BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AA/AR/2019-20/3620-3625]

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

In respect of

Sand Plast (India) Limited
(PAN: AAFPJ1029F)

M/s Upturn Securities Pvt. Ltd.
(PAN: AACU7014M)

Mr. Suresh Pukhraj Jain
(PAN: AAFPJ1029F)

Dr. Ram S Garg
(DIN: 02316019)

Shri Rajesh Gupta
(PAN: ACBPG8552A)

Shri Shivraj Manikrao Parvatkar
(DIN: 00274922)

In the matter of
Sand Plast (India) Ltd

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation to ascertain whether there has been any irregularity in the trading of the scrip of Sand Plast (India) Ltd (hereinafter referred to as '**Company' / 'Sandplast' / 'Noticee 1'**) during the period from June 04, 2009

to December 31, 2009 (hereinafter referred to as '**Investigation period'**). Sandplast was earlier declared a sick company by Board for Industrial and Financial Reconstruction (**BIFR**) on November 14, 2002. Pursuant to the approval of rehabilitation scheme by BIFR, the shares of Sandplast were relisted on the Bombay Stock Exchange (**BSE**) for trading on June 3, 2009.

2. It was observed by SEBI that pursuant to the relisting of the shares of Sandplast, there was a rise in the price of the shares of Sandplast during the period June 4, 2009 to June 9, 2009 and subsequently there was a continuous fall in the price of the scrip. Therefore, an investigation was conducted by SEBI with a focus on the possibility of price manipulation, synchronized trades and creation of artificial volumes by any person during Investigation period. It was also observed that Sandplast made three corporate announcements with regard to consideration of its rights issue in the months of July, September and October of 2009, but it did not proceed with the rights issue and also failed to make any public announcement regarding the cancellation of its aforesaid rights issue.

3. It is observed from the Investigation report that M/s. Upturn Securities Pvt. Ltd. (hereinafter referred to as '**Noticee 2**' / '**Upturn'**) and one of the directors of the Sandplast, Shri Suresh Pukhraj Jain (hereinafter referred to as '**Noticee 3**' / '**Mr. Jain' / 'Mr. S. P. Jain'**) have created artificial volumes in the scrip of Sandplast and also repeatedly established the opening price, at a price higher than the previous day's closing price, on majority of the days in the month of June 2009, i.e., pursuant to the relisting of the scrip Sandplast on June 3, 2009. Such activities/trades on the part of Noticee 2 and Noticee 3 were alleged to be in violation of the provisions of Regulation 3 (a),(b),(c),(d), 4(1), 4(2)(a) and 4(2)(b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**). It is further observed that Sandplast made misleading price sensitive announcements about its proposed rights issue without any genuine intention to implement such proposal. Therefore, Sandplast and its directors viz

Mr. S. P. Jain, Dr. Ram S. Garg (hereinafter referred to as '**Noticee no. 4'**), Shri Rajesh Gupta (hereinafter referred to as '**Noticee no. 5'**) and Shri Shivraj Manikrao Parvatkar (hereinafter referred to as '**Noticee no. 6'**) are alleged to have violated the provisions of Section 12 A(c) of the SEBI Act read with Regulations 3(a), 4(1), 4(2)(f) and 4(2)(r) of the PFUTP Regulations. The Noticees no. 1 to 6 are hereinafter collectively referred to as '**the Noticees'** for the purpose of current proceedings.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri D. Ravikumar was appointed as the Adjudicating Officer in the matter, vide communique dated November 28, 2014, under section 19 read with section 15I(1) of the SEBI 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 conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules read with sections 15I(1) and 15I(2) of the SEBI Act, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of the Adjudication Rules and section 15HA of the SEBI Act. Subsequently, Shri Suresh B. Menon was appointed as the AO in the matter vide communique dated June 22, 2015. Thereafter, the undersigned was appointed as the Adjudicating Officer in the matter, vide communique dated March 25, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A common Show Cause Notice no. A&E/EAD3/SBM-ASR/27699/2015 dated September 29, 2015 (herein after referred to as '**SCN**') was issued to all the Noticees under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticees and why penalty should not be imposed upon the Noticees under section 15HA of the SEBI Act, for the violations alleged to have been committed by them. Briefly, the major allegations made in the SCN are mentioned below:

a) *Trading in the scrip was analyzed for the period June 4, 2009 to Dec 31, 2009. It has been observed that the price of the scrip increased from` 25.00 to ₹28.85 during initial trading days i.e. from June 4, 2009 to June 9, 2009, thereafter, the price of the scrip fell to ₹7.67 by December 8, 2009.*

b) *It was observed during the course of investigations that Noticee no 3 was the Chairman and Director of Networth Stock Broking Ltd and was the top Trading Member in terms of net sell position in the scrip of Sandplast during the investigation period. It was further observed that Noticee no 3 viz. Shri S P Jain (also known as Suresh Pukhraj Jain) had traded in the scrip of Sandplast through Networth Stock Broking Ltd and had sold 6,48,200 shares of Sandplast (constituting 37.62% of the market volume) during the investigation period. It emerged during the course of the investigations that Noticee no 3 viz Shri S P Jain had acquired 8,15,605 shares of Sandplast from Shri Ved Prakash , the then MD of Sandplast, in lieu of non-refund of approximately Rs 1 Crore, which Mr Ved Prakash had collected as token from his client viz. Shyam Telecom group. It is also alleged that the 6,48,200 shares sold by Noticee 3 viz. S P Jain were purchased by Noticee no 2 viz. Upturn. Further, Noticee no 3 viz. Shri S P Jain was inducted into the Board of Sandplast as Independent Director w.e.f. August 28, 2009.*

c) *It is alleged that the orders that have resulted in the first trade in the scrip of Sandplast were placed at a price higher than the previous day's closing price, details of which have been brought out in para 7.7 (page 13) of the investigation report. Thus, it is alleged that Noticee no. 2 and Noticee no. 3 have tried to establish the price of the scrip by executing trades at a price higher than the previous day's closing price. It is further alleged that Noticee no. 2 and Noticee no. 3 have also created artificial volume by transferring shares between themselves. The distribution of* *trades executed between Noticee no. 2 and Noticee no. 3 during the month of June 2009 is tabulated hereunder-*

Time difference in buy & Sale orders (in mins)	*Quantity traded between Noticee no. 2 and 3*	*% of quantity traded between Noticee no. 2 and 3 to the total quantity traded by them*	*Quantity of shares of Sandplast traded between Noticee no. 2 and 3 in (% terms) to the total quantity traded at BSE during June, 2009*
Less than 1 minute	*1,67,500*	*26.85*	*25.13*
1-2 mins	*1,16,000*	*18.59*	*17.40*
2-5 mins	*1,75,000*	*28.05*	*26.26*
More than 5 mins	*1,65,400*	*26.51*	*24.82*
Total	*6,23,900*	*100.00*	*93.61*

d) *Pursuant to the investigation, it is alleged that a large percentage of the trades that were executed between M/s Upturn Securities (Noticee no. 2) and Shri. S.P Jain (Noticee no. 3) was in the nature of sychronised deals. It is further alleged that 68.79% of the total traded quantity in the scrip of Sandplast on the exchange was executed between Noticee no. 2 and Noticee no. 3 with an order time difference of less than 5 minutes during the month of June 2009, whereas the average order time difference at the exchange was 33 mins 24 seconds during the same month.*

e) *It is alleged that due to the trading activity of Noticee no. 2 and Noticee no- 3 in the scrip of Sandplast, which were done to generate artificial volumes, the trading activity of the retail investors in the scrip of Sandplast have also increased , as mentioned in the table below :*

	BID		*ASK*	
	Noticee 2 & 3	*Others*	*Noticee 2 & 3*	*Others*
June 2009	*627,400*	*39,100*	*648,200*	*18,300*
July 2009	*95,400*	*141,400*	*189,800*	*47,000*

August 2009	*181,000*	*28,200*	*168,200*	*41,000*
Sept 2009	*97,700*	*49,800*	*98,700*	*48,800*
Oct 2009	*0*	*81,200*	*12,800*	*68,400*
Nov 2009	*5,000*	*152,600*	*18,000*	*139,600*
Dec 2009	*25,100*	*198,900*	*2,000*	*222,000*

f) *In view of the above, it is alleged that the trading that has taken place in the scrip of Sandplast between Noticee no. 2 and Noticee no. 3 were for the purpose of generating artificial volume in the scrip, which by and large also succeeded in inducing the retail investors to trade in the scrip of the company during the above said period.*

g) *It is, therefore, alleged that both Noticee no- 2 and Noticee no-3 have dealt in the scrip of Sandplast in a fraudulent manner, thereby creating a false market in the scrip by trading and dealing in the scrip with no genuine intention to effect transfer of beneficial ownership of shares but with intentions only to operate as a device to inflate, depress or cause fluctuations in the scrip price for wrongful gain or avoidance of loss. It is, therefore, alleged that Noticee no-2 and Noticee no-3 have violated the provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(b) of the SEBI (PFUTP) Regulations, 2003.*

h) *It is alleged that Noticee no 1 viz Sandplast made three corporate announcements with regard to consideration of its rights issue in the months of July 2009, September 2009 and October 2009 but did not proceed with the same.*

i) *It is alleged that Sandplast did not come out with the rights issue till June 30, 2013. BSE vide e-mail dated April 01, 2013 mentioned that the company has neither filed any Letter of Offer with respect to their rights issue nor declared any record date for the purpose of their rights issue to its shareholders since August 2009. Thus, it appears that the company has not proceeded with the rights issue, which was earlier approved by their Board of Directors and the same has not been informed/disclosed to its shareholders/ investors.*

j) It is alleged that Sandplast had made misleading price sensitive announcements about their proposed Rights Issue without any genuine intentions to implement such proposal. It is alleged that due to the said announcement without any genuine intentions to execute such announcements, the volumes in the scrip of Sandplast also increased particularly after its relisting at BSE. It is also alleged that investors were lured by such false announcements made by the company and the same is evident from the observations brought out in para 12 above. It is, therefore, alleged that Sandplast (Noticee no 1) and the Noticees at no- 3 to 6 above have violated the provisions of Section 12 A(c) of the SEBI Act read with Regulations 3(a), 4(1), 4(2)(f) and 4(2)(r) of the PFUTP Regulations.

6. The SCNs issued to Mr. Jain and Upturn returned undelivered from their address available with us. The SCNs were once again sent to their alternate addresses available with us. In response to the SCN, vide its letter dated July 26, 2017, Mr. Jain submitted his preliminary reply to the SCN and informed us that he is in the process of filing a settlement application with SEBI, in this matter. However no reply to the SCN was received from Upturn. Subsequently, vide our letter dated March 26, 2018, SCN was once again sent to Upturn at all its addresses available on record, along with the hearing notice informing it about the schedule of personal hearing in the matter. Further, a copy of the SCN and hearing Notice addressed to Upturn was also sent to Mr. Jain, as Mr. Jain is mentioned as the authorized signatory of Upturn in the KYC documents of Upturn with its broker viz. M/s Mehta Equities Ltd. However, despite the delivery of the aforesaid SCN and hearing Notice at the address of Upturn and Mr. Jain, for which proof of delivery is available on record, Upturn failed to submit any reply to the SCN and also failed to appear for the personal hearing in the matter.

7. Although the SCN was delivered to Noticee 1 and Noticees 4 to 6, no reply to the SCN was received from them. Therefore, another letter dated May 04, 2017 was sent to the Noticees 1, 4, 5 and 6 advising them to submit their reply to the SCN by June 07, 2017. In response, an email dated June 08, 2017 was received from Sandplast and Mr. Rajesh Gupta, requesting for more time to submit their reply in the matter. Subsequently, a letter dated June 23, 2017, was received from Sandplast, which was signed by Mr. Rajesh Gupta / Noticee 5, wherein following submissions were made:

   a. *The undersigned hereby further submits that the Board of Directors of Sand Plast (India) Limited (hereinafter to be referred as Company) was committed to execute the proposal for right issue of shares in order to infuse funds into the Company and rehabilitate the Company pursuant to BIFR order, and accordingly, made 3 (Three) corporate announcement pertaining to right issue of shares. The Company has also appointed Dhir & Dhir Associates, Advocates and Solicitors, New Delhi as legal advisor for the proposed right issue of the Company.*
   b. *The Company has also appointed Sobhagya Capital Options Limited as the lead manager to the proposed right issue of the Company. The Company has also obtained in principal approval of the Bombay Stock Exchange Limited (Presently BSE Limited) for the proposed right issue.*
   c. *Subsequent to the above, draft letter of offer for the proposed right issue was filed by the lead manager with the Securities and Exchange Board of India (SEBI), Ahmedabad on October 14, 2009. However, the lead manager vide its letter dated January 22, 2010 communicated to the undersigned opting to withdraw to act as Lead Manager to the proposed right issue pursuant to the SEBI observation letter no. WRO/AN/MB/SPIL/2107/09 dated December 14,* 2009.

d. *It was informed by Sobhagya Capital Options Limited to the Company that they have already communicated their withdrawal to the Securities and Exchange Board of India.*
e. *The Company wrote a letter to SEBI Ahmedabad on 5th February 2010 seeking advice on the course of action to be taken in regard to queries raised by SEBI and the manner in which SEBI would require the Company to address the situation created. However, the Company did not receive any response pursuant to their letter 5th February, 2010.*
f. *The undersigned hereby further submit that since the offer document filed by Lead Manager has been withdrawn by them pursuant to the SEBI Observation Letter no. WRO/AN/MB/SPIL/2107/09 dated December 14, 2009, the Company was under impression that the corporate announcement relating to right issue become null and void and has no effect and stand automatically withdrawn.*

8. In the interest of the principles of natural justice, an opportunity of hearing was given to Sandplast and the Noticees 5 and 6 on July 17, 2017. During the course of hearing, the authorized representative of Sandplast and the Noticees 5 and 6 reiterated the submission made in their earlier letter dated June 23, 2017. Subsequently, another letter dated July 16, 2017 was received from Sandplast, which was signed by Mr. Noticee 5, wherein it reiterated the earlier submissions made vide letter dated June 23, 2017 and those made during the course of personal hearing held on July 17, 2017. Mr. Shivcharan M. Parvatkar / Noticee 6 vide his letter dated July 16, 2017 and e-mail dated August 01, 2017 made additional submissions in the matter stating that he was an Independent Director on the Board of Sandplast and was not involved in the day to day affairs of the Company. Noticee 6 also submitted a copy of the undated letter from Sandplast, wherein the Company has stated that Mr. Parvatkar is an independent director of Sandplast and he is with the Company to give

independent advice on professional matters and he is not involved in the day to day business of the Company.

9. Vide letter dated February 20, 2018, Noticee no. 4/ Mr. Ram S. Garg also submitted his reply to the SCN and stated that he is not involved in the day to day affairs of the Company and the managing director of the company, viz. Noticee no. 5 / Mr. Rajesh Gupta is responsible for the day to day affairs of the company. Further, he also said that all the documents and information are in the possession of Mr. Rajesh Gupta and that there is no contact between him and Mr. Rajesh Gupta. In the interest of natural justice, Mr. Ram S. Garg was provided with an opportunity of hearing on April 12, 2018. The authorized representative of Mr. Ram S. Garg appeared for hearing on April 12, 2018 and reiterated his earlier submissions and sought further time for making additional submissions in the matter.

10. Subsequently, Mr. Rajesh Gupta submitted a reply dated May 04, 2018 on behalf of Mr. Ram S. Garg and stated the following:

    a. *SIPL was a sick company in terms of Sick Industrial Companies (Special Provisions] Act, 1985, and accordingly, it was administered by the Hon'ble Board for Industrial & Financial Reconstruction (hereinafter referred as "BIFR").*

    b. *The undersigned, after his induction as Non-Executive Chairman, started working for the revival of Company, and resultantly, the Hon'ble BIFR vide its order dated 12th June, 2008 in Case No. 388/2001 has instructed SIPL to raise capital for infusions of required fund for rehabilitation. The Hon'ble BIFR through the same order has exempted SIPL from the provisions of Section 81(A) of the Companies Act, 1956 and/ or any other applicable provisions of the Companies Act, 1956, SEBI Guidelines, Regulations etc. as may be applicable. Further, the order has also instructed the Company to re-list the Company's shares in the stock exchange(s) without imposition of any* *penalty for past delay/default in making payment of fees etc. to the Stock Exchanges.*

c. *The undersigned and Mr. Rajesh Gupta, Managing Director of the Company put lots of effort in order to make the Company solvent, and accordingly, the Board of Directors of SIPL, so as to revive the Company from the status of "Sick Company" to a "Solvent Company" and to comply with the order of the Hon'ble BIFR, has decided to issue further capital by way of right issue of shares. The Board of Directors, in their meeting held on 24th September, 2009, (in which undersigned was present] has considered and approved the ratio of the equity shares to be offered by way of Right Issue to the shareholders of the Company. In the said meeting, the Board has approved the ratio of 1:3 for the right issue and authorised Mr. Rajesh Gupta, Managing Director to do all acts, deeds and things necessary in the matter related to Right Issue.*

d. *The Board of Directors of Company in their meeting held on 19th April, 2010 has further appointed Mr. Rajesh Gupta, Managing Director as compliance officer to carry out the compliances under the Companies Act, 1956, SEBI Act and other law applicable to Company. The copy of the minutes of the said meeting is attached and marked as Annexure-4.*

e. *The undersigned hereby submits that SEBI has issued observation letter no. WRO/AN/MB/SPIL/2107/09 dated December 14, 2009 to the lead manager and lead manager withdrew to act as such pursuant to the above observation letter.*

f. *It is hereby further informed that since the lead manager has withdrew to act as lead manager for the proposed right issue, Mr. Rajesh Gupta, Managing Director and authorised official vide resolution passed by the Board of Directors of the Company dated 24th September, 2009, has made a communication to your good office to treat the offering as* *withdrawn without prejudice or consequence. Copy of the said letter is already submitted to your good office,*

g. It is hereby further informed that since the communication of withdrawal was made to your good office being the regulatory body of Stock Exchange (s), the undersigned was under impression that no communication is required to be made to the Stock Exchange in this respect Therefore, no communication was made to the Stock Exchange in this respect It is pertinent to mention here that the Company was exempted by BIFR vide its order dated 12th June, 2008 in Case No. 388/2001 from the compliances of SEBI Guidelines, Regulations etc. as may be applicable. It is also pertinent to mention here that shares of the Company were infrequently traded, and therefore, non-compliance, if any, with respect to communication regarding withdrawal of offer of right issue, would not have made any impact on the wealth of the stakeholders.

11. Meanwhile, the concerned department of SEBI, informed on October 19, 2018 that the settlement application of Mr. Jain has been rejected by the competent authority. In the light of the rejection of the settlement application of Mr. Jain and pursuant to my appointment as AO in the matter, letters dated April 05, 2019 were issued to Mr. Jain and Upturn, providing them opportunity to make submissions in the matter and also appear for hearing. I note that despite the delivery of the aforesaid letter to the address of Upturn, it once again failed to appear for hearing and also failed to submit any response to the SCN.

12. In the interest of principles of natural justice, another opportunity for personal hearing was provided to all the Noticees. Consequently, the personal hearing of Noticee 6 was held on April 24, 2019, Noticee 3 was held on May 03, 2019, Noticee 1 and 5 on May 13, 2019 and June 06, 2019 and Noticee 4 on May 23, 2019. I note that during the course of personal hearing, Noticee 1, Noticee 4, Noticee 5 and Noticee 6 reiterated their earlier submissions in the matter. Vide

his letter dated May 23, 2019, Noticee 4 once again reiterated his earlier submissions in the matter.

13. Mr. Jain appeared for hearing on May 03, 2019 and denied all the charges made against him in the SCN. Mr. Jain was given time till May 10, 2019 to submit his response to the SCN. Vide its letter dated May 09, 2019, Mr. Jain made additional submissions. Briefly, the submissions made by Mr. Jain are given below:

    a. *I, Suresh Jain, aged 55 is a qualified Chartered Accountant and have been founder of NSE/BSE Broking firm Networth Stock Broking Ltd since 1995 & has never engaged in any wrong/manipulative practices in the market.*
    b. *In 2007, I moved out from day to day broking business & started boutique investment banking business in the name of Sun Capital Advisory services Private Limited.*
    c. *I came across a deal for sell transaction of M/s Sandplast (India) Ltd, which was agreed to be acquired by our client group namely "Shyam Telecom" and they paid initial token of Rs. 1 crore to selling shareholder(s) of M/s Sandplast (India) Ltd.*
    d. *I have given oral guarantee for token to speed up the transaction but deal fizzled out and I ended up owing this liability.*
    e. *To salvage situation I bought shares from Mr. Ved Prakash and held it with me.*
    f. *After holding for over two to three years, after listing I was able to sell those shares in open market.*
    g. *Since it was simple sell transaction and there was less trading in shares, due to selling of shares over an extended period, the price came down in market. I have neither engaged in taking price up or down nor even buying and selling, just liquidate my investment. Therefore, the created opinion that I manipulated price, is not at all true.*

14. The SCN issued to Upturn was duly served on the address of Upturn and the authorized person of Upturn and the proof for such delivery is available in the records. Further, in the interest of natural justice, Upturn was also provided with an opportunity of personal hearing in the matter on August 04, 2017, April 12, 2018 and April 24, 2019. I note from the postal records that the letters dated July 17, 2017, March 26, 2018 and April 05, 2019 were duly served on the address of Upturn and its authorized representative viz. Mr. Jain. However, I note that Upturn has not only failed to submit its reply to the SCN but also failed to appear for the personal hearing on the scheduled dates. In this context, I would like to place reliance on the Order dated February 11, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Sanjay Kumar Tayal and Ors. vs SEBI (Appeal No 68 of 2013), wherein SAT had observed that "...As rightly contended by Mr. Rustomjee, the learned senior counsel for respondents, appellants have neither filed any reply to the 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 the charges leveled against them in the show cause notices ..."

    In view of the above reasons, I am compelled to proceed further in the matter on the basis of material/facts available on record

<u>CONSIDERATION OF ISSUES</u>

15. I have carefully perused the charges levelled against the Noticees, their replies and the documents / material available on record. I note that the issues that arise for consideration in the present case are :
    (a) Whether the Upturn / Noticees 2 and Mr. S. P. Jain / Noticee 3 have done manipulative trades in the scrip of Sandplast during the Investigation period and, therefore, violated the provisions of Regulations 3 (a),(b),(c),(d), 4(1), 4(2)(a) and 4(2)(b) of the SEBI of the PFUTP Regulations?

(b) Whether Sandplast and its directors viz. Noticee 3 to 6 made misleading price sensitive announcements about proposed Rights Issue without any genuine intention to implement such proposal and thereby violated provisions of Section 12 A(c) of the SEBI Act read with Regulations 3(a), 4(1), 4(2)(f) and 4(2)(r) of the PFUTP Regulations?

(c) Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?

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

16. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, alleged to have been violated by the Noticees, as below:

SEBI Act, 1992

12A. No person shall directly or indirectly

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

<u>PFUTP Regulations</u>

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*

(a) *indulging in an act which creates false or misleading appearance of trading in the securities market;*

(b) *dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;*

(f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*

(r) *planting false or misleading news which may induce sale or purchase of securities.*

Whether the Upturn / Noticees 2 and Mr. S. P. Jain / 3 have done manipulative trades in the scrip of Sandplast during the Investigation period and, therefore, violated the provisions of Regulations 3 (a),(b),(c),(d), 4(1), 4(2)(a) and 4(2)(b) of the SEBI of the PFUTP Regulations?

17. I note from the Investigation report in the matter (which was provided to the Noticees as an annexure to the SCN) that Mr. S. P. Jain and Upturn are connected with one another. The connection among both the Noticees, as per the details given in the Investigation report, are given below:
    a) It has been observed from the member-client agreement entered by Upturn with its broker, M/s Mehta Equities Ltd. in September 2006 that Mr. Jain is the authorized signatory for Upturn and had been authorized to deal in securities on behalf of Upturn and also received contract notes of M/s Upturn at his address.
    b) Mr. S. P. Jain also admitted during the course of investigation that he was the authorized signatory of Upturn.
    c) The address of Upturn is shown as 143B, 14th floor, Mittal Court, B Wing, 224, Nariman Point Mumbai – 21 in the demat account of Upturn

maintained with CDSL. The said address is also the address of Mr. S P Jain as mentioned in one of the correspondences of Mr. S P Jain with SEBI which was sent by him during the course of investigation. The said address is also the address of M/s. Sun Capital Advisory Services (P) Ltd., wherein, Mr. S P Jain is the founder and the Managing Director.

d) I note from the copy of the Memorandum of Association (**MoA**) of Upturn that Mr. Prakash Bhandari, son of Mr. Dalichand Bhandari, and Ms. Kusum Bhandari, wife of Mr. Prakash Bhandari, are mentioned as the directors of Upturn. Further, one Mr. Vijay Bhandari, son of Mr. Pukhraj Bhandari, is mentioned as the witness in the MoA. As per the PAN details of Mr. S. P. Jain, his father is also Mr. Pukhraj Dalichand Bhandari.

e) Further, the bank account (no. 004010200365192) of Upturn maintained with Axis Bank, shows that it was introduced as client by M/s Networth Stock & Shares. The remarks noted on the application form by the bank officials are "Close *relation with Mr. S.P. Jain, Director of Networth Stock & Shares, Networth is our existing customer*".

f) Ms. Kanta Suresh Jain is the wife of Mr. S. P. Jain. On perusal of the aforesaid Axis Bank account of Upturn, it is noted that on behalf of M/s Networth Stock Broking Ltd, one Mr. Raj Bhandari had signed at the place of introducer. He further signed as introducer to Mrs. Kanta Suresh Jain in her member client agreement with her broker M/s. Kaushik Shah Shares & Securities Pvt. Ltd. Further, Raj Bhandari was authorized to collect bills and contract notes on behalf of Mrs. Kanta Suresh Jain.

g) As per the KYC forms of Upturn with its broker, M/s. Mehta Equities Ltd and that of Ms. Kanta Suresh Jain with her broker, M/s. Kaushik Shah Securities, the telephone no. for both Upturn and Ms. Kanta Suresh Jain is mentioned as 22836307/08, which is registered in the name of M/s Sun Capital Advisory Services Pvt. Ltd., wherein, Mr. S P Jain is the founder and the Managing Director.

h) The above observations, in the Investigation report, conclusively prove that Shri. S.P. Jain and Upturn are closely connected to each other.

18. It is observed from the Investigation Report provided with the SCN to the Noticees, that Upturn purchased 6,77,600 shares (39.33% of market volume) in a price range of ₹ 7.62 to ₹ 28.9 during the Investigation period, out of which 6,27,400 shares (92.5% of the total shares purchased by Upturn) were bought in the month of June 2009 with a price range of ₹ 18.5 to ₹ 28.9. Upturn sold 4,89,500 shares in a price range of ₹ 7.8 to ₹ 16 during the Investigation period. Further, Mr. S.P. Jain sold 6,48,200 shares in the month of June 2009. The major counter party to the sale of shares by Mr. S P Jain was Upturn constituting 96.25% of the total shares sold by Mr. S P Jain. I note that on several days their trades constituted 100% of the total market volume for that day. The trades executed between Upturn and Mr. S.P. Jain were matched trades and in several instances these trades were synchronised wherein buy and sell orders were of same price and quantity and placed within one minute, as seen from the Annexure 4 provided with the SCN to the Noticees. I note that a total of 6,23,900 shares were purchased by Upturn from Mr. S.P. Jain in a total of 27 trades wherein all of these 27 trades were matched trades as the buy and sell orders placed by Upturn and Mr. Jain were of same price and similar quantity. Out of these matched trades, 9 trades for 1,67,500 shares and value of ₹ 43,57,950 were synchronised trades as the buy and sale orders were placed within a gap of 1 minute.

19. It is observed that during the Investigation period a total of 1,404 trades were executed on 138 trading days and the average time difference between a buy order time and sell order time for each of the trade was 55 minutes 32 seconds, indicating the lack of depth in the order book of Sandplast due to low buyer and seller interest. Further, the average time difference between buy and sell orders for all the trades executed during the month of June, 2009 was 33 minutes and 24 seconds. The distribution of trades executed between Mr. S.P. Jain and Upturn during the month of June 2009 is tabulated hereunder-

Time difference in buy & Sale orders (in mins)	Quantity traded between S P Jain and Upturn	% of quantity traded by S P Jain and Upturn to the total quantity traded between them	% of quantity traded between S P Jain and Upturn to the total quantity traded at exchange during June, 2009
Less than 1 minute	167,500	26.85	25.13
1-2 mins	116,000	18.59	17.40
2-5 mins	175,000	28.05	26.26
More than 5 mins	165,400	26.51	24.82
Total	623,900	100.00	93.61

20. From the above table, it can be seen that 26.85% of the trades executed between Upturn and Mr. S.P Jain (which is 25.13% of the total market volume of Sandplast during June 2009) were in the nature of synchronised deals as the time difference between buy and sell order was less than 1 min. I note that Mr. S.P. Jain has received a consideration of ₹ 1,52,36,580/- towards sale of 6,23,900 shares done by him during the Investigation period.

21. Pursuant to the re-listing of shares of Sandplast on June 3, 2009, the scrip traded for the first time on June 04, 2009 with 200 shares, wherein, Ms. Kanta Suresh Jain was the seller and Shri. Gulabchand Nihalchand Jain and Ms. Lilavanti Dilipbhai Kanzaria were the buyers of 100 shares each at a price of ₹ 25. On June 04, 2009, during the time period, 09.55.20 hrs to 14.25.01 hrs, 71 buy orders for 14,001 shares were placed in the price range of ₹ 1.50 to ₹ 21 for quantities ranging from 1 share to 2000 shares. Subsequently, during the time period 14.37.40 hrs to 14.38.09 hrs, Upturn placed 4 buy orders for 200 shares each at incremental rates of ₹ 18, ₹ 20, ₹ 22 and ₹ 24. Thereafter, at 14.39.40 hrs, Ms. Kanta Suresh Jain placed a buy order for 200 shares at ₹ 23. Subsequently, at 14.39.47 hrs, she placed a sell order (opposite position) for 200 shares at ₹ 25 which was followed by a buy order, at 14.40.12 hrs, for 100 shares at ₹ 25 by Gulabchand Nihalchand Jain and a buy order, at 14:54:46, for 100 shares at ₹ 25 by Ms. Lilavanti Dilipbhai Kanzaria. The aforesaid orders resulted into two trades of 100 shares each at ₹ 25/-.

22. Thus, Ms. Kanta Suresh Jain, who dealt in the scrip only on June 4, 2009, established scrip price at ₹ 25/-. It is noted that Ms. Kanta Suresh Jain failed to

fulfill her sale obligation of 200 shares which was the total traded volume of the day. On examination of her demat account, it has been noted that she was not holding any shares of Sandplast at the time she sold 200 shares of Sandplast. As mentioned earlier, Ms. Kanta Suresh Jain is the wife of Mr. S.P. Jain. Consequent to the failure of Ms. Kanta Suresh Jain to meet the pay-in obligation of 200 shares, these shares were auctioned at ₹ 30.35/-. Thus, Ms. Kanta Suresh Jain traded in the scrip of Sandplast, only to execute the first trade in the scrip of Sandplast and establish a price. Considering that Ms. Kanta Suresh Jain is the wife of Mr. Suresh Pukhraj Jain, who wanted to offload his holding of 8,15,605 shares of Sandplast, it is concluded that Ms. Kanta Suresh Jain executed her sell trades (despite not having shares of Sandplast available in her account), at the behest of her husband viz. Mr. S. P. Jain.

23. Thus, it is noted that the price of the scrip was established at ₹ 25/- by Ms. Kanta Suresh Jain, subsequent to which, 6,23,900 shares of Sandplast were sold by Mr. S P Jain at a price range of ₹ 21.5 to ₹ 28.9. Further, in many instances, Shri S P Jain has also established opening price higher than the previous day's closing price, which is discussed in the following paragraphs.

24. It is observed that, the scrip of Sandplast witnessed price rise from ₹ 25 to ₹ 28.85 during June 04 to June 09, 2009. The scrip of Sandplast closed at a price of ₹ 25.00 on the first day of the trading on June 04, 2009. On June 05, 2009, there were very few market participants with the highest buy order being placed by Upturn at ₹ 26.25 at 11.26.43 hrs. The buy order of Upturn matched with the sell order of P. N. Vijay Fin. Services P. Ltd. placed at 12.28.36 hrs for 500 shares at ₹ 26.25. Thus, Upturn by placing buy order at a price higher than the previous day’s closing price, has also established higher price.

25. On June 08, 2009, Mr. S. P. Jain placed first order of the day as a sell order at 09.56.37 hrs for 50,000 shares at ₹ 27.55 which was followed by the buy order placed by Upturn at 09.57.16 hrs for 50,000 shares. On June 09, 2009, Mr. S. P. Jain again placed the first order of the day as a sell order at 09.57.35 hrs for 25,000 shares at ₹ 28.90 which was followed by the buy Order of Upturn at

10.00.15 hrs for 23,000 shares. The buy and sell orders were placed by Upturn and Mr. Jain at the same rates for both the aforesaid trades. Further, Upturn and Mr. S P Jain were the only market participants in the scrip of Sandplast during these two days.

26. It is observed that similar to the pattern explained above, during the month of June 2009, the trades between Upturn and Mr. S.P. Jain established first trade of the day on 10 occasions at a price higher than the previous day's closing price. Details of the same are tabulated below-

Trade Date	Trade Time	Qty	Traded price	Prev Day Closing Price	Buy Client Name	Buy order time	Sell Client Name	Sell order time	Order time difference	Total no. of trades during the day
08-06-2009	09.57.17	50000	27.55	26.25	UPTURN	09:57:16.528406	S P JAIN	09:56:37.017007	00:00:40	25
09-06-2009	10.00.15	23000	28.9	27.55	UPTURN	10:00:15.634612	S P JAIN	09:57:35.260202	00:02:40	25
10-06-2009	10.04.28	19000	28.85	27.5	UPTURN	10:04:28.290666	S P JAIN	09:56:38.171633	00:07:50	5
11-06-2009	11.26.11	3500	28.4	27.5	UPTURN	11:26:10.416730	S P JAIN	11:25:41.563114	00:00:29	5
15-06-2009	09.55.48	28000	26.95	25.7	UPTURN	09:55:48.747113	S P JAIN	09:55:19.243435	00:00:30	5
16-06-2009	10.34.31	20000	23.25	24.45	UPTURN	10:34:31.105195	S P JAIN	10:22:48.131489	00:11:43	4
17-06-2009	10.13.56	20000	24.4	23.25	UPTURN	10:13:56.682043	S P JAIN	10:13:31.021777	00:00:26	6
18-06-2009	10.46.48	35000	22.25	22.1	UPTURN	10:46:48.796559	S P JAIN	10:45:46.125617	00:01:03	3
23-06-2009	10.20.14	50000	22	21.15	UPTURN	10:20:13.569696	S P JAIN	10:14:38.054044	00:05:36	2
24-06-2009	10.06.01	50000	23	22	UPTURN	10:06:01.424825	S P JAIN	10:03:37.462310	00:02:24	3
25-06-2009	10.19.32	24000	21.5	20.95	UPTURN	10:19:31.981738	S P JAIN	10:16:08.943114	00:03:23	1

27. It is noted from above that during the month of June 2009, out of 18 trading days, on 11 trading days, Mr. S P Jain as the seller and Upturn as the buyer have established the opening price of the day by executing first trade. It is further observed that they have established the price of first trades higher than the previous day's closing price repeatedly on 10 days. Further, on all the aforesaid 11 days, first sell order was placed by Shri Suresh Pukhraj Jain which was followed by the buy order placed by Upturn. This indicates that on majority of the days, the buy and sell orders of Upturn and Shri S P Jain were placed in a coordinated/pre-planned manner. I also note that the time gap between the sell order and buy order placed by Mr. Jain and Upturn, for the first trades of

the day, were in the range of 40 seconds to 11 minutes 43 seconds, which is significantly less compared to the average time gap of 33 mins 24 seconds between all the buy and sell orders placed during the month of June 2009. Further, in 4 instances, the first trades by Upturn and Mr. Jain were those matched in less than one minute.

28. It is further observed that during the month of June 2009, Mr. S P Jain sold 6,48,200 shares of Sandplast, constituting 97.25% of the total shares traded during the said month. Further, during the same month, Upturn bought 6,27,400 shares constituting 94.13% of the total shares traded during the said month. Out of 6,27,400 shares purchased by Upturn during June 2009, 6,23,900 shares were purchased from Mr. S P Jain. As seen from the Annexure 4 of the SCN, the trades executed between Mr. S P Jain and Upturn were structured / synchronised in nature. It is observed that the sell orders placed by Shri S P Jain resulted in first trade on all the 11 trading days.

29. Therefore, I observe that the orders placed by Upturn and Mr. S P Jain which resulted in the first trades of the day, during June 2009, were always placed at a price higher than the previous day's closing price. Thus, the Noticees no. 2 and 3 have tried to establish price of the scrip at a price higher than the previous day's closing price in the manner explained above. Further Mr. S P Jain and Upturn have also created volumes by trading shares between themselves, in a matched/synchronised manner.

30. It is noted that Mr. S.P. Jain and Upturn while dealing among themselves, have ultimately sold shares of Sandplast to the general public. The details of the shares offloaded by the entities to general public is given hereunder:

Entity	**June 4, 2009 to Dec 31, 2009**
S P Jain	24,300
Upturn Securities	1,37,300
Total	1,61,600

It is noted from the above that a total of 1,61,600 shares of Sandplast were ultimately offloaded by the Noticees no. 2 and 3, during the Investigation period.

31. It is further observed that due to the co-ordinated trading activity by the Noticees no. 2 and 3, as explained in paragraphs above, the activity of retail investors also increased in the scrip of Sandplast, during the Investigation period.

	BID		ASK	
	SP Jain / M/s Upturn	Others	SP Jain / M/s Upturn	Others
June 2009	627400	39100	648200	18300
July 2009	95400	141400	189800	47000
August 2009	181000	28200	168200	41000
Sept 2009	97700	49800	98700	48800
Oct 2009	0	81200	12800	68400
Nov 2009	5000	152600	18000	139600
Dec 2009	25100	198900	2000	222000

32. I am of the view that there are sufficient evidence available on record, as discussed above, which cumulatively establish the fact that the Noticees no. 2 and 3, which are connected to each other have traded in a coordinated/ synchronised manner in the scrip of Sandplast to enable Mr. S P Jain to fraudulently offload his holding in the shares of Sandplast. I note that the sequence and manner of events and the activities of the Noticees no. 2 and 3, which I am reiterating below, clearly hold Noticees no. 2 and 3 liable for executing a manipulative scheme on the gullible retail investors of Sandplast. The main findings, in this regard are given below:

    a. The scrip of the Sandplast was re-listed on June 03, 2009. However, no trading could take place on that day.
    b. Mr. S P Jain was holding 8,15,605 shares of Sandplast, received from one Mr. Ved Prakash, which he wanted to offload in the market. Therefore, to initiate trading in the scrip of Sandplast and to establish a price, Ms. Kanta Suresh Jain, wife of Mr. Suresh Pukhraj Jain, entered into a sell trade of 200 shares on June 04, 2019, on behalf of Mr. Suresh Pukhraj Jain, whereas she was not holding any share of Sandplast which ultimately led to auctioning of the 200 shares of Sandplast.
    c. Shri. S.P. Jain and Upturn are closely connected to each other and Mr. S.P. Jain was dealing on behalf of Upturn in the shares of

Sandplast. Therefore, the trading done by Upturn was with the full knowledge of Mr. S. P. Jain.

d. During the month of June 2009, Mr. S P Jain sold 6,48,200 shares of Sandplast, constituting 97.25% of the total shares traded during the said month. Further, during the same month, Upturn bought 6,27,400 shares constituting 94.13% of the total shares traded during the said month. Out of 6,27,400 shares purchased by Upturn during June 2009, 6,23,900 shares were purchased from Mr. S P Jain.

e. A total of 6,23,900 shares were purchased by Upturn from Mr. S.P. Jain in 27 matched trades. Out of these matched trades, 9 trades for 1,67,500 shares having value of ₹ 43,57,950 were synchronised trades.

f. It is observed that during the month of June 2009, the sell orders placed by Shri S P Jain resulted in the first trade on 11 trading days. In all of these 11 days, the sell order of Mr. Jain matched with buy order of Upturn. Further, in 10 of these instances, first trade was placed at a rate higher than previous days close.

g. The trading activity of the Noticees no. 2 and 3 induced the retail investors to trade in the scrip of Sandplast which ultimately resulted in increased retail investor's participation in the scrip of Sandplast. Further, Noticees no. 2 and 3 were able to offload a total of 1,61,600 shares of Sandplast to retail investors, during the Investigation period.

33. As explained above, Noticee 2 failed to respond to the SCN and also failed to appear for the hearing. I also note that apart from just denying all the charges made in the SCN, Noticee no. 3 has not made any specific submission to dispute the charges in the SCN. I note that the only submission made by Mr. Jain is that that he had received 8,15,605 shares of Sandplast from Mr. Ved Prakash and all of his trading was a result of genuine attempt by him to sell those shares in market, without being involved in any manipulation with Upturn.

34. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has observed that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

35. Therefore, I conclude that Mr. S. P. Jain and Upturn, together manipulated the scrip of Sandplast by executing matched trades and synchronised trades with each other and by establishing higher price of the scrip by way of first trade of the day with each other only to influence the scrip of Sandplast to ultimately offload its shares to retail investors. Hence, I am of the view that commensurate penalty for the violations committed by the Noticees no. 2 and 3 needs to be imposed, taking into consideration the seriousness and the gravity of the violations committed by them.

Whether Sandplast and its directors viz. Noticee 3 to 6 made misleading price sensitive announcements about proposed Rights Issue without any genuine intentions to implement such proposal and thereby violated provisions of Section 12 A(c) of the SEBI Act read with Regulations 3(a), 4(1), 4(2)(f) and 4(2)(r) of the PFUTP Regulations

36. I note that the allegation on Sandplast and its directors, viz. Noticees 3 to 6 is that Sandplast made three corporate announcements with regard to consideration of its rights issue in the months of July 2009, September 2009 and October 2009 but did not proceed with the same. Thus, it is alleged that the Company did not proceed with the rights issue, which was earlier approved by their Board of Directors and also did not inform/disclose to its shareholders/ investors about its plan to withdraw the proposed rights issue.

37. I have perused the material placed before me by the investigation department of SEBI and the documents and evidence submitted by the Noticees during the

course of current proceedings. I note that the charge on Noticee 1 and Noticees 3 to 6 is that the announcement of the Rights issue was part of pre-planned fraud by the Company and its directors and there was never an intent by the Company to proceed with a rights issue. The chronology of events from announcements of rights issue till withdrawal of the same is given below:

Date	**Remarks**
June 12, 2008	BIFR passes order w.r.t. Sandplast with, *inter-alia*, instruction to relist the shares of Sandplast.
June 03, 2009	Scrip of Sandplast gets relisted on BSE.
July 24, 2009	Sandplast made a public announcement that its Board would be considering raising of capital through a rights issue on July 31, 2009.
July 31, 2009 at 16:48 hrs	Sandplast made a public announcement that its Board has approved raising of capital upto Rs. 15 crore through rights issue. The scrip price of Sandplast falls 3.72% on next trading day. However, the daily market volume increased from 1900 shares to 9500 shares
September 25, 2009 at 09:55 hrs	Sandplast made a public announcement that the total rights issue size is of 77,33,333 equity shares amounting to ₹ 11.60 crore and Sobhagya Capital Option Ltd has been appointed as the Merchant Banker for the same. The scrip closed at same price of the previous trading day but the daily market volume increased from 900 shares to 2800 shares
October 09, 2009	Sandplast made a public announcement that the Right Issue Committee at its meeting held on October 08, 2009, has approved the Draft Letter of Offer in accordance with the provision contained in the SEBI (ICDR) Regulations, 2009 for the Rights Issue. The price of the scrip went up by 4:41% on this day and volumes also increased from 900 to 5700 shares.
December 14, 2009	SEBI issues observation letter to the lead manager regarding the proposal of the Company of rights issue.
January 22, 2010	Sobhagya Capital withdraws to act as lead manager for the issue in light of the incomplete and inconsistent information provided by Sandplast.
February 05, 2010	Sandplast send letter to SEBI requesting for clarification on the queries raised by SEBI regarding letter of for the Rights issue.

38. I observe from the table given above that on three days when positive public announcement regarding the rights issue viz. July 31, 2009, September 25, 2009 and October 09, 2009 was made by Sandplast, there was significant impact on the volume of the scrip.

39. The charge against the Company and its directors is that they made fraudulent announcement regarding the rights issue whereas the Company had no genuine intention to come up with such rights issue, in reality. In this regard, I note that Sandplast had taken several steps w.r.t. its rights issue. It appointed Sobhagya Capital Option Ltd and RCMC Share registry Pvt. Ltd, as the Merchant Banker and registrar for the rights issue, respectively. In its reply dated June 23, 2017, Sandplast has submitted during the adjudication proceedings that the merchant banker had filed its offer document dated October 14, 2009 for the rights issue with SEBI. According to Sandplast, the merchant banker vide its letter dated January 22, 2010, addressed to the Company, informed that they are in receipt of certain documents including SEBI's observation letter, documents from the Regional stock exchanges, the secured and unsecured creditors of Sandplast, and the merchant banker has concluded that the information given by Sandplast is incomplete and inconsistent. Vide its aforesaid letters, merchant banker also statedly informed Sandplast that in the light of the SEBI observations, the merchant banker is withdrawing from providing its services in connection with the rights issue of Sandplast. I note that in its submissions, Sandplast has also referred to its letter dated February 05, 2010, addressed to SEBI wherein it informed SEBI about the withdrawal of their lead manager from the rights issue and also requested for copy of the observation letter of SEBI regarding Rights issue of Sandplast. I also note that in its aforesaid letter, Sandplast had requested for various other correspondence between its lead manager and SEBI and also sought advice on the course of action to be taken in regard to the queries raised by SEBI and the manner SEBI would require Sandplast to address the situation so that it could take steps to resolve the issue. Finally, Sandplast has mentioned in its letter that, in case SEBI deems it necessary, it may treat the offer of rights issue of Sandplast withdrawn. However, I note that the investigation report of SEBI has not made any reference to either the letter of offer relating to the rights issue or to these correspondence cited by the company. An attempt was made to

retrieve the observation letter from SEBI-WRO, but the same was in vain, as these are ten years old.

40. Although I am of the view that, in the light of its earlier public announcements regarding approval of its Board for the right issue, Sandplast should have made subsequent public announcement regarding the withdrawal of the rights issue, I am unable to find anything on record which shows that the company made fraudulent announcement about the Rights issue whereas it had no genuine intent. I note that Sandplast had appointed the merchant banker and had taken steps towards the formalities w.r.t rights issue. I note that the charges of regulation 4(2)(f) and 4(2)(r) of PFUTP Regulations are pertaining to the misleading information to impact the price of the security. However, no evidence has been placed before me which could show that the charge of fraud can be attributed to the acts of the Company and its directors. Having said that, I am of the view that there was serious lapse on the part of Sandplast and its directors in not making a public announcement regarding the failure of their rights issues. I find that the evidence available is not conclusive to establish that such lapse or omission on the part of the company/directors was deliberate and was done with an intent to defraud its investors. Therefore, I conclude that even though Noticee 1 and its directors viz. Noticee 3 to 6 have failed to make public announcement regarding withdrawal of the rights issue, there is no evidence to show that such failure was deliberate or fraudulent and therefore, Noticee 1 and Noticee 3 to 6 have not violated the provisions of Section 12 A(c) of the SEBI Act read with Regulations 3(a), 4(1), 4(2)(f) and 4(2)(r) of the PFUTP Regulations.

41. I note that Sandplast has also contended that concerned rights issue of the Company was in the light of the BIFR order dated June 12, 2008, wherein the promoter group of the Company was permitted to induct additional equity capital in the Company. It was also mentioned in the aforesaid order of BIFR that Sandplast would be exempted from the provisions under section 81(A) of the Companies Act, 1956 and /or any other applicable provisions of the Companies

Act, 1956, SEBI Guidelines, Regulations etc. as may be applicable for infusion of such funds.

<u>Does the violations, if any, attract monetary penalty under Section 15HA of the SEBI Act?</u>

42. As discussed on previous paragraphs, I am convinced that in the light of the fraudulent trading of Noticee 2 / Upturn and Noticee 3 / Mr. S. P. Jain in the shares of Sandplast during the Investigation period, it is a fit case for imposition of monetary penalty on the Noticees no. 2 and 3 under the provisions of section 15HA of the SEBI Act, which reads as under:

<u>SEBI Act</u>

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

43. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

15J. *While adjudging quantum of penalty under section 15-I, 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.*

44. I note that in the instant case, the shares held by Mr. S. P. Jain were ultimately sold to retail investors either directly or through Upturn. In this regard, I note that Noticees were able to offload a total of 1,61,600 shares. I note that there is no information available on record w.r.t. the total amount realized as profit by way of sale of these 1,61,000 shares of Sandplast to retail investors, during the

Investigation period. However, I note from the submissions of the Noticee that the average sale price of the shares sold by him is ₹ 24. Further, I note from the Investigation report that average rate of acquisition of shares of Sandplast by Mr. Jain was ₹ 12.26. (8,15,605 shares acquired from Mr. Ved Prakash in lieu of ₹ 1,00,00,000 loan). Therefore, the profit registered by the Noticees, at the expense of the retail investors, during the Investigation period is calculated as no, of shares sold to retail investors by Noticees during investigation period x (average sell price – average buy price), which comes out to be ₹ 18,97,184 [1,61,600 x (24.00 - 12.26)]. Therefore, I conclude that the approximate profit earned by the Noticee during the Investigation period by way of fraudulently dealing in the shares of Sandplast and offloading shares to the retail investors is ₹ 19 lakh. Therefore, I am of the view that the penalty imposed on the Noticees shall consider the aforesaid profit earned by the Noticees during the Investigation period.

ORDER

45. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose, jointly and severally, a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakh) on Noticee 2 / M/s. Upturn Securities Pvt. Ltd and Noticee 3 / Shri Suresh Pukhraj Jain under section 15HA of the SEBI Act.
46. I am of the view that the said penalties are commensurate with the lapse/omission on the part of the Noticees. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

47. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Division of Regulatory Action-3, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan 2, Plot No. C – 7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051”:

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

48. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties. Payment can also be made online by following the below path at SEBI website www. sebi.gov.in: ENFORCEMENT ->Orders->Orders of AO ->PAY NOW.

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

Date: July 24, 2019
Place: Mumbai

Dr. ANITHA ANOOP
CHIEF GENERAL MANAGER
& ADJUDICATING OFFICER