BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/PM/GD/2021-22/15671)

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

In respect of

Ace Consultant

(PAN: ABGPK4707P)

In the matter of Esteem Bio Food processing Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') appointed the undersigned as the Adjudicating Officer under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules,1995 (hereinafter referred to as "Adjudication Rules") to inquire into and adjudge under the provisions of Section 15HA of the Securities And Exchange Board of India (SEBI) Act-1992 for the violation of the provisions of Regulations 3(a), 3(b), 3(c), 3(d), and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with sections 12A(a), 12A(b) and 12A(c) of the SEBI Act, 1992 by **Ace Consultant (hereinafter referred to as "Noticee").**

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer, vide communique dated July 17, 2017 under section 19 r/w section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the **SEBI Act, 1992**) r/w rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

(hereafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under the provisions of section 15HA of the SEBI Act, 1992.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. A Show Cause Notice having reference no. SEBI/AO-PM/NK/29843/2017 dated November 29, 2017 (hereafter referred to as **SCN**) was issued to the Noticee in terms of the provisions of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under the provision of section 15HA of the SEBI Act, 1992. The allegations in the SCN are as follows:
   a) *Securities and Exchange Board of India (herein after referred to as "SEBI") conducted an investigation in the matter relating to the IPO of Esteem Bio Organic Food Processing Limited (herein after referred to as Esteem or 'the Company').*
   b) *During investigation it was observed that Esteem came out with an Initial Public Offering (IPO) to raise Rs. 1125 Lacs from issue of 45,00,000 equity shares of Rs. 10 each at an issue price of Rs. 25 each. The shares were listed on BSE - SME segment on January 07, 2013. The price of the scrip opened at Rs 25.25 and increased to an intraday high of Rs 26.50 and closed at Rs 26.50 on the listing day. The issue size constituted, 30.20% of post issue shares, of Rs.10 each. Bidding Period of Issue opened on January 18, 2013 and closed on January 22, 2013.*
   c) *As per the prospectus, the proposed utilisation of the IPO proceeds was as under;*

Proposed Utilisation:

Sl.No.	*Particulars*	*Amount (Rs. in lacs)*
1	*Setting up of Shade Net Cultivation facility*	*380.00*
2	*Development of Farm land for transition to Organic Farming*	*565.00*
3	*Procurement of farm tools and equipments*	*30.00*

4	*Brand Building and General Corporate purposes*	*80.00*
5	*Issue Expenses*	*70.00*
	Total	***1125.00***

Means of Finance:

Particulars	***Amount (Rs. in lacs)***
Initial Public Offering	*1125.00*
Internal Accruals	*-*
Total	***1125.00***

d) Esteem, vide its letter dated 25/12/2015, received by SEBI on 29/01/2015 informed that the utilization of the IPO proceeds as on 31/03/2015 (Rs. in lacs) was as under;

Particulars	***Utilized as on 31/03/2015 (Rs in lacs)***
Setting up of shade Net cultivation facility	*375.00*
Development of farm land for transition to organic farming	*564.49*
Procurement of farm tools and equipments	*29.06*
Brand Build and General Corporate Purpose	*30.00*
Issue Expenses	*31.28*
Investment in short term, advances	*99.67*
Total	*1129.50*

e) It was observed that Esteem did not provide any supporting documents with respect to the utilization of the IPO proceeds as claimed in its reply dated 25/12/2015. Further, e-mail was sent to seek supporting documents with respect to the IPO proceeds utilization. Investigation observed that the information provided by Esteem with regard to IPO proceeds utilization pursuant to summons Invesigating Authority (IA) was incomplete and misleading.

f) It is alleged by Investigation that certain entities were connected with Esteem directly/ indirectly and that these connected entities had funded the IPO applicants of Esteem. The details of these entities and basis of their connection is brought out in table below :

SN	Particulars	Connection - Fund Movement
1	*International Finvest Ltd. (Goldline)*	• *Goldline received IPO proceeds of Rs. 239.60 lacs from ESTEEM.* • *ESTEEM given Rs. 245 lacs to ECO, the same was transferred by ECO to Goldline.* • *Goldline had fund movement with Mayfair Infosolution Private Limited, Guiness Securities Limited and Sanjeev Agarwal.* • *Goldline had also fund movement with the entities who had funded to IPO Allottees viz. AMS Powertronic Private Limited, Bright Securities, Columbia Sales.*
2	*Satendra Kumar (PAN: AWWPK8525E)* ***<u>Proprietorship Firm</u>*** • *Bright Securities* • *A R Enterprise* • *Nisha Traders*	• *Nisha Traders received funds from Magnum Industrial and Bright Securities.* • *Bright Securities had fund movement with Nisha Traders, Magnum Industrial, N V Sales Corporation, A One Furniture, Goldline International Private Limited and AMS powertronic Private Limited.* • ***Address**: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092.* • *Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address.*
3	*Madhukar Dubey* *(PAN: AIJPD7329J)* ***<u>Proprietorship Firm</u>*** • *Alliance Traders* • *N V Sales Corporation* • *A One Furniture* • *Magnum Industrial*	• *N V Sales Corporation had fund movement with Khan Enterprises, AMS Powertronic Private Limited.* • *A One Furniture received funds from Magnum Industrial.* • *Alliance Traders received funds from AMS Powertronic Private Limited, Mayfair Infosolution Private Limited., A One Furniture, N V Sales Corporation, Nisha Traders.* • *Magnum Industrial received funds from Eco and A One Furniture.* • *Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092.* • *Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address.*
4	*Ram Prakash* *(PAN: AXFPR4439L)* ***<u>Proprietorship Firm</u>*** • *Khan Enterprises* • *Aggrawal Traders*	• *Khan Enterprise had fund movement with Shiv Traders and Garg Traders & Suppliers.* • *Aggrawal Traders received funds from the Goldline International Private Limited.* • *Ram Prakash is the director in following companies (MCA Database);* *i. Aavia Buildtech Private Limited* *i. Aavia Softech Private Limited.*
5	*Aavia Softech Pvt. Ltd.*	• *It had fund movement with Mayfair Infosolution Private Limited, Eco, Goldline and Esteem Bio.* • *Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common address : 1/2486, Gali No. 26, Ramnagar, Modern Shahdra, East Delhi - 110032. (MCA Website)*

SN	Particulars	Connection - Fund Movement
		• *Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common Director: 1) Kamal Singhal 2) Ramprakash* • *Mr. Ramprakash is the proprietor of M/s. Khan Enterprise and Ms/. Aggrawal Traders.*
6	*Aavia Buildtech Pvt. Ltd.*	• *It had received IPO proceeds of Rs. 40 lacs from the company.* • *Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common address : 1/2486, Gali No. 26, Ramnagar, Modern Shahdra, East Delhi - 110032.* • *Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common Director: 1) Kamal Singhal 2) Ramprakash.* • *Mr. Ramprakash is the proprietor of M/s. Khan Enterprise and Ms/. Aggrawal Traders.*
7	*Mayfair Infosolution Pvt. Ltd.*	• *It had received IPO proceeds of Rs. 81 lacs from the company.* • *It had fund movement with Aavia Softech Pvt. Ltd, Goldline, Esteem, AMS Powertronic Pvt. Ltd and Gracious Software Pvt Ltd.* • ***Director Name** :1)Sumit Kumar 2) Vinay Kumar* • *Mayfair is connected with AMS Powertronic Pvt. Ltd.,Nikky Printing Press pvt. Ltd., through common directors.*
8	*Avisha Credit Capital Ltd*	• *It had received IPO proceeds of Rs. 15.50 lacs from the company.* • *Further, it had fund movement with Eco, Goldline , ISF Securities Ltd., and Mayfair Infosolution.*
9	*Nikky Printing Press Pvt. Ltd.*	• *It had fund movement with Goldline, Mayfair Infosolution, AMS Powertronic and Madhukar Dubey.* • ***Director Name** : 1)Sumit Kumar 2) Vinay Kumar* • *Nikky Printing press Pvt. Ltd. is connected with Mayfair Infosolution Pvt. Ltd, AMS Powertronic Pvt. Ltd., through common directors.*
10	*Neel Kanth Trading Co.*	• *It had fund movement with AMS Powertronic Pvt. Ltd.*
11	*Amsons Apparels Pvt Ltd*	• *It had fund movement with AMS Powertronic Pvt. Ltd., Goldline, Madhukar Dubey and Mayfair Infosolution Pvt. Ltd.*
12	*Gracious Software Pvt Ltd*	• *It had fund movement with Goldline and Mayfair Infosolution Pvt. Ltd.*
13	*Ace Consultant*	• *It had fund movement with the ISF Securities Ltd and Goldline.* • *Common Address with ISF Securities Ltd.*

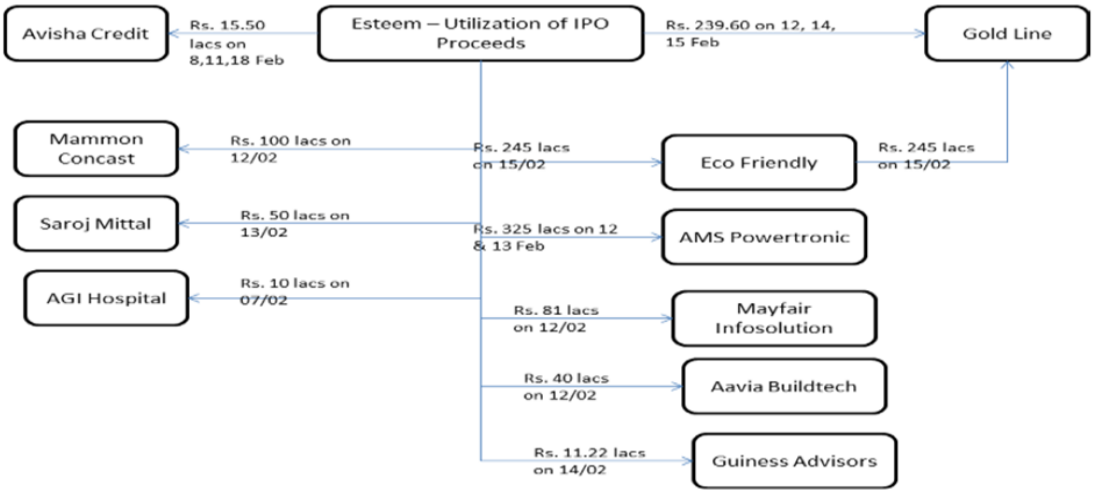
SN	Particulars	Connection - Fund Movement
		• *Till March 2014, Brij Kishore Sabharwal (Director of Eco & Esteem) was the director in ISF Securities Ltd.*
14	*Shiv Traders*	• *Shiv Traders had fund movement with Mayfair Infosolution Pvt. Ltd., Khan Enterprise, Neelkanth Trading, AMS Powertronic Pvt. Ltd., Aavia Buildtech Pvt. Ltd., Esteem.*
15	*AMS Powertronic Pvt. Ltd.*	• *It had received Rs. 325 lacs from the IPO proceeds of the ESTEEM.* • *It had fund movement with Mayfair Infosolution Pvt. Ltd., Goldline, Amsons Apparels pvt. Ltd., N V Sales Corporation, Aavia Softech pvt. Ltd., Nisha Traders, Shiv Traders, ECO, Aggarwal Traders, Madhukar Dubey, ESTEEM.* • ***Director Name** : 1)Sumit Kumar 2) Vinay Kumar* • *Sumit Kumar is the common director in AMS Powertronic Pvt. Ltd., Nikky Printing Press Pvt. Ltd. & Mayfair Infosolution Pvt. Ltd.*

Entities at Sr. No. 1 to 15 above shall hereinafter be referred to as the funding group entities and/or funding group.

g) *Investigation further alleged that Esteem had raised Rs. 1129.50 lacs through the IPO out of which Rs. 1106.10 lacs were transferred to various entities connected to Esteem. Further, out of the aforesaid Rs. 1106.10 Lacs, Rs. 946.10 lacs were transferred to certain group entities who were allegedly found to have funded the some of the applicants in the IPO of Esteem and also received the IPO proceeds. The details of the distribution of Rs. 946.10 Lacs amongst the funding group entities is as per the table below:*

Sl.No	Entity Name	Amount received from IPO proceeds (Rs in lacs)
1	Goldline International Finvest Ltd	484.60
2	Mayfair Infosolution Pvt. Ltd	81
3	Aavisha Credit Capital Pvt. Ltd	15.50
4	AMS Powertronic Pvt. Ltd.	325
5	Aavia Buildtech Pvt. Ltd.	40
	Total	**946.10**

h) *A diagrammatic representation of the funds movement from the bank account statement of Esteem (HDFC Bank - 00032560005478) to various entities is shown below:*



i) In view of the above it is alleged that the IPO of Esteem was funded by certain entities connected to the company and upon receipt of the IPO proceeds into the accounts of the company, the same were transferred back to those entities.

j) It was observed from the analysis of bidding data that 479 application for 2874000 shares were received in the retail investor category of which 29 application for 174000 shares were rejected due to various reasons. Post rejection, the total valid application were 483 for 46,14,000 shares which was 1.03 times of offer size.

<u>Category wise allotment details are as under:</u>

Category of Bids	No. of shares applied	No. of shares allotted	No. of Allottees whom shares allotted	No. of shares Application rejected
Market Maker	7,50,000	7,50,000	1	0
HNI	11,64,000	11,46,000	32	0
RII	28,74,000	26,22,000	437	1,74,000
Total	**47,88,000**	**45,18,000**	**470**	**1,74,000**

k) Investigation alleged that on perusal of bank accounts of the retail investors, it was observed that out of 450 retail applicants, applications of 270 applicants were funded by the funding group entities who received the funds back from the IPO proceeds. Further, of the 270 such applicants, 238 applicants got allotment of 14,28,000 shares which constituted approximately 31.60%of the allotted shares in the IPO. Further, in the market maker category the application for 7,50,000 shares was also allegedly funded by *the funding group which constituted approximately 16.60% of the allotted shares in the IPO. Further, it was observed that 32 applicants had applied for 11,64,000 shares in the HNI category, of which 11,46,000 shares were allotted to those 32 applicants on proportionate basis and of the 11,46,000 shares allotted to HNI, 60,000 shares (1.30% of the allotted shares in the IPO) were alleged to have been funded by the funding group entities. In view of the above, it was alleged that approximately 50% of the shares allotted in the IPO were indirectly funded by the company.*

l) *Investigation alleged that the application money for the applicants in the IPO was funded by the funding group entities who were connected to the company as shown in the preceding paragraphs. The funding group entities received funds from company directly / indirectly towards the allotted 23,34,000 shares (1428000 (RII) + 96000 (RII - Indirect Funding) + 750000 (Market Maker) + 60,000(HNI).*

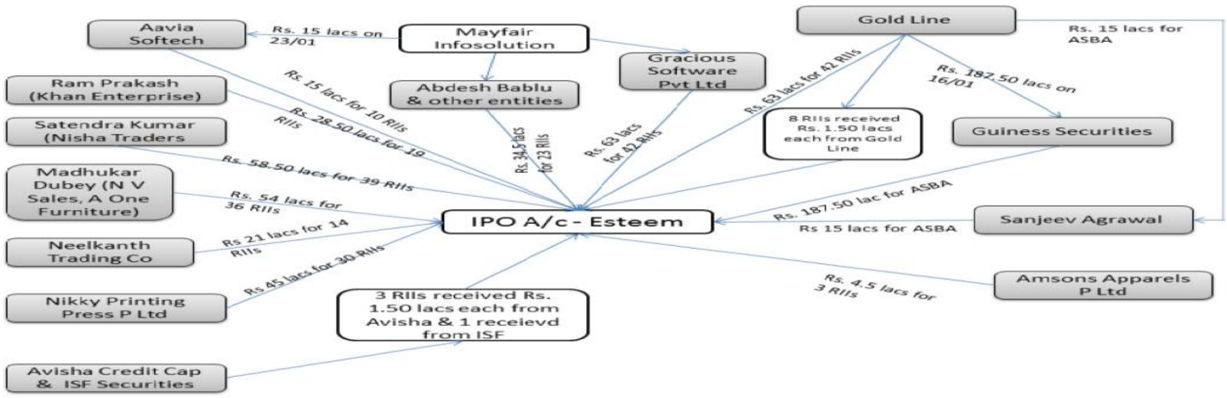
m) *In view of the above, it was alleged that the allotment of shares in the IPO was not genuine. The below table summarizes the fund movement between the company, funding group entities and IPO allottees.*

SN	Name	Bank A/c no.	Observations
1	Satendra Kumar **Proprietorship Firm** • Nisha Traders • Bright Securities	Yes Bank - 013683900002254	• ***Nisha Traders*** had issued 39 cheques of Rs. 1.50 lacs each on behalf of 39 Non ASBA retail investors.(38 allottees got allotment). • It had received Rs. 37 lacs from Bright Securities, & Rs. 13.50 lacs from Magnum Industrial Corporation.
		Yes Bank - 013683900002195	• Bright Securities had fund movement with Nisha Traders, Magnum Industrial , N V Sales Corporation, A One Furniture , Goldline and AMS powertronic Pvt. Ltd.
2	Madhukar Dubey **Proprietorship Firm** • N V Sales Corporation • A One Furniture	Dhanlakshmi Bank - 019106700001580	• **N.V. Sales Corporation** had issued 16 cheques of Rs. 1.50 lacs each on behalf of 16 Non ASBA retail investors. (9 allottees got allotment) • It had received Rs. 10.60 lacs from Khan Enterprise.
		Yes Bank - 013683900002266	• **A One Furniture** had issued 20 cheques of Rs. 1.50 lacs each on behalf of 20 Non ASBA retail investors. (20 allottees got allotment) • It had received Rs. 16.50 lacs from magnum Industrial corporation and Rs. 15 lacs received from Sumit Kumar.
3	Ram Prakash **Proprietorship Firm** • Khan Enterprise	Tamilnad Mercantile Bank - 211150050800272	• **Khan Enterprise** had issued 19 cheques of Rs. 1.50 lacs each on behalf of 19 Non ASBA retail investors. (18 allottees got allotment) • It had received Rs. 22.40 lacs from Shiv Traders & Rs. 5 lacs from Garg Traders & Suppliers.

SN	Name	Bank A/c no.	Observations
			• *Shiv traders* **(***TMB - 211150050800237) had received Rs. 81.50 lacs from ECO, Rs. 67 lacs from Esteem, in October and December, 2012.*
4	*Aavia Softech Pvt. Ltd.*	*Axis Bank -* ***:912020024045250***	• *Aavia Softech Pvt Ltd had issued 10 cheques of Rs. 1.50 lacs each on behalf of 10 Non ASBA retail investors. (9 allottees got allotment)* • *It had received Rs. 15 lacs from Mayfair Infosolution Pvt. Ltd. and Rs. 80 lacs from Eco Friendly Food Processing Park Ltd and also had fund movement with Gold Line, Esteem and other connected entities.*
5	*Goldline International Finvest Ltd.*	*ICICI Bank - 663005120449*	• *Gold Line had issued 42 cheques of Rs. 1.50 lacs each on behalf of 42 non ASBA allottees and 8 non ASBA received Rs. 1.50 lacs each from Gold Line to make application in the IPO. (37 allottees got allotment)* • *It had also funded Rs. 187.50 lacs to Guiness Securities Ltd and Rs. 15 lacs to Mr. Sanjeev Agarwal to make ASBA application.* • *It had received Rs. 239.60 lacs from Esteem from IPO proceeds, Rs. 245 lacs from Eco which was received from Esteem.* • *It had received Rs. 206 lacs from Mayfair Infosolution Pvt Ltd. on various dates.*
6	*Mayfair Infosolution Pvt. Ltd.*	*Axis Bank -* ***912020004121565***	• *It had given Rs. 1.50 lacs to 23 Non Asba applicants each who had made application in the IPO of Esteem. (20 allottees got allotment)* • *Further, Aavia Softech received Rs. 15 lacs & Gracioiuse Software Pvt Ltd received Rs. 63 lacs from Mayfair Infosolution.*
7	*Avisha Credit Capital Ltd*	*HDFC Bank - 05982740000567*	• *It had given Rs. 1.50 lacs to 3 Non Asba applicants each who had made application in the IPO of Esteem.(3 allottees got allotment)* • *It had received Rs. 15.50 lacs from IPO proceeds of Esteem.* • *Further, it had fund movement with Eco, Goldline, Mayfair Infosolution.*
8	*Nikky Printing Press P Ltd*	*Axis Bank -* ***911020034143910***	• *It had issued 30 cheques of Rs. 1.50 lacs each on behalf of 30 non ASBA allottees. (25 allottees got allotment)* • *It had received Rs. 45 lacs from Mayfair Infosolution and also had fund movement with Godline , AMS Powertronic, Madhukar Dubey.*
9	*Neel Kanth Trading Co.*	*Dhanlakshmi Bank - 019106700000717*	• *It had issued 14 cheques of Rs. 1.50 lacs each on behalf of 14 non ASBA allottees. (14 allottees got allotment)* • *It had fund movement with AMS Powertronic Pvt Ltd,*
10	*Amsons Apparels Pvt Ltd*	*Axis Bank -* ***912020014964077***	• *It had issued 3 cheques of Rs. 1.50 lacs each on behalf of 3 non ASBA allottees. (2 allottees got allotment)* • *It had received Rs. 5 lacs from Core Capital Services Pvt Ltd. Further, it had fund movement with AMS Powertronic Pvt. Ltd., Gold Line, Madhukar Dubey.*

SN	Name	Bank A/c no.	Observations
11	Gracious Software Pvt Ltd	Axis Bank - **912020015006932**	• It had issued 42 cheques of Rs. 1.50 lacs each on behalf of 42 non ASBA allottees. (42 allottees got allotment) • It had received Rs. 63 lacs from Mayfair Infosolution Pvt Ltd. Further, it had fund movement with Goldline.
12	Ace Consultant	HDFC Bank - 03142000000740	• Ace Consultant had funded Rs. 1.5 lacs to 1 Non ASBA entities. (1 allottees got allotment) • Ace Consultant & ISF Securities having same address. • Mr. B K Sabharwal (Director of Esteem & Eco) is the director in ISF Securities Ltd.(prospectus)

n) *Diagramatiic presentation of funding by funding group entities to the IPO applicants is shown as under:*



o) *Following table shows the summary of the amount funded by the 12 funding group entities and number of shares allotted:*

SN	Funding Entity	Amount funded (Rs. in lacs)	No. of allottees got allotment	Received back from IPO proceeds of Esteem (Rs. in lacs)	No. of shares allotted
1	Goldline International Finvest Ltd.	277.50	39(2 ASBA)	484.60	10,32,000
2	Satendra Kumar & Proprietorship firm	58.50	38	-	2,28,000
3	Madhukar Dubey & Proprietorship firm	54.00	29	-	1,74,000
4	Ram Prakash & Proprietorship firm	28.50	18	-	1,08,000
5	Aavia Softech Pvt. Ltd.	15.00	9	40	54,000
6	Mayfair Infosolution Pvt. Ltd.	34.50	20	81	1,20,000
7	Avisha Credit capital Pvt. Ltd	4.50	3	15.50	18,000
8	Nikky Printing Press Pvt. Ltd	45.00	25	-	1,50,000
9	M/S. Neel Kanth Trading Co	21.00	14	-	84,000

SN	Funding Entity	Amount funded (Rs. in lacs)	No. of allottees got allotment	Received back from IPO proceeds of Esteem (Rs. in lacs)	No. of shares allotted
10	ISF Securities Ltd. (Ace Consultant)	1.50	1	-	6,000
11	Amsons Apparels Pvt. Ltd.	4.50	2	-	12,000
12	Gracious Software Pvt Ltd	63.00	42	-	2,52,000
13	Indirect Funding				96000
	Total	607.50	240		23,34,000

p) *From the above, it is observed that of the 45,18,000 shares allotted, 23,34,000 shares (i.e. 51.66% shares) were allotted to the entities who had received funds from the company directly/ indirectly, for application in the IPO of the company.*

q) *Investigation alleged that Esteem transferred major portion of the IPO proceeds to the funding group entities on the same day on which it received IPO funds from the escrow account.*

r) *In view of the above, investigation alleged that the IPO of Esteem would have failed due to lack of minimum subscription, had the funding group entities not funded the applicants. Further, it is alleged that Esteem and its Directors in connivance with the funding group entities employed a fraudulent scheme to get the IPO subscribed in a fraudulent manner by directly/ indirectly funding the IPO applicants. Thus, it is alleged that the funding group entities played a pivotal role in the scheme devised by Esteem and its directors to get sufficient IPO application to get listing on the SME- exchange platform.*

s) *In view of the above it is alleged that the Noticees namely; Satendra Kumar & Proprietorship firm viz. Nisha Traders, Bright Securities (PAN: AWWPK8525E - Noticee -1), Madhukar Dubey & Proprietorship firm viz. N V Sales Corporation, A One Furniture (PAN: AIJPD7329J - Noticee - 2), Ram Prakash & Proprietorship firm viz. Khan Enterprise (PAN: AXFPR4439L - Noticee -3), Aavia Softech Private Limited (CIN: U72200DL2012PTC233674 - Noticee- 4), Mayfair Infosolution Private Limited (CIN:U72900DL2007PTC168997 - Noticee- 5), Avisha Credit Capital Private Limited (CIN: U74899DL1992PLC050492 - Noticee -6), Nikky Printing Press Private Limited (CIN: U22190DL2010PTC207535 - Noticee - 7), Neel Kanth*

Trading Co. (Noticee -8), Ace Consultant (Noticee - 9), Amsons Apparels Private Limited (CIN: U74899DL2003PLC122266 - Noticee -10), Gracious Software Private Limited (CIN: L72300DL2007PLC168989 - Noticee -11)., ('Noticees') were instrumental in the fraudulent scheme devised by the company and its directors to get the IPO subscribed in a fraudulent manner by funding the IPO applicants and subsequently receiving the proceeds of the IPO from the company. Further, the Noticees allegedly aided and abetted the company and its directors to get the minimum subscription required for successful listing of scrip in SME segment.

t) *It is therefore alleged that the Noticees actions have led to the violation of the provisions of Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) of SEBI (Prohibition of Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations) read with sections 12A(a), 12A(b) and 12A(c) of SEBI Act, 1992 (SEBI Act).*

4. The aforesaid SCN sent through speed post acknowledgement due (SPAD) and the same was delivered to the Noticee. Vide letter dated December 18, 2017 Noticee requested for extension of time for filing the reply to notice. Further Vide letter dated January 08, 2018 Noticee again reiterated its request for extension of time for filing the reply to notice. vide letter date January 22, 2018, noticee filed its reply. Subsequently opportunity of hearing was granted to the Noticee on March 04, 2022. Notice vide letter dated February 22, 2022 filed its additional submissions. In the interest of natural justice, another hearing opportunity was granted to the noticee on March 22, 2022. Noticee availed the hearing on the scheduled date i.e. March 22, 2022, on behalf of the Noticee, the Authorized Representative (AR) attended the hearing and reiterated the submissions made by the Noticee vide its letter dated February 22, 2022 and asked time till end of day to make additional submissions which was acceded to. on the same day Noticee submitted additional submissions.

5. A summary of the submissions made by the Noticee in response to the SCN is reproduced verbatim:

a. *Ace Consultant is a proprietorship firm of Mrs. Sunita Khemka operating since 1990.Further Mrs. Sunita Khemka is currently the designated director of ISF Securities Ltd. which was acquired by her husband. Apart from herself, her husband is also the designated director in the company.*

b. *ISF was incorporated in the year 1995 and has been in the business of providing stock broking services, as member of NSE &BSE. The control and management of ISF was changed in the year 2011, in favor of Mrs. Sunita Khemka and her family.*

c. *Mr. B.K. Sabharwal was in management only till 2011, although he continued as director simpliciter of the company till March, 2014, only for the purpose of proper handover of business & operations. ISF Securities Ltd. has no financial & other dealings of any kind whatsoever during the year 2011 to 2013 with him. Mr. B. K. Sabharwal is currently neither the director nor the shareholder of ISF Securities Ltd. The undersigned had no financial relationship or transaction of any kind whatsoever with Mr. B.K. Sabharwal.*

d. *That Ace (Proprietor: Mrs. Sunita Khemka) is associated/related to the capital markets for over 20 years and has been investing in securities and also subscribing to various IPOs.*

e. *Mrs. Sunita Khemka and Ace is one and same entity only the proprietary firm and its proprietor cannot be said to be distinct entity and are legally inseparable. Thus the allegation that Ace funded Sunita Khemka and that Ace being one of the funding group entity stands demolished herein itself.*

f. *Investment in capital market and subscription in IPO cannot be done in the name of proprietary firm and can only be done in the name of proprietor.*

g. *That an application for 6000 shares was made in the IPO of Esteem bio involving a total amount of Rs. 1,50,000/- which is a small amount.*

h. *Mrs. Sunita Khemka had also applied in the IPO of Eco Friendly food Processing Park Ltd, although in the said IPO her application got rejected. she git the refund, which was utilized to apply for subscription of Esteem Bio's Share.*

i. *Goldline International Finvest Ltd. (Goldline) is a Non – Banking Financial Company (NBFC) duly registered with RBI. The undersigned borrowed a sum of Rs. 50 Lacs on interest on 15/17 January, 2013. This loan was repaid along with interest over a period of time and was fully settled in*

July, 2014. A total interest of Rs. 5,81,917/- was paid by Ace Consultants on the aforesaid loan, during this period.

j. *Goldline International Finvest Ltd. (Goldline) is a Non – Banking Financial Company (NBFC) duly registered with RBI. The undersigned borrowed a sum of Rs. 50 Lacs on interest on 15/17 January, 2013. This loan was repaid along with interest over a period of time and was fully settled in July, 2014. A total interest of Rs. 5,81,917/- was paid by Ace Consultants on the aforesaid loan, during this period.*

k. *This loan was taken by Ace Consultants in the normal course of business & the interest bearing lending had no relationship of any kind whatsoever with the IPO under investigation. It may be noted that a sum of Rs. 1.50 Lacs was invested by Mrs. Sunita Khemka in the said IPO. This money was withdrawn by the undersigned from Ace Consultants. The money received from ISF of Rs. 1.50 Lacs by Ace Consultants is actually out of the credit balance of Ace Consultants with ISF. We are enclosing the following documents in this regard:*

   i. *The Copies of relevant bank statement of Mrs. Sunita Khemka and Ace Consultants.*

   ii. *ii. Copy of accounts of Goldline in the books of Ace Consultants for the F.Y. 2012-13; 2013-14 & 2014-15*

   iii. Copy of account of Ace Consultants in the books of ISF Securities Ltd.

l. *It may please be noted that although Ace Consultants and ISF have their offices in the same building but they occupy separate floors. ISF has its office on the First floor whereas Ace Consultants operates from an office on the Third Floor of the Building no. 5A/4B at Ansari Road, Darya Ganj, New Delhi – 110002.*

m. *Transaction with Goldline was done in normal course of business to meet out pending loan re-payments and payments to ISF to meet their working capital requirements.*

n. *It is an obvious fact that the Noticee, being the proprietorship firm of Mrs. Sunita Khemka, has transferred funds for making IPO application in her name. As per extant legal framework; the proprietor and the proprietorship firm are considered one and the same, undistinguishable from each other for all legal, taxation and practical purposes. Further, there is no provision to enable a proprietorship firm to be an IPO applicant in exclusion of its proprietor. In the aforesaid matter, we are submitting copy of ITR of Mrs.*

Sunita Khemka for 2 years wherein the details of the Noticee (Ace Consultants), as proprietorship firm of Ms. Sunita Khemka, have been duly captured, which in the absence of any other contradictory evidence, should be accepted. Therefore, as the allegations against the Noticee are limited to funding the IPO application of its own proprietor, the said charges are not maintainable in view of the factual support and legal framework, as discussed above.

o. *It is noteworthy here that no amount was received by Ace Consultants or any other related entity from the proceeds of IPO of Esteem. The investment done by Mrs. Sunita Khemka was with bonafide investment intention as no undue benefit or gain was received by Ace consultants or Mrs. Sunita Khemka.*

p. *As per Regulation 14(1) of ICDR, the requirement for minimum subscription to be received in an issue shall not be less than ninety percent of the offer, through offer document. In this respect we wish to submit that the IPO of Esteem was subscribed 1.03 times i.e. was oversubscribed by 0.03 times (post rejection of invalid applications), which shows that on the IPO size of Rs. 1,125 Lacs, applications equivalent to Rs. 1,153.50 Lacs were made. Herein it is submitted that to comply with the requirement of Regulation 14(1), a subscription equivalent to Rs. 1,012.50 Lacs was necessary. Thus the actual subscription amount was over and above the minimum subscription amount by Rs. 141 Lacs, whereas Mrs. Sunita Khemka applied and subscribed in the IPO of Esteem for merely Rs. 1.50 Lacs. This clearly implies that the minimum subscription requirement, as above, would have easily been complied, even if Mrs. Sunita Khemka had not applied for 6000 shares for Rs. 1.50 Lacs. Therefore the undersigned has no role in the minimum subscription of the IPO under investigation and has therefore not violated Regulation 14(1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR").*

q. *Noticee vehemently denies having violated provisions of Regulations 3(a), 3(b), 3(c), 3(d), and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with sections 12A(a), 12A(b) and 12A(c) of the SEBI Act, 1992.*

r. *Noticee has placed reliance on learned WTM order dated December 22, 2020 bearing reference no. WTM/SM/IVD/ID3/9875/2020-21in the same matter.*

CONSIDERATION OF ISSUES AND FINDINGS:

6. I have carefully perused the reply to the SCN, oral and written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are:

Issue (I): Whether the Noticee has violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

Issue (II): If yes, whether the failure, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act, 1992?

Issue (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, 1992?

7. I note that Noticee has raised contention regarding multiple enforcement actions initiated against the noticee viz. under section 11(1), 11(4), & 11B of SEBI Act, 1992 and Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, show cause notices have been issued by WTM and Adjudicating officer respectively. In this regard it is stated that both the proceedings are distinct independent of each other. A direction issued under Section 11B after due investigation under Section 11C is remedial in nature. on the other hand, Section 15I under Chapter VI-A provides for a mechanism for an AO to impose penalties for various violations required to comply with the Act or Regulation.

8. I find it pertinent to refer Hon'ble Securities Appellate Tribunal order in the matter of Ms. Sunita Gupta vs Sebi dated 21 April, 2017

"6. Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under

Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted."

9. **Relationship of Noticee with Mr. B.K. Sabharwal:**

(i) As regards to alleged relationship with Mr. B.K. Sabharwal, Noticee has contended that there is no financial relationship or transaction of any kind whatsoever with Mr. B.K. Sabharwal. The control and management of ISF was changed in the year 2011, in favor of Mrs. Sunita Khemka and her family pursuant to her taking over the business. Mr. B.K. Sabharwal was in management till 2011, although he continued as director simpliciter of the company till March, 2014, for the purpose of proper handover of business & operations to the new management.

(ii) Noticee further submitted that Ace Consultants and ISF have their offices in the same building but they occupy separate floors. ISF has its office on the first floor whereas Ace Consultants operates from the third floor of the building no. 5A/4B at Ansari Road, Darya Ganj, New Delhi – 110002.

(iii) I am unable to accept the justification offered by Noticee that continuation of B K Sabharwal as a director was purely for professional reasons. I find that the aforesaid submission is not backed by any kind of document such as board resolution, board minutes *etc* which indicates that he was retained as a director after the acquisition by Sunita Khemka basis the qualification and experience of B K Sabharwal as a past director in ISF. In absence of such documents, a reasonable inference can be drawn that B

K Sabharwal shares a relationship with the Noticee pursuant to his relationship with Sunita Khemka.

10. **Funding**

(i) Funding of IPO by Noticee:

(a) An application for 6000 shares was made in the IPO of Esteem Bio by Mrs. Sunita Khemka, for Rs. 1.50 Lacs, against which she was allotted shares. It is alleged in the SCN that Sunita Khemka received the aforesaid amount from the Noticee.

(b) I note from the material available on record, that M/s Ace Consultants is a proprietorship firm of Ms. Sunita Khemka. The Noticee has been associated with the capital markets *inter alia* by investing in securities and also by subscribing to various IPOs.

(c) It is pertinent to note that for legal and taxation purposes, a proprietorship firm and a proprietor are considered indistinct from each other. A proprietorship firm by itself cannot make an application for subscribing to shares of an IPO. In the present case, the Noticee has submitted copy of ITR of Ms. Sunita Khemka for 2 years wherein the details of the Noticee as proprietorship firm of Ms. Sunita Khemka, have been duly captured, which in the absence of any other contradictory evidence, have to be accepted. Therefore, as the allegations against Noticee are limited to funding the IPO application of its own proprietor, the said charges are not maintainable in view of the factual support and legal framework.

(ii) Funding of IPO by Goldline Finvest Ltd.

(a) Noticee in its reply has contended that the transaction with Goldline Finvest was in ordinary course of business and it had no relationship of any kind whatsoever with the IPO.

(b) In this regard, I note from the following documents available on record which are (1) bank statement of Mrs. Sunita Khemka and Ace Consultants; (2) copy of accounts of Goldline in the books of Ace Consultants for the F.Y. 2012-13; 2013-14 & 2014-15; and (3) copy of account of Ace Consultants in the books of ISF Securities Ltd. that the loan was repaid along with interest of Rs. 5,81,917/- over a period of time and was fully settled in July, 2014. Hence, in view of the submissions of the Noticee along with the documents furnished, I find that Noticee has credibly demonstrated that the transactions in question were genuine loan transactions between Goldline and Noticee. Taking into account the aforesaid, I conclude that the transactions between Noticee and Goldline are in the normal course of business. Therefore the charge levelled in the show cause notice cannot be sustained.

11. In view of the preceding paragraphs, I note that the charges levelled in the show cause notice are not established against the Noticee. Hence, I am of the view that no penalty is warranted in respect of the Noticee under Section 15HA of the SEBI Act, 1992 in the matter and accordingly the SCN issued to the Noticee is disposed of.

12. Incidentally, I also note that, a separate and parallel proceeding was initiated against the Noticee under the provisions of Sections 11(1), 11(4) and 11B of SEBI Act under the same facts. *Vide* order dated December 22, 2020, Hon'ble Whole Time Member of SEBI has dropped the said proceedings without any directions in respect of Noticee.

Issue No. II: If the answer to Issue No. (I) is in affirmative, whether the violation on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?

Issue No. III: If the answer to Issue No. (II) is in affirmative, 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 SEBI Adjudication Rules?

13. I find that since the first issue has been answered in negative, the question of penalty does not arise in the current matter. Accordingly, Issue No. II and III are disposed off.

ORDER

14. After taking into consideration the facts and circumstances of the case, material on record and the reply of the Noticee, as brought out above, I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, dispose of the SCN issued to the Noticee.

15. In terms of the provisions of rule 6 of the SEBI Adjudication Rules, a copy of this order is being sent to the Noticee and SEBI.

Date: March 29, 2022	**PRASANTA MAHAPATRA**
Place: Mumbai	**ADJUDICATING OFFICER**