

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: S. K. MOHANTY, WHOLE TIME MEMBER
ORDER

Under Section 15-I(3) read with Section 19 of the Securities and Exchange Board of India Act, 1992.

In respect of:

S. No.	Name of the Entities	PAN
1.	MPF Systems Ltd.	AADCM7896A
2.	Ms. Kirti Salvi	BZAPS5179J
3.	Mr. Anil Kothari	AOLPK5277J
4.	Mr. Aakesh Chopra	AENPC7889Q
5.	Mr. Ambrish Barsati Pal	APFPP2586L

In the matter of MPF Systems Ltd.

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

1. The instant proceedings have emanated from a show cause notice dated May 05, 2020 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) under section 15-I(3) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) to MPF Systems Ltd. (hereinafter referred to as “**MPF/ Company/ Noticee no. 1**”), Ms. Kirti Salvi (**Noticee no. 2**), Mr. Anil Kothari (**Noticee no. 3**), Mr. Aakesh Chopra (**Noticee no. 4**) and Mr. Ambrish Barsati Pal (**Noticee no. 5**) (hereinafter individually referred to by their respective names/Noticee nos. and collectively as “**Noticees**”) calling upon them to show cause as to why appropriate penalty shall not be imposed on them under sections 15A(a) and 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “the SEBI Act, 1992”) read with sections 23E and 23H of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “the SCRA, 1956”).
2. Prior to the SCN under consideration, adjudication proceedings had been initiated by SEBI in the matter of MPF Systems Ltd., *inter alia*, for misrepresentation of financial statements of the

Company. Consequently, an order dated February 28, 2020 (hereinafter referred to as **“Adjudication Order”**) was passed by the concerned Adjudicating Officer imposing penalty of different amounts in respect of MPF, Ms. Kirti Salvi, Mr. Anil Kothari, Mr. Aakesh Chopra and Mr. Ambrish Barsati Pal under sections 15A(a) and 15HA of the SEBI Act, 1992 read with sections 23E and 23H of the SCRA, 1956. The details of violations and penalty imposed by the Adjudicating Officer are reproduced herein below for purposes of easy reference:

Sl. No.	Noticees	Violation of provisions	Action Recommended	Penalties imposed by Adjudication order
	MPF Systems Limited	Section 12(A)(a)(b) and (c) of the SEBI Act, 1992 read with regulations 3(b),(c) and (d) and Regulation 4(1) and 4(2)(f) and (r) of the PFUTP Regulations, 2003 Regulation 4(1)(a),(b),(c), (e) and (g), Regulation 4(2) (f) (i)(2), 4(2)(f)(2)(6) and (7), 4(3)(f)(iii)(1),(3),(6) and (12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b), Regulation 19(1) (c) and Regulation 33(2)(a) of the LODR Regulations, 2015 and section 21 of the SCRA, 1956	Section 15A(a) and 15HA of the SEBI Act, 1992, section 23E of the SCRA, 1956	₹6,00,000/- (Rupees Six Lakh Only)
	Ms. Kirti Salvi	Section 12(A)(a)(b) and (c) of the SEBI Act, 1992 read with regulation 3(b),(c) and (d) and regulation 4(1) and 4(2)(f) and (r) of the PFUTP, 2003 Regulation 4(1)(a), (b), (c), (e) and (g), Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(6) and (7), 4(2)(f)(iii)(1), (3), (6) & (12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b), Regulation 19(1)(c) and Regulation 33(2)(a) of the LODR Regulations, 2015	Section 15A(a), 15HA of the SEBI Act, 1992 and section 23H of the SCRA, 1956	₹4,00,000/- (Rupees Four Lakh Only)
	Anil Kothari			₹4,00,000/- (Rupees Four Lakh Only)
	Aakesh Chopra			₹4,00,000/- (Rupees Four Lakh Only)
	Ambrish Barsati Pal			₹4,00,000/- (Rupees Four Lakh Only)

- SEBI, after examining the records of the adjudication proceedings, was of the view that the order passed by the Adjudicating Officer is erroneous to the extent it is not in the interest of the securities market, since the penalty imposed by the said order is not commensurate with the violation alleged and, in some cases, is less than the minimum penalty of ₹5,00,000/- prescribed under section 15HA of the SEBI Act, 1992 vide the Securities Laws (Amendment) Act, 2014, for such violations. Considering the foregoing, proceedings under section 15-I(3) of the SEBI Act, 1992 have been initiated against the *Noticees* and a combined Show Cause

Notice dated May 5, 2020 was issued to the *Notices* herein calling upon them to show cause as to why appropriate penalty shall not be imposed on them under sections 15A(a) and 15HA of the SEBI Act, 1992 read with sections 23E and 23H of the SCRA, 1956.

4. The *Notices* have responded to the SCN with a common written reply dated May 21, 2020 in which the submissions made by them are summarised as under:
 - (a) Another Whole Time Member (hereinafter referred to as “**WTM**”) of SEBI has also passed an order dated April 20, 2020 under section 11B of the SEBI Act, 1992 in the same matter against the present *Notices*, differing from some of the material findings of the Adjudication Order. Since the present proceedings are as a consequence of the Adjudication Order and the aforesaid WTM’s Order is also passed as a consequence of the same allegations as made on the Adjudication Proceedings, their replies filed in the aforesaid proceedings should be treated as part of their submissions in the present proceedings.
 - (b) The *Notices* shall be assailing both the Adjudication Order as well as the aforesaid WTM order dated April 20, 2020 before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**SAT**”), therefore their reply to the present proceedings shall not be construed to mean that the penalties/directions of the Adjudication Order and WTM Order dated April 20, 2020 are acceptable to the *Notices*.
 - (c) The allegation made in the SCN that the Adjudication of penalties have not been decided on merits or that it is not in the interest of securities market is vague and not supported by substantive material. In this regard, the *Notices* have relied upon the case of *Gorkha Security Services v. Govt. (NCT of Delhi)*, (2014) 9 SCC 105 and *S. L. Kapoor v. Jagmohan & Ors.*, (1980) 4 SCC 379 to submit that the SCN fails to meet the test of a valid notice and does not indicate the precise allegation against the *Notices* other than stating that the Adjudication Order is not in the interest of securities market. Further, the *Notices* have also submitted that the SCN does not mention as to how the Adjudication Order is not in the interest of securities market. They have relied upon the following observations of the Hon’ble Supreme Court in the matter of *Gorkha Security Services v. Govt. (Supra)* -

“Contents of Show Cause Notice

(21) The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so

that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained.

(22) The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

(i) The material/ grounds to be stated on which according to the Department necessitates an action;

(ii) Particular penalty/ action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.....”

(emphasis supplied)

- (d) The *Noticees* have also placed reliance on cases decided by Hon’ble Supreme Court, viz. *Siddharth Chaturvedi v. SEBI*, (2016) 12 SCC 119 and *Adjudicating Officer, SEBI v. Bhavesh Pabari*, (2019) 5 SCC 90 to submit that the Adjudicating Officer is entitled to exercise discretion while imposing penalty for the violation of provisions of the SEBI Act, 1992 and the SCRA, 1956, etc. including the discretion to impose penalty below the minimum penalty prescribed under the respective provisions.
- (e) Further, the law is settled that provisions of section 15J of the SEBI Act, 1992 have to be considered while imposing penalty for alleged violations and hence, in the given facts of the case the Adjudicating Officer can impose penalty below the thresholds prescribed under the SEBI Act, 1992 and the SCRA, 1956. There being no finding on whether any loss was caused to any investors or any disproportionate gain was made by the *Noticees*, there cannot be any basis for concluding that the penalty imposed by the Adjudication Order is low and must be enhanced when discretion has been applied by the Adjudicating Officer after considering the reply of the *Noticees* and granting them personal hearing.
- (f) The Adjudication Order has prescribed penalty upon reaching an erroneous conclusion that the *Noticees* are in breach of regulations 16 to 19 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as the **“LODR Regulations, 2015”**) which have not been found to be established against the *Noticees* by

the WTM's Order dated April 20, 2020. Therefore, there is a case made out for reduction of penalty imposed by the Adjudication Order.

- (g) There is negligible trading in the shares of the *Company*, therefore there was no intention of the *Company* to show a false picture to the investors or to give effect to any fraudulent practice. They have enclosed price-volume data pertaining to the trades in the shares of the *Company* to emphasise that there is no impact on securities market as a result of the trades in the shares of the *Company*.
5. Subsequent to receipt of written reply vide letter dated May 21, 2020, the *Notices* were granted an opportunity of personal hearing before me through video conference on August 6, 2020, on account of COVID-19 pandemic. An Authorised Representative attended the hearing on behalf of all the *Notices* and presented oral arguments on the lines of their written reply. In view of the above, the limited issue arising for consideration in the present proceedings is to ascertain as to:-
- (a) Whether, the Adjudication Order is erroneous to the extent it is not in the interest of the securities market since the penalty amount levied against the *Notices* vide the said Adjudication Order is not commensurate with the violations alleged and in some cases, less than the minimum penalty of ₹5,00,000/- provided under section 15HA of the SEBI Act, 1992 (vide the Securities Laws (Amendment) Act, 2014)?
- (b) if yes, whether the penalty amount *qua* each of the *Notices* needs to be enhanced in the instant proceedings in terms of the respective provisions of the SEBI Act, 1992 and the SCRA, 1956?
6. Before dealing with the submissions made by the *Notices* on merit, I have to consider the submissions of the *Notices* that the allegation made in the present SCN on the ground that the Adjudication Order is not in the interest of securities market, is vague and not supported by substantive material. As mentioned above, in this regard, the *Notices* have also placed reliance on the case of *S. L. Kapoor v. Jagmohan & Ors.*, (1980) 4 SCC 379 to submit that the SCN fails to meet the test of a valid notice and does not indicate the precise allegation against the *Notices* other than stating that the Adjudication Order is not in the interest of the securities market.
7. It is relevant to note herein that the imposition of appropriate and at least the minimum penalty as prescribed under the relevant law is of paramount importance from the point of view giving a deterrent effect on other participants of securities market as envisaged by the Legislature, considering the seriousness of various violations and offences committed in securities market, the legislature in their wisdom have prescribed for a minimum penalty to be imposed in terms

of various relevant provisions of the SEBI Act, 1992 and the SCRA, 1956 for different violations that may be committed under the Securities laws. The SCN has clearly spelt out that the reason for conducting the present proceedings is to adjudge the correctness of the penalty imposed by the Adjudication Order with reference to the minimum penalty prescribed under the law. The SCN further proceeds to allege that the Adjudication Order is erroneous and not in the interest of securities market and requires consideration as to whether the penalty imposed on *Notices* requires enhancement in the light of allegation so made in the SCN. Therefore, the contentions put forth by the *Notices* that the charges in the SCN are vague and not supported by substantive material, are not found to be presenting correct factual position hence, not tenable.

8. Further, it is trite law to state that an order which is not in accordance with law is an erroneous order. I note that the SEBI Act, 1992 has been enacted with the objectives to protect the interest of the investors in securities market and for the development of the securities market and to that extent all the provisions of the SEBI Act, 1992 seek to achieve these objectives. For example, section 15HA of the SEBI Act, 1992 which has been invoked in the present proceedings seeks to prohibit fraudulent and unfair trade practices and provides for a minimum penalty of INR 5,00,000/- (INR Five Lakhs) for indulging in such practices. Therefore, by not imposing the minimum penalty prescribed under the, aforesaid provisions, the purpose of which is to inspire investors' confidence and maintain integrity of the securities market, the legislative objective behind the said provision in the SEBI Act, 1992 is being disturbed. I also note that the SCN specifically calls upon the *Notices* to show cause as to why penalty levied by the Adjudicating Officer should not be enhanced. Therefore, both the facts pertaining to the violation committed as well as the proposed action against the *Notices* have been explained in the SCN. In view thereof, I do not find that the *Notices* stand prejudiced, by issuance of the present SCN to them.
9. Adverting to the main issue of the present proceedings that revolves around the questions as to whether or not the Adjudicating Officer can use his discretion to impose penalty below the prescribed minimum threshold amounts as laid out under the relevant sections of the SEBI Act, 1992. The *Notices* have placed reliance on the cases decided by the Hon'ble Supreme court, viz. *Siddharth Chaturvedi v. SEBI*, (2016) 12SCC 119 and *Adjudicating Officer, SEBI v. Bhavesh Pabari*, (2019) 5 SCC 90 to submit that the Adjudicating Officer is entitled to exercise discretion while imposing penalty for the violation of provisions of the SEBI Act, 1992 and the SCRA, 1956, etc. including the discretion to impose penalty below the minimum penalty prescribed under the respective Acts. The relevant paragraphs from the aforesaid cases relied upon by the *Notices* are reproduced as under:

Siddharth Chaturvedi v. SEBI

“9. Two things have been clearly stated by this Court in so far as the amended Section 15A read with Section 15J is concerned. First, this Court has indicated that by the use of the expression “namely” in Section 15J, SEBI in adjudging the quantum of penalty under Section 15A can have due regard only to the three factors set out therein and not to other relevant factors as the expression “namely” cannot be equated with the expression “including”, being an exhaustive provision on the subject matter covered by the provision. This Court has also clearly held that Section 15J would suffer an eclipse for the period 2002 to 2014 inasmuch as the intention of the Legislature, by amending Section 15A, seems to be that no scope for any discretion for this period is to be exercised, if in fact, there is any infraction of Rules or Regulations. This Court clearly held that the discretionary power of the Adjudicating Officer having been withdrawn, the scope of Section 15J would correspondingly stand drastically reduced.

*10. Prima facie, we find it a little difficult to subscribe to both the views contained in paragraph 4 as well as in paragraph 5 of the said judgment. The expression “shall have due regard to” is a very known legislative device used from the time of *Julius v Bishop of Oxford* (1880) LR 5 AC 214 (HL), and followed in many judgments both English as well as of our Courts as words vesting a discretion in an Adjudicating Officer. The question which arises in the present appeals is whether the expression “namely” fixes the discretion which can be exercised only in the circumstances mentioned in the three clauses set out in Section 15J, or whether it would also take into account other relevant circumstances, having particular regard to the fact that it is a penalty provision that the Court is construing. As this needs to be authoritatively decided for the future, it would be better if we refer it to a larger Bench for such authoritative pronouncement.*

11. We also find it a little difficult to accept what is stated in paragraph 5 of the judgment. It is very difficult, keeping in view, particularly, two important legal facets – one the doctrine of harmonious construction of a statute; and two, the fact that we are construing a penalty provision of a statute which is to be strictly construed, Section 15A, post amendment in 2002, is suddenly given a pride of place, and Section 15J is made to yield entirely to it. The familiar expression “notwithstanding anything contained” does not appear in the amended Section 15A. This being the case, it is a little difficult to appreciate as to how one can construe Section 15A, as amended, in isolation, without regard to Section 15J. In fact, the facts of the present case would go to show that where there is allegedly only a technical default, and the three parameters of Section 15J would allegedly be satisfied by the appellants, namely, that no disproportionate or unfair advantage has been made as a result of the default; no loss has been caused to an investor or group of investors as a result of the default; and there is in fact, no repetitive nature of default, no penalty at all ought to be imposed. What has been done by the appellants here is to fail to adhere to Regulation 13, as alleged in the show cause notice, which failure has occurred on three days and consequently, has allegedly not been repeated by the appellants anytime thereafter. If we were to read Section 15A, as amended in 2002, in the manner suggested by the Division Bench of this Court, it may lead to anomalous results in that the effect of continuing failure to adhere to statutory regulations alleged to have been continued well beyond the period of three days, and which continues till this day, has Rs.1 lakh per

day as the minimum mandatory penalty under the provisions, which would culminate in the appellants herein having to pay Rs.1 crore in each of the three appeals. We do not think that this could have been the intention of the Parliament in enacting Section 15A, as amended in 2002. We also feel that on the assumption that paragraph 5 of the judgment is correct, it would be very difficult for Section 15A to be construed as a reasonable provision, as it would then arbitrarily and disproportionately invade the appellants' fundamental rights.

12. This being the case, on both the conclusions reached by this Court in paragraphs 4 and 5, as stated by us hereinabove, these matters deserve consideration at the hands of a larger Bench. The Registry is, accordingly, directed to place the papers of these appeals before Hon'ble the Chief Justice of India for placing these matters before a larger Bench.” (emphasis supplied)

Adjudicating Officer, SEBI v. Bhavesh Pabari

“2. Two primary questions, in a way interconnected, have been referred by the referral judgement and order dated 14th March, 2016 passed in Siddharth Chaturvedi Vs. Securities and Exchange Board of India. The correctness of the view expressed on the said two questions by a numerical smaller bench of this Court in Securities and Exchange Board of India through its Chairman vs. Roofit Industries Limited would coincidentally arise. The questions referred can be enumerated and summarized as follows:

(i) Whether the conditions stipulated in clauses (a), (b) and (c) of Section 15J of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) are exhaustive to govern the discretion in the Adjudicating Officer to decide on the quantum of penalty or the said conditions are merely illustrative?

(ii) Whether the power and discretion vested by Section 15J of the SEBI Act to decide on the quantum of penalty, regardless of the manner in which the first question is answered, stands eclipsed by the penalty provisions contained in Section 15A to Section 15HA of the SEBI Act?

.....

4. For the purposes of the present reference, we may proceed to consider the provisions contained in Chapter VIA of the SEBI Act. Sections 15A to 15HA are the penalty provisions whereas Section 15I deals with the power of adjudication and Section 15J enumerates the “factors to be taken into account by the Adjudicating Officer” while adjudging the quantum of penalty.

.....

6. Insofar as the second question is concerned, if the penalty provisions are to be understood as not admitting of any exception or discretion and the penalty as prescribed in Section 15A to Section 15HA of the SEBI Act is to be mandatorily imposed in case of default/failure, Section 15J of the SEBI Act would stand obliterated and eclipsed. Hence, the question referred. Sections 15A(a) to 15HA have to be read along with Section 15J in a manner to avoid any inconsistency or repugnancy. We must avoid conflict and head

on clash and construe the said provisions harmoniously. Provision of one section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions. The explanation to Section 15J of the SEBI Act added by Act No.7 of 2017, quoted above, has clarified and vested in the Adjudicating Officer a discretion under Section 15J on the quantum of penalty to be imposed while adjudicating defaults under Sections 15A to 15HA. Explanation to Section 15J was introduced/added in 2017 for the removal of doubts created as a result of pronouncement in M/s. Roofit Industries Ltd. case (supra). We are in agreement with the reasoning given in reference order dated 14th March, 2016 that M/s Roofit Industries Ltd. had erroneously and wrongly held that Section 15J would not be applicable after Section 15A(a) was amended with effect from 29th October, 2002 till 7th September, 2014 when Section 15A(a) of the SEBI Act was again amended. It is beyond any doubt that the second referred question stands fully answered by clarification through the medium of enacting the Explanation to Section 15J vide Act No.7 of 2017, which also states that the Adjudicating Officer shall always have deemed to have exercised and applied the provision. We, therefore, deem it appropriate to hold that the provisions of Section 15J were never eclipsed and had continued to apply in terms thereof to the defaults under Section 15A(a) of the SEBI Act.

7. Reference Order in Siddharth Chaturvedi & Ors. (supra) on the said aspect has observed that Section 15A(a) could apply even to technical defaults of small amounts and, therefore, prescription of minimum mandatory penalty of Rs.1 lakh per day subject to maximum of Rs.1 crore, would make the Section completely disproportionate and arbitrary so as to invade and violate fundamental rights. Insertion of the Explanation would reflect that the legislative intent, in spite of the use of the expression “whichever is less” in Section 15A(a) as it existed during the period 29th October 2002 till 7th September 2014, was not to curtail the discretion of the Adjudicating Officer by prescribing a minimum mandatory penalty of not less than Rs. 1 lakh per day till compliance was made, notwithstanding the fact that the default was technical, no loss was caused to the investor(s) and no disproportionate gain or unfair advantage was made. The legislative intent is also clear as Section 15A(a) was amended by the Amendment Act No.27 of 2014 to state that the penalty could extend to Rs. 1 lakh for each day during which the failure continues subject to a maximum penalty of Rs. 1 crore. This amendment in 2014 was not retrospective and therefore, clarificatory and removal of doubt Explanation to Section 15J was added by the Act No. 7 of 2017. Normally the expression “whichever is less” would connote absence of discretion by prescribing the minimum mandatory penalty, but in the context of Section 15A(a) as it was between 29th October, 2002 till 7th September, 2014, read along with Explanation to Section 15J added by Act No.7 of 2017, we would hold the legislative intent was not to prescribe minimum mandatory penalty of Rs.1 lakh per day during which the default and failure had continued. We would prefer read and interpret Section 15A(a) as it was between 29th October, 2002 and 7th September, 2014 in line with the Amendment Act 27 of 2014 as giving discretion to the Adjudicating Officer to impose minimum penalty of Rs.1 lakh subject to maximum penalty of Rs.1 crore, keeping in view the period of default as well as aggravating and mitigating circumstances including those specified in Section 15J of the SEBI Act.”

10. Apart from citing the above stated two judicial decisions, it has been submitted that law is settled that provisions of section 15J of the SEBI Act, 1992 have to be considered while imposing penalty for the alleged violations and hence, in the given facts of the case, the Adjudicating Officer can impose penalty below the thresholds amount prescribed under the SEBI Act, 1992 and the SCRA, 1956. The *Notices* have also emphasised that there being no finding on whether any loss was caused to any investors or any disproportionate gain was made by the *Notices*, there cannot be any basis for concluding that the penalty imposed by the Adjudication Order is low and must be enhanced when discretion has been applied by the Adjudicating Officer after considering the reply of the *Notices* and after granting them opportunities of personal hearing, while disposing of the matter.
11. I have perused the aforesaid submissions of the *Notices* including the judicial decision cited above and note that the question in the present proceedings is not whether an Adjudicating Officer has any discretion while determining the penalty amount to be imposed on a *Noticee* only but whether he has discretion to impose penalty below the minimum threshold amount of penalty as prescribed under the provisions of the SEBI Act, 1992 and the SCRA, 1956. Importantly, it stands confirmed by the Hon'ble Supreme Court in the case of *Bhavesh Pabari (supra)* that the Adjudicating Officer always had the discretion to apply the factors mentioned in section 15J while determining the penalty to be imposed. It is also seen from the Adjudication Order dated February 28, 2020 that the penalty amount has been determined keeping in view the factors mentioned in section 15J of the SEBI Act, 1992 as well as section 23J of the SCRA, 1956. It is noteworthy to extract the relevant paragraphs in this regard from the Adjudication Order:

"51. It is not possible from the material available on record to ascertain the actual disproportionate gain or unfair advantage made by the Noticees or the amount of loss caused to an investor or group of investors as a result of the default. However, I have analyzed the data available on record to assess the seriousness of the violation made by the Noticees and found that the Noticees grossly failed to adhere to the principles of corporate governance and accounting standards leading to the misrepresentation which is against the integrity of the capital market.

52. In the backdrop of above information the allegations against the Noticees are serious in nature. Therefore, there is a need to impose penalty on the Noticees which will act as deterrent in future."

12. Sections 15J of the SEBI Act, 1992 enumerates the factors to be taken into account by the Adjudicating Officer while adjudging the quantum of monetary penalty to be imposed while adjudicating defaults under Sections 15-A to 15HB of the Act. The Hon'ble Supreme Court in the case of *Bhavesh Pabari case (supra)* have held that factors/conditions stipulated in section 15J

of the Act are only illustrative and not exhaustive and any other relevant factor may also be taken for consideration by the Adjudicating Officer. It can be seen that the Adjudication Order dated February 28, 2020 has also taken other relevant factor such as the serious nature of violations made by the *Notices* and hence he has taken a stand on the need to impose penalty on the *Notices* which will act as deterrent in future.

13. Reverting to pertinent question at hand as to whether reliance placed by the *Notices* on the cases of *Siddharth Chaturvedi* and essentially *Bhavesh Pabari* is furthering their contentions that the Adjudicating Officer has the discretion to impose penalty below the quantum of minimum penalty amount prescribed by the SEBI Act, 1992 and the SCRA, 1956. I note that the case of *Bhavesh Pabari* dealt with the question of applicability of section 15J of the SEBI Act, 1992 to penalty provisions that existed before the amendments made to the SEBI Act, 1992 in 2014, hence the reliance placed by the *Notices* is misplaced. The issue before the Hon'ble Court was whether the factors enumerated under 15 J of SEBI Act, 1992 are exhaustive or the factors mentioned therein are inclusive so as to confer discretion to the Adjudicating Officer to consider factors other than what were mentioned under Section 15J, while determining the amount of penalty to be levied, in case of violation of relevant provisions. In this regard, following observations of the Hon'ble Supreme Court from the case of *Bhavesh Pabari* (*supra*) becomes relevant:

“.....Sections 15A(a) to 15HA have to be read along with Section 15J in a manner to avoid any inconsistency or repugnancy. We must avoid conflict and head on clash and construe the said provisions harmoniously. Provision of one section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions. The explanation to Section 15 J of the SEBI Act added by Act No.7 of 2017, quoted above, has clarified and vested in the Adjudicating Officer a discretion under Section 15J on the quantum of penalty to be imposed while adjudicating defaults under Sections 15A to 15HA. Explanation to Section 15J was introduced/added in 2017 for the removal of doubts created as a result of pronouncement in M/s. Roofit Industries Ltd. case (supra). We are in agreement with the reasoning given in reference order dated 14th March, 2016 that M/s Roofit Industries Ltd. had erroneously and wrongly held that Section 15J would not be applicable after Section 15 A(a) was amended with effect from 29 th October, 2002 till 7th September, 2014 when Section 15A(a) of the SEBI Act was again amended. It is beyond any doubt that the second referred question stands fully answered by clarification through the medium of enacting the Explanation to Section 15J vide Act No.7 to 2017, which also states that the Adjudicating Officer shall always have deemed to have exercised and applied the provision.....”
(Emphasis Supplied)

14. In the present case, we are concerned with the penalty provisions pursuant to the amendment made in 2014 wherein the Legislature has specifically prescribed the minimum amount of penalty to be levied under the respective provisions of the SEBI Act, 1992 and the SCRA,

1956. It is, therefore, relevant to take note of the following observations made by the Hon'ble Court in the case of *Bhavesb Pabari* regarding penalty provisions as amended in the year 2014, that “7.....*We would prefer read and interpret Section 15-A(a) as it was between 25th October, 2002 and 7th September, 2014 in line with the Amendment Act 27 of 2014 as giving discretion to the Adjudicating Officer to impose minimum penalty of Rs.1 lakh subject to maximum penalty of Rs.1 crore, keeping in view the period of default as well as aggravating and mitigating circumstances including those specified in Section 15-J of the SEBI Act.....*”

15. The penalty provisions under the SEBI Act, 1992 after the amendments made in the year 2014 introduces minimum penalties that too with the use of the words and expressions “.....*shall be liable to penalty which shall not be less than.....*”. It is also pertinent to be guided by the Statement of Objects and Reasons of the Securities Laws (Amendment) Bill, 2014 (**SOR**) which provides that the amendments made to sections 15A to 15HB of the SEBI Act, 1992 were aimed to provide that while imposing monetary penalties, the adjudicating officers have to imposed at least a minimum penalty prescribed under the amended provisions. Similarly, corresponding amendments were intended for the SCRA, 1956. It can, therefore, be deduced that the Legislature has indeed clarified that the Adjudicating Officer has discretion to consider factors other than what have been mentioned under Section 15J of SEBI Act, 1992 while determining the quantum of penalty to be imposed but at the same time, it intended to introduce minimum penalties to the penalty provisions by way of amendments to the SEBI Act, 1992 and the SCRA, 1956 in 2014 and therefore the discretion to be so exercised by the Adjudication Officer has to be in strict compliance of the quantum of the penalties prescribed in the respective provisions. In view of the foregoing, I find that the penalty provisions, as amended by 2014 amendments, provide for minimum quantum of penalties which are mandatory in nature and the submissions of the *Notices* that the Adjudicating Officer has discretion to levy penalties below the minimum amounts of penalties prescribed under law is not tenable.
16. I have already observed above that in light of the findings of the Hon'ble Supreme Court in the case of *Bhavesb Pabari* it stands established that section 15J of the SEBI Act, 1992 has always been available with the Adjudicating Officer while imposing monetary penalties both prior to and after the amendments made in 2014. However, in the light of my observation recorded above, I find that even while applying the factors prescribed under section 15J, to use his discretion in the matter, the Adjudicating Officer cannot go below the minimum penalties prescribed under respective penalty provisions of the SEBI Act, 1992 or the SCRA, 1956 in 2014.
17. The *Notices*' have also contended that the Adjudication Order has imposed penalties on them upon reaching an erroneous conclusion that the *Notices* are in breach of regulations 16 to 19 of the LODR Regulations, 2015, which have not been found to be established against the

Notices by the WTM's Order dated April 20, 2020, therefore, there is again a case in favour of reduction of penalty in the Adjudication Order. I have perused the Adjudication Order as well as the WTM Order dated April 20, 2020 passed in the captioned matter against the *Notices* and find that the WTM Order has indeed found the allegation of violation of regulations 16(1)(b)(iv), 17(1)(b), 18(1)(b) and 19(1)(c) of the LODR Regulations, 2015 to be not maintainable against the *Notices* (as mentioned at page 11 of the said Order). However, at the same time, it is also pertinent to refer to the findings recorded by WTM at page 16 of the Order:

“15. In view of the misrepresentations in the financial statements of MPFSL, as discussed in paragraphs 9 to 12 above, I find that Noticee no. 1 to 4, being the listed company and its directors, have violated Regulation 4(1)(a), (b), (c), (e) & (g), Regulation 4(2)(f)(i) (2), Regulation 4(2)(f)(iii) (6) & (7), Regulation 4(2)(f)(iii)(1), (3), (6) & (12) and Regulation 33(2)(a) of LODR Regulations. I find that for the same misrepresentation in the financial statements of MPFSL, as discussed in paragraphs 9 to 12 above, Noticee no. 5 being Chief Financial Officer (CFO) of MPFSL, has violated Regulation 4(1)(a), (b), (c), (e) & (g) and Regulation 33(2)(a) of LODR Regulations. I note that Section 21 of the SCRA provides that when the securities of a company are listed on a stock exchange on the application by any person such person shall comply with the conditions of listing. In terms of provisions of Section 11 and 11A of the SEBI Act, LODR Regulations have been framed to provide for conditions of listing. In view of the violations of the provisions of the LODR Regulations, by MPFSL, as mentioned above, Noticee no. 1 has violated Section 21 of SCRA.”

18. It is also to be noted that though the Adjudication Order has held the *Notices* liable for violation of regulation 16(1)(b)(iv), regulation 17(1)(b), regulation 18(1)(b), regulation 19(1)(c) of the LODR Regulations, 2015 with respect to the allegation pertaining to loan from Independent Directors not being in line with provisions of the LODR Regulations, 2015, the same Adjudication Order has also held the *Notices* liable for violation of accounting standards and violation of regulations 33(2)(a) of the LODR Regulations, 2015 on account of the allegations pertaining to misrepresentation of financial statements. It is relevant to note that the penalty provisions for violations of any of the provisions of the LODR Regulations, 2015 are laid down under the common section 23E/23H of the SCRA, 1956. Similarly, WTM's Order despite holding the *Notices* not guilty of violation of the respective provisions of regulations 16 to 19 of the LODR Regulations, 2015 with respect to the allegation concerning loan from Independent Directors, has however held the *Notices* guilty of violation of other provisions of the LODR Regulations, 2015 as well as section 21 of the SCRA, 1956 against the allegation of misrepresentation of financial statements. In essence, the *Notices* have been found liable for failure to comply with principles of corporate governance and financial misrepresentation and have been held liable for violation of provisions of the LODR Regulations, 2015 read with section 21 of the SCRA, 1956 by both Adjudication Order as well

as the WTM in their respective Orders and the *Notices* have not advanced any submission in their defence on these violations to the contrary. Despite exoneration of the *Notices* pertaining to allegations of violation of regulation 16 to 19 of the LODR Regulations, 2015 by WTM Order, violations of other provisions of the LODR Regulations, 2015 as held by the Adjudicating Officer and WTM and discussed above continue to survive in the Adjudication Order attracting imposition of at least the minimum penalty amount as prescribed under section 23H/23E of the SCRA, 1956. Considering that the present proceedings are restricted to adjudging the correctness of the monetary penalty imposed by Adjudicating Officer, I find that there is no case made out by the *Notices* in their defense to claim any benefit with regards to the imposition of penalty for at least the minimum prescribed amount under the aforesaid penal provisions of the SCRA, 1956.

19. After a careful perusal of the Adjudication Order, I note that the allegation against the *Notices* pertaining to failure to file affidavits and to give details with respect to employees of the *Company* amounting to violation of section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 has not been found to be established, however, while imposing a consolidated penalty, the Adjudication Order has applied the provisions of section 15A(a) of the SEBI Act, 1992 which are the penal provisions pertaining to non-furnishing of requisite information. I, therefore, find that the *Notices* deserve relief on this count which will be taken into consideration while arriving at the appropriate penalty against the *Notices* in the present proceedings in the following paragraphs of this Order.
20. Keeping in view of the aforesaid discussions, I find that section 15HA, as amended in the year 2014, provides mandatory minimum penalty amount of INR Five Lakh, section 23E of the SCRA, 1956 provides for a minimum penalty of INR Five Lakh and section 23H of the SCRA, 1956 prescribed for a minimum penalty of INR One lakh. Since in the present case, the Adjudication Order has imposed a consolidated penalty of only INR Six Lakh against the *Noticee no. 1* and INR Four Lakh each against the remaining *Notices no. 2 to 5* (which is less than the total sum of minimum penalty mandated under section 15HA of the SEBI Act, 1992, and sections 23E/23H of the SCRA, 1956) therefore, the Adjudication Order is erroneous to that extent, as it is not in accordance with the corresponding statutory provisions of the SEBI Act, 1992 and the SCRA, 1956 and consequently, it is also not in the interest of the securities market.
21. Lastly, the *Notices* have contended that there was negligible trading in the shares of the *Company*, therefore, there was no intention of the *Company* to show a false picture to the investors or to give effect to any fraudulent practice and also that there is no impact on securities market as a result of the trades in the shares of the *Company*. I do not find the aforesaid submissions of *Notices* to lend any credence to their cause in view of their violations

which have been found established and find it relevant to take note of the observations made by the Hon'ble Supreme Court in the case of *SEBI v. Rakhi Trading Pvt. Ltd.*, (2018) 13 SCC 753:

“According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.”

22. Considering the fact of common violations as established in the order passed by the Adjudicating Officer as well as by the WTM, after taking into account the minimum penalty provisions mandated under the SEBI Act, 1992 and the SCRA, 1956 as well the submissions of the *Notices* and my observations/findings recorded above, to bring clarity regarding the quantum of minimum penalty that are imposable on the *Notices* are as follows:

S. No.	<i>Notices</i>	Applicable Penalty Sections	Penalty imposed by Adjudication Order	Applicable/Payable penalty as per penalty provisions
1.	MPF Systems Limited	Section 15HA of the SEBI Act 1992 and 23E of SCRA	₹6,00,000/- (Rupees Six Lakh Only)	₹10,00,000/- (Rupees Ten Lakh Only)
2.	Ms. Kirti Salvi	Sections 15HA of SEBI Act 1992 and Section 23H of SCRA	₹4,00,000/- (Rupees Four Lakh Only)	₹6,00,000/- (Rupees Six Lakh Only)
3.	Mr. Anil Kothari		₹4,00,000/- (Rupees Four Lakh Only)	₹6,00,000/- (Rupees Six Lakh Only)
4.	Mr. Aakesh Chopra		₹4,00,000/- (Rupees Four Lakh Only)	₹6,00,000/- (Rupees Six Lakh Only)
5.	Mr. Ambrish Barsati Pal		₹4,00,000/- (Rupees Four Lakh Only)	₹6,00,000/- (Rupees Six Lakh Only)

23. In view of the foregoing, in exercise of the powers conferred upon me in terms of section 15-I(3) read with of section 19 of the SEBI Act, 1992, I, in order to meet the end of justice hereby enhance the penalty imposed by the Adjudication Order upon the *Noticee no. 1* from

₹6,00,000/- (Rupees Six Lakh Only) to ₹10,00,000/- (Rupees Ten Lakh Only) and upon *Notices no. 2 to 5*, from ₹4,00,000/- (Rupees Four Lakh Only) to ₹6,00,000/- (Rupees Six Lakh Only) each.

24. The enhanced penalty amounts after adjusting the amounts, if any, paid in compliance with the Adjudication Order, shall be paid by the *Notices* within a period of forty-five (45) days from the date of coming into force of this Order by way of demand draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai. The said demand draft shall be forwarded to “*The Division Chief, Investigation Department (ID-9), Securities and Exchange Board of India, SEBI Bhavan-II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*” and also send an email to that effect to tad@sebi.gov.in with the following details:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

OR

Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of Chairman/Members → Click on PAY NOW or <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>

25. In the even to failure to pay the said amount of penalty within 45 days of the receipt to this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter-alia*, by attachment and sale of movable and immovable properties.
26. A copy of this Order shall be forwarded to the *Notices* immediately.

DATE: DECEMBER 22, 2020
PLACE: MUMBAI

-Sd-
S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA