

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AS/VC/2022-23/25158-25168)**

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 THE SECURITIES CONTRACT (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of

Noticee No.	Name and PAN of the Noticee
1	Aarti Singal (PAN- AEFPS6299L)
2	Aniket Singal (PAN- CZCPS6126E)
3	Sanjay Singal (PAN- ANRPS7985C)
4	Sanjay Singal HUF (PAN- AAMHS8301N)
5	Sarvottam Advisory Private Limited (PAN- AAMCS7291N)
6	Jagruti Infra Developers Private Limited (Earlier known as Akriti Advisory Services Private Limited) (PAN- AAICA9057G)
7	Sunita Agarwal (PAN- ACNPA9499E)
8	Anurag Agarwal (PAN- AQRPA2442B)
9	Gopal Babu Agarwal (PAN- ACLPA5507B)
10	Pramod Agarwal (PAN- AEOPK6930M)
11	Priti Agarwal (PAN- AAGPA1904M)

**In the matter of Superspace Infrastructure Limited
(Earlier known as Surabhi Chemicals and Investment Limited)**

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation into the trading activities of certain entities in the scrip

of Surabhi Chemicals and Investments Limited (now known as Superspace Infrastructure Limited) (*hereinafter referred to as “**SIL/SCIL/the Company**”*) for the period August 1, 2012 to January 6, 2015 (*hereinafter referred to as “**Investigation Period**”*). The focus of the investigation was to examine the following:

- a) Whether there were any disclosure violations under SEBI (Prohibition of Insider Trading) Regulations, 1992/2015 (*hereinafter referred to as “**SEBI (PIT) Regulations, 1992/2015**”*) and/or (can be deleted) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (*hereinafter referred to as “**SEBI (SAST) Regulations, 2011**”*) during the period of investigation.
 - b) Whether there were any violations of provisions of Securities Contracts (Regulations) Act, 1956 (*hereinafter referred to as “**SCRA, 1956**”*) by entities mentioned in Suspicious Transaction Reports (STRs);
2. Pursuant to the investigation, it was observed that Aarti Singal (Noticee no. 1) Aniket Singal (Noticee no. 2), Sanjay Singal (Noticee no. 3), Sanjay Singal HUF (Noticee no. 4), Sarvottam Advisory Private Limited (Noticee no. 5), Jagruti Infra Developers Private Limited (Noticee no. 6), Sunita Agarwal (Noticee no. 7), Anurag Agarwal (Noticee no. 8), Gopal Babu Agarwal (Noticee no. 9), Pramod Agarwal (Noticee no. 10), Priti Agarwal (Noticee no. 11) and (collectively referred to as “**Noticees**” / “**You**”) had not made any disclosures till date with respect to the acquisition of their shares and violated the provisions of Regulation 29 (1) read with 29 (3) of SEBI (SAST) Regulations 2011. It was also observed that Noticee no. 5 and 6 had entered into the transactions with entities mentioned in Suspicious Transaction Reports (*hereinafter referred to as ‘**STRs**’*) where the transactions prior to the dematerialization of shares as highlighted in the STRs were off-market transactions when the share were held in physical mode. It was observed that none of these transactions prior to the dematerialization of shares conform the conditions of Spot Delivery Contract provisions as mentioned at Section 2 (i) read with sections 13, 16 & 18 of the SCRA, 1956 read with SEBI Notification G.S.R 184 (E) dated March 1, 2000.

APPOINTMENT OF ADJUDICATING OFFICER

3. In view of the above, SEBI initiated adjudication proceedings and appointed Shri Prasanta Mahapatra as the Adjudicating Officer *vide* order dated March 02, 2022, under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules**') read with section 19 of the SEBI Act, 1992 to inquire into and adjudge under:
 - a) Section 15A (b) of the SEBI Act, 1992 for the alleged violations by the Noticees of Regulation 29 (1) read with 29 (3) of SEBI (SAST) Regulations, 2011; and
 - b) Section 15A (b) of the SEBI Act, 1992 and under section 23H of the SCRA, 1956 for the alleged violations by the Noticee no. 5 and 6 of Section 2(i) read with Section 13, 16 & 18 of the SCRA, 1956 read with SEBI notification G.S.R 184 (E) dated March 1, 2000.

Pursuant to the transfer of erstwhile Adjudicating officer Shri Prasanta Mahapatra, the instant matter *vide* order dated June 06, 2022, was transferred to the undersigned.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice dated May 31, 2022 (hereinafter referred to as '**SCN**') was served on the Noticees, in terms of the provisions of rule 4 of the SEBI Adjudication Rules read with Section 15-I of the SEBI Act, 1992, requiring the Noticees to show cause as to why an inquiry should not be held against them in terms of Rule 4 of SEBI Adjudication Rules read with Section 15-I (1) & (2) of SEBI Act, and penalty, if any, should not be imposed on Noticees under rule 5 of the SEBI Adjudication rules and under Section 15 A(b) of SEBI Act, 1992 and on Noticee no. 5 and 6 under Section 23H of SCRA, 1956 for the aforesaid alleged contraventions done by them.

5. The details of the delivery and the mode of delivery of the SCN to the Noticees is given below:

Table No. 1

Sr. No.	Entity	SCN Delivery status: Yes / No	Mode of the delivery
1	Noticee no. 1	Yes	SPAD*
2	Noticee no. 2	Yes	SPAD
3	Noticee no. 3	Yes	SPAD
4	Noticee no. 4	Yes	SPAD
5	Noticee no. 5	Yes	Newspaper publications**
6	Noticee no. 6	Yes	SPAD
7	Noticee no. 7	Yes	SPAD
8	Noticee no. 8	Yes	SPAD
9	Noticee no. 9	Yes	SPAD
10	Noticee no. 10	Yes	SPAD
11	Noticee no. 11	Yes	SPAD

* Speed post Acknowledgement Due is referred to as SPAD.

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6. Therefore, from the aforesaid table, I note that the service of SCN to all the Noticees was completed and sufficient notice was given to them.
7. In the interest of natural justice, opportunities of hearing through video conference on cisco Webex platform, were granted to the Noticees. The detail of Hearing Notices (hereinafter referred to as 'HN') served to the Noticees and hearings conducted is as under:

Table No. 2

Noticee No.	HN Delivery status: Yes / No	Hearing conducted / availed: Yes / No	Date of HNs	Date on which hearing scheduled / conducted
Noticee no. 1	Yes	Yes	1. August 30, 2022	1. September 19, 2022 (Hearing adjourned on request of AR*)
Noticee no. 2	Yes	Yes	2. September 19, 2022	2. September 26, 2022 (Hearing postponed on request of AR)
Noticee no. 3	Yes	Yes	3. September 25, 2022	3. October 14, 2022 (Hearing rescheduled)
Noticee no. 4	Yes	Yes	4. October 14, 2022	4. October 20, 2022 (Hearing conducted)
Noticee no. 5	Yes (Through Newspaper publications)	Not availed	December 30, 2022	January 09, 2023 (Not availed)
Noticee no. 6	Yes	Not availed	1. August 30, 2022 2. September 21, 2022	1. September 20, 2022 (Not availed) 2. October 06, 2022 (Not availed)
Noticee no. 7	Yes	Yes	August 30, 2022	Hearing of Noticee no. 8 and 9 was scheduled on September 19, 2022 and hearing of Noticee no. 7, 10 and 11 was scheduled on September 20, 2022. Considering the request of AR, the hearing in respect of Notice no. 7, 8, 9, 10, and 11 was conducted on September 19, 2022.
Noticee no. 8	Yes	Yes	August 30, 2022	
Noticee no. 9	Yes	Yes	August 18, 2022	
Noticee no. 10	Yes	Yes	August 30, 2022	
Noticee no. 11	Yes	Yes	August 30, 2022	

* Authorised Representative is referred to as AR.

8. The details of replies to the SCN submitted by the Noticees are as follows:

Table No. 3

Sr. No.	Entity	Reply given: Yes / No	Date of reply
1	Noticee no. 1	Yes	August 10, 2022
2	Noticee no. 2	Yes	August 10, 2022
3	Noticee no. 3	Yes	August 10, 2022
4	Noticee no. 4	Yes	August 10, 2022
5	Noticee no. 5	No	-
6	Noticee no. 6	No	-
7	Noticee no. 7	Yes	September 01, 2022
8	Noticee no. 8	Yes	September 01, 2022
9	Noticee no. 9	Yes	September 01, 2022
10	Noticee no. 10	Yes	September 01, 2022
11	Noticee no. 11	Yes	September 01, 2022

9. The allegations levelled against the Noticees in the SCN are summarised as under:

“Change in Shareholding and disclosures under SEBI (SAST) Regulations 2011 and SEBI (PIT) Regulations 2015:

Notice no. 1, 2, 3 and 4 (Singal Family)

- 9.1. It was observed that during the IP, following corporate actions were announced by SCIL:
- a) a bonus issue of 9:1 i.e. 9 shares for every 1 shares held with record date as August 11, 2012.
 - b) a stock split from 10:1 i.e. from a Face Value (FV) of Rs. 10 to Face value (FV) of Rs. 1 with record date as April 12, 2013.
- 9.2. It was also observed that Noticee no. 1, 2, 3, and 4 (Aarti Singal, Aniket Singal, Sanjay Singal, Sanjay Singal HUF/ Collectively called as ‘**Singal Family**’) were allotted shares

in the preferential issue by the company on December 31, 2012. Prior to that said allotment, all the 4 Noticees had nil shareholding as provided in the table below:

Table No. 4

Name	Period				Change
	Prior to December 31, 2012	As on Quarter ending December 2012	During various quarters between December 2012 to December 2014	As on Quarter ending December 2014	
Aarti Singal	0	4.6230	4.6230	4.6230	Nil
Aniket Singal	0	4.6230	4.6230	4.4831	- 0.1399
Sanjay Singal	0	4.6230	4.6230	4.6230	Nil
Sanjay Singal HUF	0	4.6230	4.6230	4.6230	Nil
Total	0	18.492	18.492	18.3521	- 0.1399

9.3. Further, from the examination of KYC details and fund flow of the said preferential allotment, it was observed that Sanjay Singal HUF is Mr. Sanjay Singal, and Ms Aarti Singal is the wife of Sanjay Singal and Aniket Singal is the son of Sanjay Singal. Since all the Noticees are immediate relatives of each other, therefore, they are deemed to be acting as “Persons acting in Concert” (hereinafter referred to as “PAC”) as per the regulation 2(1)(q) of SEBI (SAST) Regulations, 2011 for the aforesaid acquisition of shares in the preferential issue on December 31, 2012. Further, it is alleged that non-disclosure of their acquisition of 18.492% of share capital of the company in the preferential issue on December 31, 2012 attracts the provisions regarding of Disclosure of acquisition and disposal under Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations 2011.

9.4. In this regard, vide email dated June 14, 2021, BSE had confirmed that BSE had not received any disclosure under SEBI (SAST) / (PIT) Regulations from the aforesaid 4 Noticees during the period August 1, 2012 to January 6, 2015. Further, information regarding the disclosures made to the Company and the Stock Exchanges by the aforesaid 4 Noticees was sought vide letters dated June 29, 2021. However, the aforesaid entities stated that they were not able to trace the documents. No other reply had been provided by them.

9.5. In view of the above records from BSE and the evidence available on the records from Noticees regarding the disclosures made by them, it is alleged that no disclosures were

ever made by the aforesaid 4 Noticees to either the Company or to BSE pursuant to preferential allotment by the Company. Therefore, it is alleged that Noticee no. 1, 2, 3 and 4 as PAC had violated the provisions of Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations 2011.

9.6. The details of non-compliance by the Singal family with respect to the provisions of Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations 2011 is as given below:

Table No. 5: Details of non-compliance by Singal family as PAC

Name of the Acquirer/ Seller	Date of the transaction	Sale (-ve) / purchase (₹)	Shareholding of the acquirers / sellers (in %)		Compliance		Delay (in days)	Alleged Violations
			Before acq/ sale	After acq/ sale	Due date	Actual date		
Aarti Singal	31.12.12	4000000	0	4.6230	02.01.13	No disclosure made	Continuing	Reg 29(1) read with 29(3) of SEBI (SAST) Regulations 2011
Aniket Singal			0	4.6230				
Sanjay Singal			0	4.6230				
Sanjay Singal HUF			0	4.6230				
Total		4000000	0	18.492				

Noticee No. 7, 8, 9, 10 and 11

9.7. It was observed from the Investigation Report that Noticee no. 7, 8, 9, 10 and 11 (Sunita Agarwal, Anurag Agarwal, Gopal Babu Agarwal, Pramod Agarwal, and Priti Agarwal / Collectively called as “**Agarwal Family**”) were allotted shares in the preferential issue by the company on December 31, 2012 as provided in table below:

Table No. 6: Allotment of shares and % shareholding of Noticee 7, 8, 9, 10 and 11 as PAC

Name	Shares	% shareholding
Sunita Agarwal	100000	0.4623
Anurag Agarwal	100000	0.4623
Gopal Babu Agarwal	500000	2.3115
Pramod Agarwal	500000	2.3115
Priti Agarwal	100000	0.4623
Total	1300000	6.0099

On examination of KYC of aforesaid 5 Noticees following points were observed from the investigation report:

- a) All the aforesaid 5 Noticees had common address during the Investigation period.
- b) Noticee no. 9 (Gopal Babu Agarwal) and 10 (Pramod Agarwal) are brothers.
- c) Noticee no. 11 (Priti Agarwal) is the wife of Noticee no. 9 (Gopal Babu Agarwal)
- d) Noticee no. 7 (Sunita Agarwal) is wife of Noticee no. 10 (Pramod Agarwal)
- e) Noticee no. 8 (Anurag Agarwal) is son of Noticee no. 10 (Pramod Agarwal)

9.8. Further, on the examination of the fund flow for the said acquisition of shares by the aforesaid 5 Noticees as provided in table below, it was observed that the funding for the acquisition of shares under the preferential allotment by the Noticee no. 7, 8, 9 and 11 (Sunita Agarwal, Anurag Agarwal, Gopal Babu Agarwal and Priti Agarwal) had been made under the control of Noticee no. 10 (Pramod Agarwal) which shows that there was informal agreement or understanding among them and they indirectly co-operate for acquisition of shares of SIL and thereby they fall within the definition of PAC in terms of provisions of SEBI (SAST) Regulations, 2011.

Table No. 7: Fund flow w.r.t. acquisition of shares by the Agarwal Family

Name	Fund flow from	Amount (₹)	Fund flow from	Amount (₹)
Anurag Agarwal	Pramod Trading Company (Proprietor: Pramod Kumar Agarwal)	15,00,000	Maruti Ispat and Energy Pvt Ltd (Dir: Pramod Kumar Agarwal)	30,00,000
Gopal Babu Agarwal	Pramod Trading Company (Proprietor: Pramod Kumar Agarwal)	75,00,000	Maruti Ispat and Energy Pvt Ltd (Dir: Pramod Kumar Agarwal)	75,00,000
Pramod Agarwal	Agarwal Foundries Pvt. Ltd. (Proprietor Pramod Agarwal)	75,00,000		
Priti Agarwal	Pramod Trading Company (Proprietor: Pramod Kumar Agarwal)	15,00,000	Agarwal Foundries Pvt. Ltd. (Proprietor Pramod Agarwal)	15,00,000
Sunita Agarwal	Pramod Trading Company (Proprietor: Pramod Kumar Agarwal)	15,00,000	Maruti Ispat and Energy Pvt Ltd (Dir: Pramod Kumar Agarwal)	30,00,000

9.9. Vide email dated September 17, 2021, BSE had confirmed that BSE had not received any disclosure under SEBI (SAST) / (PIT) Regulations from the abovementioned 5 Noticees during the period August 1, 2012 to January 6, 2015. Email of BSE is placed.

Further, vide email dated September 15, 2021 and reminder letter dated November 15, 2021, information regarding disclosures was sought from the Notices 7, 8, 9, 10 and 11 and it was submitted by Gopal Babu Agarwal and Pramod Agarwal that they are brothers but they did not have a common objective or purpose and their investment was limited to them and their wives and therefore, they have never surpassed the threshold limit of 5%. Further, Gopal Babu Agarwal and Pramod Agarwal also submitted that they did not make disclosures under SAST Regulations, 2011 with the Company or the Exchange.

9.10. In view of the available evidence provided by BSE and the fact that the funding for the acquisition of shares under the preferential allotment by all the Noticees no. 7, 8, 9 and 11 was made under control of Noticee no.10 (Pramod Agarwal), it is alleged that the above mentioned 5 Noticees were PAC in terms of provisions of SEBI (SAST) Regulations, 2011 and has not made any disclosures with respect to acquisition of shares, amounting to 6.0099% shareholding of the company, thereby violated provisions of Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations 2011. Details are given in the table below:

Table No. 8: Details of non-compliance by the Agarwal Family

Name of the Acquirer/ Seller	Date of the transaction	Sale (-ve) / purchase	Shareholding of the acquirers / sellers (in %)		Compliance		Delay (in days)	Alleged Violations
			Before acq / sale	After acq / sale	Due date	Actual date		
Anurag Agarwal	31.12.12	1300000	0	0.4623	02.01.13	No disclosure made	Continuing	Reg 29(1) read with 29(3) of SEBI (SAST) Regulations 2011
Gopal Babu Agarwal			0	2.3115				
Pramod Agarwal			0	2.3115				
Priti Agarwal			0	0.4623				
Sunita Agarwal			0	0.4623				
Total		1300000	0	6.0099				

Noticee no. 5 and Noticee no 6

9.11. From the Investigation Report, following points were observed w.r.t the Noticee no. 5 and 6:-

- a) Noticee no. 5 (Sarvottam Advisory Private Limited) and Noticee no. 6 (Jagruti Infra Developers Private Limited) were connected through common directors during the Investigation Period as given in table below:

Table No. 9: Connections / Relationship between Noticee no 5 and Noticee 6

Director	Time Period			
	Sarvottam Advisory Pvt. Ltd.		Jagruti Infra Developers Pvt. Ltd.	
	From	To	From	To
Kavita Dipan Patel	January 20, 2009	July 16, 2012	October 19, 2010	July 15, 2012
Kanchan Ramesh Mokal	July 15, 2012	November 09, 2012	October 19, 2010	November 08, 2012
Dilip Jaisukhlal Doshi	November 02, 2012	July 10, 2019	November 01, 2012	July 11, 2019
Tapan Jaisukhlal Doshi	November 02, 2012	Till date	November 01, 2012	Till date

- b) Noticee no. 5 and 6 were under the same management
- c) Noticee no. 6 had shareholding in Noticee no. 5
- d) Both shared common phone number
- e) Off market share transfer was observed between Noticee no. 5 and 6 during Investigation period.
- f) Both had received shares in off-market from promoter (Parth) as mentioned below:

Table No. 10: Change in shareholding pattern of buyers (Noticee No. 5 and 6) of Parth (Promotor)

Name	Quarter ending June 2012		Quarter ending September 2012		Quarter ending December 2012		% change	
	Shares	% holding	Shares	% holding	Shares	% holding	June to September	September to December
Sarvottam Advisory Private Limited	715	0.0609	457000	3.8957	162250	0.7501	3.8348	-3.1456
Jagruti Infra Developers Private Limited	0	0.00	360600	3.0739	224100	1.0360	3.0739	-2.0379
Total	715	0.0609	817600	6.9696	386350	1.7861	6.9087	-5.1835

9.12. In view of the above mentioned table, it was observed that since both the aforesaid Noticee no. 5 and 6 were under the same management and control during the Investigation period and therefore, they fall within the definition of PAC. Further, vide email dated September 17, 2021, BSE had confirmed that BSE had not received any disclosure under SEBI (SAST) / (PIT) Regulations from the above mentioned two Noticees during the period from August 1, 2012 to January 6, 2015. In this regard, information was also sought from the Noticee no. 5 and 6 regarding the aforementioned disclosures, however, no reply was received.

In view of the above, it is alleged that no disclosures were made by Noticee no. 5 and 6 as PAC to either the Company or BSE. It is therefore alleged that Noticee no. 5 and 6 as PAC has violated the provisions of Regulation 29(1) read with 29(3) of SEBI (SAST) Regulations 2011.

Noticee no 5 and 6 - Suspicious Transaction Reports (STRs)

9.13. It was observed from the Investigation Report that Noticee no. 5 and Noticee no. 6 entered into the off-market transactions with entities mentioned in STRs as given below in the table:

Table No. 11: Details of transactions w.r.t. entities against whom STRs were received

Sr. No.	Entity Name	PAN	Type of Transaction	Transaction Date	Quantity
1	Haranathreddy Atla	ABLPA5057H	Dematerialization	07-Nov-2012	20,000
2	Manish Abhaykumar Gelda	AEHPG4889C	Dematerialization and Share received after stock split	13-Apr-2013	200,000

9.14. Transaction mentioned in the STRs are those transactions which took place prior to the dematerialization of shares i.e. when the shares were held in physical mode and these transactions are required to conform the conditions of Spot Delivery Contract provisions as mentioned at Section 2(i) read with sections 13, 16 & 18 of the SCRA, 1956 read with SEBI Notification G.S.R 184 (E) dated March 1, 2000.

Non-compliance of Spot Delivery Contract provisions by Noticee no. 5

9.15. From the Investigation report, it was observed that 20,000 shares of SCIL were dematerialized by the entity namely, Haranathreddy Atla ("Haranath") on November 07, 2012. Pursuant to sub-division as on April 13, 2013, 2,00,000 shares were credited

in his account. In response to the query raised by SEBI, the aforementioned entity responded that it purchased 2000 shares of SCIL for Rs 250 per share from Noticee no. 5 on the basis of newspaper publication made by Sarvottam Advisory Private Limited (Noticee no. 5). The aforementioned sale along with the consideration to the said sale took place on March 26, 2012. However, actual delivery to the shares could not take place within the time specified under section 2(i) of SCRA, 1956, since the shares were earlier held in the name of Rajen P Shah (HUF) and the certificate no. 993 was issued to the aforesaid entity only on May 21, 2012 in lieu of sub-division of earlier certificate no. 802 (held in name of Rajen P Shah). Thus the actual delivery could only have done after May 21, 2012. Hence, it was observed that aforesaid transaction does not conform to the Spot Delivery Contract provisions as mentioned in Section 2(i) read with sections 13, 16 & 18 of the SCRA, 1956 read with SEBI Notification G.S.R 184 (E) dated March 1, 2000.

The analysis of the above transaction is summarized as under:

Table No. 12: Analysis of transactions of Haranathreddy Atla (“Haranath”)

Seller	Quantity	Date of sale	Details of Consideration		Delivery details		
			Date	Amount	Date	Quantity	Remarks
Sarvottam	2000	March 26, 2012	March 27, 2012	500000	After May 21, 2012	2000	As the said certificate number 993 was issued only on May 21, 2012 in lieu of sub-division of earlier certificate no. 802

Non-compliance of Spot Delivery Contract provisions by Noticee no. 6

9.16. From the investigation report, it was observed that the entity namely, Manish Abhaykumar Gelda (“Manish”) received 2,00,000 shares of SIL pursuant to sub-division as on April 13, 2013. In this regard SEBI raised some queries and the entity namely, Manish responded to said query stating that he purchased 2000 shares SCIL for Rs 250 per share from Noticee no. 6 (Jagruti Developers Private Limited) based on newspaper advertisement dated February 7, 2012 (**Annexure-11**). Summary of the said transaction is given below:

Table No. 13: Analysis of transactions of Manish Abhaykumar Gelda (“Manish”)

Seller	Quantity	Date of sale	Details of Consideration		Delivery details		
			Date	Amount	Date	Quantity	Remarks
Jagruti Developers Private Limited	2000	May 25, 2012	May 25, 2012	500000	After June 26, 2012	2000	It is observed from the transfer register that the said shares were first transferred into the name of Mahadhan on June 26, 2012 (seller was Rajen P Shah HUF) and then were transferred to Manish on July 11, 2012.

9.17. It was observed from the available records that the sale and the consideration took place on May 25, 2012. However, the actual delivery of shares could not take place within the time specified under section 2(i) of SCRA, 1956 since earlier these shares were transferred in the name of Parth/Mahadhan (Promotor) and the actual delivery could only take place after June 26, 2012. Therefore, it is alleged that the aforesaid transaction does not conform to the of Spot Delivery Contract provisions.

9.18. In view of the above, it was found that both the Noticees did not conform the abovementioned conditions of Spot Delivery Contract provisions as mentioned at Section 2(i) read with sections 13, 16 & 18 of the SCRA, 1956 read with SEBI Notification G.S.R 184 (E) dated March 1, 2000. Further, it was also observed that SEBI had taken action against the Noticee no. 5 and Noticee no. 6 in the past also, therefore the Noticees called upon to show cause as to why an inquiry should not be held against them.”

10. Noticee 1, 2, 3 and 4 vide separate letters dated August 10, 2022, furnished reply to the SCN which are similar. Noticee 7, 8 and 10 vide letter dated September 01, 2022, furnished reply to the SCN. Noticee 9 and 11 vide letter dated September 01, 2022, furnished reply to the SCN. Noticee 5 and 6 have not furnished reply to the SCN.

11. The reply of Noticee 1, 2, 3 and 4 is summarised as under:

11.1. “The Company has made preferential allotment of Equity Shares in the year 2012 to Noticee. The Noticee believes that the Company has made such allotment after

making necessary compliances under applicable laws including Companies Act and SEBI regulations. After allotment of shares, the Company has filed Return of Allotment with the Registrar of Companies (ROC) and also got the shares listed on the Bombay Stock Exchange (BSE) in a transparent manner. Therefore, the shareholding of Noticee was appearing in the records of ROC and BSE since the date of allotment.

- 11.2. Pursuant to availability of shareholding of the Noticee on ROC and BSE public domain, Noticees shareholding was on public record and could be accessed by anyone. Therefore, Noticee submits that no loss has been caused to any investor or any other stakeholder due to alleged allegations of non- disclosure against the Noticee.*
- 11.3. Noticee has made relevant requisite disclosures to Company and Stock Exchange under SAST Regulations on acquiring share capital of Company together with shares held by him and his relatives aggregating to more than 5% of total paid capital of the Company. The said preferential allotment in question pertains to the year 2012, therefore due to lapse of approximately 10 years, the Noticee is unable to find the records and the relevant documents pertaining to the said transaction. It is unfortunate that in spite of our best efforts, the documents are not traceable on present date.*
- 11.4. The present notice has been issued to Noticee after an inordinate delay of 3,438 days without explaining any reasons of delay. The Noticee submits that delay in sending such notice has caused inconvenience to the Noticee as it is very difficult for the Noticee (being individual) to trace documents filed in the year 2012/2013. It will be grave injustice to the Noticee if he/she would be punished for such delayed notice as it is settled law that delayed proceedings defeat the very purpose of the proceedings.*
- 11.5. Further, Noticee has made investment into the Company as per the advice received from an Investment Advisor at that point in time. The Investment Advisor was solely responsible to ensure compliance/documentation in respect of investments of Noticee. Noticee is unable to trace said Investment Advisor and does not know his present whereabouts. The Noticee believes that Investment Advisor being expert in this field, must have complied with all the laws including*

the provisions under SEBI Act as well as the rules and regulations prescribed thereunder.

- 11.6. The Noticee has bonafidely purchased Equity Shares in the Company only on the basis of investment advice of aforesaid Investment Advisor. The Noticee has not sold the shares so far and not attained any disproportionate gain or unfair advantage from the alleged non-disclosures under SAST regulations.*
- 11.7. At present, the shares of the Company are not being traded and consequently, the investment of the Noticee is blocked. The Noticee requests your office to allow Noticee an exit option to enable to recover his/her investment which is blocked for a long time without any of his/her default.*
- 11.8. Noticee submits that he/she is making best efforts from his/her part to find the records and would certainly forward the same, if found. The Noticee also assures his/her complete co-operation in the present investigation.*
- 11.9. In the light of above, Noticee requests to not impose any penalty under section 15A(b) of the SEBI Act without giving opportunity to find documents and also without giving personal hearing to present his/her case before Adjudicating Officer.”*
12. Noticees 7, 8 and 10 filed a common reply vide letter dated September 1, 2022 and Noticees 9 and 11 have filed a common reply vide letter dated September 1, 2022. It is observed that the contents of both the letters are similar barring the details of their acquisitions. Submissions of the Agarwal Family are summarised as under:
- 12.1. “Before proceeding to deal with the allegations contained in the SCN, the following may be noted:*
- a) Company had made the preferential allotment of 99,00,000 shares on 31st December 2012.*
- b) The detail of acquisition of shares through preferential allotment by us is as under:*

Table No. 14

Sl. No.	Name of the person	Relationship	Quantity	% of total paid up capital of SIL
1.	Mr. Pramod Agarwal	Self	5,00,000	2.31
2.	Mr. Anurag Agarwal	Son of Mr. Pramod Agarwal	1,00,000	0.46
3.	Mrs. Sunita Agarwal	Wife of Mr. Pramod Agarwal	1,00,000	0.46
Total			7,00,000	3.23

Table No. 15

Sl. No.	Name of the Person	Relationship	Quantity	% of total paid up capital of SIL
1.	Mr. Gopal Babu Agarwal	Self	5,00,000	2.31
2.	Mrs. Priti Agarwal	Wife of Mr. Gopal Babu Agarwal	1,00,000	0.46
Total			7,00,000	2.77

- c) SEBI, for the first time, vide its email dated 15th September 2021 enquired us about the acquisition of shares of the company through preferential allotment and thereafter again vide letter dated 15th November, 2021 sought the same information, however the said email remained unanswered inadvertently.
- d) Vide our letter dated 24th November 2021, SEBI was, inter alia, informed that Mr. Pramod Agarwal, Mr. Anurag Agarwal and Mrs. Sunita Agarwal are not "persons acting in concert" with Mr. Gopal Babu Agarwal and Mrs. Priti Agarwal and hence there is no need to file disclosure under SEBI (SAST) Regulations, 2011.

12.2. At this stage, it is to be noted that the present SCN has been issued on 31st May 2022 alleging the non-disclosure on our part for the preferential allotment made on 31st December 2012. The knowledge about the said preferential allotment made by the Company was in public domain (BSE Website) since December 2012. Hence, there is a delay of almost 10 years in issuance of the present SCN

and because of such inordinate delay today we are not in a position to give in detail the reason for acquiring the shares of the company in December 2012 nor does Mr. Pramod Agarwal remembers the reason for fund transfer to his brother Mr. Gopal Babu Agarwal and his wife. Therefore, on this ground alone the SCN is liable to be disposed of without imposition of any penalty.

12.3. *In this regard attention is drawn to the Judgment of Hon'ble Tribunal in the matter of Mr. Rakesh Kathotia vs. SEBI (Appeal No.7 of 2016, date of Decision 27th May, 2019). Wherein it was inter alia held as under:*

"21In our view, there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellant for the alleged violation. In our opinion, much water has flown since then and, at this belated stage, the appellant cannot be penalized for the alleged violation which in any case was substantially complied with under Chapter III of the Regulations.

22 ... The Tribunal, however, in the aforesaid decisions further went on to hold that in the absence of a time limit prescribed for issuing a show cause notice or for completing the adjudicating proceedings, SEBI cannot arbitrarily delay the procedure and must take all reasonable steps to initiate and complete the proceedings in accordance with law as expeditiously as possible. The Tribunal also held that the Regulator should always make an endeavor to take prompt action against the defaulting Companies in order to render speedy and timely justice.

23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.II SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3

SCC 695. The Supreme Court recently in the case of *Adjudicating Officer, SEBI vs. Bhavesh Pabari* (2019) SCC Online SC 294 held:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc. "

12.4. The ratio laid down by the aforesaid Judgment has been followed in the matter of *Ashok Shivilal Rupani & Anr. Vs. SEBI* (Appeal No. 417 of 2018, date of Decision 22nd August, 2019) and *Ashlesh Shah vs. SEBI* (Appeal No. 169 of 2019, Date of Decision 31st January, 2020) also.

12.5. Now dealing with the allegations in the SCN, our response to which is twofold as under:

Reply of Noticee 7, 8 and 10 (Sunita Agarwal, Pramod Agarwal and Anurag Agarwal)

- a) *Firstly, the investment made by us in the Company amounted to acquisition of only 3.23% shareholding of the Company and hence no disclosure was required under Regulation 29(1) read with Regulations 29(3) of SEBI (SAST) Regulations, 2011.*
- b) *Secondly, Mr. Gopal Babu Agarwal and Mrs. Priti Agatwal are not "person acting in concert" with us under Regulation 2(1)(q) of SEBI (SAST) Regulations, 2011.*

Reply of Noticee 9 and 11 (Gopal Babu Agarwal and Priti Agatwal)

- a) *Firstly, the investment made by us in the Company amounted to acquisition of only 2.77% shareholding of the Company and hence no disclosure was required under Regulation 29(1) read with Regulations 29(3) of SEBI (SAST) Regulations, 2011.*
- b) *Secondly, Mr. Pramod Agarwal, Mr. Anurag Agarwal and Mrs. Sunita Agarwal are not "person acting in concert" with us under Regulation 2(1)(q) of SEBI (SAST) Regulations, 2011.*

12.6. *It may be noted that for a person to be covered under the definition of "person acting in concert" as mentioned above, there has to be a common objective or purpose for acquiring the shares of the Company pursuant to any agreement or understanding (formal or informal and direct or indirect cooperation) with the acquirer. In the present case, Noticee 7, 8 and 10 (Sunita Agarwal, Pramod Agarwal and Anurag Agarwal) were not "person acting in concert" with Noticee 9 and 11 (Gopal Babu Agatwal and Priti Agarwal) for the following reasons:*

- a) The place of residence of Mr. Gopal Babu Agarwal and Mr. Pramod Agarwal is not same. Mr. Gopal Agarwal & Mrs. Priti Agarwal's address is 1-8-673, Baghlingampally Road, Azamabad, Hyderabad-500020. Mr. Pramod Agarwal and his family's address is 5-4-83 Rama Towers, MG Road, Secunderabad-500 003 Telangana.*
- b) We had regular receipt and payment with several persons and entities and as on date it is not possible for us to recollect whether the transactions mentioned in the SCN were for what reason. However we vaguely remember that these transactions must be one of the temporary loans given by Mr. Pramod Agarwal.*
- c) Noticee 7, 8 and 10 were oblivious to the acquisition of shares of the Company by Noticee 9 and 11 under preferential allotment done on 31st December 2012. It is only after we received SEBI's email dated 15th September 2021 they came to know that the others had also acquired shares of the Company in December 2012 through preferential allotment.*
- d) Noticee 7, 8 and 10 did not have any common objective with Noticee 9 and 11 for acquisition of shares of the Company or exercising control over the Company pursuant to any agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares of the Company or exercise of control over the Company.*

12.7. *The Hon'ble Supreme Court in the matter Daiichi Sankyo Company Limited vs. Jayaram Chigurupati & Ors. [(2010) 7 SCC 449] had explained the concept of persons acting in concert and held as follows:*

"48. To begin with, the concept of "person acting in concert" under Regulation 2(1)(e)(I) is based on a target company on the one side, and on the other side two

or more persons coming together with the shared common objective or purpose of substantial acquisition of shares, etc. of the target company: Unless there is a target company, substantial acquisition of whose shares, etc. is the common objective or purpose of two or more persons coming together there can be no "persons acting in concert". For, dehors the target company the idea of "persons acting in concert" is as irrelevant as a cheat with no one as victim of his deception. Two or more persons may join hands together with the shared common objective or purpose of any kind but so long as the common object and purpose is not of substantial acquisition of shares of a target company they would not comprise "persons acting in concert".

49. The other limb of the concept requires two or more persons joining together with the shared common objective and purpose of substantial acquisition of shares, etc. of a certain target company. There can be no "persons acting in concert" unless there is a shared common objective or purpose between two or more persons of substantial acquisition of shares, etc. of the target company. For, dehors the element of the shared common objective or purpose the idea of "person acting in concert" is as meaningless as a criminal conspiracy without any agreement to commit a criminal offence. The idea of "persons acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition or substantial acquisition of shares, etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares, etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares, etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the sine qua non for the relationship of "persons acting in concert" to come into being.

55. Regulation 2(l)(e)(2) defines "person acting in concert". It is a deeming provision. It has to be read in conjunction with Regulation 2(1)(e)(l) which states that person acting in concert comprises of persons who in furtherance of a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly cooperate by acquiring or

agreeing to acquire shares or voting rights in the target company or to acquire control over the target company.

57. Whether a person is or is not acting in concert with the acquirer would depend upon the facts of each case. In order to hold that a person is acting in concert with the acquirer or with another person it must be established that the two share the common intention of acquisition of shares of some target company. For example, there is no hard-and-fast rule that every foreign institutional investor (FII) would share with the sub-account(s) the common objective of acquiring substantial stakes or control in some target company. Whether in a given case an FII and its sub-account(s) have a common objective of making investment in India to earn profits in unit holders or whether they have a common objective of acquiring substantial stakes or control in some target company would depend on the facts of each case. In the former case Regulation 2(J)(e)(2){v} would not apply whereas in the latter case the said sub-regulation would apply. The above illustration brings out the true purport of the expression "unless the contrary is established" which expression finds place in Regulation 2(J)(e)(2)."

12.8. From the aforesaid judgment it is clear that when two or more persons are acquiring shares of a target company and if there is no common object and purpose for the same, then they would not be persons acting in concert.

12.9. The only basis in the SCN based on which the allegation has been made on us is that the funding for acquisition of shares under the preferential allotment by Noticee Nos. 7 to 11 was made under the control of Noticee No. 10 i.e. Mr. Pramod Agarwal.

12.10. It is submitted that the fund transfer to Mr. Gopal Babu Agarwal and Mrs. Priti Agarwal by Mr. Pramod Agarwal has nothing to do with the acquisition of shares by them through preferential allotment. The same could have been also done as per their own wish and decision. Mr. Gopal Babu Agarwal and Mrs. Priti Agarwal could have also taken a loan from any bank or NBFC or any other known person for subscribing the shares of the Company under preferential allotment. Merely because the funds were transferred by an entity connected to Mr. Pramod Agarwal, it cannot be alleged that the same was done for acquisition of shares under the preferential allotment.

12.11. *Considering the facts and circumstance of the present case reliance is placed on the judgment passed by the Hon'ble Securities Appellate Tribunal in the matter of Nikhil Mansukhani vs. SEBI (Appeal No. 96 of 2019, Date of decision 26th July, 2021) wherein it was inter alia held as under:*

"14 ... In Daiichi Sankyo Company Limited (supra), the Supreme Court explained the concept of persons acting in concert under Regulation 2(1)(e) and held as follows:-

15. The Supreme Court in brief held that two or more persons may join hands together with the shared common objective or purpose of any kind but so long as the common object and purpose is not of a substantial acquisition of shares of a target company they would not comprise persons acting in concert. The Supreme Court further held that there can be no persons acting in concert unless there is a shared common objective or purpose between two or more persons of substantial acquisition of shares of the target company.

17. In this light, the finding of the A0 that the appellants were acting in concert at the time when the warrants were being converted being common objective cannot be faulted in as much as it was the Company who were allotting the shares to the two groups and no one in the two groups could have any objection on that. However, it does not mean that the two groups were acting in concert.

19. The short question that arises is, whether the acquisition by J.C. Mansukhani of the 95,000 shares of the target company, namely, Man Industries (India) Limited was made while acting in concert with the other promoters, namely, the rival R C group. The deeming fiction of acting in concert would not apply in the instant case when there has been a consistent stand by the parties, namely, that the R C group and J C group were not acting in concert; that there were internal disputes between the two parties.

20. We find that in the instant case, the acquisition of 95,000 shares by J.C. Mansukhani was not intimated to the Company or to the Stock Exchange. Thus, a clear cut evidence is on the record to indicate that the other promoters were unaware of the acquisition made by J.C. Mansukhani when the shares were allotted on June 19, 2010. If the R C group was unaware or the Company was unaware, the question of acting in concert by the promoters cannot happen and the finding that the promoters, as a homogeneous group, have to be taken together and are deemed to be acting in concert is, thus, patently erroneous.

22. Thus, from the aforesaid we can safely conclude that quite apart that the two groups were not acting in concert there was no meeting of minds between the two groups leading to share a common objective or purpose for acquisition or substantial acquisition of shares of the target Company. In the absence of a shared common objective or purpose, the idea of the two groups acting in concert becomes meaningless. "

12.12. From what is stated above, it is clear that in spite of Mr. Gopal Babu Agarwal and Mr. Pramod Agarwal being an 'immediate relative' (as defined under Regulation 2(1)(1) of SEBI (SAST) Regulations, 2011) they cannot be stated to be a 'deemed to be persons acting in concert' and thus Mr. Gopal Babu Agarwal and Mrs. Priti Agarwal cannot be alleged to be persons acting in concert with thus Mr. Pramod Agarwal, Mr. Anurag Agarwal and Mrs. Sunita Agarwal for the acquisition of shares of the Company under the preferential allotment.

12.13. Further once it is established that Mr. Gopal Babu Agarwal and Mrs. Priti Agarwal are not persons acting in concert with Mr. Pramod Agarwal, Mr. Anurag Agarwal and Mrs. Sunita Agarwal, their shareholding in the Company is only 2.77% in case of Mr. Gopal Babu Agarwal and Mrs. Priti Agarwal and 3.23% in case of Mr. Pramod Agarwal, Mr. Anurag Agarwal and Mrs. Sunita Agarwal. As the minimum requirement to make a disclosure under Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011 is 5% shareholding or more, the same does not arise in the present case and consequently we cannot be held to be in violation of the same.

12.14. Above all we have not sold a single share from our holding nor we have ever attended any meeting of the Company or participated in the affairs of the company.

12.15. In view of the above, the SCN is liable to be disposed of without imposition of any penalty on us under Section 15A(b) of the SEBI Act."

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the charges levelled against the Noticees in the SCN, the submissions made by the Noticees in this regard and material available on record. The issues that arise for consideration in the present case are as follows:

I. Whether the Noticees have violated the following provisions:

- a) Violation of Regulation 29 (1) read with 29 (3) of SEBI (SAST) Regulations, 2011 by the Noticees?
 - b) Violation of Section 2(i) read with Section 13, 16 & 18 of the SCRA, 1956 read with SEBI notification G.S.R 184 (E) dated March 1, 2000 by the Noticee no. 5 and 6?
- II. Does the violation, if any, attract monetary penalty under section 15A (b) of the SEBI Act, 1992 and/or under section 23H of the SCRA, 1956?
- III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules; and Section 23-J of the SCRA, 1956 read with Rule 5(2) of the SCR Adjudication Rules?
14. Before proceeding forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

Extract of SEBI (SAST) Regulations, 2011:

Definitions.

2(1)(q) *“persons acting in concert” means, -*

(1) *persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.*

(2) *Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established, —*

.....

(v) *immediate relatives;*

.....

2(1)(l) *“immediate relative” means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse;*

Disclosure of acquisition and disposal.

“29(1) Any acquirer who acquires shares or voting rights in a “target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to, —

- (a) every stock exchange where the shares of the target company are listed; and*
- (b) the target company at its registered office.”*

Extract of the SCRA, 1956:

“Section 2 (i) -Spot Delivery Contract

“Spot Delivery Contract” means a contract which provides for:

- a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;*
- (b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;*

Section 13: Contracts in notified areas illegal in certain circumstances.

If the Central Government is satisfied, having regard to the nature or the Volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognized stock exchange or recognized stock exchanges in such State or States or area or through or with such member shall be illegal:

Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall —

- (i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;
- (ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.

Section 16: Power to prohibit contracts in certain cases.

16. (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

Section 18: Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

SEBI Notification S.O. 184(E) dated March 01, 2000

"In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992, (See [1992] 75 Comp Cas (St.) 216.) and Notification No. 183(E), dated 1st March, 2000, (See page 53 supra.) issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as "the Board") being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that

no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992), and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognised stock exchange Provided that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognised stock exchange shall be entered into in accordance with-

(a)the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the directions issued by the Securities and Exchange Board of India under the said Acts;

(b)the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934), or the Banking Regulation Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973), by the Reserve Bank of India;

(c)the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956)”

15. Based on perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

Issue I. Whether the Noticees have violated the following provisions:

- a) Violation of Regulation 29 (1) read with 29 (3) of SEBI (SAST) Regulations, 2011 by the Noticees?**
- b) Violation of Section 2 (i) read with Section 13, 16 & 18 of the SCRA, 1956 read with SEBI notification G.S.R 184 (E) dated March 1, 2000 by the Noticee no. 5 and 6?**

16. Before proceeding with the matter on merits, I would first deal with the contention of delay in issuance of SCN as raised by Noticee no. 1 to 4 and Noticee no. 7 to 11. In support of their contention the Noticee no. 7 to 11 have relied upon the judgement of Hon'ble Securities Appellate Tribunal (hereinafter referred to as

‘SAT’) in the matter of Rakesh Kathotia vs SEBI and Supreme Court judgement in the case of SEBI vs. Bhavesh Pabari. In this regard, I observe from the records that investigation in the instant matter was initiated in November, 2014 and the investigation pertained to the period from August 1, 2012 to January 6, 2015 which was focused on price manipulation in the scrip of SIL. The investigation for price manipulation involved analysis of shareholding pattern of the Company, examination of price volume movement in the shares of SIL, analysis of trading by group entities and connection between them which was completed in 2017. Subsequently, a separate investigation was initiated in March 2018 for the matters relating to disclosure violation, violation of the provisions of SCRA, 1956 by entities mentioned in STR, violation of the provisions of SEBI (PIT) Regulations, 1992/2015, and SEBI (SAST) Regulations, 2011, matter relating to disclosure violation by promoters of the Company and of funding preferential allotment, if any by the Company. This investigation involved examination of bank account statements of SIL and preferential allottees, analysis of fund flow among promoters / company and preferential allottees and any other connection, and examination of trading pattern of entities. The investigation was completed in January 2022 and adjudication proceedings in the matter were approved. Subsequently, *vide* Order dated March 02, 2022 Shri Prasanta Mahapatra was appointed as the Adjudicating Officer and thereafter the SCN dated May 31, 2022 was issued to the Noticees. Pursuant to transfer of Shri Prasanta Mahapatra, the instant matter was transferred to the undersigned *vide* order dated June 06, 2022. Considering the time taken to complete the investigation, I do not find that there is an inordinate delay in issuance of the SCN. I find that in the SAT judgement relied upon the Noticees in the matter of **Rakesh Kathotia vs SEBI**, Hon’ble SAT has held that *“held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case.”*

In this context, I would also like to refer to observations of the Hon’ble SAT in **Bipin R Vora vs SEBI**, *“As regards the plea of delay and laches and submission that*

the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market”.

17. In view of the aforesaid judgements, I conclude that there is no merit in the objections raised by the Noticees regarding the delay in issuance of SCN.
18. I now proceed to deal with the merits of the cases as regards the allegations made against the Noticees and their submissions in this regard.

Notice no. 1, 2, 3 and 4 (Singal Family)

19. It is alleged in the SCN that Noticee no. 1, 2, 3, and 4 (Singal Family) are immediate relatives of each other and therefore, they are deemed to be acting as PAC. They were allotted shares in the preferential issue by the company on December 31, 2012. Prior to that said allotment, all the 4 Noticees had 'Nil' shareholding as indicated in the table no. 4. Non-disclosure of their acquisition of 18.492% of share capital of the company in the preferential issue on December 31, 2012 attracts the provisions regarding of disclosure of acquisition of more than 5% of shareholding along with 'persons acting in concert' under Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations 2011, however, Singal Family had not made any disclosure under SEBI (SAST) Regulations, 2011.
20. I note from the response of the Singal Family that they have not denied that they are "persons acting in concert" as indicated in the SCN. Noticees in their separate responses have submitted that the shareholding of the Noticees was available in the records of ROC and BSE and accessible to everyone and the alleged non-disclosures under SEBI (SAST) Regulations, 2011, neither caused disproportionate gain or unfair advantage to the Noticees nor caused loss to any

investor. In this regard, I note that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the SEBI (SAST) Regulations, 2011. Here, I find it pertinent to refer to the judgment of Hon'ble SAT in the matter of **Komal Nahata v. SEBI** (Appeal No. 5 of 2014 dated January 27, 2014) where SAT held that *"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for noncompliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure"*. In view of the same, I do not find merit in the submissions of the Noticees.

21. Singal Family further stated that disclosures were made in compliance of SEBI (SAST) Regulations, 2011 on acquiring more than 5% share capital of the Company, however, no evidence has been furnished by them in this regard, therefore, the contentions of the Noticees are not acceptable.
22. Singal Family submitted that their investment into the Company was as per the advice received from an Investment Advisor at that point in time and the Investment Advisor was solely responsible to ensure compliance in respect of investment of the Noticees. In this regard, I am unable to accept the contentions of the Noticees as the onus of compliance with the regulations rests with the person/ entity who is buying and/or selling the securities. The Noticees may take investment advice from various persons, however they cannot shift or delegate the responsibility of compliance with securities rules and regulations.
23. In view of the above, I hold that Noticee no. 1, 2, 3, and 4 (Singal Family) have deemed to be acted as PAC as per Regulation 2(1)(q) of SEBI (SAST) Regulations, 2011, for the acquisition of 18.492% of share capital of the company in the preferential issue. Singal family's shareholding of more than 5% was required to be disclosed under Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011, however, Singal Family had not made any disclosure under SEBI (SAST) Regulations, 2011. Therefore, the allegation that

Singal Family have violated the provisions of the Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011, stand established.

Notice no. 7, 8, 9, 10 and 11 (Agarwal Family)

24. It is alleged in the SCN that Noticee no. 7, 8, 9, 10 and 11 (Agarwal Family) had common address during Investigation period and Noticee no. 9 (Gopal Babu Agarwal) and 10 (Pramod Agarwal) are brothers. Further, Noticee no 11 (Priti Agarwal) is the wife of Noticee no. 9 (Gopal Babu Agarwal), Noticee no 7 (Sunita Agarwal) is wife of Noticee no. 10 (Pramod Agarwal) and Noticee no. 8 (Anurag Agarwal) is son of Noticee no. 10 (Pramod Agarwal). Moreover, funding for the acquisition of shares under the preferential allotment by the Noticee no. 7, 8, 9 and 11 had been made under the control of Noticee no. 10 (Pramod Agarwal) which shows that there was informal agreement or understanding among them and they indirectly co-operated for acquisition of 6.0099% shareholding of SIL in the preferential issue of the company on December 31, 2012. Therefore, Agarwal Family were PAC in terms of provisions of SEBI (SAST) Regulations, 2011 and had not made any disclosures with respect to acquisition of shares, amounting to 6.0099% shareholding of the company, thereby violated provisions of Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations 2011.
25. In response to the above allegations, Noticee no. 7, 8 and 10 submitted that Noticee no. 9 and 11 were not PAC with them as the place of residence of Noticee no. 9 and 11 is different, and they were not aware of the acquisition of shares of the Company by Noticee no. 9 and 11 and they did not have any common objective with Noticee no. 9 and 11 and not have any agreement or understanding (formal or informal), directly or indirectly co-operated for acquisition of shares of the Company or for exercising control over the Company.
26. Similarly, Noticee no. 9 and 11 submitted that the place of residence of Noticee no. 7, 8 and 10 is different from their residence and they were not aware of the acquisition of shares and not have any common objective with Noticee no. 7, 8 and 10.

27. I find that the aforesaid 5 Noticees had common address during the Investigation period, therefore, the contention of having different addresses now is not tenable.

28. In respect of funding for the acquisition of shares made by entities under the control of Noticee no. 10 (Pramod Agarwal), Agarwal Family in their separate responses have stated that these transactions were related to one of the temporary loans given by Mr. Pramod Agarwal to them and the fund transfer has nothing to do with the acquisition of shares by them through preferential allotment. Merely the funds were transferred by an entity connected to Mr. Pramod Agarwal, it cannot be alleged that the same was done for acquisition of shares. In this regard, the detail of fund transfers by entity under the control of Noticee no. 10 (Pramod Agarwal) to other Noticees of Agarwal Family and further fund transfer by these Noticees for application of shares under preferential issue is as under:

Table No. 16

Name of Noticee	Detail of fund transfer to the account of Noticees of Agarwal Family			Detail of fund transfer by the Noticees for preferential issue	
	Funds transfer from	Date	Amount (₹)	Date	Amount (₹)
Anurag Agarwal	Pramod Trading Company	November 22, 2012	15,00,000	November 23, 2012	15,00,000
Gopal Babu Agarwal	Pramod Trading Company	November 24, 2012	75,00,000	November 24, 2012	75,00,000
Priti Agarwal	Pramod Trading Company	November 7, 2012	15,00,000	November 20, 2012	15,00,000
Sunita Agarwal	Pramod Trading Company	November 22, 2012	15,00,000	November 23, 2012	15,00,000

29. I find that the funds transferred to the account of Noticees by entity under the control of Pramod Agarwal were same to amount of application for the preferential issue in the case of above stated Noticees of Agarwal Family. I also note that the funds were transferred by Pramod Trading Company to the Noticees either on the same day or just a few days before the date of application of shares under the preferential issue. Further, the contention of temporary loans given by Mr. Pramod

Agarwal to them cannot be accepted as the Noticees have not furnished any supporting document / evidence in respect of utilisation of these loans provided to them or repayment of loans made by them. Therefore, I hold that the funding for the purpose of applying in the preferential issue of SIL for the acquisition of shares by the Noticee no. 7, 8, 9 and 11 under the preferential allotment, was done by entities under the control of Noticee no. 10 (Pramod Agarwal), which shows that there was informal agreement or understanding among them for acquisition of 6.0099% shareholding of SIL in the preferential issue of the Company.

30. Agarwal Family quoted the Hon'ble Supreme Court judgment in the matter *Daiichi Sankyo Company Limited vs. Jayaram Chigurupati & Ors* and stated that when two or more persons are acquiring shares of a target company and if there is no common object and purpose for the same, then they would not be persons acting in concert. On perusal of the said order, I find that the matter pertained to determination of "Persons acting in concert" of two companies with respect to acquisition of a company, however in the case of Agarwal family it is noted that as Takeover regulations they are already deemed to be PAC unless the contrary is established. Further, Agarwal Family placed reliance on the judgment passed by the Hon'ble SAT in the matter of *Nikhil Mansukhani vs. SEBI* and submitted that in spite of Mr. Pramod Agarwal / Mr. Gopal Babu Agarwal being an 'immediate relative' (as defined under Regulation 2(1)(1) of SEBI (SAST) Regulations, 2011) cannot be stated as 'deemed to be PAC' with us for the acquisition of shares of the Company under the preferential allotment. In this regard, I find that the matter of *Nikhil Mansukhani vs. SEBI* is different from present case as some disputes were continuing there between the two brothers with regard to the running of the Company in the said case and there was sufficient material available on record to show that the dispute between the two promoter groups was continuing. However, in the instant matter no such issue has been stated by the Agarwal Family.

31. In this context, I find it relevant to quote the matter of **SEBI vs. Sunil Kumar Khaitan and Ors. 2022 SCC Online SC 862** wherein the Hon'ble Supreme Court explained the position relating to persons acting in concert holding:

“48. The expression ‘person acting in concert’ as defined in clause (e) to Section 2(1) is again broad and expansive. The expression ‘person acting in concert’ as per sub-clause (1) to Clause (e) includes a person, who for a common object or for purpose of substantial acquisition of shares, voting rights, gaining control over the company, pursuant to an agreement or understanding formal or informal, directly or indirectly, cooperate by acquiring or agreeing to acquire shares or voting rights in a target company or to take control over a target company. Sub-clause 2 to clause (e) to Section 2(1) incorporates legal fiction as it states that the persons enumerated in clauses (i) to (x) shall be deemed to be persons acting in concert with other persons in the same category. The note to sub-clause (e) to Clause 2(1) explains the expression ‘associate’ as a relative of the person within the meaning of Section 6 of the Companies Act, 1956, family trust and Hindu Undivided Families. However, the presumption raised vide sub-clause (2) to Regulation 2(1)(e) is qualified and subject to - ‘unless the contrary is established’. Therefore, if the contrary is established, the presumption raised vide clauses (i) to (x) may not apply in entirety or only apply in part limited to specific shareholder(s) or the persons mentioned in clauses (i) to (x) who in concert acquire shares or voting rights of a target company. The factual matrix is determinative as clause (e) Civil Appeal No. 8249 of 2013 & Anr. vide sub-clause (1) to Regulation 2(1) of the Takeover Regulations 1997 lays down a derivative or spin-off rule of interpretation, and even when the presumption under sub-clause (2) arises, the adjudicator will not apply the presumption when the fact to the contrary are established. The presumption is to be looked as “the bats of law, flitting in the sunlight but disappearing in the sunshine of fact”.

32. Relying on the above judgement of Hon’ble Supreme Court, I find that Agarwal Family is one of the persons enumerated in clauses 2(1)(q)(2) of the SEBI (SAST) Regulations, 2011 and nothing contrary is established or available on record that they are not persons acting in concert, therefore, I hold that the Noticee no. 7 to 11 are deemed to be PAC.

33. In view of the above, I find that Agarwal Family have acted as PAC in terms of provisions of SEBI (SAST) Regulations, 2011, for the acquisition of 6.0099% of shareholding of the company in the preferential issue. Agarwal Family's shareholding of more than 5% was required to be disclosed under Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011, however, Agarwal Family had not made any disclosure under SEBI (SAST) Regulations, 2011. Therefore, the allegation that Agarwal Family have violated the provisions of the Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011, stand established.

Notice no. 5 and 6

34. It is alleged in the SCN that Noticee no. 5 (Sarvottam Advisory Private Limited) and Noticee no. 6 (Jagruti Infra Developers Private Limited) were connected through common directors during the Investigation Period and both the Noticees were under same management and control. Noticee no. 6 had shareholding in Noticee no. 5 and off market share transfer was observed between Noticee no. 5 and 6 during the investigation period. Both the Noticees had received shares in off-market from promoter (Parth), thereby, shareholdings of Noticee no. 5 and 6 respectively increased from 0.0609% and 0% (total : 0.0609%) at quarter ending June 2012 to 3.8957% and 3.0739% (total: 6.9696%) at quarter ending September 2012. Thereafter, the shareholdings of Noticee no. 5 and 6 respectively decreased from 3.8957% and 3.0739% (total shareholdings of both Noticees: 6.9696%) at quarter ending September 2012 to 0.7501% and 1.0360% (total: 1.7861%) at quarter ending December 2012. It was alleged that no disclosures were made by Noticee 5 and 6 and they have violated Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011.
35. It was further alleged in the SCN that certain transactions of Noticee 5 and 6 did not conform to the Spot Delivery Contract provisions as mentioned at Section 2(i) read with sections 13, 16 & 18 of the SCRA, 1956 read with SEBI Notification G.S.R. 184 (E) dated March 1, 2000.

36. I note that Noticee no. 5 (Sarvottam Advisory Private Limited) and Noticee no. 6 (Jagruiti Infra Developers Private Limited) have neither furnished any reply to the SCN nor availed the opportunity of hearing for making any submission in the matter.
37. I note that sufficient opportunity has been provided to the Noticee no. 5 and 6 to represent their case by way of reply to the SCN and also by way of personal hearing. However, it is a matter of record that Noticees failed to furnish their reply and also failed to appear for personal hearing before the undersigned. Therefore, in the absence of reply to the SCN from Noticee no. 5 and 6 and their failure to avail the opportunity of personal hearing for making any submission in response to the allegation levelled in the SCN, I am inclined to presume that the Noticee no. 5 and 6 have nothing to offer in their defense and therefore, they have admitted to the allegations levelled against them in the SCN. In this context, Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Sanjay Kumar Tayal vs SEBI**, vide Order dated February 11, 2014 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 to the charges levelled against them in the show cause notice."*

I also refer to the judgment of Hon'ble SAT dated December 08, 2006 in the matter of **Classic Credit Ltd. v SEBI** (Appeal No. 68 of 2003) wherein, it is observed, *"... 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"*.

Further, the same position is reiterated by the Hon'ble SAT in the matter of **Dave Harihar Kirtibhai Vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under: *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear*

before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...”

38. In view of the aforesaid observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against Noticee no. 5 and 6 as ex-parte.
39. I find that Noticee no. 5 (Sarvottam Advisory Private Limited) and Noticee no. 6 (Jagruti Infra Developers Private Limited) were connected through common directors during the investigation period and both the Noticees were under the same management and control. Noticee no. 6 had shareholding in Noticee no. 5 and off market share transfer was observed between Noticee no. 5 and 6 during the investigation period. Therefore, I hold that Noticee no. 5 and 6 have deemed to be acted as PAC. I find that Noticee no. 5 and 6 had received shares in off-market from promoter (Parth), thereby, aggregate shareholdings of both the Noticees increased from 0.0609% at quarter ending June 2012 to 6.9696% at quarter ending September 2012. Thereafter, aggregate shareholdings of Noticee no. 5 and 6 decreased from 6.9696% at quarter ending September 2012 to 1.7861% at quarter ending December 2012. Thus, per cent change in aggregate shareholdings of both the Noticees as PAC from June to September was 6.9087% and September to December was -5.1835%. I find that BSE has also confirmed that no disclosure was received from Noticee 5 and 6 during the period August 1, 2012 to January 6, 2015. Further no response has been received from Noticee 5 and 6 for the allegations made in the SCN. Therefore, I hold that the allegation that Noticee no. 5 and 6 have violated the provisions of the Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011, stand established.
40. I note that the “Spot Delivery Contract” is defined under section 2(i) (a) of SCRA Act, 1956 as *“a contract which provides for, actual delivery of securities and the*

payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality.” Therefore, in terms of the aforesaid Section 2(i) (a) of the SCRA, 1956, a contract in securities market will be completed on actual delivery of shares and payment of consideration either on the same day or the next day of the contract. In other words, a spot contract in securities market is said to be completed only if delivery / transfer of securities and payment therefor has been made within the time limit prescribed under Section 2 (i) (a) of SCRA, 1956.

41. However, in the instant matter I find that Haranathreddy Atla purchased 2000 shares of SCIL for Rs 250 per share from Noticee no. 5 on March 26, 2012, on the basis of newspaper publication made by Sarvottam Advisory Private Limited (Noticee no. 5). However, actual delivery to the shares could not take place within the time specified under section 2(i) of SCRA, 1956, since the shares were earlier held in the name of Rajen P Shah (HUF) and the certificate no. 993 was issued to Noticee no. 5 only on May 21, 2012 in lieu of sub-division of earlier certificate no. 802 (held in name of Rajen P Shah). Thus, the actual delivery could only have done after May 21, 2012. I also find that Manish Abhaykumar Gelda purchased 2000 shares SCIL for Rs 250 per share from Noticee no. 6 (Jagruti Developers Private Limited) on May 25, 2012, based on newspaper advertisement dated February 7, 2012. However, the actual delivery of shares could not take place within the time specified under section 2 (i) of SCRA, 1956 since earlier these shares were transferred in the name of Parth/Mahadhan (Promotor) and the actual delivery could only take place after June 26, 2012.

42. In order to be a legal transaction, it would have to qualify as a spot delivery contract as defined under section 2 (i) of SCRA, 1956 i.e. actual delivery/ transfer of shares and the payment should be on the same day as date of contract or the next day. In the instant matter, the transfer of shares by Noticee no. 5 and 6 did not take place as per spot delivery contract conditions as defined in SCRA, 1956. Therefore, I hold that the trades done by Noticee no. 5 and 6 did not conform to

the Spot Delivery Contract provisions as mentioned at Section 2(i) read with sections 13, 16 & 18 of the SCRA, 1956 read with SEBI Notification G.S.R. 184 (E) dated March 1, 2000. Therefore, the allegation that Noticee no. 5 and 6 have violated the above stated provisions, stand established.

Issue II. Does the violation, if any, attract monetary penalty under section 15A (b) of the SEBI Act, 1992 and/or under section 23H of the SCRA, 1956?

43. It has been established in the foregoing paragraphs that Noticees have violated the provisions of Regulation 29 (1) and Regulation 29 (3) of SEBI (SAST) Regulations, 2011 and Noticee no. 5 and 6 have violated the provisions of Section 2(i) read with Section 13, 16 & 18 of the SCRA, 1956 read with SEBI notification G.S.R 184 (E) dated March 1, 2000.

44. In this regard, I place reliance on Hon'ble SAT's judgement dated October 14, 2014 in the matter of **Virendrakumar Jayantilal Patel vs. SEBI** (Appeal No. 299 of 2014), in which Hon'ble SAT observed that:

"..... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures."

45. In view of the above, since it is established that Noticees have violated the provisions of Regulation 29 (1) and Regulation 29 (3) of SEBI (SAST) Regulations, 2011 and Noticee no. 5 and 6 have violated the provisions of Section 2(i) read with Section 13, 16 & 18 of the SCRA, 1956 read with SEBI notification G.S.R 184 (E) dated March 1, 2000, I find it a fit case for imposition of monetary penalty on Noticees under the provisions of section 15A(b) of the SEBI Act, 1992 and on Noticee no. 5 and 6 under section 23H of SCRA, 1956, which reads as under:

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

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

.....

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

SCRA, 1956

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules; and Section 23-J of the SCRA, 1956 read with Rule 5(2) of the SCR Adjudication Rules?

46. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992 and Section 23-J of the SCRA, 1956, which reads as under: -

SEBI Act, 1992

Factors to be taken into account while adjudging quantum of penalty.

15J While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

SCRA, 1956

Factors to be taken into account while adjudging quantum of penalty.

23J While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or 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 exercised under the provisions of this section.]

47. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees as a result of the non-compliance of SEBI (SAST) Regulations, 2011 and SCRA, 1956, is not available. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticees. With respect to the repetitive nature of the default, I find that no past defaults by Noticee no. 7, 8, 9, 10 and 11 are available on record. The detail of previous defaults done by the Noticee no. 1 to 6 and penalties imposed on them is summarised in the table given below:

Table No. 17

Noticee No.	Case Name	Order date	Violation of provisions of Acts / Regulations	Penalty / Directions
Noticee No. 1, 2, 3 and 4 (Singal Family)	Global Infratech Limited	September 29, 2022	Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011.	Rs. 1,00,000/-
	Grandma Trading and Agencies Ltd	December 06, 2022	Regulation 29 (1) and Regulation 29 (3) of SEBI (SAST) Regulations, 2011.	Rs. 1,00,000/-
	Shreekrishna Biotech Limited	December 20, 2022	Regulation 13 (1) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015; and Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011.	Rs. 1,00,000/- on each of the Noticee no. 1 to 4.
Noticee No. 5 and 6	Kailash Auto Finance Ltd.	December 05, 2018	Sections 12A(a), (b) & (c) of the SEBI Act, 1992 read with Regulations 3(a),(b),(c),(d) and Regulations 4(1), 4(2)(a) &	Restrained from accessing the Securities Market and prohibited from dealing in securities

Noticee No.	Case Name	Order date	Violation of provisions of Acts / Regulations	Penalty / Directions
			4(2)(e) of PFUTP Regulations, 2003.	for a period of 4 years.
	Kailash Auto Finance Ltd.	September 30, 2019	Regulations 3(a),(b),(c),(d) and Regulations 4(1), 4(2)(a) & 4(2)(e) of PFUTP Regulations, 2003 read with section 12 A (a), (b) & (c) of the SEBI Act, 1992.	Rs. 2,00,000/- on Noticee no. 5 and Rs. 3,00,000/- on Noticee no. 6.
	Superspace Infrastructure Ltd.	January 27, 2021	Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a), (e) of SEBI PFUTP Regulations, 2003.	Restrained from accessing the Securities Market and prohibited from dealing in securities for a period of 6 months.
	Superspace Infrastructure Limited	September 30, 2021	Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003.	Rs. 1,00,000/- on each of the Noticee no. 5 & 6.

48. It is relevant to mention that timely disclosures to the company and the stock exchange as required under the SEBI (SAST) Regulations, 2011 are of significant importance from the point of view of the investors and regulators. These Regulations are aimed at bringing out transparency in the transactions by any shareholder. In this regard, the Hon'ble SAT, in the matter of **Milan Mahendra Securities Pvt. Ltd. vs. SEBI**, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."* The non-compliance as found in this case, had clearly defeated the purposes of the Regulations. However, I also note that the impugned transactions took place

during 2012 and a considerable time has passed since, and this is also considered as a relevant factor while deciding the quantum of penalty.

49. I note that Spot Delivery Contract provisions have been inserted in the SCRA, 1956 to prevent undesirable transactions in securities and subsequent notification was issued to prevent dealings outside the stock exchange mechanism. Section 13 of SCRA, 1956 makes a transaction in securities, in an area, illegal which is other than between the members of recognized stock exchange or through or with such member(s). The effect of this provision is that if a transaction in securities has to be validly entered into, such a transaction has to be either between the members of a recognized stock exchange or through a member of a stock exchange or with a member of a recognized stock exchange. Section 18 excludes spot delivery contracts from the applicability of Section 13 of SCRA, 1956. Hence, it can be said every contract in securities must be executed through the stock exchange mechanism unless it is a spot delivery contract. The transactions entered by the Noticee no. 5 and 6 were neither executed on the stock exchange nor do they qualify to be the spot delivery contract, therefore, need to be penalised accordingly.

50. In this context, it is pertinent to mention Hon'ble SAT in the matter of Mrs. **Bhanuben Jaisukhlal Shah v. SEBI** (Appeal No. 271/2009) wherein it was observed:

“In the case before us, it is not dispute that the appellant sold 4,50,000 shares in off-market transactions in December, 2004 and had not received the payment till the time she filed her reply before the adjudicating officer.... This being so, the off-market sales effected by the appellant in December 2004 were not spot delivery contracts within the meaning of the Act and since these were not transacted through or with member(s) of a recognised stock exchange, they are illegal in view of the provision of Section 13 of the Act. In this view of the matter, no fault can be found with the impugned order passed by the adjudicating officer holding the said transactions to be illegal violating the provisions of Section 2(i) read with Section 13 of the Act.”

ORDER

51. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-J of SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules; and Section 23-J of the SCRA, 1956 read with Rule 5 of the SCR Adjudication Rules, I hereby impose the following monetary penalty on the Noticees under Section 15A (b) of the SEBI Act, 1992 and Section 23H of the SCRA, 1956:

Noticee No.	Name of Noticee	Penalty Provisions	Amount of penalty (in ₹)
1	Aarti Singal	Section 15A (b) of the SEBI Act, 1992	₹ 2,00,000/- (Rupees two lakhs only) Noticee1 to 4 are jointly and severally liable to pay the penalty.
2	Aniket Singal	Section 15A (b) of the SEBI Act, 1992	
3	Sanjay Singal	Section 15A (b) of the SEBI Act, 1992	
4	Sanjay Singal	Section 15A (b) of the SEBI Act, 1992	
5	Sarvottam Advisory Private Limited	Section 15A (b) of the SEBI Act, 1992	₹ 1,00,000/- (Rupees one lakh only)
		Section 23H of the SCRA, 1956	₹ 5,00,000/- (Rupees five lakh only)
6	Jagruti Infra Developers Private Limited	Section 15A (b) of the SEBI Act, 1992	₹ 1,00,000/- (Rupees one lakh only)
		Section 23H of the SCRA, 1956	₹ 5,00,000/- (Rupees five lakh only)
7	Sunita Agarwal	Section 15A (b) of the SEBI Act, 1992	₹ 1,00,000/- (Rupees one lakhs only) Noticee no. 7 to 11 are jointly and severally liable to pay the penalty.
8	Anurag Agarwal	Section 15A (b) of the SEBI Act, 1992	
9	Gopal Babu Agarwal	Section 15A (b) of the SEBI Act, 1992	
10	Pramod Agarwal	Section 15A (b) of the SEBI Act, 1992	
11	Priti Agarwal	Section 15A (b) of the SEBI Act, 1992	

In my view, the said penalty is commensurate with the violations committed by the Noticees in this case.

52. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

53. 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.
54. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the SEBI.

Place: Mumbai

ASHA SHETTY

Date: March 29, 2023

ADJUDICATING OFFICER