BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/AK/AS/2023-24/27814-27825

UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SCR(R) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 AND SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 IN RESPECT OF:

Noticee No.	Name of Noticee (PAN)	Address
1	Gold Line International Finvest Ltd (AACCG6377M)	Office No. 203, MB-156, 2nd Floor, Opposite Madhuban Park, Delhi East, Delhi – 110 092.
2	Mr. Mahendra Singh Bisht (BVPPS4067J)	B-21, Pardhan Enclave, Parshuram Enclave, Village – Burari, Delhi – 110 084.
3	Mr. Rajesh Narula (AEGPN9995K)	27-J, Zamrudpur, Kailash Colony Extn., Delhi – 110 048.
4	Mr. Nihar Ranjan Mishra (AFLPM1238C)	A-2/215, 1st Floor, Janakpuri, New Delhi – 110 057.
5	Mr. Akshod Kumar Sharma (BFGPS1522B)	308, Mahavir Nagar, Firozabad, Uttar Pradesh – 283 203.
6	Mr. Ashish Kumar (DUHPK5131G)	E-128, Gali No 6, Subhash Vihar, North Gonda, Garhi Mendu, Delhi – 110 053.
7	Ms. Archana Devi (CGBPD5175N)	Rampur Dan Jaunpur, Uttar Pradesh – 222202.
8	Mr. Uma Shanker (DOAPS2264P)	88 Block- S, Princess Park, Copernicus Marg, Delhi – 110 001.
9	Mr. Ashok Marwah (AGAPM9028L)	C-123, 2nd Floor, Ganesh Nagar, Tilak Nagar, Delhi – 110 018.

Noticee No.	Name of Noticee (PAN)	Address
10	Mr. Mahesh Chand (ARAPC2598N)	Village – Tilapta Karanvas, Greater Noida, Gautam Buddh Nagar, Uttar Pradesh – 201306.
11	Ms. Asha Rani (AGMPR3645L)	House No. 25/438, Chilla Khader, Trilokpuri, East Delhi, Delhi – 110 091.
12	Mr. Arun Kumar Gupta (AKPG5996K)	151, State Bank Colony, Derawal nagar, GT Karnal Road, Delhi – 110 033.

In the matter of Gold Line International Finvest Ltd

BACKGROUND OF THE CASE

1. Gold Line International Finvest Ltd (hereinafter referred to as **"Noticee No. 1"**) made five preferential allotments during the period of January 2013 to March 2013. SEBI had carried out an investigation to ascertain whether there was any misutilization of funds raised through the said preferential allotments by Noticee No. 1. As the funds raised through the preferential allotments were utilized over a period of 3 years till June, 2016, the period of investigation was taken as January 01, 2013 to June 30, 2016 (hereinafter referred to as **"Investigation Period"**).

2. On the basis of findings of said investigation, the following was alleged:

   2.1 Gold Line International Finvest Ltd (**"Noticee No. 1"**), Mr Mahendra Singh Bisht (**"Noticee No. 2"**) and Mr Rajesh Narula (**"Noticee No. 3"**) violated the provisions of Section 12A(a)(b)(c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) and Regulation 3(b)(c)(d),4(1),4(2)(f),(k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**) read with (r/w) Section 27(2) of the SEBI Act;

2.2 Mr Nihar Ranjan Mishra (**"Noticee No. 4"**), Mr Akshod Kumar Sharma (**"Noticee No. 5"**), Mr Ashish Kumar (**"Noticee No. 6"**), Ms Archana Devi (**"Noticee No. 7"**), Mr Uma Shanker (**"Noticee No. 8"**), Mr Ashok Marwah (**"Noticee No. 9"**), Mr Mahesh Chand (**"Noticee No. 10"**), Ms Asha Rani (**"Noticee No. 11"**) and Mr Arun Kumar Gupta (**"Noticee No. 12"**) violated the provisions of Clause B(6) (Part C) of Regulation 18(3) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **"LODR Regulations"**); and

2.3 Noticee No. 1 violated the provisions of Clause 43 of the Listing Agreement r/w Regulation 32 of the LODR Regulations r/w Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA"**).

APPOINTMENT OF ADJUDICATING OFFICER

3. On being satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid alleged violations, SEBI in exercise of powers under Section 23-I of the SCRA and Rule 3 of the SCR(R) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as the **"Adjudication Rules, 2005"**), and Section 19 r/w Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **"Adjudication Rules, 1995"**), appointed the undersigned as the Adjudicating Officer, vide communication dated March 09, 2023, to inquire into and adjudge under Section 23-I r/w Section 23A(a) of the SCRA, and under Section 15-I r/w Section 15HA, Section 15HB and Section 15A(b) of the SEBI Act, the alleged violations by the Noticees.

SHOW CAUSE NOTICE AND PERSONAL HEARING

4. A common Show Cause Notice dated March 21, 2023 (hereinafter referred to as **"SCN"**) was issued to the Noticees to show cause as to why an inquiry should not be initiated against them, and why penalty, if any, should not be imposed against them under Section 15HA of the SEBI Act for alleged violations by Noticee Nos. 1 to 3, under Section 15HB of the SEBI Act for alleged violations by Noticees Nos.

4 to 12 and under Section 15A(b) of the SEBI Act and Section 23A(a) of the SCRA for the alleged violations by Noticee No.1. The details of communication with the Noticees are provided below:

4.1. Noticee No.1

SCN was served on the Noticee vide SPAD and digitally signed email dated March 21, 2023. Vide response dated March 31, 2023, Noticee sought inspection of documents in the matter. Vide email dated April 13, 2023, Noticee was granted opportunity to inspect the documents on April 18, 2023. Noticee inspected the documents on the scheduled date i.e. April 18, 2023. During the course of inspection, all documents relied upon and relevant in the matter were provided to Authorized Representative of the Noticee. Vide response dated May 16, 2023, Noticee submitted its reply to the SCN on merits. Further, vide email dated May 16, 2023, Noticee was granted opportunity of personal hearing on May 29, 2023. However, Noticee did not avail of the opportunity of personal hearing. Further, Noticee made additional submissions, vide emails dated May 30, 2023 and June 21, 2023.

4.2. Noticee No. 2

SCN was served on the Noticee, vide SPAD and digitally signed email dated March 21, 2023. Vide response dated April 01, 2023, Noticee, interalia, sought opportunity of inspection of documents in the matter. Vide email dated April 13, 2023, Noticee was granted opportunity to inspect the documents on April 18, 2023. Noticee inspected the documents on the scheduled date i.e. April 18, 2023. During the course of inspection, all documents relied upon and relevant in the matter were provided to Authorized Representative of the Noticee. Vide response dated May 13, 2023, Noticee submitted its reply to the SCN on merits. Further, vide email dated May 16, 2023, Noticee submitted that he does not want to avail the opportunity of personal hearing.

4.3. Noticee No. 3

SCN was served on the Noticee, vide SPAD and digitally signed email dated March 21, 2023. Vide response dated April 03, 2023, Noticee, interalia, sought opportunity of inspection of documents in the matter. Vide email dated April 13, 2023, Noticee was granted opportunity to inspect the documents on April 18, 2023. Noticee inspected the documents on the scheduled date i.e. April 18, 2023. During the course of inspection, all documents relied upon and relevant in the matter were provided to Authorized Representative of the Noticee. Vide response dated May 11, 2023, Noticee submitted its reply to the SCN on merits. Further, the Noticee availed of the opportunity of personal hearing on May 16, 2023. During the course of hearing, Noticee made the submissions relying upon responses dated April 03, 2023 and May 11, 2023.

4.4. Noticee No. 4

The SCN was sent to the Noticee vide SPAD. However, the same returned undelivered. Thereafter, the SCN was delivered to the last known address of the Notice, vide affixture on May 18, 2023. Further, copy of SCN along with the annexures were also sent to the Noticee on its alternate email ID on May 18, 2023. Vide response dated May 25, 2023, Noticee submitted reply to the SCN on merits. Vide email dated May 25, 2023, Noticee was granted opportunity of personal hearing on June 07, 2023. Noticee also made certain additional submissions vide email dated June 05, 2023. The Noticee availed of the opportunity of personal hearing on June 07, 2023. During the course of hearing, Noticee made the submissions relying upon responses dated May 25, 2023 and June 05, 2023.

4.5. Noticee No. 5

SCN was served on the Noticee, vide SPAD and digitally signed email dated March 21, 2023. Vide letter dated March 31, 2023, Noticee, interalia, sought inspection of documents in the matter. Vide email dated April 13, 2023, Noticee was granted opportunity of inspection of documents on April 18, 2023. However, vide telephonic conversation dated April 19, 2023, Noticee conveyed that he was not willing to avail the opportunity of inspection of documents, and the same was recorded in the email sent to the Noticee on April 19, 2023. Vide response dated May 16, 2023, Noticee conveyed that he does not want to avail the opportunity of personal hearing.

4.6. Noticee No. 6

SCN was served on the Noticee, vide digitally signed email dated March 21, 2023. Vide response dated May 15, 2023, Noticee submitted reply to the SCN on merits. Vide response dated May 16, 2023, Noticee conveyed that he does not want to avail the opportunity of personal hearing.

4.7. Noticee No. 7 and Noticee No. 11

SCN was served on the Noticees, vide digitally signed email dated March 21, 2023. Vide responses dated April 03 and April 02, 2023, Noticee No. 7 and 11 respectively, interalia, sought inspection of documents. Vide email dated April 13, 2023, Noticees were granted opportunity to inspect the documents on April 18, 2023. Noticees inspected the documents on the scheduled date i.e. April 18, 2023. During the course of inspection, all documents relied upon and relevant in the matter were provided to Authorized Representative of the Noticees. Vide email dated April 20, 2023, Noticees were granted opportunity of personal hearing in the matter on May 16, 2023. Vide email dated May 15, 2023, Noticees were provided the web address to avail the aforesaid opportunity of personal hearing. However, Noticees did not avail of the opportunity of hearing.

4.8. Noticee No. 8 and Noticee No. 10

SCN was served on the Noticees, vide digitally signed email dated March 21, 2023. Thereafter, it was noted from the website of MCA (‘www.mca.gov.in’), that the Noticee No. 8 is a director in four LLPs and Noticee No. 10 is a director in three LLPs. Therefore, alternate email IDs of Noticee Nos. 8 and 10 were obtained pertaining to the said LLPs, and copy of the digitally signed SCN along with the annexures was served on the said email IDs on April 13, 2023. However, no response was received from the Noticees. Vide email dated April

20, 2023, Noticees were granted opportunity of personal hearing on May 16, 2023. However, Noticees did not avail of the opportunity of personal hearing.

4.9. Noticee No. 9

SCN was served on the Noticee, vide digitally signed email dated March 21, 2023. Vide response dated April 01, 2023, Noticee, interalia, sought opportunity of inspection of documents in the matter. Vide email dated April 13, 2023, Noticee was granted opportunity of inspection of documents on April 18, 2023. However, Noticee did not avail the opportunity of inspection of documents on April 18, 2023. Vide telephonic conversation dated April 19, 2023, Noticee was conveyed that he had not availed the opportunity of inspection as scheduled. However, Noticee did not communicate his intention to avail the inspection in the telephonic conversation or vide any communication thereafter. Therefore, vide email dated April 20, 2023 sent to the Noticee, it was conveyed that, as he had not sought inspection of documents any further, opportunity of personal hearing would be granted. Vide response dated May 11, 2023, Noticee submitted reply to the SCN. Vide email dated May 15, 2023, Noticee conveyed that he was not willing to avail of the opportunity of personal hearing.

4.10. Noticee No. 12

SCN was served on the Noticee, vide digitally signed email dated March 21, 2023. Vide letter received on April 08, 2023, Noticee submitted reply to the SCN on merits. Vide email dated April 20, 2023, Noticee was granted opportunity of personal hearing on May 16, 2023. Noticee availed the opportunity of personal hearing on May 16, 2023, as scheduled. During the course of hearing, Noticee made the submissions relying upon the response made vide letter received on April 08, 2023.

CONSIDERATION OF ISSUES AND FINDINGS

5. The issues that arise for consideration are as under:

5.1. Whether Noticee Nos. 1 to 3 misutilized funds raised through preferential issue, resulting in violation of provisions of Section 12A(a)(b)(c) of the SEBI Act and Regulation 3(b)(c)(d),4(1),4(2)(f),(k) and (r) of the PFUTP Regulations r/w Section 27(2) of the SEBI Act?

5.2. Whether Noticee No. 1 failed to disclose statement of variation between projected utilization and actual utilization of funds raised through preferential issue, resulting in violation of provisions of Clause 43 of the Listing Agreement r/w Regulation 32 of the LODR Regulations r/w Section 21 of the SCRA?

5.3. Whether Noticee No. 1 carried out invalid ratification of utilization of funds raised through the preferential allotment, resulting in violation of provisions of Section 12A(a)(b)(c) of the SEBI Act and Regulation 3(b)(c)(d),4(1),4(2)(f),(k) and (r) of the PFUTP Regulations r/w Section 27(2) of the SEBI Act?

5.4. Whether Noticee Nos. 4 to 12 failed to review the statement of deviation of issue proceeds, resulting in violation of provisions of Clause B(6) (Part C) of Regulation 18(3) of the LODR Regulations?

5.5. If yes, whether the violations, if any, attract monetary penalty under the provisions of Section 23A(a) of the SCRA and/ or Section 15HA, Section 15HB and/ or Section 15A(b) of the SEBI Act, as applicable? If so, what quantum of monetary penalty should be imposed on the Noticees after taking into consideration the factors mentioned in Section 23J of the SCRA and Section 15J of the SEBI Act?

6. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticees, as applicable during the Investigation Period, and the same are reproduced below:

SEBI Act

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

12A. No person shall directly or indirectly-

………

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

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

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

Offences by Companies

27(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

PFUTP Regulations

3. No person shall directly or indirectly—

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves:-

……….

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

……….

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;

………

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

<u>LODR Regulations</u>

18(3) The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II

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

(a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds."

Schedule II

Part C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE

B. The audit committee shall mandatorily review the following information:

………

(6) statement of deviations:

(a) quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchanges(s) in terms of Regulation 32(1).

(b) annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7).

SCRA

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

Clause 43 of the erstwhile Listing Agreement

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

7. The findings of the investigation and allegations against the Noticees in the SCN are summarized below:

7.1. Allegation pertaining to Misutilization of proceeds of preferential issue

7.1.1. Noticee No. 1 made 5 preferential allotments during the Investigation Period amounting to Rs 48.72 Crores. The Objects of the preferential issue, as per the notice calling for Extra Ordinary General Meeting for the issue were as below:

- To strengthen the equity base of the company,

- To arrange the funds required for meeting the enhanced working capital requirements of the company,
- To meet certain capital expenditure and
- To meet expenditure for general corporate purposes

7.1.2. It was found from the information submitted by Noticee No. 1, vide email dated March 11, 2019 and letter dated August 05, 2022, that it had utilized Rs 11,70,75,000 i.e. 24.03% of proceeds of preferential issue for giving 'Loan without Interest' to 30 entities. Further, the Investigation observed that Noticee No. 1 was not authorized to give Loan without interest as per its Information Memorandum filed with BSE during direct listing, its Memorandum of Association and as per its Objects of Issue for EGMs.

7.1.3. The aforesaid Loan Agreements were not legally enforceable, as they were not executed on a legally valid stamp paper and were not notarized/ registered. Therefore, the Investigation observed that the loan agreements were only superficial documents created to give an impression of genuineness of transactions done by Noticee No. 1 using proceeds of the preferential issue.

7.1.4. Further, out of Rs 11,70,75,000 granted as 'Loan without interest' by Noticee No. 1, Rs 9,47,75,000 was not recovered and Rs 2,23,00,000 was recovered, starting from the year 2019 i.e. after the investigation in the instant matter was initiated.

7.1.5. Therefore, it was alleged that Noticee No. 1 had misutilized Rs 11,70,75,000, for purposes other than for which the preferential issue was made, resulting in violation of provisions of Section 12A(a)(b)(c) of SEBI Act and Regulation 3(b)(c)(d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations.

7.2. <u>Allegation pertaining to violation of provisions of LODR Regulations</u>

7.2.1. It was found that Noticee No. 1 had not utilized Rs 11,70,75,000/- or 24.03% of total preferential issue proceeds as per objects of issue. Noticee No. 1 had not filed any quarterly statements regarding deviation in utilization of preferential issue proceeds with the Stock Exchange. Further, it had not given any explanation regarding deviation in the proposed and the actual utilization of preferential issue proceeds in its Annual Report for the Fiscal years 2013-14, 2014-15 and 2015-16. Therefore, it was alleged that Noticee No. 1 had not filed the required statements for deviation of usage of preferential issue proceeds, resulting in violation of provisions of Clause 43 of the listing agreement r/w Regulation 32 of the LODR Regulations r/w Section 21 of the SCRA.

7.3. <u>Allegation pertaining to ratification of utilization of funds raised from the preferential issue</u>

7.3.1. Noticee No. 1, vide reply dated August 05, 2022, had submitted, interalia, that it had ratified the purpose of repayment of loans regarding the utilizations of funds raised from the preferential issue in the 26th Annual General Meeting (AGM) held on September 15, 2018. On perusal of the letter dated September 15, 2018, filed by Noticee No. 1 on BSE website, the Investigation observed that 38 members attended the 26th AGM held on September 15, 2018 and the agenda of 'Ratification of utilization of funds raised through preferential issue' was discussed in the said AGM. Further, all the 38 members present in the AGM voted in favor of the resolution accounting for 5.57% of total votes.

7.3.2. Further, Noticee No. 1 had published on the Millenium Post on August 21, 2018, stating that the 26th AGM had been scheduled on September 15, 2018, and that the said Notice along with the Proxy Form, Attendance Slip and Annual Report has been dispatched to all Members to their registered address or email ids on September 8, 2018, and the notice was also available on the website of Noticee No. 1 and NSDL. It was also published that the members could contact M/s Bigshare Services Pvt. Ltd., the then Registrar and Share Transfer Agent of Noticee No. 1, in case of any grievance.

7.3.3. However, M/s Bigshare Services Pvt. Ltd. submitted during the Investigation that Noticee No. 1 had not approached it for sending AGM notices along with Proxy form, Attendance slip etc. Also, NSDL, vide e-mail dated November 07, 2022, submitted that it had not received scrutinizer report from Noticee No. 1 to upload on the e-Voting website of NSDL, and that the notice was also not uploaded by Noticee No. 1 on the e-Voting website of NSDL. Further, Skyline Financial Services Pvt Ltd, who had provided e-voting to Noticee No. 1 for FY 2017-18 as per current Registrar and Share Transfer Agent of Noticee No. 1, submitted that it was appointed by Noticee No. 1 only for uploading of database on NSDL e-voting portal and AGM notice and gist of the resolution was not provided to it by Noticee No. 1.

7.3.4. It was also found that there was discrepancy in the number of shareholders as reported by Noticee No. 1 to whom the notice of AGM was sent, and as per the information availed on the website of BSE for the relevant period. However, Noticee No. 1 stated that the same was due to typographical mistake. With regard to a sample copy of notices sent to shareholders in physical/ electronic mode, Noticee No. 1 stated that it had made all its effort but was not able to trace or find out the record of proof of dispatch of notice of AGM to the shareholders.

7.3.5. From the above submissions of NSDL, erstwhile and current RTA and Noticee No. 1, it was found that Noticee No. 1 had not sent notice to all the shareholders for the AGM held on September 15, 2018. In view of the above, it was found that the ratification of utilization of proceeds of preferential issue, claimed by the company, could not be considered as valid.

7.3.6. Therefore, Noticee No. 1 had misled the shareholders about ratification of utilization of funds raised from the preferential issue, resulting in violation of provisions of Regulation 2(1)(c)(1),(2),(3) and (7) of the PFUTP Regulations, resulting in violation of provisions of Section 12A(a)(b)(c) of the SEBI Act and Regulation 3(b)(c)(d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations.

7.4. <u>Allegation pertaining to the role of Directors</u>

7.4.1. Noticee No. 2 was a Whole Time Director of Noticee No. 1 for November 01, 2012 to October 06, 2015 and Noticee No. 3 was Whole Time Director during October 23, 2015 to March 15, 2016, and therefore, were liable for misutilization of proceeds of preferential issue, resulting in violation of provisions of Section 12A(a)(b)(c) of SEBI Act and Regulation 3(b)(c)(d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations read with Section 27(2) of the SEBI Act.

7.4.2. Noticees No 4 to 12 were members of the Audit Committee of Noticee No. 1 during the period 2012-13 to 2015-16. In terms of Clause B(6) (Part C) of Regulation 18(3) of the LODR Regulations, the members of the Audit Committee were responsible to mandatorily review the statement of deviation of issue proceeds. Therefore, it was alleged that Noticees No 4 to 12, were liable for not reviewing the statement of deviation of issue proceeds, resulting in violation of provisions of Clause B(6) (Part C) of Regulation 18(3) of the LODR Regulations.

8. The submissions made by the Noticees as regards allegations levelled against them are summarized below. Further, the submissions made by Noticees which are common, have not been repeated for the sake of brevity.

8.1. <u>Noticee No. 1:</u>

8.1.1. The instant SCN has been issued after a gap of more than 10 years from the date of preferential issue and 7 to 10 years from utilization of proceeds of preferential issue. Now the management of the company has changed, and it is not possible to know the strategy of the management at the time in question. Therefore, there is an inordinate delay in initiation of proceedings. In this regard, Noticee No. 1 relied upon the Orders passed by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) in the matters of Shriram Insight Share Brokers Ltd vs SEBI, Yatin Pandya HUF vs SEBI, SIC Stock & Services Pvt Ltd vs SEBI, Man Industries Ltd & Ors. vs SEBI, Jolly Plastic Industries Ltd vs SEBI and GR Capital & Finance Pvt Ltd & Ors. vs SEBI.

8.1.2. The allegation levelled in the SCN are based on peripheral possibilities and random possibilities only. Further, Noticee No. 1 has ensured compliance with the necessary pre conditions and disclosures as per the laws applicable at the relevant point of time.

8.1.3. Noticee No. 1 has utilized the proceeds of the preferential issue in accordance to the objects of the issue. It is alleged that Noticee had provided loans to 30 entities, however, in reality, Noticee had provided loans to only 23 entities, with multiple loans been granted to some of the entities. Noticee No. 1 is connected to five entities to whom it had given loans viz. Alps Motor Finance Ltd, Antheia Trade Services Pvt Ltd, Citurgia Biochemicals Ltd, Greenvalue Agrofarms Ltd and Ridevel Gears Pvt Ltd, as group companies. However, the businesses of the said 5 companies and of the Noticee No. 1 are run independently. Noticee is not connected to rest of the entities to whom interest free loans have been granted.

8.1.4. Loans without interest were granted to 23 entities as these entities undertook to introduce different entities to whom loans could be provided. This would have increased equity base and business profile of Noticee No. 1. Further, Noticee No. 1 earned substantial interest income from the entities introduced by the aforesaid 23 entities, to whom loan with interest was granted, resulting in increased revenue. Also, Noticee No. 1 has also granted loans with interest to 44 other entities as well. Further, certain amounts of loans without interest have been returned, and the Noticee is following up with other entities to get back the loans granted to them. Non-repayment of loans is part of business of lending itself. Further, granting loans without interest was as per Memorandum of Association of Noticee No. 1.

8.1.5. As there was no deviation in the utilization of proceeds of preferential issue, no statement of deviation was supposed to be filed with BSE, nor was any explanation of any such alleged deviation required to be made in the Annual Reports. Therefore, no adverse inference can be drawn against the Noticee for alleged violation of Clause 43 of the listing agreement r/w Regulation 32 of the LODR Regulations r/w Section 21 of the SCRA.

8.1.6. As regards the allegation of misleading shareholders about ratification of utilization of proceeds of preferential issue, Noticee No. 1 submitted that the period of allegation pertains to September, 2018, which is outside the Investigation Period in the instant matter. Further, the Notice of AGM and its voting results were uploaded on BSE website, and thus, was available to public at large. Further, there was no complaint from any shareholder in this regard.

8.1.7. Noticee has relied upon Order dated May 28, 2021 passed by the WTM of SEBI in the case of Tatia Global, and contended that allegation of violation of provisions of Section 12 A (a), (b) and (c) of SEBI Act and provisions of PFUTP Regulations were not upheld, and that instant violations must also not be upheld on similar grounds.

8.2. Noticee No. 2

8.2.1. The Investigation Period is 7 to 10 years old. Presently, Noticee does not have all the material to verify the contents of SCN. In this regard, Noticee has relied upon the judgements of the Hon'ble SAT in the matters of Ashok Shivlal Rupani & Anr. Vs SEBI, Mr Rakesh Kathotia vs SEBI, Yatin Pandya HUF vs SEBI, H B Stockholdings vs SEBI, Khandwala Securities Ltd vs SEBI, Man Industries Ltd & Ors. vs SEBI and Veerendra Kumar Singh & Ors vs SEBI.

8.2.2. Noticee No. 2 was appointed Executive Director of Noticee No. 1 on November 01, 2012 and had resigned on October 06, 2015, and after the resignation, he is not aware of the functioning of business of the company. Also, Noticee No. 2 had ensured that Noticee No. 1 remained a law abiding company during his tenure as the Executive Director.

8.2.3. As regards, the grant of interest free loans by Noticee No. 1, Noticee No. 2 was not a signatory to the said loan agreements or the bank accounts and was not known to the 30 entities to whom the loans were granted.

8.2.4. Noticee No. 2 had not carried out any activity of buying or selling of shares of Noticee No. 1 in his term as the Executive Director, or even before that. There was no mens rea or actual act of commission or omission, and violation, if any, had taken place without his knowledge.

8.2.5. Strict proof and compelling evidence is required to prove charge of fraud. In this regard, Noticee has relied upon the judgement of the Hon'ble Supreme Court in the matters of Kishore R Ajmera vs SEBI and Ram Sharan Yadav vs Thakur Muneshwar Nath Singh; and of the Hon'ble SAT in the matters of

R. K. Global vs SEBI, Narendra Ganatra vs SEBI, Sterlite Industries (India) Ltd vs SEBI and Parsoli Corporation vs SEBI.

8.3 Noticee No. 3

8.3.1 Noticee was appointed as Whole Time Director on October 23, 2015, on a monthly remuneration of Rs 25,000/-. Noticee was not connected to the company when it raised funds through preferential issue. Noticee left company 7 years ago, and was with the company for less than 5 months. Noticee was never a shareholder of the company, and was a salary based employee.

8.3.2 As regards the allegation of granting interest free loans to 30 entities using funds raised in the preferential issue, Notice has submitted that during his tenure, only one such loan was granted to Growvalue Agrofarm Ltd, which was paid back on October 21, 2021. Also, Noticee No. 3 was not a signatory to the aforesaid loan, and was not aware of the terms of the loan agreement. Further, Noticee No. 3 has not connection with any of the 30 entities to whom interest free loans were granted.

8.3.3 Noticee has submitted that great prejudice has been caused as no information was sought from him during the course of investigation.

8.3.4 Noticee No. 3 had ensured that Noticee No. 1 remained a law abiding company during his tenure as the Executive Director.

8.3.5 Noticee No. 1 has balance of cash and cash equivalent of Rs 38 Lacs on March 31, 2015, which would have been the maximum amount from the proceeds of preferential issue not utilized on that day i.e. March 31, 2015. Thereafter, till March 11, 2016, Noticee No. 1 had already given loans with interest amounting to Rs 42.5 Lacs. Therefore, the loan of Rs 20 Lacs given on March 11, 2016, during the tenure of Noticee No. 3, could not have been from the proceeds of the Preferential Issue.

8.3.6 Noticee No. 3 did not work for Noticee No. 1 after March 01, 2016, and drew last remuneration only on March 08, 2016. Therefore, he had not involvement in the loan granted on March 11, 2016.

8.3.7 Noticee No. 1 had newly opened a bank account during the tenure of Noticee No. 3, which did not receive any amount pertaining to proceeds of the preferential issue. Therefore, Noticee No. 3 was not capable of misutilizing the proceeds of the preferential issue.

8.4 Noticee No. 4

8.4.1 Noticee No. 4 was an employee of Vishvas Securities, which was owned by one Vijay Jindal. During his tenure, Vijay Jindal approached him for becoming director in Noticee No. 1, which he could not refuse due to the risk of losing job. Noticee No. 4 submitted resignation from directorship on October 28, 2006, and requested it to take appropriate measures and communicate the same to the concerned authorities. When the same was not done, Noticee No. 4 informed the RoC and BSE regarding his resignation, and requested authorities to take suitable action against Noticee No. 1. Noticee No. 4 finally left Vishwas Securities in February, 2007, and has not visited the offices of Vijay Jindal since then.

8.4.2 Noticee No. 4 was made director in Noticee No. 1 for name's sake, and had never participated in its board meeting or signed any board resolution or other documents. He was not even allowed entry in the office of Noticee No. 1.

8.4.3 Noticee No. 4 does not own shares of any company, and does not have a demat account, as he considers the same to be unethical, working in the back office and dealing with capital market operations.

8.4.4 Noticee No. 4 has also submitted his resignation letter and communication with RoC and Stock Exchange, and submitted a copy of SEBI Order dated January 31, 2022 in the matter of Mefcon Agro Industries Ltd, wherein the charges alleged against him were not established.

8.5 Noticee No. 5

8.5.1 Noticee No. 5 has been appointed as an Independent Director on June 30, 2008, and has resigned from the directorship on May 30, 2013. During his tenure, he had no role to play in day to day affairs of Noticee No. 1.

8.5.2 Further, Noticee No. 5 has no trading history, shareholding or connection with Noticee No. 1 or its promoters.

8.6 Noticee No. 6

8.6.1 Noticee No. 6 was appointed an Independent Director of Noticee No. 1 on March 11, 2015, and has never received any remuneration in lieu of the same. The preferential allotments and the majority of loans granted without interest had been made prior to appointment of Noticee No. 6 as Independent Director. Also, Noticee No. 6 was unaware of the loans which were granted during his tenure in Noticee No. 1. Noticee No. 6 had not signed any agreement pertaining to loans granted without interest, and was never a signatory to any bank account of Noticee No. 1. Therefore, Noticee cannot be held liable for not reviewing the statement of deviation of issue proceeds.

8.6.2 Noticee No. 6 was unaware of compliance requirements of Noticee No. 1, which were handled by Compliance Department.

8.6.3 As per the provisions of Section 27 of the SEBI Act, no person must be held liable for violation, if it is proved that the offence was committed without his/ her knowledge. Further, as per Section 149(12) of the Companies Act, 2013, the Independent Director cannot be held liable unless he had knowledge of the commission of wrong doing by the Company or did not act diligently. In the present case, the violations, if any, were committed without knowledge of the Noticee. In this regard, Noticee has also relied up on the judgements of the Hon'ble Supreme Court in the matters of State of Haryana vs Brij Lal Mittal & Ors and Municipal Corporation of Delhi vs Ram Kishan Rohtagi, of the Hon'ble SAT in the matters of Prafull Anubhai Shah vs SEBI, Pritha Bag vs SEBI and Sayanti Sen and P.G. Electroplat Ltd & Ors vs SEBI and certain other Orders passed by SEBI.

8.7 Noticee No. 7

8.7.1 Noticee No. 7 was appointed as a non-independent director of Noticee No. 1 on September 17, 2015, and resigned from there on March 27, 2018. She was not a director when the preferential issues were made in 2013. She had no role to play in day to day affairs of Noticee No. 1 during her tenure as Non-Independent director. Pursuant to her resignation, she has no connection with Noticee No. 1, or its directors and promoters etc.

8.8 Noticee No. 9

8.8.1 Noticee No. 9 was appointed as a non-executive and non- independent director on July 15, 2006, and resigned from the aforesaid position on June 02, 2013. During his tenure, he had no role to play in day to day affairs of Noticee No. 1, and had not received any remuneration. Pursuant to his resignation, she has no connection with Noticee No. 1, or its directors and promoters etc.

8.8.2 He has never traded in shares of Noticee No. 1, and had not signed any loan agreements. Also, he was unaware of compliance requirements of Noticee No. 1, which were handled by Compliance Department.

8.8.3 Majority of the loans without interest were granted after resignation of Noticee No. 9. Also, few loans which were granted during tenure of Noticee No. 9, were made close to his resignation. Noticee was not aware of the aforesaid loans.

8.8.4 Prior to his last meeting as Audit Committee member on January 28, 2013, only one loan was granted. Noticee No. 9 was not aware of the said loan, and was not a signatory to the loan agreement. After January 28, 2013 till his resignation, he did not attend any Audit Committee meeting.

8.9 Noticee No. 11

8.9.1 Noticee No. 11 was appointed as Non-Independent director on March 25, 2015, and resigned on September 17, 2015, i.e. for less than 6 months. Further, Noticee was not a director when the preferential allotments were made. Also, after her resignation, she is not connected with Noticee No. 1 or its directors and promoters in any way.

8.10 Noticee No. 12

8.10.1 Noticee No. 12 is not aware of Noticee No. 1, and has never heard the name of the company. He was never a director, and does not know directors or any key managerial personnel of Noticee No. 1. He has never given his consent to work as an additional director or director, and never signed Form 29 under Section 264 of the Companies Act, 1956. The signatures on such forms have been put with fraudulent means. He has never given consent to anyone to file any directorship form with RoC to become director of Noticee No. 1. He has never provided his DIN, PAN, Aadhaar or DSC to any person related to Noticee No. 1. If any of such documents have been used, then it's a fraudulent exercise.

8.10.2 He has never attended any Board or General Meetings or signed any attendance sheet. He never received any notice from Noticee No. 1 to attend its meetings. He has also never visited office premises of Noticee No.1.

8.10.3 In terms of Section 283(1)9g) of Companies Act, 1956, office of director becomes vacant if he is absent from three consecutive meetings of the board of directors, without obtaining leave of absence. As Noticee No. 12 never attended any Board Meeting, he could not be a director of Noticee No. 1.

8.10.4 Noticee No. 12 is not aware of the shareholders, utilization of proceeds of preferential issue and has never receive any remuneration.

Issue No. I: Whether Noticee Nos. 1 to 3 mis-utilized funds raised through preferential issue, resulting in violation of provisions of Section 12A(a)(b)(c) of the SEBI Act and Regulation 3(b)(c)(d),4(1),4(2)(f),(k) and (r) of the PFUTP Regulations r/w Section 27(2) of the SEBI Act?

9. Before dealing with issue on merits, I note that the Noticees have raised the plea of latches, and contended that SCN has been issued after a gap of more than 10 years from the date of preferential issue and 7 to 10 years from utilization of proceeds of preferential issue. Currently, the management of Noticee No. 1 has changed, and it is not possible for the Noticees to know the strategy of the management during the Investigation Period. Therefore, there is an inordinate

delay in initiation of proceedings. In this regard, Noticees have relied upon the Orders passed by the Hon'ble SAT in the matters of Shriram Insight Share Brokers Ltd vs SEBI, Yatin Pandya HUF vs SEBI, SIC Stock & Services Pvt Ltd vs SEBI, Man Industries Ltd & Ors. vs SEBI, Jolly Plastic Industries Ltd vs SEBI, Ashok Shivlal Rupani & Anr. Vs SEBI, Mr Rakesh Kathotia vs SEBI, H B Stockholdings vs SEBI, Khandwala Securities Ltd vs SEBI, Veerendra Kumar Singh & Ors vs SEBI and GR Capital & Finance Pvt Ltd & Ors. vs SEBI. In this regard, I note that although the preferential allotments were done in 2013, the funds raised therefrom were allegedly misutilized till June, 2016. The time gap in the initiation of the proceedings has to be considered from the year till which alleged misutilization of proceeds of the issue took place i.e. from 2016, and not the year of preferential allotment in itself. Thereafter, detailed investigation was started in the matter in May 30, 2019, pursuant to the appointment of Investigating Authority on the said date. The Investigation process involved detailed analysis of fund flow of proceeds of the issue, and determination of roles of its directors and audit committee members. Upon conclusion of the investigation, Adjudication Proceedings were approved in the matter on December 28, 2022, and the undersigned was appointed as the Adjudicating Officer vide communication dated March 09, 2023. Further, SCN dated March 21, 2023 was issued, and thereafter, inquiry was initiated involving, interalia, conduct of personal hearing and inspection of documents by the Noticees. I also note that the documents on the basis of which the instant charges have been framed, had been provided as Annexures to the SCN, and that inspection of all the relevant documents had also been provided to Noticees Nos. 1, 2, 3, 7 and 11, as requested.

10. I further note that the case laws relied upon by the Noticees are distinguishable from the instant matter. For instance, in the matter of Ashok Shivlal Rupani vs SEBI, the violations alleged therein occurred in 2010, and the Investigation Period was observed between January 04, 2010 to January 10, 2011, while the SCN was issued in 2018. Further, the disclosure violations that had occurred were held to be 'technical' in nature by the Hon'ble SAT, which is distinguishable vis-a-vis the instant matter. In the matter of Shriram Insight Share Brokers Ltd vs SEBI, the

inspection report pertaining to the matter was submitted on May 07, 2012 and a reply was submitted by the Noticee therein on June 14, 2012. Thereafter, the SCN was issued after more than seven years. In the matter of HB Stockholdings vs SEBI, after issuance of SCN in 2005 and conduct of hearing in 2006, proceedings remained in abeyance till 2011, when another hearing was called, and prejudice was caused due to such delay, interalia, including application of substantive portions of amended law in the judicial proceedings which were not in force at the time of commission of offence. Further, in the matter of GR Capital & Finance Pvt Ltd & Ors. vs SEBI, the Hon'ble SAT had held that while the transactions involved were of the period 2009-2010, SEBI had come to know about the alleged violation through a forensic audit report which was submitted on February 27, 2012. Thereafter, the SCN was issued on February 18, 2020, after SEBI had the knowledge of alleged violations for 8 years. However, in the instant matter, SEBI had initiated investigation in 2019 itself, and the SCN was issued after the findings of investigation were crystallized and adjudication proceedings were approved in the matter in December, 2022. In conclusion, I note that although there is no substantial delay in the matter, the time gap in the matter serves as a factor which can be considered as a mitigating factor while deciding quantum of monetary penalty, if any. Therefore, I am not inclined to accept the contentions of the Noticees with regard to delay.

11. I now proceed to consider the issue on merits. I note that Noticee No. 1 had made five preferential allotments for Rs 48.72 Crore, and the details of the allotment are as follows:

Sr. No	Date of preferential allotment	Date of Board meeting approving the issue	No. of allottees	No of shares allotted	Issue Price per share (Rs)	Issue Proceeds (Rs)
1	15-01-2013	14-01-2013	49	66,68,000	10	6,66,80,000
2	27-02-2013	26-02-2013	49	1,46,05,000	10	14,60,50,000
3	14-03-2013	13-03-2013	49	1,72,05,000	10	17,20,50,000
4	22-03-2013	21-03-2013	22	76,72,500	10	7,67,25,000
5	25-03-2013	21-03-2013	4	25,70,000	10	2,57,00,000
Total			**173**	**4,87,20,500**		**48,72,05,000**

12. I note from the notices of EGMs on record, that the objects of the said preferential issues were as follows:
   - To strengthen the equity base of the company
   - To arrange the funds required for meeting the enhanced working capital requirements of the company
   - To meet certain capital expenditure and
   - To meet expenditure for general corporate purposes.

13. Further, Noticee No. 1 submitted the details of utilization of proceeds of preferential issue vide email dated March 11, 2019 to the Investigation, and the aforesaid details are as follows:

Sr. No.	Purpose of utilization	Amount utilized (INR)	% of proceeds of pref issue
1	Loan on interest	14,43,50,000	29.63
2	Advance for Business	12,29,50,000	25.24
3	Loan without interest	11,70,75,000	24.03
4	Repayment of Loan	3,43,00,000	7.04
5	Working Capital	3,34,75,000	6.87
6	Miscellaneous Expenses	1,22,70,344	2.52
7	Investments	90,00,000	1.85
8	Loan for Business	54,00,000	1.11
9	Expenses Paid	36,25,000	0.74
10	Kalicharan	25,00,000	0.51
11	Fixed Assets Purchase	17,00,000	0.35
12	Expenses Paid	2,16,000	0.04
Total		**48,68,61,344**	**99.93**

14. I note that Noticee No. 1 had granted loans without interest amounting to Rs 11,70,75,000/-, constituting 24.03% of the proceeds of the issue, in 30 tranches. I note that the SCN states that the aforesaid loan was granted to 30 entities. However, upon perusal of the list of entities, provided as Annexure 7 to the SCN, I note that that loans were granted to only 23 entities, in 30 separate tranches. Notwithstanding the same, Noticee No. 1 was not authorized to give loans without interest to the 23 entities because of the following reasons:

14.1. In the Information Memorandum submitted by Noticee No. 1 at the time of listing with BSE, under the heading '*SECTION III – Summary Of Industry & Business*', it was, interalia, stated that Noticee No. 1 was incorporated with an object to *'carry on the business of lending, finance and investment/ trading in shares & securities etc'.* Further, under the head "Business Operations", the following was stated: *Under this segment, the Company is providing various financial solutions such as:*

- *advancing loans against listed shares, securities and properties*
- *margin funding*
- *corporate loans*
- *personal loans*
- *trading in shares & securities*
- *trade financing*
- *bill discounting etc.*

14.2. Further, the main objects in the Memorandum of Association of Noticee No. 1, inter-alia, stated the following:
To carry on the business of investments and investment advisory services in India and abroad, undertake money market operations, treasury managements, research and analysis, act as procuring agents/ brokers for Unit Trust of India, Mutual Funds, ……
Furthermore, the objects incidental or ancillary to the attainment of the main objects, of the Memorandum of Association, inter-alia, stated the following:
To lend money either with or without security and to such persons and upon such terms and conditions as the company may fit and else to invest and to deal with the money of the company not immediately required in or upon such investments and in such manner as may, be determined, not being investment in company's own shares provided that the Company shall not carry on the main business of banking as defined in the Banking Regulations Act, 1949.

14.3. Finally, Objects of the Preferential Issues as per the notice for EGMs of Noticee No. 1 on January 14, 2013, February 26, 2013, March 13, 2013 and March 21, 2013 were as under:

- *To strengthen the equity base of the company,*
- *To arrange the funds required for meeting the enhanced working capital requirements of the company,*
- *To meet certain capital expenditure and*

- *To meet expenditure for general corporate purposes.*

14.4. I note from the above that the grant of 'Loans without Interest' was not one of the objects of Noticee No. 1 as per its Information Memorandum, Memorandum of Association or the objects of the preferential issues, as stated in the notices for its EGMs.

15. I further note from the sample loan agreement executed by Noticee No. 1 pertaining to the loans granted without interest, that, the said agreements had been executed on the letter head of Noticee No. 1. They were neither notarized nor registered, and had been drafted casually without recording terms, conditions and other ancillary details expected in a prudently drafted agreement. The loans were granted on the personal guarantee of the borrower without any collateral.

16. For instance, I note that in the loan agreement entered by Noticee No. 1 with Ashok Kumar Goyal and Sons HUF, the following had been, interalia, stated:

'NOW THIS AGREEMENT WITNESSETH and it is hereby agreed by and between the parties hereto as under:-

1. *The Borrower hereto, being in need of money, has requested the Lender to given an interest free loan of Rs 30,00,000/- (Rupees Thirty Lakhs only).*
2. *The said loan is required by the Borrower, commencing from 27/03/2014.*
3. *The Borrower hereby agrees and undertakes to return the loan of Rs 30,00,000/- (Rupees Thirty Lakhs only) in installments or in one time as mutually agreed and gives her personal guarantee for the same.*
4. *The terms and conditions of this Agreement are arrived at by the mutual consent of the parties thereto'*

I note that from the above that the reason for granting loan has not explicitly mentioned, instead, it has been stated that the borrower being in 'need of money', requested the lender for an interest free loan. Further, even the terms of repayment of loan have not mentioned, and it has been merely stated that the borrower undertook to return the loan in installments or in one time, and that the terms and conditions of the Agreement were arrived at by mutual consent. I note that the shareholders had subscribed to the preferential issues considering the objects stated therefor, and in anticipation of good returns. Therefore, Noticee No. 1 should have been diligent and careful while investing or utilizing the proceeds, such that the returns on investments should have been guaranteed. Instead, the manner in which the aforesaid loan agreements were drafted, indicates as if Noticee No. 1 was not concerned with repayment of loans at all, and was not foreseeing the possibility of litigation in case of defaults in repayment.

17. I further note that all the loans had remained outstanding till 2019, that is the time when the Investigation was initiated and queries were asked from Noticee No. 1. Only after 2019, loans amounting to Rs 2,23,00,000/- were recovered, while amount of Rs 9,47,75,000/- remained outstanding. The details of recovery of loans are as follows:

Sr. No.	Name of the entity	Amount of loan given without interest (Rs)	Amount received (Rs)	Date of receipt
1	Biogeen India	10,00,000.00	10,00,000.00	9th July 2020 & 29th July 2020
2	Bits India Roaltross Pvt Ltd	1,00,00,000.00	1,00,00,000.00	10th September 2020, 14th September 2020 & 18th September 2020
3	Greenvalue Agrofarms Limited	20,00,000.00	20,00,000.00	21st October 2021
4	Thar Commodities	22,00,000.00	22,00,000.00	14th February 2019
5	Alps Motor Finance Limited	1,28,00,000.00	71,00,000.00	6th December 2022, 8th December 2022, 12th December 2022 & 16th December 2022

18. Noticee has, interalia, contended that the allegations are based on peripheral possibilities, and that it had ensured necessary compliance with the laws applicable at the time. In this regard, I note from the facts of the case that the Noticee had misutilized the proceeds of the issue for granting loans without interest as per its own submissions to the Investigation. The said act constituted an attempt devised to defraud investors, involving misutilization of proceeds to enter into transactions which were not capable of earning returns and were devoid of business logic. Further, Noticee has contended that it was not connected to the majority of entities to whom the interest free loans were granted. I note in this regard that allegation of direct connections has not been made in the instant

matter, and instead, the interest free loans granted to the said entities have been considered along with the objects of the issue and nature of the loan agreements, to arrive at the findings.

19. Noticee has submitted that the loans were granted to the 23 entities, because said entities went on to introduce Noticee to certain other entities. Noticee then granted loans with interest to the said newly introduced entities, earning substantial revenues from them. I note firstly, that the said act of granting loans, apparently in order to grant more loans with interest to other entities was not an object of issue. Further, the business activity as described by Noticee appears to be an unmethodical risk prone arrangement, and utilization of proceeds of the issue for the same in deviation from the stated objects does not invoke credibility. Noticee has also contended that some of the loans granted without interest have been repaid, while Noticee had also granted some loans with interest to certain other entities as well. I note that the repayment of loans was done only after 2019, when SEBI had first sought comments from Noticee as regards the issue, and such a pattern is bound to raise suspicion. Further, the loans without interest comprised substantial proportion i.e. 24.03% of the issue proceeds, which cannot be simply explained by the fact the Noticee had granted loans with interest to certain other entities as well. Noticee has also contended that granting loans without interest was as per its Memorandum of Association. In this regard, I note from the paragraph 14 above, that even though the Memorandum of Association allowed lending by Noticee No. 1 on such terms and conditions as it deemed fit, the same when read along with Information Memorandum and the objects of the issue could not be construed to imply that granting loan without interest was a legitimate business activity of the Noticee. Therefore, I note that the Noticee’s contentions are devoid of merits.

20. Therefore, I note that the Noticee No. 1 had granted loans without interest, amounting to 24.03% of proceeds of the issues, which was contrary to the objects of the preferential issues, as well as not aligned with the Information Memorandum or Memorandum of Association of Noticee No. 1. Further, the loan agreements

pertaining to the aforesaid loans were granted in a superficial manner, in an attempt to cloak the transactions as genuine. Unsurprisingly, majority of such loans had not been repaid. Therefore, I note that Noticee No. 1 has misutilized the proceeds of the issue for purposes other than for which the preferential issue was made, to the extent of Rs 11,70,75,000/-.

21. I further note that Noticee No. 2 was Whole Time Director during the period November 01, 2012 to October 06, 2015. He was also signatory to the Information Memorandum dated April 04, 2014 and was responsible for day to day functioning of Noticee No. 1 as per the annual report of Noticee No. 1 for FY 2012-13, 2013-14 and 2014-15. Further, Noticee No. 3 was Whole Time Director during the period October 23, 2015 to March 15, 2016 and was responsible for the day to day functioning of Noticee No. 1 as per the annual report of for FY 2015-16. I note that the preferential allotment and disbursal of loans out of the proceeds of preferential issue took place during the tenure of Noticee Nos. 2 and 3 as directors.

22. Noticee No. 3 has contended that he was employed with Noticee No. 1 only for 5 months, and during his tenure, only one such loan was granted, which was eventually repaid. Further, Noticee No. 3 was not involved in even the aforesaid loan, as he did not work for Noticee No. 1 after March 01, 2016 and was not a signatory to the relevant loan agreement. In this regard, I note from the disclosures made by Noticee No. 1 on the website of BSE and the Annual Report for FY 2015-16, that Noticee was first appointed as a Non-Executive Director on October 06, 2015, and then as a Whole Time Director in place of Noticee No. 2 on October 23, 2015. He had resigned from the directorship with effect from March 15, 2016. I note that only one loan without interest amounting to Rs 20 lacs, had been granted during his tenure to Growvalue Agrofarm Ltd on March 11, 2016, and even the said loan had been repaid on October 21, 2021. I also note from Noticee No. 3's submissions, that Noticee No. 1 had communicated the following to him, vide email dated February 29, 2016:

"*This has reference to your mail dated 29 February 2016 wherein you had informed about your resignation.*

This is to confirm that your resignation has been accepted and we further request you to continue till 10th March to make alternate arrangements. We assure you that we will take necessary steps to inform MCA, Exchanges, Banks and other relevant authorities."

I note from the above that the loan without interest granted to Growvalue Agrofarm Ltd on March 11, 2016, was after the aforesaid date on which Noticee No. 3 had apparently submitted his resignation i.e. February 29, 2016.

23. I note that Noticee No. 3 has been charged for being responsible for the violations conducted by Noticee No. 1 during his tenure as Whole Time Director. I note that as per email dated February 29, 2016 of Noticee No. 1, Noticee No. 3 was supposed to get relieved as Director on March 10, 2016 but he continued in the company till March 15, 2016. Further, I note that Noticee No. 1 had misutilized the proceeds of preferential issue by granting loans without interest to certain entities, however, only one such loan was granted during the tenure of Noticee No. 3. Even the said loan had been apparently granted after submission of resignation by Noticee No. 3 to Noticee No. 1. I note that the extent of misutilization of funds during the tenure of Noticee No. 3 was only Rs 20,00,000/- out of the total amount of funds misutilized i.e. Rs 11,70,75,000/-, and the said loan also was repaid on October 21, 2021, thereby causing quite an insignificant impact on financial of the Company i.e to the extent of loss of interest on the said loan. Therefore, I am willing to take a lenient view pertaining to the violations alleged against Noticee No. 3, considering the findings pertaining to him *in toto*.

24. Noticee Nos. 2 has contended that he had ensured that Noticee No. 1 complied with applicable laws during his tenure, and he had no association with the company after resignation. There was no mens rea or actual act of commission or omission, and violation, if any, had taken place without his knowledge. Further, Noticee No. 2 was not signatory to the loan agreements, and was not known to the entities to whom loans without interest were granted. I note that Noticee No. 2 was Whole Time Director of the company for more than 3 years, which included the period during which preferential allotments were done and majority of loans

without interest were granted, and thus he was directly responsible for Noticee No. 1's conduct including for legal compliance. However, as has been brought out in the foregoing paragraphs, the company i.e. Noticee No. 1 had misutilized the proceeds of preferential issue, and therefore, Noticee Nos. 2 also became responsible for the acts done by Noticee No. 1. Noticee Nos. 2 has also contended that he had not carried out any activity of buying or selling of shares of Noticee No. 1 during his tenure or even before that. I note that the aforesaid has not been alleged or does not form part of the facts/ allegations in the instant matter.

25. In this regard, I also place reliance on the judgement of the Hon'ble Supreme Court in the matter of *Official Liquidator vs P.A. Tendolkar dated January 19, 1973*, wherein it was held that,

"A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially".

26. Further, Noticee No. 2 has relied upon the judgement of the Hon'ble Supreme Court in the matters of *Kishore R Ajmera vs SEBI and Ram Sharan Yadav vs Thakur Muneshwar Nath Singh*; and of the Hon'ble SAT in the matters of *R. K. Global vs SEBI, Narendra Ganatra vs SEBI, Sterlite Industries (India) Ltd vs SEBI and Parsoli Corporation vs SEBI*, and contended that strict proof and compelling evidence is required to prove charge of fraud. In this regard, I place reliance on the matter of *SEBI vs. Kanaiyalal Baldev Bhai Patel (2018) 13 SCC 753* which dealt with the definition of *"fraud"* as given under Regulation 2(1) (c) of the PFUTP Regulations. Two Hon'ble Judges of Hon'ble Supreme Court of India, in their separate but concurring judgments in the matter of *SEBI vs. Kanaiyalal Baldev Bhai Patel (2018) 13 SCC 753* dealt with the definition of *"fraud"* as given under Regulation 2(1) (c) of PFUTP Regulations, 2003 and held as under:

Per Hon'ble Justice N. V. Ramanna - *"...26. There is no dispute as to the fact that fraud is jurisprudentially very difficult to define or cloth it with particular ingredients. A generalized meaning may be difficult to be attributed, as human ingenuity would invent ways to bypass such behaviour. It is to be noted that fraud is extensively used in various regulatory framework which mandates me to take notice of the conceptual and definitional problem it brings along. Fraud is among the most serious, costly, stigmatizing, and punitive forms of liability imposed in modern corporations and financial markets. Usually, the antifraud provisions of the security laws are not coextensive with common-law doctrines of fraud as commonlaw fraud doctrines are too restrictive to deal with the complexities involved in the security market, which is also portrayed by the changes brought in through the 2003 regulation to the 1995 regulation.*

On a comparative analysis of the definition of "fraud" as existing in the 1995 regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of "fraud" under the PFUTP regulations adopts the definition of "fraud" from the Indian Contract Act, 1872 whereas the subsequent definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of "fraud" as present under the Indian Contract Act. It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation.

The definition of 'fraud' under clause (c) of regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of the term "fraud"..."

27. Per Hon'ble Justice Ranjan Gogoi – *"...5. If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful*

manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities.

The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce"..." (Emphasis supplied)

28. The examination of the definition of fraud under the PFUTP Regulations envisages among other things fraud by way of "act" so as to have an "effect of inducement" on another person for dealing in securities. Further, Regulation 3 (c) of PFUTP Regulations prohibits employment of any device, scheme or artifice for fraud. In the given situation, Noticee No. 1 had stated objects of the issues unambiguously in the notice of the EGMs, in which the issue of preferential issue was considered. As discussed in foregoing paragraphs, upon receipt of proceeds, Noticee No. 1 misutilized substantial proportion of the same, by way of granting loans without interest, amounting to Rs. 11,70,75,000/-. The shareholders would have subscribed to the allotment in hope of earning handsome returns, assuming that Noticee No. 1 would invest the money as stated in its objects. However, Noticee No. 1 misutilized the funds contrary to the stated objects. Further, Noticee No. 2 was Director of Noticee No. 1, and were responsible for the malafide conduct of Noticee No. 1. Therefore, Noticee No. 1, along with Noticee Nos. 2, played fraud on the shareholders who had subscribed to the preferential allotments.

29. From the above, it is established that Noticee No. 1 and Noticee No. 2, violated the provisions of Regulations 3 (b) (c) (d), 4(1), 4(2)(f), 4(2)k and 4(2)(r) of the PFUTP Regulations r/w Section 12A (a) (b) (c) of the SEBI Act r/w Section 27(2) of the SEBI Act.

Issue No. II - Whether Noticee No. 1 failed to disclose statement of variation between projected utilization and actual utilization of funds raised through preferential issue, resulting in violation of provisions of Clause 43 of the Listing Agreement r/w Regulation 32 of the LODR Regulations r/w Section 21 of the SCRA?

30. I note that Clause 43 of the listing agreement r/w Regulation 32 of the LODR Regulations mandated Noticee No. 1 to make disclosures to the Stock Exchange(s) on a quarterly basis, pertaining to the deviation between projected utilization of proceeds of, interalia, preferential issue, and its actual utilization. I note that Noticee No. 1 had misutilized Rs 11,70,75,000/- out of the proceeds of the issue, however, it had admittedly not filed such statements of deviation for the use of proceeds. I also note that Noticee No. 1 had not given any explanation regarding deviation in the proposed and the actual utilization of preferential issue proceeds in its Annual Report for the Fiscal years 2013-14, 2014-15 and 2015-16.

31. Noticee No. 1 has, interalia, submitted that as there was no deviation in the utilization of proceeds of preferential issue, no statement of deviation was supposed to be filed with BSE, and there was no need for any explanation to be provided in the Annual Reports. In this regard, I note that it has been established under Issue – I, that Noticee had misutilized proceeds of the issue, by the way of granting loans without interest to 23 entities. Hence, Noticee No. 1 was under the obligation to make necessary disclosures pertaining to deviation in utilization of issues proceeds, which it failed to do. Therefore, the aforesaid contentions are without merits and are rejected.

32. Therefore, I note that Noticee No. 1 had not filed the required statements for deviation in utilization of preferential issue proceeds, resulting in violation of provisions of Clause 43 of the listing agreement r/w Regulation 32 of the LODR Regulations r/w Section 21 of the SCRA.

Issue No III - Whether Noticee No. 1 carried out invalid ratification of utilization of funds raised through the preferential allotment, resulting in violation of provisions of Section 12A(a)(b)(c) of the SEBI Act and Regulation 3(b)(c)(d),4(1),4(2)(f),(k) and (r) of the PFUTP Regulations r/w Section 27(2) of the SEBI Act?

33. I note that Noticee No. 1 had submitted during the course of investigation that repayment of loans was not one of the objects of the preferential issues, however, Noticee No. 1 had, interalia, utilized the proceeds for the same. Therefore, Noticee No. 1 had obtained ratification of the shareholders in the 26th Annual General Meeting held on September 15, 2018 for the aforesaid deviation. I note from the Notice of 26th AGM that Noticee No. 1 had, interalia, stated that it had *utilized the proceeds for the purposes of 'providing advances for business purposes, loans & advances, Repayment of Loan, General Corporate Purpose and working capital requirement to expand the business of the company.'* Further, vide the aforesaid Notice, Noticee No. 1 had disclosed the status of proceeds of the issue as follows:

Particulars	**Amount utilized as on 31st March 2018**
Advances for the Business Purpose	Rs. 13,85,00,000/-
Expenses on the time of Issue	Rs. 36,25,000/-
Fixed Assets Purchase	Rs. 17,00,000/-
Investment	Rs. 90,00,000/-
Loan on Interest	Rs. 14,77,00,000/-
Loan Without Interest	Rs. 10,72,75,000/-
Repayment of Loan	Rs. 3,43,00,000/-
Working Capital	Rs. 3,34,75,000/-
Miscellaneous Expenses	Rs. 1,12,00,000/-
Total	**Rs. 48,67,75,000/-**

I also note that the notice of the meeting also stated that the remote e-voting period would commence on September 12, 2018 and end on September 14, 2018.

34. I further note from the letter dated September 15, 2018, filed by Noticee No. 1 on BSE website, that a total of 38 members attended the 26th AGM held on September 15, 2018 and the agenda of 'Ratification of utilization of funds raised through preferential issue' was discussed. I further note from the disclosure made on BSE website that all of the 38 members voted in the favour of resolution, accounting for 5.57% of the votes.

35. I further note that Noticee No. 1 had also provided a 'Newspaper clipping' published on the Millennium Post on August 21, 2018 pertaining to the 26th AGM of Noticee No. 1. Further, the clipping stated that the Notice of AGM along with the Proxy Form, Attendance Slip and Annual Report had been dispatched to all Members to their registered address or email ids on September 8, 2018 and the same was also available on the website of Noticee No. 1, while the Notice was also available on the website of NSDL. The said clipping also stated that in case of grievances, members might contact M/s Bigshare Services Pvt. Ltd., the then Registrar and Share Transfer Agent of Noticee No. 1.

36. However, I note that Bigshare Services Pvt Ltd submitted to the Investigation that Noticee No. 1 had not approached it for sending AGM notice along with the Proxy Form, Attendance Slip, etc, and that the details of shareholders to whom the Notice of AGM had been sent were not available with it. Further, NSDL submitted to the investigation that it had not received scrutinizer report from Noticee No. 1 to upload on the e-Voting website of NSDL. I also note that the notice was also not uploaded by Noticee No. 1 on the e-Voting website of NSDL, contrary to the claim made in the newspaper publication.

37. I note that Skyline Financial Services Pvt Ltd had provided e-voting to Noticee No. 1 for FY 2017-18, as submitted by current Registrar to the issue and Share Transfer Agent of Noticee No. 1, to the Investigation. However, I note that Skyline Financial Services Pvt. Ltd. stated that it was appointed by Noticee No. 1 only for uploading of database on NSDL e-voting portal, and AGM notice and gist of the resolution was not provided to it.

38. I further note that Noticee No. 1 submitted to the Investigation a list of the shareholders along with their percentage of holding to whom the notice of AGM for FY 2017-18 was sent. I note that while the number of shareholders of the Noticee No. 1 as per disclosures made on BSE website were 5005, 5012 and 5003 for quarters ending March, June and September, 2018 respectively, the number

of shareholders to whom it claimed to have served the Notice of AGM was 3467. Therefore, there was huge discrepancy in the aforesaid numbers of shareholders, which could not be explained satisfactorily by Noticee No. 1. I note that the aforesaid discrepancy clearly indicates the lackadaisical approach with which the affairs of Noticee No. 1 were being conducted, such that even the details as fundamental as number of shareholders of the company were inconsistent. Also, Noticee No. 1 had no records of any sample copy of notices or of the record of proof of dispatch of the said notices to the shareholders.

39. Noticee No. 1 has submitted that Notice of AGM and its voting results were uploaded on BSE website, and thus, was available to public at large. Further, there was no complaint from any shareholder in this regard. I note that the process of serving notices of AGM are governed by Companies Act, 2013. In the instant matter, Noticee had made a fraudulent claim of serving notice to all the shareholders in the newspaper advertisement, and providing them fair chance of participating in the AGM. However, Noticee failed to do so, in an apparent attempt to get the agenda of AGM approved without consent and information of the genuine shareholders. The said act involved publishing a false report pertaining to the affairs of Noticee No. 1, which would have affected the decision making of genuine shareholders, and satisfies the ingredients of 'fraud', as defined in paragraph 28 to 30.

40. Noticee No. 1 has also relied upon Order dated May 28, 2021 passed by the WTM of SEBI in the case of Tatia Global, and contended that allegation of violation of provisions of Section 12 A (a), (b) and (c) of SEBI Act and provisions of PFUTP Regulations were not upheld, and that instant violations must also not be upheld on similar grounds. I note that in the referred matter, it was, interalia, held that, *'I find that violations of PFUTP Regulations, 2003, as alleged in the SCN, are very general and vague in nature without making out any specific case containing necessary ingredients required to constitute these violations nor were the Noticees given opportunity to inspect or furnished any finding of examination relating to PFUTP Regulations 2003 violations which was additionally included while issuing the SCN.'* I note from the above that the

facts of the instant matter are distinguishable, and therefore, the contentions are rejected.

41. Therefore, I note on the basis of foregoing paragraphs that Noticee No. 1 had not sent notices to all the shareholders, informing them about details of the 26th AGM, and that the claims made in the newspaper publication pertaining to the aforesaid service were patently false. Therefore, I note that Noticee No. 1 had misled shareholders about ratification of utilization of funds raised from the preferential issue and committed 'fraud' as defined under Regulation 2(1)(c)(1),(2),(3) and (7) of the PFUTP Regulations, resulting in violation of provisions of Section 12A(a)(b)(c) of the SEBI Act and Regulation 3(b)(c)(d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations.

Issue No. IV - Whether Noticee Nos. 4 to 12 failed to review the statement of deviation of issue proceeds, resulting in violation of provisions of Clause B(6) (Part C) of Regulation 18(3) of the LODR Regulations?

42. I note that Noticee Nos. 4 to 12 were Audit committee members of Noticee No.1 during the period 2012-13 to 2015-16. The tenure of the aforesaid Noticees as Audit Committee members is listed below:

Noticee No.	Name of Directors/ Noticees	Designation	Date of Appointment	Date of cessation
9	Mr. Ashok Marwah	Audit Committee member, Non Independent Director	15-07-2006	02-06-2013
4	Mr. Nihar Ranjan Mishra	Independent Director, Audit Committee member	July 2006	-
5	Mr. Akshod Kumar Sharma	Independent Director, Chairman of Audit Committee	30-06-2008	30-05-2013
6	Mr. Ashish Kumar	Independent Director, Audit Committee member	11-03-2015	-
7	Ms. Archana Devi	Non-Independent Director, Audit Committee member	17-09-2015	27-03-2018
8	Mr. Uma Shanker	Independent Director, Chairman of Audit Committee	25-01-2016	28-02-2017
10	Mr. Mahesh Chand	Independent Director, Chairman of Audit Committee	30-05-2013	25-01-2016

Noticee No.	Name of Directors/ Noticees	Designation	Date of Appointment	Date of cessation
11	Ms. Asha Rani	Non-Independent Director, Audit Committee member	25-03-2015	17-09-2015
12	Mr. Arun Kumar Gupta	Non Independent Director, Audit Committee member	02-06-2013	25-03-2015

43. It has been alleged that Noticee Nos. 4 to 12 were responsible for mandatorily reviewing the statement of deviation of issue proceeds, in terms of Clause B(6) (Part C) of Regulation 18(3) of the LODR Regulations. However, Noticee Nos. 4 to 12 allegedly failed to review the aforesaid statements.

44. I note for reference that Chapter IV of LODR Regulations pertains to *'Obligations Of A Listed Entity Which Has Listed Its Specified Securities And Non-Convertible Debt Securities'*. Further, Regulation 18, which forms part of the aforesaid chapter, deals with obligations of the Audit Committee of the listed entity. Regulation 18(3) reads *'The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II'.* Clause B(6) of Part C of Schedule II of LODR Regulations reads as follows:

B. The audit committee shall mandatorily review the following information:

………

(6) statement of deviations:

(a) quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchanges(s) in terms of Regulation 32(1).

(b) annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7).

45. For reference, I note the provisions of Regulations 32(1) and 32(7) of the LODR Regulations below, as applicable during the Investigation period:

Statement of deviation(s) or variation(s)

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

(a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds."

……….

(7) Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on an annual basis, promptly upon its receipt.

Explanation,— For the purpose of this sub-regulation, "monitoring agency" shall mean the monitoring agency specified in regulation 16 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

46. I note from reading of the above provisions, that, in terms of Regulation 32(1) of the LODR Regulations, the listed entity was obligated to submit statement(s) of deviation on quarterly basis pertaining to proceeds of preferential issue. Further, in terms of Regulation 32(7) of the LODR Regulations, the monitoring agency appointed under the provisions of SEBI (ICDR) Regulations, if any, was obligated to place before audit committee the monitoring report annually.

47. I note in the instant matter that firstly, the listed entity viz. Noticee No. 1 did not submit the statement of deviation to the stock exchange in terms of Regulation 32(1) of the LODR Regulations, as held in Issue-II. Also, no monitoring report was placed in front of the audit committee in terms of Regulation 32(7) of the LODR Regulations.

48. I note that since the aforesaid reports had not been submitted neither to the Stock exchange nor to the audit committee, as applicable, the audit committee members i.e. Noticee Nos. 4 to 12 could not have been expected to review the same. The obligations mandated upon Noticee Nos. 4 to 12 were contingent on compliance of provisions of Regulation 32(1) and 32(7) by Noticee No. 1, which was not done. Therefore, I am of the considerate view that violations alleged against Noticee Nos. 4 to 12 in the instant matter are not established.

Issue No. V: If yes, whether the violations, if any, attract monetary penalty under the provisions of Section 23A(a) of the SCRA and Section 15HA, Section 15HB and Section 15A(b) of the SEBI Act, as applicable? If so, what quantum of monetary penalty should be imposed on the Noticees after taking into consideration the factors mentioned in Section 23J of the SCRA and Section 15J of the SEBI Act?

49. It has been established in the foregoing paragraphs that Noticees Nos. 1 and 2 have violated the provisions of Section 12A(a)(b)(c) of the SEBI Act and Regulation 3(b)(c)(d),4(1),4(2)(f),(k) and (r) of the PFUTP Regulations r/w Section 27(2) of the SEBI Act, which attract monetary penalty under Section 15HA of the SEBI Act. Further, Noticee No. 1 has violated the provisions of Clause 43 of the Listing Agreement r/w Regulation 32 of the LODR Regulations r/w Section 21 of the SCRA, attracting monetary penalty under Section 23A(a) of the SCRA and Section 15A(b) of the SEBI Act. The provisions of Section 15HA of the SEBI Act and Section 23A(a) of the SCRA, read as under:

SEBI Act

Penalty for failure to furnish information, return, etc.

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

Penalty for fraudulent and unfair trade practices.

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

SCRA

Penalty for failure to furnish information, return, etc.

23A. Any person, who is required under this Act or any rules made thereunder,—

(a)to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or who furnishes, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

50. While determining the quantum of penalty under Section 15HA and Section 15 A(b) of the SEBI Act and Section 23A(a) of the SCRA, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act and Section 23J of the SCRA, which read as under: -

SEBI Act

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b) the amount of loss caused to an investor or group of investors as a result of the default;

c) the repetitive nature of the default.

SCRA

Factors to be taken into account by the adjudicating officer.

23J. While adjudging quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely: -

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b) the amount of loss caused to an investor or group of investors as a result of the default;

c) the repetitive nature of the default.

51. I note that the amount of disproportionate gain or unfair advantage made by Noticee Nos. 1 and 2 is not available. However, from the material on record I note that huge loss, of more than nine crores has been caused to investors as a result of the aforesaid violations. With respect to the repetitive nature of the default, I find that Noticee No. 1 has been penalized in four matters vide Adjudication Order, and directions under Section 11(1), 11(4) and 11B of the SEBI Act have been issued against it in four matters as well. However, there is nothing on record to indicate any past violations committed by the Noticee No. 2.

ORDER

52. After taking into consideration the facts of the matter, violations established against Noticee Nos. 1 and 2, and various factors such as the time gap between the preferential issue and initiation of the instant Adjudication Proceedings, and others mentioned in Section 15J of the SEBI Act and Section 23J of the SCRA, I impose the following penalty on them:

Noticees (PAN)	Violation of provisions	Penalty u/s	Penalty in Rs.
Gold Line International Finvest Ltd. (AACCG6377M)	Section 12A(a)(b)(c) of the SEBI Act and Regulation 3(b)(c)(d), 4(1),4(2)(f),(k) and (r) of the PFUTP Regulations r/w Section 27(2) of the SEBI Act	Section 15HA of the SEBI Act	10,00,000/- (Rupees Ten Lakhs Only)
	Clause 43 of the Listing Agreement r/w Regulation 32 of the LODR Regulations r/w Section 21 of the SCRA	Section 23A(a) of the SCRA and Section 15A(b) of the SEBI Act	1,00,000/- (Rupees One Lakh Only)
Mr. Mahendra Singh Bisht (BVPPS4067J)	Section 12A(a)(b)(c) of the SEBI Act and Regulation 3(b)(c)(d), 4(1),4(2)(f),(k) and (r) of the PFUTP Regulations r/w Section 27(2) of the SEBI Act	Section 15HA of the SEBI Act	20,00,000/- (Rupees Twenty Lakhs Only)

I find that the said penalty is commensurate with the violations committed by Noticee Nos. 1 and 2 in this case.

53. Noticees 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

54. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act and Section 23JB of the SCRA for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

55. In terms of Rule 6 of the Adjudication Rules, 2005 and Rule 6 of the Adjudication Rules, 1995, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai **AMIT KAPOOR**

Date: June 28, 2023 **ADJUDICATING OFFICER**