**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/SM/HG/2022-23/19888]**

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

**In respect of:**

**Pincon Lifestyle Limited**

**(PAN: AACCM2684D)**

**In the matter of Pincon Lifestyle Limited**

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## BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as "**SEBI**"*) carried out investigation with regard to alleged misutilization of funds raised through preferential issue by Pincon Lifestyle Ltd. (hereinafter referred to as *'**PLL / company/ Noticee**'*). The focus of investigation was to ascertain whether there were any violations of SEBI Act, 1992 and/or violations of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 hereinafter referred to as *'**PFUTP Regulations**'*) and/or Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 hereinafter referred to as *'**ICDR Regulations**'*) or any other Rules/Regulations made by SEBI thereunder. During the investigation, it was observed by SEBI that Noticee passed the Board Resolution for issue of 3,00,00,000 equity shares @ Rs.10/- per share through preferential allotment aggregating Rs.30,00,00,000/- (Rupees Thirty Crore Only) in the meeting held on April 1, 2013. The said Resolution was approved by the shareholders in the Extra Ordinary

General Meeting held on April 24, 2013. The company on 26.04.2013 allotted 3,00,00,000 equity shares to preferential allottees by accepting the consideration in kind i.e. the company accepted the shares of several private limited companies instead of cash from the preferential allottees. Subsequently, the company sold the shares received against the allotment during April 25, 2014 to February 12, 2016. In view of this, the period of investigation was taken from April 1, 2013 to February 12, 2016. (hereinafter referred to as "**Investigation Period / IP**").

2. The company Pincon Lifestyle Limited (formerly Modi Udyog Ltd) was incorporated on 04.10.1982. The company manufactures apparel. The company offers shirting, khakhi and knitted fabrics and wholesale trades in textiles primarily in India. The company also engages in trading, manufacturing, and exporting readymade garments; and life style products/fashion apparels comprising trousers, shirts, and T-shirts, as well as Jeans under the PINCON and HIGHLAND BLUE brands. In addition, it trades in sunflower and mustard oils. The company was formerly known as Modi Udyog Limited. The company was listed on Calcutta Stock Exchange on 26.02.1997 and on BSE on March 11, 2015.

3. It was observed that with regard to the preferential allotment dated April 26, 2013 by Noticee, the company allotted 3,00,00,000 equity shares of Rs.10/- per share to 21 preferential allottees aggregating Rs.30 crores in lieu of the shares of the private limited companies, under the arrangement made amongst them. The details of preferential allottees are as given below:

| Sr. no. | Name of the Allottees | No. of shares allotted | Amount Payable (Rs.) |
|---|---|---|---|
| 1 | Lucky Commosales Pvt Ltd | 10,00,000 | 1,00,00,000 |
| 2 | Vedant Commodeal Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 3 | Newedge Vinimay Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 4 | Festino Vincom Ltd | 15,00,000 | 1,50,00,000 |
| 5 | Jackpot Vintrade Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 6 | Unicon Tie-up Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 7 | Moontree Traders Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 8 | Ocian Advisory Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 9 | Paropkar Investment Consultants Pvt Ltd | 15,00,000 | 1,50,00,000 |

| | | | |
|---|---|---|---|
| 10 | Kinetic Commosales Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 11 | Newwave Commodeal Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 12 | Maa Vaishnavi Vanijya | 15,00,000 | 1,50,00,000 |
| 13 | Yuthika Vyapar Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 14 | Bankura Agricultural Projects Development (p) Ltd | 15,00,000 | 1,50,00,000 |
| 15 | Swift Realcon Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 16 | Lemonmint Traders Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 17 | Matarani Dealer Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 18 | Ecospace Infotech Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 19 | Pincers Commodities Pvt Ltd | 15,00,000 | 1,50,00,000 |
| 20 | Viewmore Dealers Pvt Ltd | 10,00,000 | 1,00,00,000 |
| 21 | Shrishtidata Distributors Pvt Ltd | 10,00,000 | 1,00,00,000 |
| | **Total** | **3,00,00,000** | **30,00,00,000** |

4. It was observed that, as per the company notice dated 01.04.2013 of Extra Ordinary General Meeting sent to the shareholders, the purpose of raising funds through preferential allotment the object of raising funds was for the growth and expansion of the business.

5. Further, Noticee was listed on BSE Ltd (**BSE**) on 11.03.2015. The preferential issue was made by the Noticee for consideration other than cash on 26.04.2013, while it was listed on Calcutta Stock Exchange. It was observed in the investigations that Noticee had accepted shares of several private limited companies as consideration towards the said preferential allotment. According to BSE, Noticee had accepted the shares of private limited companies which was not its core business. In view of this, BSE had initiated enquiry against the company and sought several clarifications. One such communication was the Show Cause Notice (SCN) dated 01.06.2016 issued by the BSE to the company. SEBI received a copy of this SCN dated 01.06.2016 in respect of alleged mis-utilisation of funds raised through preferential allotment. In light of the above SCN, SEBI vide letter no. SEBI/HO/CFD/FAC/OW/P/2017/6147/1 dated 21.03.2017 directed the Noticee to place the matter of funds raised in the preferential allotment and its utilization before the Audit Committee of the company and sought the views/ recommendation from the Audit Committee.

6. The Audit Committee of the company vide letter dated 08.04.2017 submitted the following to SEBI:

6.1. The company carried out preferential allotment to 21 preferential allottees on 26.04.2013. The company accepted the shares of several private limited companies from the preferential allottees instead of cash. The company and the preferential allottees who offered these shares, mutually decided the price of the shares to be taken over as a consideration. The details of the same are as follows:

| Sr. No | Name of the Preferential Allottee | Amount payable by the allottee (Rs.) | Name of the company of which shares were offered by allottees | No. and price @ which shares offered by the allottees | Value of the shares paid by the allottees to the company (Rs.) |
|---|---|---|---|---|---|
| 1 | Lucky Commosales Pvt Ltd | 1,00,00,000 | Intimate Tradelink Pvt Ltd | 10,000 shares @ Rs.1000/- per share | 1,00,00,000 |
| 2 | Vedant Commodeal Pvt Ltd | 1,50,00,000 | Virtual Vintrade Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 3 | Newedge Vinimay Pvt Ltd | 1,50,00,000 | Rockstar Traders Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 4 | Festino Vincom Ltd | 1,50,00,000 | Escort Vincom Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 5 | Jackpot Vintrade Pvt Ltd | 1,50,00,000 | Intimate Tradelink Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 6 | Unicon Tie-up Pvt Ltd | 1,50,00,000 | Virtual Vintrade Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 7 | Moontree Traders Pvt Ltd | 1,50,00,000 | Gangaur Dealtrade Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 8 | Ocian Advisory Pvt Ltd | 1,50,00,000 | Rajgharana Distributors Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 9 | Paropkar Investment Consultants Pvt Ltd | 1,50,00,000 | Gangaur Dealtrade Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 10 | Kinetic Commosales Pvt Ltd | 1,50,00,000 | Merlin Commosales Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 11 | Newwave Commodeal Pvt Ltd | 1,50,00,000 | Virtual Vintrade Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 12 | Maa Vaishnavi Vanijya | 1,50,00,000 | Vigneshwar Dealmark Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |

| | | | | | |
|---|---|---|---|---|---|
| 13 | Yuthika Vyapar Pvt Ltd | 1,50,00,000 | Respect Vyapar Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 14 | Bankura Agricultural Projects Development Pvt Ltd | 1,50,00,000 | Eugenia Services & Solutions Pvt Ltd | 15,000 shares @ Rs.1000/- per share | 1,50,00,000 |
| 15 | Swift Realcon Pvt Ltd | 1,50,00,000 | Anantnath Exports Pvt Ltd | 1500 shares @ Rs.10,000/- per share | 1,50,00,000 |
| 16 | Lemonmint Traders Pvt Ltd | 1,50,00,000 | Aakruti Infrareality Pvt Ltd | 1500 shares @ Rs.10,000/- per share | 1,50,00,000 |
| 17 | Matarani Dealer Pvt Ltd | 1,50,00,000 | Blackberry Impex Pvt Ltd | 1500 shares @ Rs.10,000/- per share | 1,50,00,000 |
| 18 | Ecospace Infotech Pvt Ltd | 1,50,00,000 | Mangalkripa Infrastructure Pvt Ltd | 3,000 shares @ Rs.5000/- per share | 1,50,00,000 |
| 19 | Pincers Commodities Pvt Ltd | 1,50,00,000 | Mangalkripa Infrastructure Pvt Ltd | 3,000 shares @ Rs.5000/- per share | 1,50,00,000 |
| 20 | Viewmore Dealers Pvt Ltd | 1,00,00,000 | Inner Mercantile Pvt Ltd | 1,000 shares @ Rs.10000/- per share | 1,00,00,000 |
| 21 | Shrishtidata Distributors Pvt Ltd | 1,00,00,000 | Abin Developers Pvt Ltd | 2,000 shares @ Rs.5000/- per share | 1,00,00,000 |

6.2. The Audit Committee of the company further informed that the aforementioned shares received by the company in lieu of cash were subsequently sold by the company and the amount realised on sale of these shares is as detailed below:

| Sr. no. | Date of sale | Name of the company | No. of shares sold | Sales Price (Rs.) | Amount Realized (Rs.) |
|---|---|---|---|---|---|
| 1 | 18.01.2016 | Abin Developers Pvt Ltd | 2,000 | 5100/- | 1,02,00,000 |
| 2 | 18.01.2016 | Inner Mercantile Pvt Ltd | 1,000 | 10050/- | 1,00,50,000 |
| 3 | 18.01.2016 | Blackberry Impex Pvt Ltd | 1,500 | 10100/- | 1,51,50,000 |
| 4 | 22.01.2016 | Anantnath Exports Pvt Ltd | 1,500 | 10000/- | 1,50,00,000 |
| 5 | 22.01.2016 | Aakruti Infrareality Pvt Ltd | 1,500 | 10000/- | 1,50,00,000 |
| 6 | 30.01.2016 | Merlin Commosales Pvt Ltd | 15,000 | 1010/- | 1,51,50,000 |
| 7 | 30.01.2016 | Gangaur Dealtrade Pvt Ltd | 30,000 | 1010/- | 3,03,00,000 |
| 8 | 30.01.2016 | Mangalkripa Infrastructure Pvt Ltd | 6,000 | 5000/- | 3,00,00,000 |
| 9 | 04.02.2016 | Virtual Vintrade Pvt Ltd | 45,000 | 1010/- | 4,54,50,000 |
| 10 | 04.02.2016 | Rockstar Traders Pvt Ltd | 9,800 | 1004.05 | 98,39,700 |
| 11 | 09.02.2016 | Escort Vincom Pvt Ltd | 15,000 | 1000/- | 1,50,00,000 |

| | | | | | |
|---|---|---|---|---|---|
| 12 | 09.02.2016 | Rajgharana Distributors Pvt Ltd | 15,000 | 1010/- | 1,51,50,000 |
| 13 | 09.02.2016 | Respect Vyapar Pvt Ltd | 15,000 | 1000/- | 1,50,00,000 |
| 14 | 09.02.2016 | Eugenia Services & Solutions Pvt Ltd | 9,800 | 1004.05 | 98,39,700 |
| 15 | 12.02.2016 | Vigneshwar Dealmark Pvt Ltd | 14,199 | 1000/- | 1,41,99,000 |
| 16 | 12.02.2016 | Intimate Tradelink Pvt Ltd | 20,025 | 1000/- | 2,00,25,000 |
| 17 | 25.04.2014 | Rockstar Traders Pvt Ltd | 5,200 | 1000/- | 52,00,000 |
| 18 | 25.04.2014 | Eugenia Services & Solutions Pvt Ltd | 5,200 | 1000/- | 52,00,000 |
| 19 | 15.05.2014 | Intimate Tradelink Pvt Ltd | 4,975 | 1000/- | 49,75,000 |
| 20 | 15.05.2014 | Vigneshwar Dealmark Pvt Ltd | 801 | 1000/- | 8,01,000 |
| | | | | **Total** | **30,15,29,400** |

6.3. The Audit Committee informed that the funds raised from sale of above shares were deployed for building current assets in the FY 2015-16 and substantial part of the funds was utilized in the FY 2016-17 for growth and expansion of business viz. Textile Business. The Audit Committee further stated that the consideration has been duly received and the share transfer forms and Transfer Deeds were also executed in respect of the same. The Audit Committee concluded that utilization of funds raised through the preferential issue appears to be justified and in order. However, it was observed that the Audit Committee had not provided any documents to substantiate their above stated claims regarding the utilisation of funds by the company.

7. It was observed from the above table at para 6.2 that during the period 18.01.2016 to 12.02.2016 (Sr. No. 1 to 16 of Table) the company has realised Rs.28,53,53,400/- from the sale of shares. The bank account of the company was verified. On verification, it was noted that as per the bank statement, amount realised during the above period was Rs.28,39,03,400/- instead of Rs.28,53,53,400/-. Thus there was a difference of Rs.14,50,000/- in the amount mentioned by the Audit Committee and the amount realised as per the bank statement of the company. As the company was not responding to any queries, the reasons for the above difference couldn't be identified during investigation. Further, the amount realised by the company during the period from 25.04.2014 to 15.05.2014 (Sr. No.17 to 20 of Table) couldn't be verified with any bank statement as the company had not provided the details of bank account in which

the above amounts were credited. As informed by Punjab National Bank vide email dated 15.12.2021, the above bank account was opened on 20.11.2015 hence, amount realized by the company during the period 25.04.2014 to 15.05.2014 couldn't be verified in the said bank account. Therefore, SEBI, *inter alia*, sought information from Noticee under section 11C (3) of SEBI Act, 1992 during the investigation:

7.1. Details of preferential issue made by the company – Pincon Lifestyle Ltd during FY 2013-14.

7.2. Object of the preferential issue made by the company.

7.3. Bank details of the company (all bank accounts).

7.4. List of allottees along with the basis for allotment and term and conditions of allotment in detail.

7.5. Copy of notice sent to shareholders w.r.t. the preferential issue.

7.6. Details of utilization of proceeds of preferential allotment along with reasons (if any).

7.7. Whether any disclosure was made by company for deviations in utilization of funds raised under the preferential issue. If yes, details of the same, etc.

8. The above details were sought from the company vide emails, letter and summons. The delivery status of the said emails, letters and summons is provided in below given table:

| **Sr. no.** | **Date** | **Letter/ Summons/ email** | **Address on which sent** | **Speed-Post Delivery Status** | **Delivery through email** |
|---|---|---|---|---|---|
| 1 | 26.12.2018 | email | (i) info@pinconlifestyle.com;<br>(ii) pinconlifestyle@gmail.com' | N A | Delivered |
| 2 | 03.01.2019 | email | (iii) info@pinconlifestyle.com;<br>(iv) pinconlifestyle@gmail.com' | N A | Delivered |
| 3 | 09.01.2019 | Letter | Wellesley House, 7, Red Cross Place, 3rd Floor, Kolkata, West Bengal - 700001 | Return Undelivered | N A |

| | | | | | |
|---|---|---|---|---|---|
| 4 | 07.12.2020 | Summons u/s 11C(3) of SEBI Act, 1992 | Wellesley House, 7, Red Cross Place, 3rd Floor, Kolkata, West Bengal – 700001 and through email on info@pinconlifestyle.com, and pinconlifestyle@gmail.com | Return Undelivered | Delivered |
| 5 | 15.12.2021 | Summons u/s 11C(3) of SEBI Act, 1992 | Wellesley House, 7, Red Cross Place, 3rd Floor, Kolkata, West Bengal – 700001 and through email on info@pinconlifestyle.com, pinconlifestyle@gmail.com and pincon2019@gmail.com | Return Undelivered | Delivered |

9. The letters and summons sent on the registered address of the company through speed-post were returned undelivered. The summons dated December 07, 2020 sent through email was delivered at the email address viz. pinconlifestyle@gmail.com, however it returned undelivered from info@pinconlifestyle.com. The summons dated December 15, 2021 sent through email was delivered at the email addresses viz. pinconlifestyle@gmail.com and pincon2019@gmail.com, however it returned undelivered from info@pinconlifestyle.com. Therefore, it was observed that that summons dated December 07, 2020 and December 15, 2021 were duly served on the Noticee, however no information was provided by the Noticee in response to the emails, letters and summons.

10. Therefore, it was also observed that despite several emails, letters and summons Noticee didn't provide the details sought by SEBI including the details of utilization of funds. Thus, it was alleged that the Noticee has failed to furnish the information sought through summons thereby violated section 11C(3) of SEBI Act, 1992.

## APPOINTMENT OF ADJUDICATING OFFICER

11. The undersigned was appointed as the Adjudicating Officer **(AO)** by SEBI vide Order dated March 30, 2022 under Section 19 read with Section 15-I of SEBI Act, 1992 and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter referred to as, "**Adjudication Rules**"*) to inquire into and adjudge

under Section 15A(b) of the SEBI Act, 1992 for the alleged violation of section 11C(3) of SEBI Act, 1992 by the Noticee.

## SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

12. Show Cause Notice No. EAD-10/ADJ/SM/AE/OW/23670/1/2022 dated June 07, 2020 (*hereinafter referred to as '**SCN**'*) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon him under the provisions of Section 15A(a) of SEBI Act, 1992 for the violation SCN alleged that the Noticee has failed to furnish the information sought through summonses thereby, Noticee violated section 11C(3) of SEBI Act, 1992.

13. The SCN was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') on June 07, 2022 as well as through digitally signed email dated June 08, 2022. The SCN sent at the email ids pinconlifestyle@gmail.com and pincon2019@gmail.com was duly served upon Noticee, however, the SCN sent through SPAD was returned undelivered with the comment "Left". Noticee was given fifteen (15) days' time to make his submissions in respect of the allegations made in the SCN. However, no reply was received from the Noticee till date of this order.

14. Thereafter, in the interest of natural justice, vide hearing notice dated August 19, 2022, Noticee was granted an opportunity of personal hearing before the undersigned on September 06, 2022. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email on August 19, 2022. The SCN sent at the email ids pinconlifestyle@gmail.com and pincon2019@gmail.com was duly served upon Noticee, however, the SCN sent through SPAD was returned undelivered. The Noticee was also granted the option of conducting the hearing through video conferencing on the scheduled date and time. However, the Noticee did not submit any reply to the SCN nor did it appear for the said hearing.

15. Considering the fact that the Noticee has neither filed any reply nor has availed the opportunity of personal hearing despite being granted opportunities for the same, I am of the view that the Noticee has nothing to submit, and in terms of rule 4(7) of the Rules, the matter can be proceeded ex-parte on the basis of material available on record. In absence of any response from the Noticee to the SCN, I presume that the Noticee has admitted the charges levelled against it. In this regard, it is pertinent to note that the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), has, inter alia, observed that,

> *"...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

16. Further, the same position is reiterated by the Hon'ble SAT in the matter of *Dave Harihar Kirtibhai Vs SEBI* (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:

> *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*

17. In view of the aforesaid observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly I deem it appropriate to proceed against the Noticee ex-parte, based on the material available on record.

## CONSIDERATION OF ISSUES AND FINDINGS

18. I have carefully examined the material available on record, and the submissions made by the Noticee. The issues that arise for consideration in the present case are :

    I. Whether the Noticee has violated the provisions of section 11C(3) of SEBI Act, 1992?

    II. Does the violation, if established, attract monetary penalty under Section 15A(a) of SEBI Act, 1992?

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

## FINDINGS

19. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticee and the same is reproduced below:

**SEBI Act, 1992**

***Investigation.***

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

***SEBI Act, 1992***

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

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

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

***Issue I)*** **Whether the Noticee has violated the provisions of section 11C(3) of SEBI Act, 1992?**

20. I note that the allegation against the Noticee is that Noticee didn't provide the details sought by Investigating Authority of SEBI (*hereinafter referred to as* **'IA'**) during the investigation under section 11C (3) of SEBI Act, 1992.

21. From the material available on record, I note that IA had sought details from Noticee vide emails, letter and summons. The details of the information sought by Noticee is reproduced hereunder:

    a) Details of preferential issue made by the company – Pincon Lifestyle Ltd during FY 2013-14.

    b) Object of the preferential issue made by the company.

    c) Bank details of the company (all bank accounts).

    d) List of allottees along with the basis for allotment and term and conditions of allotment in detail.

    e) Copy of notice sent to shareholders w.r.t. the preferential issue.

    f) Details of utilization of proceeds of preferential allotment along with reasons (if any).

    g) Whether any disclosure was made by company for deviations in utilization of funds raised under the preferential issue. If yes, details of the same, etc.

22. The details of the aforementioned emails, letter and summons along with the delivery status of the said emails, letters and summons is provided in below given table:

| Sr. no. | Date | Letter/ Summons/ email | Address on which sent | Speed-Post Delivery Status | Delivery through email |
|---|---|---|---|---|---|
| 1 | 26.12.2018 | email | (v) info@pinconlifestyle.com; (vi) pinconlifestyle@gmail.com' | N A | Delivered |
| 2 | 03.01.2019 | email | (vii) info@pinconlifestyle.com; (viii) pinconlifestyle@gmail.com' | N A | Delivered |
| 3 | 09.01.2019 | Letter | Wellesley House, 7, Red Cross Place, 3rd Floor, Kolkata, West Bengal - 700001 | Return Undelivered | N A |
| 4 | 07.12.2020 | Summons u/s 11C(3) of SEBI Act, 1992 | Wellesley House, 7, Red Cross Place, 3rd Floor, Kolkata, West Bengal – 700001 and through email on info@pinconlifestyle.com, and pinconlifestyle@gmail.com | Return Undelivered | Delivered |
| 5 | 15.12.2021 | Summons u/s 11C(3) of SEBI Act, 1992 | Wellesley House, 7, Red Cross Place, 3rd Floor, Kolkata, West Bengal – 700001 and through email on info@pinconlifestyle.com, pinconlifestyle@gmail.com and pincon2019@gmail.com | Return Undelivered | Delivered |

23. I note that the letter and summonses sent on the registered address of the company through speed-post had returned undelivered. I also note that summons dated December 07, 2020 sent through email was delivered at the email address viz. pinconlifestyle@gmail.com, The summons dated December 15, 2021 sent through email was delivered at the following email addresses viz. pinconlifestyle@gmail.com and pincon2019@gmail.com, Therefore, I find that summonses dated December 07, 2020 and December 15, 2021 were duly served on the Noticee. However, I note from records that despite summonses being served upon Noticee, Noticee did not reply to summons.

24. I note that a statutory duty is cast upon Noticee under Section 11C (3) of SEBI Act to comply with and to co-operate with the investigation process and to provide the information/records as may be required by the IA. Once information is called for by IA

under Section 11C(3) of SEBI Act, it necessarily commands performance of duty by the persons/entity who has been called upon to furnish such information failing which it results in violation of 11C(3) of SEBI Act.

25. In view of the above, I conclude that the allegation that Noticee has violated section 11C (3) of SEBI Act, 1992, stands established.

***Issue II)*** **Does the violation, if established, attract monetary penalty under Section 15A(a) of SEBI Act, 1992?**

26. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the* contravention *of the statutory obligation as contemplated by the Act and the Regulations is established...…".* Further, Hon'ble SAT, in Appeal No.95/04 vide its order dated August 9, 2004 in Mayfair Paper & Board Pvt. Ltd. V SEBI held that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under Section 15A of the SEBI Act 1992. Therefore, in view of the above violations as brought out in the foregoing paragraphs and placing reliance on the aforementioned judgement, I find that Noticee is liable for monetary penalty under Section 15A (a) of SEBI Act

27. The text of Section 15A(a) of SEBI Act, is reproduced below:

***SEBI Act***

***Section 15A (a) of the SEBI Act: Penalty for failure to furnish information, return, etc.:***

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

*(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less*

**<u>Issue III:</u> <u>If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?</u>**

28. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules, require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

29. In the instant matter, it is not possible to quantify the gains made by Noticee or the loss caused to investors as a result of the failure on the part of Noticee to honour the summons. Further, there is nothing on record which shows repetitive nature of the default by Noticee. I observe that the Noticee failure to furnish required information to the Investigating Authority reflects the Noticees disregard for the investigation process of SEBI. In this context, it is also important to refer to the order of the Hon'ble SAT in the matter of Mr. Jalaj Batra vs. SEBI (Appeal no. 184 of 2010, dated December 06, 2010), wherein it was held that "*......We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non-co-operation with the market regulator has to be viewed seriously. We do not know what else would have come to light if the*

*appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him."*

## **ORDER**

30. Having considered all the facts and circumstances of the case, the material available on record, and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 1,00,000/-(Rupees One Lakh only) on Noticee i.e. Pincon Lifestyle Limited, under the provisions of Section 15A(a) of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee

31. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

32. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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|---|---|
| 1. Case Name: | |
| 2. Name of payee: | |
| 3. Date of payment: | |
| 4. Amount paid: | |
| 5. Transaction no.: | |
| 6. Bank details in which payment is made: | |

| | |
|---|---|
| 7. Payment is made for:<br>(like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details) | |

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

34. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz. Pincon Lifestyle Limited and also to SEBI

**Date: September 30, 2022** **SOMA MAJUMDER**
**Place: Mumbai** **ADJUDICATING OFFICER**