BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO.: Order/GR/PU/2022-23/20383-20386]**

ORDER 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 AND SECTION 23–I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 (HEREINAFTER REFERRED TO "SCRA") AND RULE 5 OF SECURITIES CONTRACT (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 (**HEREINAFTER REFERRED TO "SCR ADJUDICATION RULES")**

In respect of:

Noticee No.	Noticee Name	PAN/DIN
1.	Shivamshree Businesses Ltd.	AAACS0442F
2.	Rakesh Vashist	ACCPV3502E
3.	Sudharshan Jha	AEJPJ5427M
4.	Avnish Srivastava	00516840

In the matter of Shivamshree Businesses Ltd.,

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

BACKGROUND IN BRIEF

1. Securities and Exchange Board of India ("**SEBI**") conducted investigation into the trading in the scrip of Shivamshree Businesses Limited., (hereinafter referred to as "**the company / SBL/Noticee No.1**"), based on an examination of BSE, which had concluded that prima facie there were misutilization of funds received against issue of equity shares on preferential basis by several companies including SBL, to ascertain the possible violations inter alia of the provisions of SEBI Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market Regulations, 2003 ("**PFUTP Regulations, 2003**"), Securities and Exchange Board of India Act, 1992 ("**SEBI Act, 1992**"), Securities Contracts (Regulation) Act, 1956 ("**SCRA, 1956**") SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations, 2015**") read with Listing Agreement and any other Regulations made there under, if any . The period of investigation for SEBI was from October 1, 2013 to March 31, 2014 (hereinafter referred to as "**Investigation Period/IP**"). However, wherever deemed necessary, reference has been made to period, outside this period.

2. Pursuant to the investigation, the following are observed and alleged:

   a) Out of preferential issue proceeds of Rs.4.33 crores, raised by SBL on December 13, 2013, funds to the tune of Rs.4.16 crores (i.e. 96% of preferential issue proceeds) was used by SBL for purposes such as purchase of cattle, giving loans & advances, repayment of liabilities to CSK Infrastructure Pvt. Ltd. and miscellaneous purposes (cash for own purpose and funds transfer to entities), which were not mentioned as the objects of the preferential issue presented to the shareholders in the notice of postal ballot dated 12.10.2013. It was therefore alleged that SBL (Noticee No.1) had committed "fraud" as defined under Regulation 2(1)(c) of PFUTP Regulations, 2003 by deviating and misutilising the preferential issue proceeds and has, thereby, alledged to have violated the provisions of Regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) & 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A (a) (b) (c) of the SEBI Act, 1992.

b) The aforesaid fraudulent act by SBL was done with the knowledge of its directors. Thus, the directors of SBL i.e. Rakesh Vashist (Executive Director) (Noticee No.2), Sudharshan Jha (Independent Director) (Noticee No.3) and Avnish Srivastava (Director) (Notice No.4), have also been alleged to have violated Regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) & 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A (a) (b) (c) of the SEBI Act, 1992.

c) Additionally, the company (Noticee No.1) had failed to comply with disclosure requirements under Clause 43 of the Listing Agreement read with Regulation 32 of LODR Regulations, 2015 and Section 21 of SCRA, 1956, in respect of variation/deviation in the utilization of preferential issue proceeds and is alleged to have violated the same.

3. SEBI had, therefore, initiated adjudication proceedings *inter alia* against Noticee No. 1 - 4 under Section 15HA of the SEBI Act, 1992 for the alleged violation of Regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) & 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A (a) (b) (c) of the SEBI Act, 1992. Further, adjudication proceedings was initiated against Noticee No.1 under Section 23E of the SCRA, for the alleged

violation of Clause 43 of the Listing Agreement read with Regulation 32 of LODR Regulations,2015 and Section 21 of SCRA, 1956.

APPOINTMENT OF THE ADJUDICATING OFFICER

4. SEBI appointed the undersigned as the Adjudicating Officer (hereinafter referred to as the "**AO**") vide order dated February 09, 2021, conveyed vide communique dated February 18, 2021, under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") read with Section 15-I of the SEBI Act and under Rule 3 of Securities Contracts (Regulation) (Procedure for holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SCR Adjudication Rules**") to inquire into and adjudge under section 15HA of SEBI Act, 1992 and section 23E of the SCRA, 1956, for the aforesaid violations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common Show Cause Notice dated December 06, 2021 (**SCN**) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of SEBI Adjudication Rules and Section 23 I of the SCRA read with Rule 4 of SCR Adjudication Rules to show cause as to why an enquiry should not be initiated and penalty be not imposed under section 15HA of SEBI Act, 1992 and section 23E of the SCRA, 1956, as applicable, for the alleged violations specified in the SCNs. The said SCN and annexures were issued to the Noticees by SPAD and while the SCN pertaining to Noticee No. 2 was duly delivered through Speed Post (SPAD),

SCNs pertaining to Noticee No. 1, 3 & 4 had returned undelivered with the comments, "Incomplete Address/No such person". Therefore the SCN pertaining to Noticee No. 1, 3 & 4 were served by way of Newspaper publication i.e. Navbharath Times, New Delhi Edition (Hindi), Times of India, Delhi Edition (English) on 29.06.2022 and Hindusthan Times, Delhi Edition (English), Dainik Jagran, Delhi Edition (Hindi) on 23.08.2022. The details of mode of delivery of the SCN and the replies received in the matter are as under;

S. No	**Name of the Noticee**	**Mode of delivery SPAD/NPP (date of publication)**	**Reply received Y/N (Date of reply)**
1	Shivamshree Business Ltd.	Newspaper Publication (29.06.2022)	No
2	Rakesh Vashist	SPAD	Yes (24.12.2021 & 29.08.2022)
3	Sudharshan Jha	Newspaper Publication (26.06.2022)	No
4	Avnish Srivastava	Newspaper Publication (23.08.2022)	No

6. An opportunity of personal hearing was granted to the Noticees, the details of the Hearing Notices duly delivered and the status of attendance are as under;

S. No	**Name of the Noticee**	**Mode of delivery SPAD (date of Notice)/NPP (date of publication)**	**Hearing date (attended/ did not attend)**
1	Shivamshree Business Ltd.	Newspaper Publication (07.07.2022)	14.07.2022 (did not attend)
2	Rakesh Vashist	SPAD (08.08.2022)	24.08.2022 (attended)

3	Sudharshan Jha	Newspaper Publication (07.07.2022)	14.07.2022 (did not attend)
4	Avnish Srivastava	Newspaper Publication (23.08.2022)	30.08.2022 (did not attend)

7. **The summary of the reply submitted by Noticee No. 2 is as under;**

- The Noticee submitted that he was not a shareholder, director or an executive director as alleged in the notice during the period 01.10.2013 to 17.06.2014 and he was only associated with Notice No. 1 upto 6th August, 2013. He also stated that the said alleged preferential allotment was proposed and undertaken by the new shareholder group to the exclusion of the Noticee No.2, the necessary notices, board resolution and also the corporate filings was undertaken by Mr. Manish Mishra and his associates only. Further, he stated that he was not even an authorized signatory or representative of the Company and was not holding any position in the board of directors as alleged in the Notice.
- In the year 2013, the erstwhile shareholder group ("Jalan Group") along with the Noticee had finalized the transfer of the Jalan Group shareholding in the Company to one Mr. Manish Mishra, residing at 42 Nehru Nagar, Gowda Road, Meerut 250001 and his associates. Upon transition of the Company the Noticee was neither sent any notices of the board meeting/ shareholders meetings, nor was he signatory to any of the bank accounts opened by the new shareholder group nor had any say or association with the Company or its associates in any capacity whatsoever. The Company was handed over the resignation of the Noticee dated 6th August, 2013from the post of director and thereafter the Noticee had nothing to do with any work, operations, business or management of the Company.
- The notice has submitted that even though he was not a part of the board resolution dated 10.10.2013 and modified MOA, however, he was shown as the executive director of the Noticee No.1 in the Annual report for the FY 2014, which is incorrect as he had resigned on 06.08.2013. He also stated that he had sent several reminder letter but Noticee No. 1 had not filed the Resignation Form with Ministry of corporate affairs until 06.06.2014.

8. In view of the above, I am of the opinion that the SCN has been duly served upon the Noticees, but the Noticee No. 1, 3 & 4 failed to reply and also failed to avail the opportunity of personal hearing. The principle of natural justice has been followed

in the matter, as enough opportunities were provided to Noticee No. 1, 3 & 4 to reply to the SCN and appear for hearing.

9. Considering the fact that the Noticee No. 1, 3 & 4, have neither filed any reply nor has availed the opportunity of personal hearing despite being granted several opportunities for the same, I am of the view that they have nothing to submit and in terms of Rule 4(7) of the Adjudication Rules, the matter can be proceeded ex-parte on the basis of material available on record. In absence of any response from the Noticee No. 1, 3 & 4 to the SCN, I presume that they have admitted the charges levelled against them. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, held that,

   "......the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".

10. Further, the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter-alia, and held that:

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

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

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

12. Further, in view of the aforesaid observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, therefore, I deem it appropriate to proceed against the Noticee No. 1, 3 & 4 ex-parte, based on the material available on record.

CONSIDERATION OF ISSUES

13. Considering the above facts, in the present proceedings, the examination has been done with respect to the allegations against the Noticees taking into consideration of the reply to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are:

    I. Whether Noticee No.1-4, have violated the provisions of 3 (a) (b) (c) (d), 4(1), 4(2)(f) & 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A (a) (b) (c) of the SEBI Act, 1992 and Noticee No. 1 has also violated Clause 43 of the

Listing Agreement read with Regulation 32 of LODR Regulations, 2015 and Section 21 of SCRA, 1956?

II. Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA, as applicable?

III. If yes, then what should be the quantum of penalty?

OBSERVATIONS AND FINDINGS

14. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, 1992, SCRA, Listing Agreement and LODR Regulations alleged to have been violated by the Noticees. The same are reproduced below:

PFUTP Regulations, 2003

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:—

……

(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities.

……

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

SEBI Act, 1992.

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

(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;

SCRA, 1956

Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

LODR Regulations, 2015

Statement of deviation(s) or variation(s).

"32.(1) The listed entity shall submit to the stock exchange the following statement(s)on a quarterly basis for public issue, rights issue, preferential issue etc.,-

(a)indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable; (b)indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.

(2)The statement(s)specified in sub-regulation (1), shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.

(3)The statement(s) specified in sub-regulation (1),shall be placed before the audit committee for review and after such review, shall be submitted to the stock exchange(s).

(4)The listed entity shall furnish an explanation for the variation specified in sub-regulation (1), in the directors' report in the annual report.

(5)The listed entity shall prepare an annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice, certified by the statutory auditors of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.

(6)Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency within forty-five days from the end of each quarter

(7)Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on an annual basis, promptly upon its receipt. Explanation,—For the purpose of sub-regulations(6) and (7), "monitoring agency" shall mean the monitoring agency as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(7A) Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.

(8)For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which have listed their specified securities on SME Exchange shall respectively be read as "half yearly/half year"

Listing Agreement - DSE

Clause 43

"**a**) *The Company agrees that it will furnish on a quarterly basis, a statement to the Exchange indicating the variations between projected utilization of funds and /or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the General Meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability.*

b) The statement referred to in clause (a) shall be given for each of the years for which projections are provided in the prospectus / letter of offer / object/s stated in the explanatory statement to the notice for considering preferential issue of securities and shall be published in newspapers simultaneously with the unaudited/ audited financial results as required under clause 41.

c) If there are material variations between the projections and the actual utilizations / profitability, the company shall furnish an explanation therefore in the advertisement and shall also provide the same in the Directors Report.

d) The Statement referred to in clause (a) shall also be given for warrants issued along with public or rights issue of specified securities."

<u>Issue I</u>: Whether Noticee No.1-4, have violated the provisions of 3 (a) (b) (c) (d), 4(1), 4(2)(f) & 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A (a) (b) (c) of the SEBI Act, 1992 and Noticee No. 1 has also violated Clause 43 of the Listing Agreement read with Regulation 32 of LODR Regulations, 2015 and Section 21 of SCRA, 1956?

<u>Preferential issue of shares:</u>

15. I note that the allegations against the Noticees in the instant matter is mainly to the effect that the Noticees have failed to utilize the funds raised through preferential

issue dated 13.12.2013 for the purpose for which it was raised. In other words, the Noticees utilized the funds for the purpose other than the objects of the preferential issue of shares as presented to the shareholders in the notice dated 12.10.2013. In this regard, I note the observation of the investigation from the IR that SBL issued 43,25,000 equity shares on preferential basis at Rs.10/- per share amounting to Rs.4.33 crores to 45 non-promoter entities and allotment was made on 13.12.2013. It was further observed that the preferential allotment money was deposited by all the 45 allottees into SBL's HDFC Bank account (A/c no. 05877630000928). The objects of the preferential issue of shares, as presented to the shareholders in the notice dated 12.10.2013, were:

(i) to augment funds to, inter-alia, fund the Company's growth capital requirements,

(ii) to meet the Company's capital expenditure,

(iii) to enhance its long term resources and thereby, strengthening the financial structure of the Company and for other general corporate purposes and purposes permitted by applicable laws.

16. It was also observed that SBL in its letter dated 13.08.2019 to BSE, had itself admitted that the funds raised through preferential issue dated 13.12.2013 were utilized for the purposes of giving loans & advances, repayment of loan, purchase of cattle and for working capital requirements, which were not the objects of issue, as mentioned in the letter of offer and that it has ratified the utilization of funds raised through preferential issue by passing Special Resolution.

Utilization of preferential issue proceeds:

17. Further, I note that during the investigation, SEBI had sought for the details of utilization of the funds raised through the preferential issue dated 13.12.2013 along with documentary evidence vide e-mail dated 20.12.2018 and SBL had provided the details of utilization of funds, copies of loan agreements, bill receipts/invoices, etc., vide its e-mails dated 20.03.2019 and 26.03.2019, respectively. From the same, it was observed that it had failed to submit the supporting documents for payment of short term borrowings. The details of the utilization proceeds as per SBL's e-mail dated 20.03.2019 are as under;

S. No.	**Purpose**	**Amount**	**Mode of payment**
1	Cattle purchase	1,60,58,000	Cash
2	Loan Agreement	2,00,00,000	Cheque
	Total	**3,60,58,000**	
		No. of Share	**Amount**
	Fresh Capital introduced	43,25,000	4,32,50,000
	Less: Loan & Advances		1,94,35,585
	Less: Cattle Purchase		1,60,58,000
	Less: Paid Short Term Borrowing		46,49,354
	Less: Cash on hand		39,11,718
			(804657)

18. Further, during the investigation it was observed that in response to BSE's notice dated 13.06.2018, SBL vide its letter dated 13.08.2019 stated that the funds raised through preferential issue dated 13.12.2013 were utilized for the purposes of giving loans & advances, repayment of loan, purchase of cattle and for working capital requirements, which were not the objects of issue, as mentioned in the letter of offer. In this connection, SBL also submitted the revised statement of utilization of funds, duly reviewed by the board of directors in its meeting held on 18.07.2019 (as per the company), which is reproduced as under:

S. No.	Payment to	Purpose	Amount utilised
1	Given for business expansion	Loans & Advances	1,94,35,585
2	Paid to various vendors	Cattle purchase	1,60,58,000
3	Short term liability paid-off	Paid short term borrowing	46,49,354
4	For Working Capital requirement	Cash on hand	31,07,061
		Total	**4,32,50,000**

19. In this regard, I further note that since inconsistencies were observed in SBL's replies, the details of utilization of preferential issue proceeds, together with complete documentary evidence, was once again sought from SBL vide e-mail dated 26.05.2020. Further, additional information in respect of utilization of funds were also sought from SBL vide e-mails dated 26.05.2020 and 02.06.2020, which were not responded. Subsequently, despite several reminders issued vide e-mails dated 11.06.2020 and 18.06.2020, SBL did not submit the information, till date. I also note that information was once again sought from the company vide letter dated 09.12.2020, which returned undelivered.

20. This apart, I also note from the observation of the investigation that upon analysis of SBL's replies, bank statements of the company/ various entities, information received from BSE and other documents available on record, it was observed that the preferential issue proceeds were utilized by SBL in the following manner:

(a) Issue proceeds of Rs. 1.61 crores used for purchase of cattle
(b) Issue proceeds of Rs. 2 crores used for giving loans & advances
(c) Issue proceeds of Rs. 0.23 crores used for repayment of liabilities
(d) Issue proceeds of Rs. 0.49 crores used for miscellaneous purposes

Issue proceeds of Rs. 1.61 crores used for purchase of cattle:

21. As regards to the issue proceeds of Rs. 4.33 crores, I note that the investigation observed that Rs.1.61 crores was utilized by SBL for the purchase of cattle (i.e. cows & buffaloes) during the period 10.10.2013 to 19.11.2013 and the copies of bill receipts/ invoices submitted were as documentary evidence indicated that all the payments for the said purchase were made in cash. The details of cash payments submitted by SBL vide e-mail dated 20.03.2019 for cattle purchase are tabulated as under:

Purpose: CATTLE PURCHASE				
Bill No.	**Date of the bill**	**Name of the Entity**	**Amount (in Rs.)**	**Mode of payment**
67/2013 73/2013 76/2013 59/2013 54/2013	10.11.2013 11.11.2013 19.11.2013 09.11.2013 01.11.2013	Satish Kumar Singla Cattle Dealers	7,95,000 6,15,000 7,70,000 7,15,000 8,25,000	Cash
139/2013 135/2013 132/2013 128/2013 142/2013	12.11.2013 01.11.2013 01.11.2013 11.10.2013 17.11.2013	Arun Kumar Cattle Dealers	7,60,000 8,30,000 8,75,000 6,80,000 7,70,000	Cash
105 125 118 111 105	10.11.2013 16.11.2013 02.11.2013 12.10.2013 10.10.2013	Bheem and Raman Singh Cattle Dealers	7,50,000 7,50,000 8,05,000 7,90,000 8,35,000	Cash
2013/62 2013/58 2013/76 2013/69	07.11.2013 01.11.2013 17.11.2013 10.11.2013	Mahindra Tomar Cattle & Fooder Dealers	7,80,000 5,95,000 5,80,000 6,80,000	Cash

2013/65	17.11.2013		8,80,000	
2013/72	17.11.2013		9,78,000	
		Total Amount	**1,60,58,000/-**	

22. I note that on perusal of the copies of bills and invoices submitted by SBL, investigation observed that specific details regarding cattle purchase such as weight of cow/ buffalo, breed of buffalo, whether the cattle purchased was calf or full grown, etc., were not mentioned in the bill receipts/ invoices. Except for name and address, other unique details to identify the cattle dealer such as PAN or sales tax registration number were also not mentioned in the bill receipts/ invoices. Hence, the authenticity of the copies of bill receipts/ invoices submitted by SBL is questionable and raises suspicion as to whether SBL had actually purchased cattle of Rs. 1.61 crores, as stated by SBL in its various submissions to SEBI and BSE.

23. In this regard, further, it was observed from the Annual Report of SBL for FY 2013-14, that the company was into dairy business and had purchased cattle during that year. The aforesaid amount of Rs.1.61 crs. is reflected in the company's balance sheet under the head "Fixed Assets" as the "live stock (cattle) added during the year 2013-14".

24. It was also observed that vide e-mails dated 26.05.2020 & 02.06.2020, SBL was asked regarding the purpose of cash withdrawals observed in its account and also, to highlight the cash withdrawn from the bank account specifically for cattle purchase. However, SBL did not provide the information despite repeated reminders. Thereafter, information was once again sought from the company vide letter dated 09.12.2020. The said letter was returned undelivered. Scanned copy of the said letter was also sent to SBL's e-mail addresses available on record. However, no reply has been received from SBL till date. In this regard investigation

observed and concluded that SBL has no intention to provide the information, leaving a cloud of doubt and suspicion about the said transactions.

25. In view of the above fact and also as admitted by SBL in its letter mentioned at preceding para above, it is established that SBL had not utilized the funds to the tune of Rs. 1.61 crores (i.e. 37% of the preferential issue proceeds of Rs. 4.33 crores) towards the objects of the preferential issue as alleged, which tantamount to misutilisation of the issue proceeds.

<u>Issue proceeds of Rs. 2 crs. used for giving "Loans & Advances":</u>

26. As regards to the issue proceeds of Rs. 2 Crores used for giving loans and advances to 9 entities detailed below, I note from the IR that upon perusal of the bank statements, loan agreements, etc. made available, investigation observed as under;

a) that all the entities had borrowed from SBL "exclusively for the purpose of business as represented by the borrower", at interest rate of 11.50% p.a.

b) that, neither the specific business for which loan was availed nor the exact loan repayment date, were mentioned in the agreement.

c) that all the loan agreements were signed by Sudharshan Jha, Director (Noticee No.3), on behalf of SBL.

S. No.	Name of the borrower as per loan agreement	Loan amount as per agreement (in Rs.) (Date of loan agreement)	Actual amount transferred (in Rs.) (Date of transfer)	Interest payable p.a.	Amount repaid (in Rs.) (Date of repayment)	Whether interest paid (Yes / No)

1	Rajiv Kashyap	20 lakhs (05.10.2013)	10 lakhs (11.10.2013) 10 lakhs (19.10.2013)	11.50%	20 lakhs (17.03.2015)	No
2	Ritu Singla	50 lakhs (05.10.2013)	50 lakhs (23.10.2013)	11.50%	50 lakhs (26.04.2014)	No
3	Jagdish Prasad Sharma	17 lakhs (05.11.2013)	17 lakhs (11.11.2013)	11.50%	15 lakhs (25.03.2015) 2 lakhs (30.03.2015)	No
4	Nitin Tandon	10 lakhs (05.11.2013)	10 lakhs (12.11.2013)	11.50%	Not repaid	No
5	Adarsh Tandon	10 lakhs (05.11.2013)	10 lakhs (12.11.2013)	11.50%	Not repaid	No
6	Vishwa Bandhu Gupta	40 lakhs (05.11.2013)	40 lakhs & 10 lakhs (20.11.2013)	11.50%	10 lakhs (05.02.2014) 12.50 lakhs (05.07.2014) 11.50 lakhs (24.07.2014) 16 lakhs (05.11.2014)	No
7	The Trail Blazer Communi cation Pvt. Ltd.	23 lakhs (02.12.2013)	20 lakhs (02.12.2013) 10 lakhs (05.12.2013) 13 lakhs (12.12.2013)	11.50%	20 lakhs (06.03.2014) 23 lakhs (23.09.2014)	No
8	Sanjay Tulsyan	10 lakhs (29.01.2014)	10 lakhs (06.02.2014)	11.50%	10 lakhs (16.01.2015)	No
9	Santosh Kumar Agrawal	20 lakhs (01.03.2014)	20 lakhs (07.03.2014)	11.50%	20 lakhs (16.02.2015)	No

27. From the above, I also note that out of those 9 entities, 7 entities repaid the entire amount (without interest) while, 2 entities viz. Nitin Tandon & Adarsh Tandon have not repaid the loan to SBL. Hence, out of the preferential issue proceeds of Rs.4.33

crores, total amount of Rs. 2 crores (i.e. approx. 46% of total funds) was given as "loans & advances" by SBL to 9 entities.

28. Further, in this regard, I note that vide e-mails dated 26.05.2020 and 02.06.2020, Investigation sought information such as reason for giving loan to 9 entities, reason for non-payment of interest on the loan amount by the entities, relationship with those entities, proof of loan repayment by Nitin Tandon and Adarsh Tandon, etc. were sought from SBL. However, SBL did not provide the relevant information despite repeated reminders. Thereafter, information was once again sought from the company vide letter dated 09.12.2020, which returned undelivered. Even the scanned copy of the said letter sent by SEBI to SBL's e-mail addresses available on record, had no response. However, no reply has been received from SBL till date.

29. In addition, e-mail addresses of the aforesaid 9 entities, to whom SBL had given loans, were obtained from the respective banks/ NSE/ BSE/ MCA website and information was sought from them through e-mail. As no information was forthcoming except from one entity namely Jagdish Prasad Sharma, two reminder e-mails were also sent to the remaining entities.

30. Furthermore, I note that investigation also observed that out of the restored funds of the issue proceeds (i.e. Rs. 1.8 crores), from the above entities, the company had again used the funds for its corporate expenses and also, transferred funds to various entities including Bhoomi Infrastructure Company (PAN: AAIFB7716L), (now known as GLM Infratech Pvt. Ltd. PAN: AAFCG8455P) authorized agents / underwriter appointed by SBL for the sale of 30 residential flats., indicating that

SBL had also forayed into real estate business pursuant to alteration of the object clause with effect from 17.12.2014.

31. Further, it was also observed that SBL in its letter dated 03.01.2017 in response to BSE letter dated 20.12.2016, stated that the purpose of preferential allotment was to raise funds for setting up a dairy project but, due to some uncontrollable reason, the land deal could not materialize and the project could not be set up. Hence, the preferential allotment money was extended by SBL to milk suppliers for securing long term exclusive supply of milk and loan agreements were entered into with them. However, as the supply was not as per the company's terms & conditions, SBL had taken leasehold land and purchased cattle. SBL also stated that the money advanced to milk suppliers was taken back and invested in underwriting arrangement with Bhoomi Infrastructure Company (now known as GLM Infratech Pvt. Ltd.).

32. On perusal of the loan agreements, entered with all the above-mentioned entities, submitted by SBL, it is noted that the said agreements, signed by both parties, are not executed on stamp paper, not notarized and not registered, thus severely hampering the legal validity and scope of enforcing the agreement. Further, the agreements on the company's letter head inter-alia contains the following provisions:

(a) no specific repayment date or term fixed for repayment. The relevant clause only says that the principal and interest together shall be repaid in full within a week from date of demand for repayment by lender;

(b) in loan repayment schedule, it is specified that no notice reminder or intimation shall be given to the borrower regarding its obligation to ensure prompt and regular payment of interest;

(c) in case of default, the agreement states that the lender may take such actions and commence such proceedings as may be permitted by law or in equity at such times and such manner as lender in its sole discretion may consider expedient.

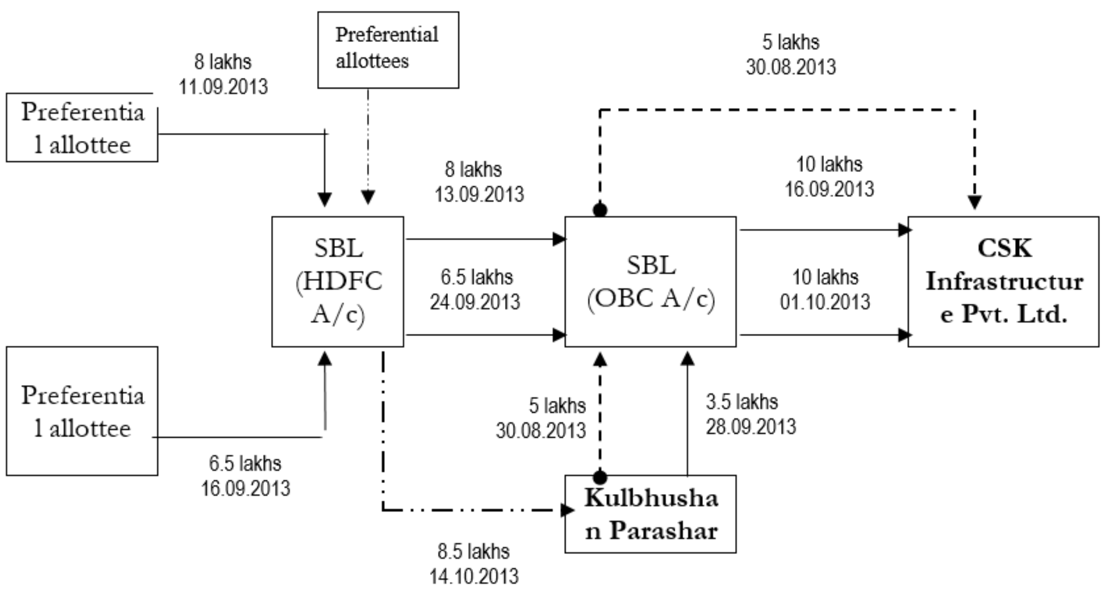
33. However, as stated earlier, it was observed that though 7 out of 9 borrowers have not paid interest, and 2 borrowers have defaulted on the loan, the company has not taken any action against those borrowers. It is observed that giving loans and advances are not the core activities of the company. In view of the above and as admitted by SBL in its letter mentioned at para 12 above I note that SBL had utilized the issue proceeds to the tune of Rs. 2 crores (i.e. 46% of the preferential issue proceeds of Rs. 4.33 crores) by not deploying funds for the stated objects which tantamounts to the misutilization of funds.

<u>Issue proceeds of Rs. 0.23 crs. used for repayment of liabilities:</u>

34. As regards the issue proceeds of Rs. 0.23 crs. used for repayment of liabilities, I note from the IR that, upon analysis of the bank statement of SBL (OBC bank A/c no. 09251010000880), it was observed that SBL had received an amount of Rs.20 lakhs on 08.09.2010 and Rs.25 lakhs on 13.09.2010 from CSK Infrastructure Pvt. Ltd. (Citizen Co-operative Bank Ltd., Noida) i.e. total amount Rs.45 lakhs. Subsequently, the entire amount was in turn transferred by SBL to CSK in 5 tranches i.e. Rs.10 lakhs on 02.08.2013, Rs.10 lakhs on 21.08.2013, Rs.5 lakhs on

30.08.2013, Rs.10 lakhs on 16.09.2013 & Rs.10 lakhs on 01.10.2013. However, it was observed that, out of the total amount (i.e. Rs. 45 lakhs) repaid by SBL to CSK, Rs.14.50 lakhs was out of the preferential issue proceeds.

35. Similarly, as regard to the balance of Rs. 8.50 Lakhs (Rs. 23 Lakhs – Rs. 14.50 Lakhs) it was also observed that the said amount was repaid to Kulbhushan Parashar out of the preferential issue proceeds, stating the reason that during 2013 Kulbhushan had paid to SBL towards share application money but, as the company was taking considerable time, he did not continue with the same and so, the company returned the money in October 2013 itself. This fact has also been confirmed from the bank statements of SBL and also as the expenditure is in line with the objects of preferential issue i.e. *"to enhance its long term resources and thereby, strengthening the financial structure of the Company and for other general corporate purposes......"*. The above mentioned details have been explained in the flow chart below:



36. In view of the above and as admitted by SBL in its letter mentioned at the preceding para above it is observed that SBL had utilized the funds to the tune of Rs. 14.50 lakhs (i.e. 0.03% of the preferential issue proceeds of Rs. 4.33 crores) for the purpose of repayment of its liabilities to CSK Infrastructure Pvt. Ltd., by not deploying funds for the stated objects which tantamounts to misutilization of funds.

<u>Issue proceeds of Rs. 0.49 crores used for miscellaneous purposes:</u>

37. As regards the issue proceeds of Rs. 0.49 crores used for miscellaneous purposes, I note that during Oct' 2013 to Jan' 2014, SBL had utilized Rs. 0.49 crores, out of preferential issue proceeds of Rs. 4.33 crores, for miscellaneous purposes such as payments to advertising agency/ MCA/ DSE, listing fees to BSE, etc., cash for own purpose and funds transfer to some entities. Details of the same are given below:

S. No.	Particulars of transaction	Date	Amount (in Rs.)
1	Cash for own purpose	-	29,00,000
2	Tushar Commodities Pvt. Ltd.	19.10.2013	10,00,000
3	MCA	23.10.2013	1,37,500
4	RBS Enterprise	25.10.2013	8,500
		07.12.2013	200
5	Bhavin Hemendra Nagda	28.10.2013	1,11,000
6	Zeal Advertising	08.11.2013	10,334
7	Harpreet Parashar (Secretarial Auditor of SBL)	08.11.2013	20,000
		25.11.2013	50,000
8	Ultech India Ltd.	28.11.2013	756
9	Delhi Stock Exchange (DSE)	29.11.2013	16,854
		19.12.2013	2,810
10	CDSL	12.12.2013	22,472
		13.12.2013	20,225
		03.01.2014	1,124
		03.01.2014	11,236
11	DBS Prakashan Pvt. Ltd.	21.12.2013	17,316
12	Awapal Solutions	23.12.2013	8,427
13	Pramod GD Gupta (appointed by SBL as Srutinizer for postal ballot)	31.12.2013	10,000
14	NSDL	01.01.2014	2,248

15	BSE	22.01.2014	5,61,800
	Total		**49,12,802**

38. From the above, I note that during investigation, it was observed that except for the amount of Rs. 0.09 crores utilized for the purpose such as payment of various fees to Exchanges, Depositories, auditor, advertising agency, etc. SBL, has not submitted any documents to show that the amount was in fact used for working capital requirements, purpose of funds transferred to Tushar Commodities Pvt. Ltd. And Bhavin Hemendra Nagda, etc. as claimed, despite several reminders. Therefore, the said amount was utilized by SBL for its own purpose, either in the form of cash withdrawal or funds transfer to entities, which was not the object of the preferential issue, amounting to misutilisation of the issue proceeds

Ratification of deviation by the shareholders of SBL:

39. As regards the ratification of deviation by the shareholders of SBL, I note that BSE vide its notice no. 20180613-29 dated 13.06.2018 had, *inter-alia*, directed SBL to make mandatory disclosures w.r.t. misutilisation of preferential issue proceeds along with ensuing quarterly unaudited/ audited financial results and to get the same ratified by the shareholders of the company within 3 months from the intimation of its notice.

40. Further, I note from SBL's letter dated 13.08.2019 to BSE that it had admitted that the funds raised through preferential issue dated 13.12.2013 were utilized for the purposes of giving loans & advances, repayment of loan, purchase of cattle and for working capital requirements, which were not the objects of issue, as mentioned in the letter of offer. I note that SBL also stated that pursuant to BSE Notice dated 13.06.2018, the company has ratified the resolution for utilization of funds raised

through preferential issue by way of passing Special Resolution in Extra-Ordinary General Meeting held on 18.07.2019. In this regard, I note that the Investigation observed that SBL had submitted the copy of the summary of the proceedings of EGM and Scrutinizer's Report as documentary evidence.

41. From the above, I note that investigation had observed that the deviation happened in the year 2013 – 2014, however, SBL had ratified only after 6 yrs. i.e. in 2019, without providing any reason for the said delay and also after receiving explicit directions from BSE vide notice dated 13.06.2018. Further, in this regard I note that the stated deviation of utilization of the issue proceeds of the past fraudulent acts/ deeds by SBL cannot be legitimized by subsequent ratification of the same by the company's shareholders through special resolution.

42. It was observed from SBL's Annual Report 2014, that the board of directors comprised of 4 directors as on 31.03.2014 i.e. Rakesh Vashist (Executive Director) (Noticee No.2), Sudharshan Jha (Independent Director) (Noticee No.3), Manish Kumar Mishra (Independent Director) and Ratan Singh (Independent Director) and Avnish Srivastava (Noticee No.4) had resigned on 01.12.2013. The details of the above mentioned directors of SBL during October 2013 and March 2014 are as under;

Sr. No.	**Name of Director**	**Designation**	**PAN**	**DIN/ DPIN**	**Date of appointment**	**Date of cessation**
1	Rakesh Vashist	Director	ACCPV3502E	00516784	31-12-1996	17-06-2014
2	Manish Mishra	Director	ACCMV5236L	02229827	16-08-2013	26-08-2014
3	Ratan Singh	Additional Director	ACAPS2179L	02440309	15-05-2013	11-11-2014
4	Sudarshan Jha	Director	AEJPJ5427M	02221178	30-09-2013	22-01-2015
5	Avnish Srivastava	Director	N.A.	00516840	31-12-1996	01-12-2013

43. In this regard, I note that, Noticee Nos. 2, 3 and 4 were on the board of the company, as directors, from the date of passing of the board resolution for issue of preferential shares i.e. 12.10.2013 to the date when the preferential allotment money of Rs. 4.33 crores was fully utilised i.e. 07.03.2014 and were actively involved in activities of the company including the said utilization of preferential issue proceeds. Further, a company is a legal entity and as such, it cannot act by itself, but only through its directors who are expected to exercise their power on behalf of the company with due diligence and within the framework of law. In view of the above, I note that the act of deviating and misutilising of the preferential issue proceeds was executed by SBL (Noticee No.1) with the knowledge of its directors i.e. Rakesh Vashist (Noticee No.2), Sudharshan Jha (Noticee No.3) and Avnish Srivastava (Noticee No.4).

<u>Disclosure to the Stock Exchanges regarding deviation from the purpose of the preferential issue:</u>

44. As regards the disclosure to the Stock Exchanges regarding SBL's deviation from the purpose of the preferential issue, I note that Clause 43 of the Listing Agreement read with Regulation 32 of SEBI (LODR) Regulations, 2015, inter alia, states that "*the Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilisation of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilisation of funds and/or actual profitability*."

45. Further, in this regard, I note from the IR that SBL was listed on the Delhi Stock Exchange (DSE) as "Siddarth Businesses Ltd." during the time of preferential allotment dated 13.12.2013 and subsequently, was listed on BSE with effect from 04.07.2014. Therefore, as per Clause 43 of the Listing Agreement read with Regulation 32 of SEBI (LODR) Regulations, 2015, Noticee No.1 was required to submit the details of deviations done by SBL, such as giving loans & advances, repayment of loan, purchase of cattle and to meet working capital requirements to DSE, on a quarterly basis, which it failed to do. Further, no records have been provided by Noticee No.1 to show that it had actually complied with the requirement.

46. As regards the allegation of deviation and misutilization of the preferential issue proceeds, I note that Noticee No. 1, 3 & 4 have not submitted their replies in the matter. Further, it is already established in the preceding paragraphs that since Noticee No. 1 had used funds to the tune of Rs. 4.16 crores out of preference issue proceeds of Rs. 4.33 crores, raised by it on December 13, 2013 for purposes such as purported purchase of cattle, giving loans & advances, repayment of liabilities to CSK Infrastructure Pvt. Ltd. and miscellaneous purposes (cash for own purpose and funds transfer to entities), which were not mentioned as the objects of the preferential issue, as presented to the shareholders in the notice of postal ballot dated 12.10.2013, it has committed fraud as defined under Regulation 2(1)(c) of PFUTP Regulations, 2003 by deviating and misutilising the preferential issue proceeds which is prohibited under the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (f) and (r) of PFUTP Regulations, thereof. Here I rely upon the relevant portion of the Judgement of Hon'ble SAT in **Shivam Investments Vs.**

SEBI, wherein it is stated that "6. *...The scope of the term 'fraud' as defined above is wide enough to take in its sweep any act which disturbs the equilibrium of the market. It is not necessary that the fraudulent act should result in price Manipulation. There are other several wrong doings envisaged in the definition of fraud as mentioned above*….". Further, the Hon'ble Supreme Court in **Kanaiyalal Baldevbhai Patel v. SEBI (2017) 15 SCC** observed that "*It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation*."

47. In this regard, I also note that Noticee Nos. 3 & 4 being on the board of the company, as independent directors, from the date of passing of the board resolution for issue of preferential shares i.e. 12.10.2013 to the date when the preferential allotment money of Rs. 4.33 crores was fully utilised i.e. 07.03.2014, were actively involved in activities of the company including the said utilization of preferential issue proceeds. I note that an independent director is a non-executive director of a company who helps the company in improving corporate credibility and governance standards, therefore they had the added responsibility to monitor the end use of the funds that were raised through preferential allotment. Further, I also note that Noticee No.3 has signed the Information Memorandum of Noticee No.1 dated 25.06.2014 and is shown to be on the Board of Directors of Noticee No. 1 in the Annual report 2013-14. Therefore, being the independent directors and by taking active part in the preferential allotment made on 13.12.2013, it can be assumed that they had have sufficient knowledge of the same. In view of the above, I find that Noticee No. 1, 3 & 4 have violated Regulations 3 (a) (b) (c) (d), 4(1),

4(2)(f) and 4(2)(r) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a) (b) (c) of the SEBI Act, 1992.

48. As regards the allegation of deviation and misutilization of the preferential issue proceeds, I also note that, Noticee No.2 has stated that he was not a shareholder, director or an executive director as alleged in the notice during the period 01.10.2013 to 17.06.2014 and he was only associated with Notice No. 1 up to 06.08.2013. He also stated that the said alleged preferential allotment was proposed and undertaken by the new shareholder group to the exclusion of the Noticee No.2, the necessary notices, board resolution and also the corporate filings was undertaken by Mr. Manish Mishra and his associates only. Further, he stated that he was not even an authorized signatory or representative of the Company and was not holding any position in the board of directors as alleged in the Notice. In the year 2013, the erstwhile shareholder group ("Jalan Group") along with the Noticee had finalized the transfer of the Jalan Group shareholding in the Company to one Mr. Manish Mishra, residing at 42 Nehru Nagar, Gowda Road, Meerut 250001 and his associates. Upon transition of the Company the Noticee was neither sent any notices of the board meeting/ shareholders meetings, nor was he signatory to any of the bank accounts opened by the new shareholder group nor had any say or association with the Company or its associates in any capacity whatsoever. The Company was handed over the resignation of the Noticee dated 06.08.2013, from the post of director and thereafter the Noticee had nothing to do with any work, operations, business or management of the Company. The Noticee has submitted that even though he was not a part of the board resolution dated 10.10.2013 and modified MOA, however, he was shown as the executive director

of the Noticee No.1 in the Annual report for the FY 2014, which is incorrect as he had resigned on 06.08.2013. He also stated that he had sent several reminder letter but Noticee No. 1 had not filed the Resignation Form with Ministry of corporate affairs until 06.06.2014

49. Upon perusal of the submission of Noticee No. 2 and the material available on record, I note that he resigned from the Board of the Company on 06.08.2013 prior to the allotment being made on 13.12.2013. Further, I note that the resignation letter dated 06.08.2013 was not submitted to the Ministry of Corporate Affairs by Noticee No.1 till June 6, 2014, despite a reminder dated 30.08.2013 issued by Noticee No.2. I also note that as per Section 168 of the Companies Act, 2013 (which came into existence in 2014) a director may resign from his office by giving notice in writing to the company and the board shall on receipt of such notice take note of the same. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. In this case upon perusal of the copy of the resignation letter dated 06.08.2013, it is observed that the Noticee has specified that he tenders the resignation from the directorship of the company with effect from 06.08.2013. Here, I would like to refer to the case of the Hon'ble Supreme Court in the matter of **State of Karnataka vs. Pratap Chand & ors**, 1981 AIR 872, 1981 SCR (3) 200, where the court had ruled that the Director is only liable when he is responsible for the operations of the company and for the acts done with his consent and connivance. Thus, on proving the same, the directors can be free from personal liability and in this case Noticee No. 2 had tendered his resignation prior to the preferential allotment and was also not aware of the events of the company

in anyway as specified above. Additionally, I also note that his name does not reflect in the Annual report for FY 2013-14, of Noticee No.1 as a Director. Therefore, I find that the liability for monitoring the use of proceeds from the said issue and responsibility for ensuring the transfer of the said proceeds cannot be imposed on Noticee No.2 and he cannot be said to have violated Regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a) (b) (c) of the SEBI Act, 1992.

50. Further, as regards the allegation of failure to disclose the details of the deviation done by Noticee No. 1, I note that Noticee No. 1 has not submitted its replies in the matter. Further, it is already established in the proceeding paragraphs how Noticee No. 1 executed the act of deviating and misutilising the preferential issue proceeds also how despite being listed on DSE and BSE had failed to submit the details of deviation done by it as per Clause 43 of the Listing Agreement read with Regulation 32 of SEBI (LODR) Regulations, 2015. Also no record has been provided by the company at the time of investigation and during current the adjudication proceedings to show that it had actually complied with the requirement of the above mentioned law. Further, I am of the view that the disclosures requirements under the respective regulations serve very important purposes. The stock exchange is informed via disclosures so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Moreover, correct and timely disclosures play an essential role in the proper functioning of the securities market and the failure to do so may result in depriving the investors from taking well informed investment decision.

51. In this context, I would like to reply upon the, Hon'ble Securities Appellate Tribunal ('SAT') in the matter of **Coimbatore Flavors & Fragrances Ltd. vs SEBI** (Appeal No. 209 of 2014 order dated August 11, 2014), has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same*." Therefore, I find that Noticee No. 1 has clearly violated Clause 43 of the Listing Agreement read with Regulation 32 of LODR Regulations, 2015 and Section 21 of SCRA, 1956.

***Issue II*: Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA, as applicable?**

52. The Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** *{[2006]5 SCC 361}* held that:

"*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

53. In the matter of SEBI vs Kishore R. Ajmera, (supra) the Hon'ble Supreme Court held that:

“the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to pre-empt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conductive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light”.

54. Therefore, in view of the violations as established above and the facts and circumstances make Noticee No. 1, 3 & 4, liable for imposition of penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA, which reads as below –

SEBI Act, 1992

“Penalty for fraudulent and unfair trade practices.

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

SCRA

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

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

***<u>Issue III</u>*: If yes, then what should be the quantum of penalty?**

55. While determining the quantum of penalty under Section 15 HA of the SEBI Act, 1992 and Section 23 E of the SCRA it is important to consider the factors relevantly as stipulated in Section 15 J of the SEBII Act, 1992 and Section 23J of the SCRA, respectively, which read as under: -

<u>SEBI ACT, 1992</u>

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.

<u>SCRA</u>

23J *- While adjudging quantum of penalty under Section 23-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.

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C, shall be and shall always be deemed to have been exercised under the provisions of this section.

56. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee No. 1, 3 & 4 and the loss suffered by the investors as a result of their act. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee No. 1, 3 & 4 or the extent of loss suffered by the investors as a result of the aforesaid violations by the Noticees is not available. Further, material available on record does not show that the said failure is repetitive. However, I observe that the Company by not utilizing the IPO proceeds for the purpose for which it was raised and by not making disclosures regarding the said deviations by Noticee No.1, have defrauded the investors at large and ultimately would have affected the investment decisions of the prospective investors at large. Further, there is no doubt that investors have been induced by the misleading and specious statements disclosed in the Offer Document and a fraud has been committed upon the investors and shareholders of the Securities Market more particularly upon the subscribers to shares of SBL. Such practices employed by the

Company and its directors, are serious in nature, thus, attract and deserve considerable penalties. The modus operandi adopted by the Noticee No. 1, 3 and 4 is detrimental to the smooth functioning of the securities market, and hence, deserve to be viewed seriously.

ORDER

57. After taking into consideration the facts and circumstances of the case, gravity of violations and the material on record, and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules also the factors stipulated in Section 15J of the SEBI Act, 1992, I, hereby impose the following penalty under Section 15 HA of the SEBI Act, 1992 on the Noticee No. 1, 3 & 4 for the violation of Regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) & 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A (a) (b) (c) of the SEBI Act, 1992 and under Section 23-I of the SCRA read with Rule 5 of SC(R) Rules also the factors stipulated in Section 23J of SCRA, I, hereby impose the following penalty under Section 23E of SCRA on Noticee No.1 for the violation of Clause 43 of the Listing Agreement read with Regulation 32 of LODR Regulations, 2015 and Section 21 of SCRA, 1956:

Noticee	**Violation and Penal Provisions**	**Penalty and Penal provision**
Shivamshree Businesses Ltd. (PAN: AAACS0442F) (Noticee No.1)	Clause 43 of the Listing Agreement read with Regulation 32 of LODR Regulations, 2015	**Rs. 2,00,000/- (Rupees Two Lakhs Only)**

Sudharshan Jha (PAN: AEJPJ5427M) (Notice No.3)	and Section 21 of SCRA, 1956 by Noticee No.1	under section 23 E of SCRA* on Noticee No.1
Avnish Srivastava (DIN: 00516840) (Noticee No.4)	Regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a) (b) (c) of the SEBI Act, 1992 by Noticee No. 1, 3 & 4	**Rs. 5,00,000/- (Rupees Five Lakh Only) under section 15 HA of SEBI Act, 1992 on Noticee No. 1, 3 & 4 to be paid Jointly and Severally.**

58. *SEBI has appealed the order of Hon'ble SAT in the matter of Suzlon Energy Ltd. Vs. SEBI, in order to ascertain whether penalty can be imposed under Section 23E of SCRA for violations of provisions of Listing Agreement and the same is pending before the Hon'ble Supreme Court. Accordingly, the enforcement of this order w.r.t. penalty imposed under Section 23E of SCRA shall be subject to the outcome of the appeal filed by SEBI before the Hon'ble Supreme Court on July 19, 2022.

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

ENFORCEMENT →Orders →Orders of AO →PAY NOW

The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 1 of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee):

b) Name of the case / matter:

c) Purpose of Payment: Payment of penalty under AO proceedings

d) Bank Name and Account Number:

e) Transaction Number:

60. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

61. In terms of the Rule 6 of the SEBI Adjudication Rules and Rule 6 of SCR Adjudication Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Place: Mumbai **G. Ramar**

Date: October 18, 2022 **Adjudicating Officer**