	10,00,000
8	Dalmia Infrapower P Ltd.	301-302 Amrapali Plaza, Amrapali Circle, Vaishali Nagar, Jaipur : 302 021	71,429	1500009	04-Dec-12	15,00,000
9	Tea Exchange Bharath Ltd.	1, Shreeji Complex, Gracehill Road, Coonoor, Tamilnadu : 643 102	95,238	1999998	30-Nov-12	20,00,000

Sl. No.	Name and address of the Allottee	Address of the Allottee	No. of Shares allotted for	Amount Payable @ Rs.21 per share	Date of Receipt of Subscription moneys	Amount
10	Golden Era Plantations P. Ltd.	94, Gracehill Road, Coonoor, Tamil Nadu : 643 101	95,238	1999998	30-Dec-12	20,00,000
11	Bharatiya Natural and Organic Foods Pvt. Ltd.	720, 7th Floor Evershine Tower, Amrapali Circle, Vaishali Nagar, Jaipur 302 021	95,238	1999998	18-Dec-12	20,00,000
12	Bharatiya Commotrade Pvt. Ltd.	719, 7th Floor, Evershine Tower, Amrapali Circle, Vaishali Nagar, Jaipur : 302 021	71,429	1500009	18-Dec-12	15,00,000
13	Shiv Trading Co. (Shiv Kumar Agarwal)	DI-382, Parswnath Township, Navrangpura, Ahmedabad	71,429	1500009	03-Dec-12	15,00,000
14	Yash Dalmia	1, Gracehill Road, Coonoor, Tamilnadu : 643 101	71,429	1500009	15-Dec-12	15,00,000
15	Chanchal Dalmia	1, Gracehill Road, Coonoor, Tamilnadu : 643 101	71,429	1500009	05-Dec-12	15,00,000
16	Maya Dalmia	1, Gracehill Road, Coonoor, Tamilnadu : 643 101	71,429	1500009	15-Dec-12	15,00,000
17	Basant Devi	1, Gracehill Road, Coonoor, Tamilnadu : 643 101	71,429	1500009	04-Dec-12	15,00,000
18	Santosh Trading Co.	301-302 Amrapali Plaza, Amrapali Circle, Vaishali Nagar, Jaipur : 302 021	71,429	1500009	03-Dec-12	15,00,000
19	Kaushal Agarwal	B-396, Murlipura Scheme, Murlipura, Jaipur	76,190	1599990	14-Dec-12	16,00,000
20	Rekha Agarwal	B-396, Murlipura Scheme, Murlipura, Jaipur	80,952	1699992	13-Dec-12	17,00,000
21	Kusum Jain	B-41 Mandir Road, Vidhyadhar Nagar, Jaipur	71,429	1500009	29-Nov-12	15,00,000
22	Jabhar Jat	55, Balaji Vihar, 18 Murlipuar Ajmer Bypass, Jaipur	71,429	1500009		15,00,000
23	Bimla Devi Sharma	22, Kartik Nagar, Akera Dungri Road No.17, VKI Area, Jaipur	71,429	1500009	14-Dec-12	15,00,000
24	Chandra Prakash Sharma	22, Kartik Nagar, Akera Dungri Road No.17, VKI Area, Jaipur	80,952	1699992	13-Dec-12	17,00,000
25	Ramesh Badai	P.O.Kukas Tehsil, Ajmer, Jaipur	80,952	1699992	14-Dec-12	17,00,000
26	Tulsi Ram Bunker	P.O.Kukas Tehsil, Ajmer, Jaipur	61,904	1299984	20-Dec-12	13,00,000
27	Sarita Gupta	33, Indraprasth Colony, Ram Nagar, Sodala, Jaipur : 302 006	47,618	999978	21-Dec-12	10,00,000
TOTAL			20,00,000	4,20,00,000		4,20,00,000

16. From the Bank Statement submitted by the Company (duly highlighting the respective credit transactions), it was observed that the aforesaid amounts were received by the Company in its Bank Account with Bank of Maharashtra.

17. Connection among the Preferential Allottees:

a. Based on the addresses given in the Application Form and as per letter dated June 14, 2019 of the Company, Dalmia Infrapower Pvt. Ltd., and Santhosh Trading Company are connected as they share common address of 301-302, Amrapali Plaza, Amrapali Circle, Vaishali Nagar, Jaipur – 302 021.

b. Tea Exchange Bharat Ltd., Yash Dalmia, Chanchal Dalmia, Maya Dalmia, Basanti Devi, and G K Dalmia, are connected as they share common address of 1, Gracehill Road, Coonoor, Tamilnadu – 643 101. In this regard, during the statement recording of the AR on December 2, 2019, they were asked whether Dalmia Infrapower P Ltd., Yash Dalmia, Maya Dalmia, Chanchal Dalmia and Besant Devi are related to Mr.G.K.Dalmia. It was also asked whether any other allottees were related to Mr.G.K.Dalmia. The representatives submitted that they were not aware of the exact details and that the requisite information would be furnished by December 9, 2019. However, the Company did not provide any information on the same yet.

c. Further, G K Dalmia is the promoter-director of Dalmia Infrapower Pvt. Ltd., and Tea Exchange Bharat Ltd. Maya Dalmia was a director in Tea Exchange Bharat Ltd.,

d. G K Dalmia and Basanti Devi are directors in Golden Era Plantations Pvt. Ltd.

e. Kaushal Agarwal and Rekha Agarwal shared the same residential address of B-396, Murlipura Scheme, Murlipura, Jaipur.

f. Hitsaran Jain and Kusum Jain shared the same residential address of B-41, Mandir Road, Vidhyadhar Nagar, Jaipur, and they were also directors of TFL.

g. Subhash Chand Chaudhary and Jaibhar Jat shared the same residential address of 55, Balaji Vihar, 18 Murlipuar Ajmer Bypass, Jaipur

h. Gajanand Sharma, Bimla Devi Sharma and Chandra Prakash Sharma shared the same residential address of 22, Kartik Nagar, Akera Dungri

Road, No.17, VKI Area, Jaipur.

i. Ramesh Badai and Tulsi Ram Bunker shared the common residential address of P.O.Kukas Tehsil, Ajmer, Jaipur.

j. Sarita Gupta and Navin Gupta shared the common residential address of 33 Indraprasth Colony, Ram Nagar, Sodala, Jaipur – 302 206

k. Yash Dalmia and Maya Dalmia were directors in Bhartiya Commotrade Private Ltd., till May 2019 and April 2019 respectively

l. Maya Dalmia and Yash Dalmia were directors in Bhartiya Natural and Organic Foods Pvt. Ltd., till September 2013 and February 2016 respectively.

m. K Dalmia was a director in both Bhartiya Commotrade Pvt. Ltd., and Bhartiya Natural and Organic Foods Pvt. Ltd., since November 2009 and December 2009 respectively.

n. Vide letter dated February 24, 2020, G K Dalmia was asked to explain the relationship/connection with the Company/other preferential allottees. The said letter sent to the address as available in the records furnished by the Company, was returned undelivered with a postal remark: "Addressee left without instructions".

o. The Company vide its email dated February 25, 2020, confirmed that the entities G K Dalmia, Damia Infrapower P Ltd., TEBL, Golden Era Plantations P Ltd., Bhartiya Natural and Organic Foods P Ltd., Bhartiya Commotrade P Ltd., Yash Dalmia, Chanchal Dalmia, Maya Dalmia, and Basanti Devi Dalmia were related to each other.

<u>Connection among the Company and the Preferential Allottees:</u>

18. Kusum Jain, Hit Saran and Chanchal Dalmia were Directors in the Company (it is noted that though the name of Chanchal Dalmia appeared in the copies of various minutes (eg., Minute of the meeting held on June 17, 2012, July 26, 2012, August 16, 2012, etc.) submitted by the Company January 28, 2020, as "present" in the meetings as a Director of the Company, however, her name did not appear in MCA website as a director of the Company);

19. Chanchal Dalmia was connected to G K Dalmia based on the residential address given by them, as well as the Company email dated February 25, 2020.

20. Dalmia Infra Power Pvt. Ltd., Tea Exchange Bharat Ltd., Golden Era Plantations Pvt. Ltd., Bharatiya Natural and Organic Foods Pvt. Ltd., Bhartiya Commotrade Pvt. Ltd., Yash Dalmia, Maya Dalmia, Basanti Dalmia was connected with the Company through Chanchal Dalmia, who was a Director of the Company, as stated earlier.

<u>Connection of the Company with the Preferential Allottees and the entities that received proceeds of the preferential allotment:</u>

21. Bhartiya Natural and Organic Foods Pvt. Ltd., were connected to preferential allottees Maya Dalmia and Yash Dalmia. Further, Maya Dalmia and Yash Dalmia share the same residential address of Chanchal Dalmia, a Director in the Company;

22. Santosh Trading Company was represented by one Santosh Agrawal in the loan agreement. He held directorship in TEBL along with Gopi Krishan Dalmia (G K Dalmia), Maya Dalmia and Basanti Devi Dalmia during the period from June 2006 and March 2009. Further, Gopi Krishan Dalmia, Maya Dalmia and Basanti Devi Dalmia shared the same residential address with Chanchal Dalmia, a Director in the Company.

23. Vinayaka Tea Company (HUF) – As per information given in "About Us" page of website of Dalmia Technologies (tebl.org/about-us.html), Vinayaka Tea Company and Tea Exchange Bharat Limited were promoted by the same promoters *(Annexure-3 to SCN)*. Further, TEBL is connected to the Company through G K Dalmia and Chanchal Dalmia. Further, the mobile number of G K Dalmia (9443366852) as per copy of his KYC Form *(Annexure-4 to SCN)* obtained from Motilal Oswal Securities Ltd., is same as that of G.K. Dalmia

(Proprietor) of The Vinayaka Trading Company in its listing in the Indiamart website (*Annexure-5 to SCN*).

24. Govind Kripa Buildwell P Ltd., and Tirupati Mahima Infratec P Ltd., were represented by one Abhimanyu in the capacity of director for executing the loan agreements.

25. TEBL was connected to the Company through G K Dalmia who was connected to the director of the Company Chanchal Dalmia.

26. Shiv Trading Company was preferential allottee for shares worth Rs.15 Lakh, and was supplier of goods to the Company to the tune of Rs.68 Lakh which was duly paid by the Company (as submitted by the Company to BSE).

27. Santosh Trading Company was another preferential allottee for shares worth Rs.15 lakh, who was also supplier of goods worth Rs.50 Lakh and was given short term loan of Rs.38.45 Lakh.

28. Krishan Kant was one of the preferential allottee as per the records submitted by the Company. The Company in its submission before BSE stated that it had deployed a sum of Rs.20.00 Lakh for purchase of goods from one Krishan Kant Agarwal. The PAN of Krishna Kant Agarwal was AGDPA7584J. Allottee by name "Krishan Kant" also held the same PAN.

Deployment of funds by Company

29. The Company, vide its letter dated June 14, 2019, delivered to SEBI on June 17, 2019 (*Annexure-6 to SCN*), furnished certain information/documents. According to the said letter of the Company, the funds mobilized through the preferential allotment were deployed as under:

<u>Table - 5</u>

S.No.	Accounting Head	Amount (INR)
1.	Short Term Loans and Advances	2,05,28,088.17
2.	Cash and Bank Balances	90,02,783.52
3.	Non-Current Investments	2,16,11,000.00
TOTAL		5,11,47,871.69

30. The Company vide its aforesaid letter also informed the following, with regard to the deployment of funds:

> "………. *Also being the Company is NBFC in nature, Company has invested the money in the other body Corporate to generate long term resources as specified in the Object of the issue. Accordingly, the Company has executed the share purchase agreement with Tea Bharat Exchange Limited (TEBL)…."*

31. It is noted that the aforesaid information relating to deployment of funds raised through the preferential issue as given in Table-5 above, is different from what has been stated by the Company before BSE. The Company's claim to have deployed the funds mobilized through the preferential issue, broadly under three account heads as mentioned in Table-5 above, was examined as under:

<u>Short Term Loans and Advances</u>

32. BSE vide its notice dated July 7, 2017 addressed to the Company (*Annexure-7 to SCN*) observed that the Company had utilized a sum of Rs.1.48 Crore for granting loans. Out of the said amount of Rs.1.48 Crore, Rs.37.81 Lakh was given to Santosh Trading Co., as Loan. The said Santosh Trading Co., was one of the preferential allottees with 71,429 shares for a total consideration of Rs.15 Lakh.

33. The Company vide its letter dated September 30, 2019 *(Annexure-9 to SCN)* submitted a ledger extract of "Loans & Advances (Asset) Account" as at the end of the financial year 2012-13. As per the said ledger extract, the following parties carried the respective Debit balances for the loans and advances made to them:

Table-7

Sl. No.	Name of the Parties	Debit balance as on March 31, 2013
1.	Govind Kripa Buildwell Pvt. Ltd.,	706,041.00
2.	Jagrati Hotels Pvt. Ltd.	29,383.00
3.	Meena Steel	1,000,000.00
4.	Mona Poddar	814,597.00
5.	Mukta M Goyal	1,624,520.55
6.	Neelam Devi Chopra	769,479.00
7.	Pawan Natani HUF	1,025,973.00
8.	Pramod Gupta Jaipur	1,572,986.23
9.	Rajesh Techno Plast Jaipur	651,885.00
10.	Rama Plastics Jaipur	1,087,206.00
11.	Sachin Water Supply Co.	1,050,630.00
12.	Tirupati Mahima Infratec Pvt. Ltd.	1,815,534.00
13.	Vinod Kumar Gupta HUF	2,516,644.00
14.	Bhartiya Natural & Organic Food P Ltd.	48,468.00
15.	Dulal P Chowdhary	200,000.00
16.	Santosh Trading Company	3,845,682.00
17.	Vinayaka Tea Co. (HUF)	1,769,059.00
TOTAL		20,528,087.78

34. Following were the observations from the Ledger extracts (party-wise) submitted by the Company:

i. From the ledger extract of Govind Kripa Buildwell Pvt. Ltd. (Annexure-10 to SCN), which was submitted by the Company vide its letter dated January 24, 2020 (received on January 27, 2020), it was observed that the principal amount of Rs.7,00,000/- was lent on February 25, 2013 and the same was also reflected in the bank statement furnished by the Company. An amount of Rs.6,041/- was debited to the loan account on March 31, 2013 towards interest on the loan. However, the Company has stated to have deployed an amount of Rs.7,06,041/- from out of the preferential issue proceeds under the head “Short Term Loans and Advances”. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head “Short Term Loans and Advances” by Rs.6,041/-.

ii. As per the ledger extract of ***Jagrati Hotels Pvt. Ltd., (Annexure-11)*** the principal amount of Rs.5,00,000.00 was lent on August 31,2012 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of RTGS from the Company’s Account with Bank of Maharashtra. Further, it is stated by the Company that the said loan amount was received back on March 15, 2013. The net debit balance of Rs.29,382/- shown as outstanding as on 31st March 2013 represents the total interest charged on the loan of Rs.32,383/- and after deducting TDS of Rs.3,000/-.

iii. As per the ledger extract of ***Meena Steel (Annexure-12)***, the principal amount of Rs.10,00,000/- was lent on December 18, 2012 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of RTGS from the Company’s Account with Bank of Maharashtra. From the ledger extract submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. *However, interest has not been charged/debited to the account for the quarters ended 31st December 2012 and March 31, 2013.*

Hence, it cannot be stated that the loan has been granted to earn revenue on the capital deployed and does not appear to be in the ordinary course of business of the Company. In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" or misutilized the preferential issue proceeds by Rs.10,00,000/-.

iv. As per the ledger extract of ***Mona Poddar (Annexure-13)***, the principal amount of Rs.8,00,000/- was lent on January 17, 2013 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of RTGS from the Company's Account with Bank of Maharashtra. From the ledger extract submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. An amount of Rs.14,597.00 has been debited to the Account on March 31, 2013 towards interest for the loan. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.14,597/-.

v. As per the ledger extract of ***Mukta Goyal (Annexure-14)***, the principal amount of Rs.15,00,000/- was lent on June 2, 2012 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of RTGS from the Company's Account with Bank of Maharashtra. From the ledger submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. A total amount of Rs.1,24,520.55 has been debited to the Account on June 30, 2012, September 30, 2012, December 31, 2012 and on March 31, 2013, towards interest for the loan. However, TDS credit as mentioned in other loan accounts has not been seen in the ledger account. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.1,24,520.55/-.

vi. As per the ledger extract of ***Neelam Devi Chopra (Annexure-15)***, the principal amount of Rs.7,50,000/- was lent on January 12, 2013 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of RTGS from the Company's Account with Bank of Maharashtra. From the ledger submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. An amount of Rs.19,479.00 has been debited to the Account on March 31, 2013 towards interest for the loan. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.19,479/-.

vii. As per the ledger extract of ***Pawan Natani HUF (Annexure-16)***, the principal amount of Rs.10,00,000/- was lent on January 12, 2013 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of RTGS from the Company's Account with Bank of Maharashtra. From the ledger submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. An amount of Rs.25,973.00 has been debited to the Account on March 31, 2013, towards interest for the loan. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.25,973/-.

viii. As per the ledger extract of ***Pramod Gupta Jaipur (Annexure-17)***, the principal amount of Rs.15,00,000/- was lent on two dates (Rs.10,00,000/- on September 15, 2012 and Rs.5,00,000/- on September 17, 2012). The copy of bank statement submitted by the Company indicates that the loan proceeds were transferred by way of RTGS from the Company's Account with Bank of Maharashtra. From the ledger submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. A total amount of Rs.72,986.23 has been debited to the Account on various dates, towards interest for the loan. However, TDS credit as mentioned in other loan accounts has not been seen in the ledger account. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.72,986.23.

ix. As per the ledger extract of ***Rajesh Techno Plast Jaipur (Annexure-18)***, the principal amount of Rs.6,00,000/- was lent on June 14, 2012 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred on June 15, 2012 by way of RTGS from the Company's Account with Bank of Maharashtra. From the ledger submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. A total amount of Rs.57,650/- has been debited to the Account on various dates, towards interest for the loan. Further, a total amount of Rs.5,765/- was credited towards TDS. Accordingly, an additional amount of Rs.51,885/- was outstanding towards interest on the loan account, along with the principal amount of Rs.6,00,000/-. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.51,885/-.

x. As per the ledger extract of ***Rama Plastics Jaipur (Annexure-19)***, the principal amount of Rs.10,00,000/- was lent on July 11, 2012 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of RTGS from the Company's Account with Bank of Maharashtra. From the ledger submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. A total amount of Rs.87,206/- has been debited to the Account on various dates, towards interest for the loan. *However, no amount was adjusted towards TDS.* Accordingly, a total amount of Rs.10,87,206/- was outstanding as on March 31, 2013. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.87,206/-.

xi. As per the ledger extract of ***Sachin Water Supply Co.(Annexure-20)***, the principal amount of Rs.10,00,000/- was lent on October 29, 2012 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of RTGS from the Company's Account with Bank of Maharashtra. From the ledger submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. A total amount of Rs.50,630/- has been debited to the Account on various dates, towards interest for the loan. *However, no amount was adjusted towards TDS.* Accordingly, a total amount of Rs.10,50,630/- was outstanding as on March 31, 2013. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.50,630/-.

xii. As per the ledger extract of ***Tirupati Mahima Infratc Pvt. Ltd.(Annexure-21)***, the principal amount of Rs.18,00,000/- was lent on February 25, 2013 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of RTGS from the Company's Account with Oriental Bank of Commerce. From the ledger submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. A total amount of Rs.15,534/- has been debited to the Account on various dates, towards interest for the loan. *However,* *no amount was adjusted towards TDS. .* Accordingly, a total amount of Rs.18,15,534/- was outstanding as on March 31, 2013. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.15,534/-.

xiii. As per the ledger extract of ***Vinod Kumar Gupta HUF (Annexure-22)***, the principal amount of Rs.15,00,000/- was lent on March 5, 2013 and another amount of Rs.10,00,000/- was lent on March 7, 2013. The copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of RTGS from the Company's Account with Oriental Bank of Commerce. From the ledger submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. A total amount of Rs.16,644/- has been debited to the Account on various dates, towards interest for the loan. *However, no amount was adjusted towards TDS.* Accordingly, a total amount of Rs.25,16,644/- was outstanding as on March 31, 2013. The interest amount that accrued as on March 31, 2013 cannot be classified as amount deployed out of preferential issue proceeds.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.16,644/-.

xiv. As per the ledger extract of ***Bhartiya Natural & Organic Food P Ltd. (BNO) (Annexure-23)***, the loan account had an opening Balance of Rs.6,00,000/- on April 1, 2012, i.e., the amount has been lent prior to the financial year 2012-13. Further, repayments of Rs.2,77,538/- on November 27, 2012, Rs.3,22,462/- on December 19, 2012 and Rs.5,00,000/- on March 7, 2013 were received by the Company. Accordingly, the borrower BNO had repaid Rs.11,00,000/- which is in excess of the principal amount of Rs.6,00,000/-. The excess amount of Rs.5,00,000/- was repaid in 7 instalments of various amounts on various dates (in cash : Rs.4,90,000/- and through bank : Rs.10,000/-).

An amount of Rs.48,468/- has been debited to the Account towards interest for the loan at the close of the financial year (transaction date not shown in the ledger). *However, interest was not charged to the account for the quarters ended June 30, 2012, September 30, 2012 and December 31, 2012.* Accordingly, an amount of Rs.48,468/- only was outstanding towards interest on the loan account. . The Company has not furnished any document in support of the aforesaid excess re-payment received from the Borrower, and the subsequent refund by the Company. Further, while refunding the excess amount to the borrower, the Company has not chosen to deduct the interest amount of Rs.48,468/- accrued on the loan account. Further, refunds were also made in cash to the tune of Rs.490,000/-. Further, BNO is also one of the preferential allottees and connected entity, which is discussed in detail under Para No.10 below.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.48,468/-.

xv. As per the ledger extract of ***Dulal P Chowdhary (Annexure-24)***, the principal amount of Rs.2,00,000/- was lent on March 27, 2013 and the copy of bank statement submitted by the Company indicates that the proceeds were transferred by way of NEFT from the Company's Account with Bank of Maharashtra. From the ledger submitted by the Company, it was observed that the said amount was lying outstanding as on March 31, 2013. Interest has not been debited to the account for the quarter ended March 2013. Accordingly, an amount of Rs.2,00,000/- was stated to have been utilized by the Company from out of the proceeds of the preferential issue. As the Company has not charged any interest on the borrower for the quarter ended March 31, 2013, the loan could not have been extended in the ordinary course of business.

Hence, the same cannot be stated that the loan has been granted to earn revenue on the capital deployed and does not appear to be in the ordinary course of business of the Company.

In view of the above, the Company has overstated the amount deployed under the head "Short Term Loans and Advances" or misutilized the preferential issue proceeds by Rs. 2,00,000/-.

xvi. As per the ledger extract of "***Santosh Trading Company-Loan" (Annexure-25)***, an amount of Rs. 7,81,571/- was lent on December 14, 2012 and an amount of Rs.30,00,000/- on December 15, 2012. The copy of bank statement submitted by the Company indicates that an amount of Rs.11,00,000/- was transferred to M/s.Santosh Trading Company on December 14, 2012 and another sum of Rs.30,00,000/- was transferred on December 15, 2012, thus totaling to Rs.41,00,000/-. However, the Company had booked only Rs. 37,81,571/- as loan given to the entity. From the ledger submitted by the Company, it was observed that an amount of Rs.66,000/- was repaid by the borrowing entity on January 1, 2013 and interest of

Rs.1,30,111/- was debited to the borrower on March 31, 2013, for which no TDS credited in the ledger account as contained in other ledger accounts. Further, interest was not charged for the quarter ended December 31, 2012. Thus the outstanding amount as at the yearend was Rs. 38,45,682/. Further, the borrower is also one of the preferential allottees, and hence the AC of BSE alleged that the funds mobilized through preferential allotment from this entity was refunded by the Company to the allottee in the garb of loans granted. It is also noted that the borrower is also connected entity.

In view of the above, the Company overstated the amount deployed under the head "Short Term Loans and Advances" by Rs.38,45,682/-.

xvii. As per the ledger extract of "***Vinayaka Tea Co.(HUF)-Loan Given" (Annexure-26 to SCN)***, an amount of Rs.23,19,028/- was lent on December 18, 2012. The copy of bank statement and the transaction in the said bank statement as identified by the Company indicated that an amount of Rs.35,00,000/- was transferred to Gopi Krishna Dalmia HUF on December 18, 2012. However, the Company had booked only Rs. 23,19,028/- as loan given to the entity.

From the ledger submitted by the Company, it was observed that a total sum of Rs.6,12,500/- was repaid by the borrowing entity on January 1, 2013 (Rs.1,62,500/-); and January 14, 2013 (Rs.4,50,000/- - in two credits of Rs.2,25,000/- each). Interest of Rs.62,531/- was debited to the borrower on March 31, 2013, for which no TDS was credited in the ledger account as contained in other ledger accounts. Further, interest was not charged for the quarter ended December 31, 2012. Vinayaka Tea Company (HUF) is also an entity connected to other preferential allottees. In view of the above, it was seen that the funds mobilized through preferential allotment was refunded by the Company to the allottee(s) in the garb of loans granted.

35. In view of the above, the Company overstated the amount deployed under the head “Short Term Loans and Advances” by Rs.17,69,059/-.

36. The Company submitted loan agreements executed with some of the parties/borrowers towards proof of amounts lent to them. The Company vide its letter dated January 24, 2020, stated that the loan agreements in respect of the following parties were not traceable:

   a. Jagrati Hotels Pvt. Ltd.,
   b. Mukta M Goyal
   c. Pramod Gupta Jaipur
   d. Rajesh Techno Plast Jaipur
   e. Rama Plastics Jaipur
   f. Sachin Water Supply Co
   g. Bharatiya Natural & Organic Food P Ltd.

37. Out of 17 parties to whom “Short Term Loans and Advances” were given and claimed to be the deployment of preferential issue proceeds, only loan agreements in respect of 10 parties were submitted by the Company. Wherever the agreements were made available they were observed to be executed in Mumbai on Non Judicial stamp papers sold in the state of Maharashtra. Whereas, the address of the parties to the agreement i.e., of the Company and the borrowers were situated in the state of Rajasthan and the seal of the Company affixed on the agreements is that of Tirupati Fincorp Ltd., Jaipur. Incidentally, the agreements did not contain any clause on the judicial limits for the enforcement of the same before a court of law. Further, it was observed that the loan agreements were not registered. The agreements did not contain any

definitive repayment period / repayment schedule for the loans granted under the said agreements.

38. The following three borrowers were connected with the Company and preferential allottees:

    a. Bharatiya Natural & Organic Foods Pvt. Ltd.,
    b. Santosh Trading Company
    c. Vinayaka Tea Company (HUF)

39. In view of the above, it was alleged that the Company has returned the amount paid by the preferential allottees under the garb of short term loans and advances.

40. From the aforesaid observations, the following summary of amounts overstated by the Company as deployment of funds / misutilization of the preferential issue proceeds, under the head “Short Term Loans and Advances” was noted:

Table-8

Name of the Parties	Debit balance as on March 31, 2013	Amount overstated/ not considered	Remarks
Govind Kripa Buildwell Pvt. Ltd.,	706,041.00	6,041.00	Interest income accrued on the loan account cannot be considered as deployment of issue proceeds
Meena Steel	1,000,000.00	1,000,000.00	The disbursement cannot be considered as loans granted in the ordinary course of business
Mona Poddar	814,597.00	14,597.00	Interest income accrued on the loan account cannot be considered as deployment of issue proceeds
Mukta M Goyal	1,624,520.55	124,520.55	
Neelam Devi Chopra	769,479.00	19,479.00	
Pawan Natani HUF	1,025,973.00	25,973.00	Interest income accrued on the loan account cannot be considered as deployment of issue proceeds
Pramod Gupta Jaipur	1,572,986.23	72,986.23	
Rajesh Techno Plast	651,885.00	51,885.00	

Jaipur			
Rama Plastics Jaipur	1,087,206.00	87,206.00	
Sachin Water Supply Co.	1,050,630.00	50,630.00	
Tirupati Mahima Infratec Pvt. Ltd.	1,815,534.00	15,534.00	
Vinod Kumar Gupta HUF	2,516,644.00	16,644.00	
Bhartiya Natural & Org. Food P Ltd.	48,468.00	48,468.00	
Dulal P Chowdhary	200,000.00	200,000.00	The disbursement cannot be considered as loans granted in the ordinary course of business
Santosh Trading Company	3,845,682.00	3,845,682.00	TDS was not made on the interest debited; Interest was not debited for one quarter. AC of BSE alleged that the Company has returned the subscription money under the garb of loans.
Vinayaka Tea Co. (HUF)	1,769,059.00	1,769,059.00	From the pattern of disbursements/ repayments and accounting, this transaction cannot be considered as deployment of preferential issue proceeds as loans granted – Borrower is also an entity connected to the preferential allottees.
TOTAL	20,528,087.78	7,348,704.78	

41. Thus, the Company allegedly diverted/misutilized an amount of Rs.73,48,704.78 out of the preferential issue proceeds on activities other than the ones approved by the shareholders in the EGM.

<u>“Non Current Investments”</u>

42. In respect of deployment of preferential issue proceeds under the head “Non Current Investments” of Rs.2,16,11,000/-, the Company, vide letter dated June

14, 2019 ***(****Annexure-31 to SCN****)***, stated that the Company being Non-Banking Finance Company, invested the money in the other body corporate to generate long term resources as specified in the object of the issue. Accordingly, the Company had executed the Share Purchase Agreement with Tea Exchange Bharat Ltd., (TEBL). A copy of the said Agreement has been submitted by the Company vide its letter dated June 14, 2019 *(Annexure-28)*.

43. The following were noted from the Share Purchase Agreement (SPA) executed by the Company with the said Tea Exchange Bharat Ltd.(TEBL):
   i. The SPA was stamped with *"Court Fee Stamps*" for a total value of Rs.20/-
   ii. The SPA was executed on March 31, 2013, for purchase of 21,61,100 shares of Rs.10/- each of TEBL at par of Rs.10/- per share for a total consideration of Rs.2,16,11,000/- (Rupees two crore sixteen lakh and eleven thousand only)
   iii. The consideration/subscription money for the above share purchase was paid in the following manner:
      - Rs.48,87,000/- (Rupees forty eight lakh and eighty seven thousand only) paid by the Company to TEBL during May 2012 to March 2013 through Bank/Cash;
      - Rs.1,67,24,000/- (Rupees one crore sixty seven lakh and twenty four thousand only) standing to the credit of ledger account in the books of the Company as on March 31, 2013, be adjusted towards consideration for the share purchase. *The said credit balance was stated to be on account of goods supplied by the Company to TEBL*
   iv. The parties to the SPA agreed to take approval of their companies' shareholders under applicable sections of Companies Act, 1956 at their respective Extraordinary General Meeting held and fulfill all the statutory compliances.

44. From the copies of the share certificates issued by TEBL in the name of the Company, it was observed that the shares certificate were issued on 31st March, 2013.

45. The Company, vide its letter dated January 13, 2020 *(Annexure-32 to SCN)*, submitted copies of the minutes of board meetings and general meetings for the financial years 2012-13 and 2013-14. From the aforesaid copies of the minutes, no board resolution could be seen for the investment in TEBL as required under Section 372 of the Companies Act, 1956. Whereas, it was observed from the copies of minutes that there was a resolution in the board meeting held on November 7, 2012 whereby consent was accorded by the Board for investment of Rs.3,00,000/- (1000 equity shares of face value Rs.100/- each at a premium of Rs.200/- per share) in Golden Era Plantations India Pvt. Ltd.

46. TEBL was also one of the preferential allottees with 95,238 shares for Rs.19,99,998/.

47. The Company stated that it adjusted the debit balance of Rs.1,67,24,000/- (Rupees one crore sixty seven lakh twenty four thousand only) in the books of the Company towards the subscription moneys payable to TEBL, and the said debit balance was attributed to supply of fabrics to TEBL by the Company.

48. In this regard, the following are observed to be the objects of the Company as per its Memorandum of Association ("MoA") *(Annexure-33 to SCN)*:

"III. The objects for which the Company is established are:

A. THE MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE:

1. To carry on the business of dealers, brokers, investors, owners, proprietors, underwriters, bargainers, financiers, concessionaires, contractors, booking agents, managers, trustees, advertisers of all kind of securities, shares debentures, scrips, bonds, bill of exchanges, letters of credit, stocks and the other securities in which dealing is permissible as per stock exchange regulations and other laws in force from time to time.

2. *To carry on the business of traders, importers, exporters, suppliers,*

brokers stockists, commission agents of chemicals, fertilisers, ferrous and non-ferrous metals, minerals, salts, pesticides, insecticides, drugs and pharmaceuticals."

49. There was no provision in the ancillary/incidental objects or other objects in the MoA for the Company to carry out the activity in the nature of trading in fabrics.

50. Further, the company being a Non-Banking Finance Company registered with the Reserve Bank of India, derived 96.37% of its total revenue for the financial year 2012-13 from the sale of fabrics and that was indicated as "Revenue from Operations". Further, the debit balance in the name of TEBL towards sale of fabrics worked out to 62.74% of the total revenue by way of fabric sale.

51. From the Statement of Profit and Loss Account read with Notes No.13 and No.14, for the year ended 31st March 2013 ***(****Annexure-35 to SCN****)*** provided by the Company, it was observed that the Company reported a total revenue of Rs.2,76,77,486.78 comprising of:

    - Rs.2,66,55,717/- as "Revenue from Operations" - from sale of fabrics; and
    - Rs.10,21,769.78 as Other income - from interests on loans and fixed deposits.

52. The Company has not booked any revenue on account of sale of fabrics during the subsequent financial year 2013-14. Also, the ledger account of "Tea Exchange Bharat Ltd., Sell A/c" in the books of the Company [submitted as Annexure-4 to the Company letter dated December 10, 2019 *(Annexure-37 to SCN****)*** did not have any opening balance on account of sale of fabrics for the financial year 2012-13 indicating that there were no fabric sales to TEBL during the previous financial year.

53. RBI, vide its Circular No. RBI/2006-07 [DNBS (PD) C.C. No.81 / 03.05.002/2006-07] dated October 19, 2006 *(Annexure-38 to SCN)*, has stipulated the following:

"…….

3. In this regard, it is further clarified that the business of non-banking financial institution (NBFI) means a company engaged in the business of financial institution as contained in Section 45 I(a) of the RBI Act, 1934. For this purpose, the definition of 'Principal Business' given, vide Press Release 1998-99/1269 dated April 8, 1999 (copy enclosed) and mentioned in below may be followed:

The company will be treated as a non-banking financial company (NBFC) if its financial assets are more than 50% of its total assets (netted off by intangible assets) and income from financial assets is more than 50 per cent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a company."

54. Vide its Press Release dated April 8, 1999 *(Annexure-3 to SCN)*, RBI *inter alia* clarified the following:-

"Any company which carries on the principal business of agricultural activities, industrial activities, trading in commodities, dealing in immovable properties, etc., is, however, not a financial institution. Since the term 'principal business' has not been defined in law, the Reserve Bank has now decided the description of principal business for the purpose of identification of an NBFC."

55. In addition, the Company, in its submissions before BSE, stated that out of the proceeds of the preferential allotment, an amount of Rs.68.00 Lakh was utilized for purchase of fabrics from Shiv Trading Co., another preferential allottee. The AC of the BSE observed that the Company has returned Rs.20.00 Lakh to Krishankant Agarwal in the garb of purchase of fabrics.

56. From the objects of the preferential issue as seen above, it was noted that the preferential issue was to augment the Company's resources for deployment in its NBFC related business activity. Whereas, the Company has stated that the funds mobilized have been deployed partly for purchase of goods and also for the purpose of investment in a body corporate viz., Tea Exchange Bharat Ltd.

57. In view of the above, the Company had not utilized the proceeds of preferential issue for the purposes approved by the shareholders of the Company. Further, the substantial portion of the preferential issue proceeds have been either paid back to the preferential allottees in the garb of short term loans or under share purchase agreement or towards purchase of goods.

58. Further, by its own admission, the Company being a Non-Banking Finance Company registered with the RBI, was in need of additional capital for shoring up its networth in order to comply with the requirements of the RBI. However, after having made the preferential issue of equity shares to increase the share capital and thereby enhancing the net-worth of the Company, it was observed that, the Company had not deployed the funds in full towards its main business of NBFC but only made fictitious book entries by creating false purchases/invoices for supply of non-taxable goods (fabrics) and built up artificial debit/credit balance in its book. The said purchase/sales transactions were made for the purposes of creating fictitious debit and credit balances which were then used to return the moneys to the preferential allottees.

59. By deploying such a dubious device/scheme including preferential allotment of shares, the Company apparently attempted to fulfil the networth requirements of RBI to keep its NBFC registration in force, and also tried to evoke better investor sentiment by making the preferential allotment appear to be a genuine capital mobilization activity by the listed Company engaged in business of non-banking finance company. Further, the Company by recording various artificial/fictitious transactions with associates/related entities, falsely portrayed higher business transactions/revenue.

60. In view of the above, the Company was alleged to have engaged in fraudulent activity and thereby violated Regulations 3 (a) (b), (c), (d) and 4 (1) and (2) (a) and (f) of the PFUTP Regulations. Consequently, the directors of TFL i.e. Noticees 1-15 (Sudhir Bhikalal Parekh, Bhavesh Premji Mamania, Parth Dineshbhai Kanabar, Sheetal Mitesh Shah, Kusum Jain, Senthilkumar Tappali

Devadoss, Hitsharan Jain, Saurabh Gandhi, Beena Jain, Prafulla Subhash Chandra Bhat, Arvind Jethalal Gala, Bhupendra Ratilal Kadhi, Chanakya Arvind Dhanda , Murugan Gayathri, Chanchal Dalmia) were alleged to have violated Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(f) of PFUTP Regulations.

61. The entities Dalmia Infrapower Pvt.Ltd., Santosh Agrawal, Yash Dalmia, Maya Dalmia, Basanti Devi, Gopi Krishan Dalmia, Tea Exchange Bharat Ltd., Bhartiya Commotrade Pvt. Ltd., Bhartiya Natural Organic Food Pvt. Ltd., Golden Era Plantations India Pvt. Ltd., Vinayak Tea Company, Shiv Trading Company and Krishan Kant Agrawal i.e. Noticees 16 to 27, which were connected with each other as mentioned earlier, aided and colluded with the Company in deploying a dubious device/scheme in the garb of preferential allotment of shares made by the Company, and thereby allegedly violated Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(f) of the PFUTP Regulations.

<u>Compliance with Clause 43 of the Listing Agreement (now Regulation 32 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 hereinafter referred to as the LODR Regulations</u>

62. Following were the objects of the preferential issue as contained in the Notice dated November 30, 2012 convening the EGM wherein it was proposed to transact the special business of passing a special resolution approving the proposed preferential allotment:

A. *Objects of the Preferential issue*
    - *In order to generate long term resources for implementing future growth plans, it is proposed to issue Equity Shares on Preferential basis*
    - *The proceeds of proposed preferential allotment will strengthen the financial position of the company*
    - *The object of the Equity Share on preferential basis is to augment the capital base of the Company and also to meet working capital requirement of the Company*

63. The Company, vide its letter dated December 23, 2015 *(Annexure-4 to SCN)*, informed the following to BSE:

"……

1. *Networth of the Company was Rs.84.08 lacs prior to making preferential issue of shares to investors.*
2. *As already stated, the company is RBI registered NBFC, which need to have networth of Rs. Two crores as per RBI guidelines.*
3. *So to keep NBFC license in force, we were required to raise the networth of the company beyond Two crores.*
4. *We were required to induct the funds into the company to do the NBFC business more efficiently and cost effective manner. Any finance company cannot survive without the availability of funds to its disposal to keep the company afloat as it is continuous requirement for a finance company to borrow the funds and deploy the funds and earn the interest income on it. Thus we wanted to raise funds for the working capital requirement of the company, which is lifeline of any Non Banking Finance Company (NBFC)."*

64. BSE vide its Notice dated October 9, 2018 *(Annexure-41)* addressed to the Company advised it to make mandatory disclosures w.r.t. mis-utilization of preferential proceeds along with ensuing quarterly unaudited/audited financial results and to get the same ratified by the shareholders of the company within 3 months from intimation. However, as confirmed by BSE, vide its email dated January 3, 2020 *(Annexure-42)*, the Company had not complied with the aforesaid direction.

65. BSE also furnished a copy of the letter dated September 10, 2018 *(Annexure-43)* received from the Company wherein it had attached a document with title "Proceedings of the Annual General Meeting of the Company held on 10th September, 2018". The said document contained *inter alia* the following:

"The Board of Directors has appointed CS Mandar Palav, partner of M/s.DSM & Associates, Company Secretaries (Membership No.27695 and COP No.13006) as the scrutinizer to scrutinize the E-voting process in a fair and transparent manner (including the Ballot Form received from the members who do not have access to the e-voting process) in a fair and transparent matter.

……..

- *He (the Chairman of the meeting)* moved the following resolutions which were duly proposed & seconded and were then put to vote through ballot paper (to be voted by only those shareholders whom have not voted* *earlier through e-voting):-*

Item No.	*Description of Resolution*	*Type of Resolution*
1.	*To receive, consider and adopt Audited Financial Statement of the Company for the financial year ended 31st March, 2018 and Reports of the Auditors' and Directors' thereon*	*Ordinary*
2.	*To appoint a Director in place of Mr. Sudhir Parekh (DIN: 07184815), who retires by rotation and being eligible offers himself for re-appointment*	*Ordinary*
3.	*To ratify the Utilisation of funds raised through Preferential Issue*	*Special*

He then requested scrutinizer Mr. Mandar Palav to start the voting process through ballots and request him to oversee the voting process.

- *He informed the meeting that the result of the voting would be declared within 2 days from conclusion of the meeting. The result would be also informed to Stock Exchanges where the shares of the Company are listed.*
- *After conclusion of voting process the meeting ended with a vote of thanks to the chair."*

66. It was observed that despite proposing the ratification resolution for voting in the Annual General Meeting of the Company held on September 10, 2018, the Company did not disclose its outcome. Thus, the Company did not comply with disclosure requirements stipulated in Clause 43 and 43A of the erstwhile Listing Agreement read with Regulation 32 of the LODR Regulations, in respect of variation/deviation in the utilization of preferential allotment proceeds**.**

<u>Status of Registration granted to the Company to act as Non-Banking Finance Company (NBFC) by the Reserve Bank of India (RBI)</u>

67. The Company in its various submissions before SEBI and the AC of the BSE, informed that the preferential allotment was made to enhance the long term resources of the Company and to meet the networth requirements stipulated by RBI for registered NBFCs. It was observed from the revenue inflow of the

Company as recorded in the financial statements submitted, that trading fabrics contributed a major share of the Company's total revenues for the financial year 2012-13. Further, the Company was also observed to be lending to various connected entities. The loan accounts (ledger extracts) submitted by the Company and the loan agreements furnished in support of the said loan transactions, did not infuse confidence in the loan transactions portrayed as deployment of the proceeds of the preferential issue.

68. Vide their letter dated January 13, 2020 *(Annexure-32 to SCN)*, the Company submitted a copy of the last correspondence received from the RBI. The said copy of correspondence was found to be a Show Cause Notice (SCN) dated March 16, 2018. Vide the said SCN, the RBI pointed out several failures on the part of the Company and called upon the Company to show-cause why the Certificate of Registration granted to the Company should not be cancelled:

69. RBI, vide its email dated February 20, 2020 to informed SEBI that the Certificate of Registration (COR) of the company was cancelled vide orders dated January 25, 2019. RBI also issued Press Release dated February 25, 2019, RBI regarding the cancellation of certificates of registration of the Company.

70. The aforesaid information regarding cancellation of registration to act as a non-banking finance company is material to the business of the Company. However, such disclosure is not appearing on the website of BSE where its shares are listed. Such failure to disclose the material information to the stock exchange was alleged to be in violation of the aforesaid Regulation 30 of the LODR Regulations.

71. The Company did not disclose to the BSE statement of variation between object of the issue approved by the shareholders of the Company in its EGM and the actual utilization of the funds raised through the preferential issue, in violation of Clauses 43 and 43A of the then Listing Agreement read with Regulation 32 of the LODR Regulations. Further, the Company furnished piecemeal/incomplete

information and suppressed material information regarding regulatory actions initiated by the RBI, thus allegedly violating Regulation 30 of the LODR Regulations.

72. The SCN was served on the Noticee by SPAD on 08.03.2021 and e-mail dated 05.03.2021.

73. Vide letter dated 24.03.2021 the Noticee sought extension of time for filing reply and also sought documents collected during investigation. Vide e-mail dated 09.07.2021, the Noticee was e-mailed a copy of letter dated 21.06.2021 responding to request for inspection of documents, stating that all relevant material relied upon for the purpose of crystallisation of allegations against the Noticees had been provided through the SCN and its Annexures. However, if there was a specific document which it would request access to, it may be specified along with the reason for seeking access. Further, an opportunity of hearing was granted to the Noticee on 14.07.2021, wherein it was advised that any further submissions on inspection of documents may be made during the hearing.

74. During the hearing conducted through videoconferencing by WebEx on 14.07.2021, the Noticee appeared through its Authorised Representative (“**AR**”), Advocate Kunal Katariya, and undertook to make submissions by 12.08.2021 and to appear for another hearing on the same day. No averments were made regarding inspection of documents.

75. Vide e-mail dated 10.08.2021, the Noticee stated that its Advocate was unwell and it needed another week to file it reply. However, vide e-mail dated 20.08.2021, the Noticee intimated regarding its decision to file a settlement application in terms of the SEBI (Settlement Proceedings) Regulations, 2018 in the matter, and requested to keep the matter in abeyance till conclusion of settlement proceedings. Vide e-mail dated 23.10.2021, the Noticee submitted a copy of its settlement application filed with SEBI.

76. Vide e-mail dated 18.04.2022 the Noticee intimated that pursuant to a meeting held on 13.04.2022 with the Internal Committee for settlement, the Noticee had decided not to avail the settlement mechanism route.

77. Accordingly, vide e-mails dated 26.04.2022 and 28.04.2922, the Noticee was granted opportunity of hearing by videoconferencing through WebEx on 23.05.2022. The Noticee Vide email dated May 20, 2022, requested for an adjournment and the same was acceded to. The Noticee was granted another opportunity of hearing on 25.03.2022.

78. During the hearing conducted by videoconferencing through WebEx on 25.05.2022, the Noticee appeared through its AR, Advocate Kunal Katariya, and reiterated its written submissions made vide reply dated May 24, 2022. Thereafter, the AR sought time to make additional written submissions and submitted the same vide its reply dated May 25, 2022.

79. Vide reply dated 24.05.2022 and 25.05.2022, the Noticee made the following submissions:-

Preliminary Replies:

(a) The transactions pertain to the period January 2013 whereas the SCN has been issued in March 2021. Thus, there is inordinate delay of 8-9 Years in issuance of SCN. All staff members who were working with the Noticee at the relevant time are no longer employed and left the organisation long ago. The management has undergone a change and the professionals who are currently in charge of the company have no material or data available to respond to the charge in the SCN.

(b) In the light of Hon’ble Supreme Court judgements in SEBI vs. Ashok Shivlal Rupani & Anr (C.A.No. 8444-8445) & SEBI vs. Bhavesh Pabari [(2019) SCC Online SC 294] and Hon’ble Securities Appellate Tribunal order in Ashlesh Gunvantbhai Shah vs. SEBI, the power to adjudicate has not been exercised within a reasonable period and therefore no penalty could be imposed

Reply on merits:

(c) With respect to the allegation of fraudulent impression of capital infusion into the company through preferential allotment, in the order dated 30 March, 2022 SEBI has already held that the alleged violation of some device or scheme to give a fraudulent impression of capital infusion into the company is not made out and therefore the allegations have been dropped. The said finding can be found at paragraph 103 of the order dated 30 March 2022. Respectfully, with this finding, the Noticee is no longer required to dwell into responding to this allegation as in the same proceeding, arising out of the same SCN, other notices have been exonerated of this charge.

(d) The present management does not have any material to respond to the said allegations as this pertains to transaction of 2013. From the record it appears that the erstwhile management did some cloth trading business from the available funds. The said business was clearly undertaken for generation of long-term resources for growth and strengthening financial position of the company. It is submitted that the allegation that the company has violated PFUTP regulations may not be sustainable as the company utilized the proceeds for cloth trading business and has never misutilised or siphoned off any funds. The charge under regulation 3 and regulation 4 of the PFUTP regulations cannot be made out in the present circumstances on account of the fact that the money was utilised for the company's own business and the said facts were reported in the annual report of the company at the relevant time. The facts were therefore always known to the shareholders and there was no attempt to cover any actions or divert any attention. In view of the same, it is respectfully submitted that since the issues of 2013 and pertains to the erstwhile management of the company, punishing the company with penalty in

2022 would only result in punishing the existing shareholders who have nothing to do with the aforesaid violation.

(e) The alleged failure to make the disclosures was unintentional. At paragraph 114 of the order dated 30 March 2022, SEBI has already held that no disclosure of the outcome of the ratification does not amount to violation of clause 43 of the listing agreement and therefore that charge has been dropped. While it is true that the fact of cancellation of registration by RBI was not disclosed by the company, the said fact was available in the public domain and was always known to the world at large. Therefore, it can never be stated that it was material information not available to the public at large.

(f) At paragraph 122 of the order dated 30 March 2022, the fact that the matter is more than 9 years old and the fact that cancellation of certificate was available in the public domain has been taken into consideration. Accordingly, the mitigating factors were taken into consideration and penalty was imposed by the learned AO. Given the fact that there is no siphoning and the fact that the management of the company is now with professionals, the Noticee prays that the present proceedings be disposed of with a warning and without imposition of penalty.

(g) The purpose of the preferential allotment was inter alia generation of long-term resources for growth and strengthening financial position of the company. In this regard, as per Object No. 21 of the memorandum of association, the company had an object of carrying out the business of cloth trading (i.e. buying and selling cloth). In view of the same, there is no diversion of funds and the funds were In fact used for long-term resources for growth and strengthening financial position of the company

80. In the light of the allegations contained in the SCN, the Noticee’s submissions in respect of the allegations made in the SCN and relevant material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

81. The issues arising for consideration in the instant proceedings are:-

   I. Whether the Noticee violated (i) Clauses 43 and 43A of the erstwhile Listing Agreement read with Regulation 32 of the LODR Regulations (ii) Regulation 30 of the LODR Regulations iii) Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (f) of the PFUTP Regulations?

   II. If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15 HA of the SEBI Act and Section 23E of the SCRA for violation of PFUTP Regulations and the LODR Regulations respectively?

   III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules, and Section 23-J of the SCRA read with Rule 5 (2) of the SCRA Adjudication Rules?

I. Whether Noticee has violated (i) Clauses 43 and 43A of the erstwhile Listing Agreement read with Regulation 32 of LODR Regulation, (ii) Regulation 30 of the LODR Regulations and (iii) Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (f) of the PFUTP Regulations?

82. The facts of the case are that during the investigation period Tirupati Fincorp Ltd. ("TFL/the Company") was an NBFC, and a company listed on the BSE since March 2015. On 07.01.2013 the Company made a preferential issue of 20,00,000 equity shares of Rs. 10 each issued at a premium of Rs. 11 each for a total amount of Rs. 4.20 crores, to 27 preferential allottees ("the preferential issue").

83. TFL issued a Notice of Extraordinary General Meeting ("EGM") dated 30.11.2012 detailing, *inter alia,* the objects of the preferential issue for an EGM

held on 05.01.2013 regarding the preferential issue. A Resolution dated 05.01.2013 was passed by the Board of Directors of the Company for the preferential issue, which was then carried out on 07.01.2013.

84. Certain preferential allottees were connected to each other. Dalmia Infrapower Pvt. Ltd. (preferential allotee) and Santosh Agrawal had the same address. Chanchal Dalmia, Yash Dalmia, Maya Dalmia, Basanti Devi and Tea Exchange Bharat Ltd. also had the same address, which was also shared by Gopi Krishan Dalmia & Vinayak Tea Company, a promoter-director of Dalmia Infrapower Pvt. Ltd. and Tea Exchange Bharat Ltd. Maya Dalmia was also a director in Tea Exchange Bharat Ltd.. Basanti Devi and Gopi Krishan Dalmia & Vinayak Tea Company were directors in Golden Era Plantations India Pvt. Ltd. Kusum Jain and Hitsharan Jain had the same address and were directors of the Company. Yash Dalmia and Maya Dalmia were directors in Bhartiya Commotrade Pvt.Ltd. till May 2019 and April 2019 respectively. They were also directors in Bhartiya Natural Organic Foods Pvt. Ltd. till September 2013 and February 2016 respectively. TFL itself confirmed that Noticees Chanchal Dalmia, Dalmia Infrapower Pvt. Ltd., Yash Dalmia, Maya Dalmia, Basanti Devi, Gopi Krishan Dalmia & Vinayak Tea Company, Tea Exchange Bharat Ltd., Bhartiya Commotrade Pvt.Ltd., Bhartiya Natural Organic Foods Pvt. Ltd. and Golden Era Plantations India Pvt. Ltd. were related to each other.

85. Kusum Jain and Hitsharan Jain and Chanchal Dalmia were Directors in the Company between 04.01.2010 and 26.09.2014. Chanchal Dalmia also connected Dalmia Infrapower Pvt. Ltd, Yash Dalmia, Maya Dalmia, Basanti Devi, Tea Exchange Bharat Ltd. (TEBL), Bhartiya Commotrade Pvt.Ltd., Bhartiya Natural Organic Foods Pvt. Ltd. and Golden Era Plantations India Pvt. Ltd to the Company, TFL. Bhartiya Natural Organic Foods Pvt. Ltd. is connected to Noticees Yash Dalmia and Maya Dalmia, who share a residential address with Chanchal Dalmia. Santosh Agrawal was a director in TEBL as were Noticees Maya Dalmia, Basanti Devi and Gopi Krishan Dalmia & Vinayak Tea Company. Maya Dalmia, Basanti Devi and Gopi Krishan Dalmia & Vinayak Tea

Company also had the same residential address as Chanchal Dalmia. Santosh Agrawal and Tea Exchange Bharat Ltd. have same promoters, and Tea Exchange Bharat Ltd. is connected to TFL through Chanchal Dalmia and Gopi Krishan Dalmia & Vinayak Tea Company.

86. Shiv Trading Co. was preferential allottee for shares worth Rs. 15 lakh, and supplied goods to the Company for Rs. 68 lakhs. Santosh Trading Co. was preferential allottee for Rs. 15 lakhs and supplied goods worth Rs. 50 lakhs and was given short-term loan of Rs. 38.45 lakhs. Krishna Kant Agarwal was preferential allottee for shares worth Rs. 1999998, and as per the Company's submission to BSE it paid Krishna Kant Agarwal Rs. 20 lakhs for purchase of goods.

87. The first set of allegations against the Noticee arises on account of making preferential allotment of shares to connected entities, with which it had also entered into various other transactions, leading to the allegation that the preferential issue was not genuine and was only a device or scheme to give a fraudulent impression of capital infusion into the Company because it needed to increase its net worth to meet RBI's NBFC requirements. Secondly, the Company could not satisfactorily explain utilisation of preferential issue proceeds for the objects for which they were raised i.e. generation of long-term resources for growth, strengthening financial position of the Company and augmenting capital base of the Company.

88. The third set of allegations relate to violation of Listing Agreement and LODR Regulations by the Company. Clause 43 of the Listing Agreement read with Regulation 32 of the LODR Regulations, requires furnishing of quarterly statements by the Company to BSE indicating variations between projected utilisation of funds raised through preferential issue and the actual utilisation of funds. Regulation 30 of the LODR Regulations mandates disclosure of material events and information to the stock exchanges by the Company. The Noticee failed to furnish the necessary disclosures.

Violation of the PFUTP Regulations

Preferential Allotment

89. The preferential issue of Rs. 4.20 crores was allotted to 27 preferential allottees. Of this Rs. 2.5 crores was received from Kusum Jain, Hitsharan Jain, Chanchal Dalmia, Dalmia Infrapower Pvt. Ltd., Santosh Agrawal, Yash Dalmia, Maya Dalmia, Basanti Devi, Gopi Krishan Dalmia & Vinayak Tea Company, Tea Exchange Bharat Ltd., Bhartiya Commotrade Pvt. Ltd., Bhartiya Natural Organic Foods Pvt. Ltd., Golden Era Plantations India Pvt. Ltd. and Shiv Trading Company which were connected to the Company (TFL) based on either common addresses or common directors or promoters. Few of the allottees were suppliers of goods. The connections are not disputed in the replies made by the Noticee.

90. The SCN has brought out certain instances of fund transactions between the company and preferential allottees being Santosh Agarwal, Gopi Krishan Dalmia & Vinayak Tea Company, Bhartiya Natural Organic Foods Pvt. Ltd., Shiv Trading Company and Krishna Kant Agarwal. All of these transactions took place in 2012 i.e. prior to the preferential issue, wherein company had lent funds to Santosh Agarwal, Gopi Krishan Dalmia & Vinayak Tea Company, Bhartiya Natural Organic Foods Pvt. Ltd., which were also repaid, and had obtained goods from Shiv Trading Company and Krishna Kant Agarwal. However, the SCN does not bring on record how the loans made by the Company to Santosh Agarwal, Gopi Krishan Dalmia & Vinayak Tea Company and Bhartiya Natural Organic Foods Pvt. Ltd were not in the regular course of business or were fraudulent. The SCN merely brings out some irregularities in the loan transactions regarding interest charged and repayments made. It is not the case that no repayments of loans were made. Shiv Trading Company and Krishna Kant Agarwal were goods suppliers and the transactions are recorded as commercial transactions in the ledger. The SCN does not bring out how these transactions, which took place prior to preferential issue, are linked to

preferential issue in terms of funding or otherwise. Other allottees, i.e. Noticees Kusum Jain, Hitsharan Jain, Chanchal Dalmia, Dalmia Infrapower Pvt. Ltd., Yash Dalmia, Maya Dalmia, Basanti Devi, Tea Exchange Bharat Ltd., Bhartiya Commotrade Pvt.Ltd. and Golden Era Plantations India Pvt. Ltd. have been charged merely because they were connected to the Company. No other facts are brought against them in the SCN. In this regard, I note that by its nature, the raising of capital through preferential issue involves raising funds through persons who may be known or related to the company in some way. Preferential allotment takes place through private solicitation of funds from known persons. Hence, the fact that the allottees are related or known to the company by itself does not raise any negative connotation or amounts to fraud. The material on record does not bring out role of the preferential allottees in the alleged device or scheme to give a fraudulent impression of capital infusion into the Company. Hence the allegations against the Noticee in respect of the preferential allotment being a fraudulent device or scheme is not established.

Misutilisation of Funds

91. The stated objective of the preferential issue was to generate long term resources for implementing future growth plans, strengthen the financial position of the company, augment the capital base of the company and to meet working capital requirement of the company. The company was an NBFC and its business involved giving of loans, and offering financial products and services.

92. Of the 4.2 crores amount raised, as per the company, Rs.2.05 crores was deployed in short term loans and advances, non-current investments were of Rs.2.16 crores and Rs.90.02 lakhs was as cash and bank balance.

93. The Company’s explanations regarding deployment of preferential issue proceeds did not stand up to scrutiny during investigation. On perusal of the ledger account of the company, it was seen that several of the short term and advances were made prior to the preferential allotment. TFL provided 10 out of 17 loan agreement copies which were submitted in support of company’s claim

of utilisation of Rs. 2.05 crores of issue proceeds. On perusal of the loan agreements, it is seen that 6 of the 10 agreements were made prior to the preferential issue on 07.01.2013. These agreements were dated between 05.02.2012 to 04.01.2013 i.e. even prior to the EGM convened for approval for preferential issue on 05.01.2013. These agreements made prior to the preferential issue account for 92.24 lakhs. Of the 17 loans made, disbursal of loan as seen from the ledger account in respect of 9 entities is made in 2012, much prior to the preferential issue. This amounts to Rs.1.26 crores. Hence, the explanation given by the company of the utilisation of issue proceeds towards loans and advances appears incorrect, and several discrepancies are found in the utilisation details.

94. Material on record brings out that Company derived 96.37% of total revenue for the financial year 2012-13 from the sale of fabrics and this was indicated as "Revenue from Operations". Further, of the loans and advances shown by the company as utilisation of preferential issue proceeds, Rs.38.45 lakhs was to Santosh Trading. The ledger states that Santosh Trading was a supplier of fabrics. This further shows that company utilised proceeds to pay for fabrics rather than for engaging in the business of NBFC. The company vide its reply dated May 25, 2022, stated that trading in fabrics was one of the objects of the company as per "other objects" mentioned in the item no. 21 of the Memorandum of Objects of the company. The extracts of the same is produced below:

> *"(c) OTHER OBJECTS:-*
>
> *………………*
>
> *21. To carry on the business of spinning, weaving, combing, manufacturing, darning, preparing, packing, bleaching, dyeing, coloring, processing, finishing. Selling, and* ***buying or dealing in cotton, staple, silk, and other fibrous and synthetic substances*** *including waste and raw wool tops."*

95. In this regard, I note that the company being an NBFC is required to have more than 50% of its gross income from financial assets in terms of RBI Circular No. RBI/2006-07 [DNBS (PD) C.C. No.81 / 03.05.002/2006-07] dated October 19, 2006. However, as per the material available on record, it is clearly established that the Company derived 96.37% of total revenue for the financial year 2012-13 from the sale of fabrics. Thus, I find that the contention of the Noticee that usage of the proceeds of preferential issue for the purpose of trading in fabrics does not amount to misutilisation of such proceeds, is not acceptable.

96. Regarding the non-current investments of Rs.2.16 crores, company entered into an SPA with TEBL. The company submitted that Rs.48,87,000/- (Rupees forty eight lakh and eighty seven thousand only) was paid by the Company to TEBL during May 2012 to March 2013 through Bank/Cash and Rs.1,67,24,000/- (Rupees one crore sixty seven lakh and twenty four thousand only) was standing to the credit of ledger account in the books of the Company as on March 31, 2013, and was adjusted towards consideration for the share purchase. The said credit balance was stated to be on account of fabrics supplied by the Company to TEBL. This further substantiates that company was into business other than that of NBFC.

97. In view of the inability of the company to give proper account of Rs.2.05 crores shown as loan and advances, and use of funds for procuring fabrics rather than in the business of financial products, it is established that the company did not utilise the preferential issue proceeds for the objects of issue.

98. Therefore, I find that there is sufficient evidence on record to conclude that the Company violated Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f) of PFUTP Regulations by misutilising preferential issue proceeds.

Violation of Listing Agreement and LODR Regulations

99. As per Clause 43 of the Listing Agreement, the Company is required to furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilisation and the actual utilisation of funds, which shall also be published in newspapers simultaneously with the unaudited/audited financial results and provided in the Directors' Report. The company was earlier listed on Jaipur Stock Exchange. The Noticee got listed on BSE on 16.03.2015. BSE was not able to give any information on compliance with the aforesaid clause by the company prior to listing with BSE.

100. BSE vide notice dated 09.10.2018 advised the Company to make disclosures regarding misutilisation of preferential issue proceeds with quarterly audited/unaudited results and to get them ratified by shareholders of the company within three months. As per letter dated 10.09.2018 submitted by the Company to BSE on "Proceedings of the Annual General Meeting of the Company held on 10.09.018", ratification of utilisation of funds raised through Preferential Issue was one of the special resolutions moved. It is alleged that outcome of ratification was not disclosed by Company. However, I note that non-disclosure of outcome of ratification does not amount to violation of Clause 43 of Listing Agreement.

101. Material on record shows that no statements of deviation in use of issue proceeds were given on a quarterly basis to the BSE in terms of Clause 43 of the Listing Agreement read with Regulation 32 of the LODR Regulations either. Further, certificate of registration of Noticee as NBFC was cancelled by RBI vide its order dated 25.02.2019. This was material information and required to be disclosed to the exchange in terms of Regulation 30 of the LODR Regulations. However, no such disclosure was made. Noticee has submitted that information of cancellation of NBFC registration was available in public domain. However, this does not exempt the Noticee from the obligation to make the required disclosure of material information under Regulation 30 of the LODR Regulations.

102. Hence, it is established that Noticee violated Clause 43 of the Listing Agreement read with Regulation 32 of the LODR Regulations and Regulation 30 of LODR Regulations.

II. If yes, whether the Noticee is liable for imposition of monetary penalty under Sections 15 HB of the SEBI Act and Section 23E of the SCRA?

and

III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules, and Section 23J of the SCRA read with Rule 5 (2) of the SCRA Adjudication Rules,?

103. As it has been established that the Noticee violated Regulations 3 (b), (c), (d) and 4 (1) and (2) (f) of the PFUTP Regulations, it is liable for imposition of penalty in terms of Section 15 HA of the SEBI Act. Further, the Noticee violated Clause 43 of the Listing Agreement read with Regulation 32 of the LODR Regulations, and Regulation 30 of the LODR Regulations. Therefore, the Noticee is liable for imposition of monetary penalty under Section 23E of the SCRA.

104. Section 15HA of the SEBI Act and Section 23E of the SCRA read as follows at the time of commission of the contravention by the Noticees:-

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty *[which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher].*

***** *Substituted for the words "twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

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

23E. *If a company or any person managing collective investment or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be [liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees]*.*

** Substituted for the words "liable to a penalty not exceeding twenty-five crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014.*

105. While determining the quantum of penalty under Sections 15HA of the SEBI Act and Section 23E of the SCRA, the following factors stipulated in Section 15J of the SEBI Act and 23J of the SCRA have to be given due regard:

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.

106. Gains made or losses avoided unlawfully by the Company on account of the misutilisation of preferential issue proceeds have not been quantified nor have been shown to have accrued to the directors. Further, the investor impact of suppression of information required to be disclosed to the BSE regarding deviation from objects of preferential issue, or cancellation of certificate of registration of the Company as NBFC by RBI has not been quantified. I also note that RBI issues a notice when it cancels registration of NBFCs which is available in public domain. I take into account that the matter pertains to preferential issue made more than 9 years ago. I also note that presently the

company is suspended by BSE due to penal reasons. However, I cannot ignore that it is the company which bears primary responsibility for ensuring compliance with aforesaid regulations.

107. Taking into account the facts and circumstances of this matter and mitigating factors, I am of the view that a penalty of Rs. 5,00,000/- (Five lakhs only) on the Noticee for misutilisation of preferential issue proceeds in violation of the PFUTP Regulations and Rs. 5,00,000/- (Five lakhs only) on the Noticee for failure to comply with disclosure requirements under the LODR Regulations, will be commensurate with the violations committed by the Noticee.

ORDER

108. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15 I of the SEBI Act and 23I of the SCRA read with Rule 5 of the Adjudication Rules and the SCRA Adjudication Rules, I hereby impose a penalty of Rs. 5,00,000/- (Rupees five lakhs only) on the Noticee in terms of Section 15HA of the SEBI Act for violation of Regulations 3 (a), (b), (c), (d) and 4 (1) and (2) (f) of the PFUTP Regulations and a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) each on the Noticee for violations of the Listing Agreement read with the LODR Regulations.

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

110. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 5 of SEBI.

111. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

112. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: MAY 27, 2022 **MANINDER CHEEMA**

PLACE: MUMBAI **ADJUDICATING OFFICER**