

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ID-5/VIL/AO/DRK-JP/EAD-3/418-84 & 419-85 of 2013)

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 BY ADJUDICATING OFFICER) RULES, 1995.

Against:

**M/s. Krishna Enterprises
(Shri K. Rajendran- Sole Proprietor)
PAN No. AEKPR7106Q**

Address: 98A, (Old.No.134), Gandhi Salai,
Velachery, Chennai 600 042

**M/s. Rajesh Services Centre
(Smt. R. Dhanalakshmi - Sole Proprietor)
PAN No. AEUPD4126J**

Address : 62A, Mathiazhagan Street,
Nehru Nagar, Velachery,
Chennai 600 042

In the matter of:

(Edserv Softsystems Ltd.)

Background:

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the alleged irregularity in the course of Initial Public Offering (IPO) and further dealing in the shares of Edserv Softsystems Ltd. (hereinafter referred to as 'ESL') for the period covering from January 2009 to March 2009.
2. During the investigation, it was observed that ESL had taken loans / Inter Corporate Deposits (ICDs) for a total of ₹ 4 crores from 5 entities during the period from January 20 to February 05, 2009 and immediately after receipt of proceeds from the IPO, the loans were re-paid with interest on February 27,

2009 to the same entities. It was observed during the investigation that ₹ 4.75 crores have been siphoned off fraudulently from the ESL, and certain entities including M/s Krishna Enterprises – Shri K. Rajendran, the sole Proprietor and M/s. Rajesh Services Centre – Smt. R. Dhanalakshmi, the sole Proprietor (hereinafter referred to as '**the Noticee No.1 & 2**' respectively or both may be referred collectively as '**the Noticees**') had aided and abetted the ESL in moving out the funds.

Appointment of Adjudicating Officer:

3. I was appointed as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act 1992 (hereinafter known as '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') vide communiqué dated April 08, 2011, to inquire into and adjudge under Section 15HA of the SEBI Act, the violations of section 12 A (a), (b) & (c) of the SEBI Act, regulation 3 (a) to (d), 4 (1) and 4 (2) (f) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'), alleged to have been committed by the Noticees.

Show Cause Notice, Reply of Noticees and Hearing:

4. Show Cause Notices No. A&E/DRK/ASG/20912/2011 and A&E/DRK/ASG/20910/2011 dated June 30, 2011 (hereinafter referred to as "**SCN**") were issued to the Noticees under rule 4 of the Adjudication Rules to show cause as to why an inquiry be not held against them and penalty be not imposed under section 15 HA of the SEBI Act for the aforesaid alleged violations of SEBI Act and PFUTP Regulations.
5. It was stated in the SCN that ESL had taken ICD/ loans for a total of ₹ 4 crores from 5 entities namely- Ramesh Jain, Devkant Synthetic Pvt. Ltd., P R Vyapar Pvt. Ltd., Sarswati Vincom Ltd. and Garrison Pharma Ltd. during the period from January 20, 2009 to February 05, 2009 and immediately after receipt of the proceeds under the IPO, the loans were re-paid along with interest on February 27, 2009 from the IPO proceeds. During the investigation, the ESL has informed vide letters dated May 26, 2010 and July 28, 2010 that the loans were borrowed for meeting the project expenditure. It was alleged in the SCN that the amounts received from the loans/ICDs were transferred by the ESL to certain entities, namely - the Noticees, M/s Shiv Impexs and M/s Mahadev Impexs.

6. It was stated in the SCN that the Noticees had not provided the complete details regarding transaction with ESL, relation with other entities, annual income, invoice details from ESL, Bank details etc. as sought during the investigation. It was stated that the Noticee No. 1 received ₹ 1 crore from ESL on January 20, 2009 out of which ₹ 50 lakh was transferred to M/s Shiv Impexs and ₹ 50 lakh transferred to M/s S.K.Trading & Alloys on the same day through Pay Orders. Further, the Noticee No. 1 had received ₹ 50 lakh from ESL on January 22, 2009 which was transferred to M/s Shiv Impexs through cheque on January 23, 2009.
7. It was stated in the SCN that the Noticee No. 2 received ₹ 75 lakh from ESL on January 22, 2009 which was transferred to M/s Mahadev Impexs on January 24, 2009. The Noticee No. 2 again received ₹ 75 lakh and ₹ 50 lakh from ESL on January 28, 2009 and same were transferred to M/s Mahadev Impexs and M/s Shiv Impexs respectively on the same day. Further, the Noticee No. 2 received ₹ 25 lakh from ESL on January 29, 2009 which was transferred to Ramco International on the same day.
8. The SCN stated that the Noticees were connected to each other and acted as layers for the transactions made by ESL to other entities. It was stated that entire amount received from ESL by the Noticees, were transferred to other entities such as M/s Shiv Impexs, M/s Mahadev Impexs, M/s S.K.Trading & Alloys and M/s Ramco International, either on the same day or next day, and the ESL had not provided any invoice or proof of completion of work/supplies for the purchase orders.
9. It was alleged in the SCN that based on the contradictory statements of ESL, suspicious routing of funds by ESL, absence of invoice/proof of the work/supplies or completion of work/supplies etc., track record/lack of experience of the suppliers and their financial positions, approximately ₹ 4.75 crores have been siphoned off from the IPO proceeds of ESL and the entities namely- the Noticees, M/s Shiv Impexs and M/s Mahadev Impexs had aided and abetted the ESL in diverting the funds.
10. In view of the above, it was alleged that by adopting and indulging into such kinds of act/practices/device/artifice, the Noticees have violated section 12 A (a), (b) & (c) of the SEBI Act, regulation 3 (a) to (d), 4 (1) and 4 (2) (f) of the PFUTP Regulations. The said provisions are produced as under;

SEBI Act

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

FUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;*
- (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 thereunder.*

4. Prohibition of manipulative, fraudulent and unfair trade practice

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

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

- (f) 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;*

11. In response to the SCN, the Noticees insisted that the SCN be issued in Tamil Language; although Noticees in their earlier communication to SEBI during the course of investigation made submission in English. After several communications by undersigned *inter –alia* intimating the use of English language in the SCN is as per law, and providing the opportunities of hearings, the Noticees vide their letters dated December 24, 2011 made certain submissions. Thereafter, for the purpose of inquiry, notice of hearing dated August 31, 2012 issued to the Noticees. In response to said notice of hearing, the Noticees vide their letters dated September 24, 2012 stated that they have filed application for consent order before SEBI and requested for rescheduling the hearing. Here, it is necessary to point out that upon verification about the

claim of filing of such application, it was confirmed by SEBI that no such consent applications are registered for the Noticees. Thereafter, another notice of hearing dated September 27, 2012 was issued to the Noticees providing an opportunity of hearing on October 01, 2012 at the SEBI Regional Office-Chennai. The hearing on October 01, 2012 was attended by the authorized representatives of the Noticees namely- Mr. Balveer Singh Choudhary and Mr. Pravin Panwar and submissions were recorded. Thereafter, the Noticees through letter dated Nil (received by SEBI on November 30, 2012) made the detailed submissions towards the SCN and also filed a valuation report.

12. The main submissions made by the Noticees under their aforesaid replies and during the hearing, are produced hereunder:

- i. We are small time vendor and Interior decorator. We have been doing carpentry work for the last one decade with good companies including ESL. We do mostly cash and carry deals for materials in our business. During the course of my business, we need to purchase materials through cash only and that cannot be construed as colluding / abetting with any ESL where we are servicing.*
- ii. We are a sole proprietorship firm involved in the business of Turnkey Projects, and in the course of business, we take up assignments from clients time to time. We also outsource various material and services from various vendors in the market, in order to deliver as per the assignments undertaken by us.*
- iii. In January 2009, we bagged an assignment from ESL for establishment of HEAL Laboratories / Head office and supply of computers/accessories. In the past also we have successfully undertaken assignment from ESL. Since, the said assignment was required to be completed on time, hence, we requested for advance payments to which ESL agreed and an amount of ₹ 2.25 crores were paid in advance.*
- iv. An advance of amount of ₹ 1.5 crores & ₹ 2.5 crores respectively received by us from ESL and paid to various entities for sourcing the materials and availing services in respect of the assignment, was the part of total amount under the said assignment. Amounts were received by us from ESL pre-IPO and post-IPO as well. We sourced various materials and services from other entities and for that we made payments. We had split the assignment into various parts and had undertaken a portion in which we are specialized.*
- v. We have no interface with the securities market at all and we neither had any demat account nor any trading account. We have never dealt in share market and securities. At the relevant time of said assignment, we were not at all aware of the alleged IPO brought by ESL. We were not aware of any alleged financial transactions entered into by ESL with third parties, and there was no reason for us to be aware of the same.*
- vi. We are neither related to the promoter / directors of ESL nor had any interest in ESL at all. With regard to the alleged siphoning off the funds by ESL, we have no relation with ESL. We have undertaken assignments from*

ESL as professionals, and the amounts received under the assignments are duly accounted for, and the invoices are duly raised by us in this regard.

- vii. As per the Valuer's Report, the present market value of the work done by us (HEAL Laboratories / Head Offices etc.) is around ₹ 3.5 crores. This completely vindicates our stand that we had utilized the amounts received from ESL towards the assignment given to us and the allegations viz. "siphoning off", and we acting as "layers" etc. are devoid of any basis and completely contrary to factual position of record.*
- viii. We are not aware of and cannot be concerned with the source of amount paid by ESL to us. It is vehemently denied that we have aided and abetted ESL in siphoning the funds as alleged. If the monies have been siphoned off, as alleged, then how the HEAL Laboratories / Head Office have been constructed? There is nothing on record to show that while undertaking and executing the said assignment, we had aided and abetted ESL in the alleged violations.*
- ix. The amounts received by us from ESL and the amounts transferred by us to M/s Shiv Impexs, M/s S.K.Trading & Alloys, M/s Mahadev Impexs and M/s Ramco International, is a matter of record. However, it has been wrongly mentioned in the investigation report that we paid ₹ 50 lakh to M/s Mahadev Impexs out of the ₹ 1.5 crores received from ESL. It is vehemently denied that we had acted as layers for the transactions made by ESL.*
- x. Our availing services from M/s Mahadev Impexs, M/s Shiv Impexs, M/s Ramco International and M/s S.K.Trading & Alloys do not give us exclusivity to restrict ESL from directly dealing with these entities for purposes other than the assignment undertaken by us. ESL was free and independent to approach any entity directly. ESL's transactions with M/s Shiv Impexs and M/s Mahadev Impexs were independent and has nothing to do with our integration with these entities.*
- xi. For the first time we got major order from ESL. We merely undertook the assignment to establish the HEAL Laboratories / Head Office etc. for ESL, in our ordinary course of business and completed the same successfully.*
- xii. It is vehemently denied that ₹ 2.25 crores was indirectly paid by ESL to M/s Mahadev Impexs, M/s Shiv Impexs and M/s Ramco International and was routed through us.*
- xiii. We have transferred the money for the business transactions that we had with aforesaid entities. We have vide our letter dated September 21, 2009 and letter dated December 24, 2010, duly given all the particulars, invoices, contact address of M/s Shiv Impexs and M/s Mahadev Impexs.*
- xiv. We are not aware of or concerned with the various entities mentioned therein and are neither related to or connected with any of the entities except that we (Mr. K. Rajendran and Mrs. R. Dhanlakshmi) are husband and wife.*
- xv. We are neither aware nor concerned with any ICD /Loan taken by ESL and vehemently denies that we have aided and abetted ESL in siphoning off the funds as alleged.*
- xvi. The alleged violation has not caused any loss to any investor and has also not adversely affected the shareholders of ESL or the securities market in any manner.*

- xvii. *We have not been found violating any of the provisions of the SEBI Act or Regulations, and no notice or action has been taken against us except the current matter under reference. The allegations are serious in nature and the same needs to be proved beyond reasonable doubts. The present proceedings against us should be withdrawn and closed.*

Consideration of Issues and Finding:

13. After taking into account the allegations, replies of the Noticees and other evidences/material available on records, I hereby, proceed further to inquire the cases on merit. The issues that arise for consideration in the present cases are as under:

- (a) Whether the Noticees aided / abetted the ESL by way of becoming layers in siphoning off the funds by ESL?
- (b) If yes, then, whether such act/practices/device/artifice of the Noticees are in violation of section 12 A (a), (b) & (c) of the SEBI Act, regulation 3 (a) - (d), 4 (1) and 4 (2) (f) of the PFUTP Regulations? and
- (c) If yes, then whether the Noticees are liable for monetary penalty prescribed under section 15 HA of the SEBI Act for the aforesaid violations and what should be the quantum of monetary penalty?

14. Before analyzing the allegation of aiding/abetting in siphoning off the funds, it is necessary to examine the issue of relation / connection of the Noticees with ESL. It is the admitted fact that the Noticees have the business relationship with ESL and in the past also, they have undertaken the assignment from ESL. Therefore, it is clear that the Noticees were known to the ESL, even before the transfer of funds / siphoning off the funds as alleged in the instant proceedings. Further, admittedly the Noticee No.1 (sole proprietor of M/s Krishana Enterprises) is the husband of Smt. Dhanlakshmi (the Noticee No. 2 being a proprietor of M/s Rajesh Service Centre). It is also submitted by the Noticees that they are known to the other entities to whom the funds were further transferred by them viz. M/s Shiv Impexs and M/s Mahadev Impexs, M/s Ramco International and M/s S.K. Alloyes & Trading. The fact cannot be ignored that the Noticees provided to SEBI, the address details of M/s Shiv Impexs and M/s Mahadev Impexs, which also demonstrate that they are well related/known.

15. From the above facts / observations, it is clear that apart from the *inter-se* relationship of the Noticees, the Noticees are also well known to ESL and to other entities to whom the funds were further transferred / siphoned off.

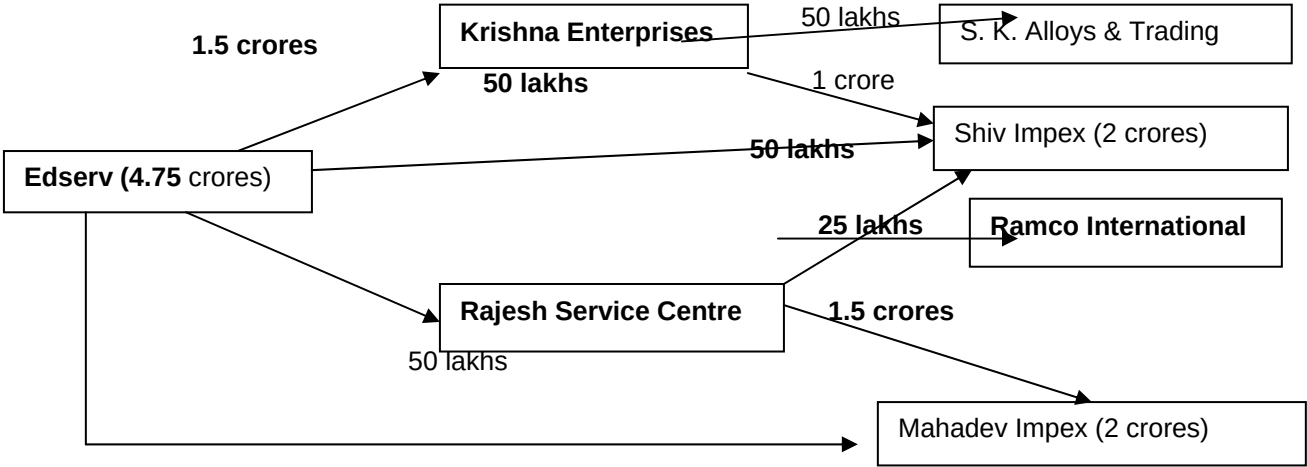
16.As regards to the second issue as to whether the Noticees had aided / abetted the ESL by way of becoming layers in siphoning off the funds, it is observed from the available records as well as from the undisputed fact of the ESL (as communicated to SEBI), that the ESL had taken ICD/ loans for a total of ₹ 4 crores from 5 entities during the period from January 20 to February 05, 2009 and that immediately after collection of IPO proceeds, the loans were re-paid with interest on February 27, 2009 from the proceeds of the IPO. The ESL has informed SEBI vide letters dated May 26, 2010 and July 28, 2010 that the loans were borrowed for meeting the project expenditure.

17.It is observed from the available records that the ESL transferred the said loan/ICD amount to certain entities, namely- the Noticee No. 1 (₹ 1.5 crores), Noticee No. 2 (₹ 2.25 crores), M/s Mahadev Impexs (₹ 50 lakh) and M/s Shiva Impexs (₹ 50 lakh), totalizing into ₹ 4.75 crores.

18.Admittedly, the Noticee No.1 received ₹ 1 crore from ESL on January 20, 2009 out of which ₹ 50 lakh was transferred to M/s Shiv Impexs and ₹ 50 lakh transferred to M/s S.K.Trading & Alloys on the same day through Pay Orders. Further, the Noticee No.1 had received ₹ 50 lakh from ESL on January 22, 2009 which was transferred to M/s Shiv Impexs through cheque on January 23, 2009.

19.It is admitted as well as observed from the available records / Bank statement that the Noticee No. 2 received ₹ 75 lakh from ESL on January 24, 2009 which was transferred to M/s Mahadev Impexs on same day. The Noticee No. 2 again received ₹ 75 lakh and ₹ 50 lakh from ESL on January 28, 2009 and entire sum was transferred to M/s Mahadev Impexs and M/s Shiv Impexs respectively on the same day. Further, the Noticee No. 2 received ₹ 25 lakh from ESL on January 29, 2009 which was transferred to Ramco International on the same day.

20.For easy understanding of the funds routing / transfer, a pictorial presentation is shown below



21. From the above undisputed facts, it is clear that the Noticees had received the said amount from the ESL and transferred the same to the said four entities on same day or the next day. After perusing the entire available records of the case, it is noted from the admitted facts of the Noticees that they were very small proprietary concern. The Income tax return of the Noticee No. No. 1 (Shri K. Rajendran) for the year 2008-09 (the year in which the alleged funds were routed) shows that he had a total income of ₹ 3, 23,919 only. It is also shown that he had total income of ₹ 3,71, 895/- only and ₹ 9,43,523/- only for the year 2009-10 and 2010 -11 respectively. Further, the Noticee No. 2 (Smt. R. Dhanlakshmi) has a total income of ₹ 6, 28,018 only for the annual return of year 2010-11. The Noticee No. 2 has submitted the aforesaid annual income tax return only.
22. Towards the entire allegations, the main contentions of Noticees are elaborated in pre Para 12 and same are not repeated for the sake of brevity. The Noticees focused on the defence that in their course of business, they took up assignments from clients and also outsourced various material / services from/to other vendors in the market, in order to complete the assignments on time. They also submitted that in January 2009, they bagged an assignment from ESL for establishment of HEAL Laboratories / Head office etc. and they requested for advance payments of ₹ 1.5 crores & ₹ 2.5 crores respectively and the ESL paid the said amount.
23. After taking into account the entire available records, it is difficult to rely upon the submission of the Noticees on the following grounds.
24. The contention of the Noticees that total amount of ₹ 3.75 crores that was transferred to them by ESL for establishment of HEAL Laboratories / Head offices / supply of computers & accessories, and which was further transferred to other vendors (viz. M/s Shiv Impexs, M/s Mahadev Impexs, M/s S K Alloys and M/s Ramco International), as the various material / services was outsourced / assigned from / to those four entities, cannot be relied on the ground that if the Noticees were really /actually given some contract by ESL to do some work, (especially, when they admittedly got such major work first time) then, naturally, the Noticees must have completed some part of it and should have kept with them part of the consideration amount, and other part of the amount could have been paid to those entities to whom the so called assignment was outsourced. However, as observed at the pre paras, the entire sum was transferred by the

Noticees on the same day or the next day without keeping a single rupee with them. In the facts and circumstances of the instant case, it is unimaginable that entire money paid in advance by the ESL to the Noticees, was in turn transferred to said four entities without the work / service being done at all, and especially, without any bill or invoice from the entities to whom the so called work was assigned. Here, the contention of outsourcing/assigning the work to the so called four entities, cannot be relied as no proof of such assignment (i.e. work order /invoice/bill) either by the said four entities to the Noticees or by the Noticees to them, is placed on records.

25. The annual income tax return also does not suggest their means/potential to carryover major orders from ESL. Despite the above, it is not clear on what basis the ESL had granted the contract of such huge amount to the Noticees. It is also noted from the records that no evidence of any basis / reasons or any agreement for awarding such major contract to the Noticees, were provided by ESL during the investigation. The fact cannot be ignored that the Noticees in their letter dated September 21, 2010 and October 30, 2010 respectively, admitted that no bill was raised to the ESL in respect of the sum received.
26. Further, it is also noticed from the investigation report that the M/s S.K. Alloys & Trading and M/s Mahadev Impexs (to whom the funds were transferred by the Noticees) were only providing services of procurement of machineries and software content/services respectively. This shows that the business which the said entities were dealing with, was totally different from the work of Noticees viz. furniture supplier and interior decorator (as admitted by Noticee in their letter dated September 21, 2010 and October 30, 2010 respectively).
27. It is also noted from the available records that the Noticees in order to support their case in the instant adjudication proceeding, submitted copy of purchase order of ESL dated January 23, 2009 and January 12, 2009 respectively. The Noticees also submitted copy of their invoices dated March 31, 2010, October 19, 20, 21, 27 & 31 of 2010 addressed to ESL. On perusal of the said invoices, it appears that the same are difficult to be relied upon on the following reasons. Firstly, it is noted that ESL earlier failed to provide any so called invoices of the Noticees / purchase orders during the investigation. Secondly, during the investigation, it was admitted by the Noticees in their letter dated September 21, 2010 and October 30, 2010 respectively, that no bill / invoice was raised upon ESL by the Noticees for the work done. In view of said admission, which is sufficient to conclude that there was no bill/invoice for the amount transferred by

the ESL to Noticees, and therefore, the said invoices submitted by the Noticees in the present proceedings are afterthought and cannot not support their case.

28. Further, the contention of the Noticees that they also received the money from ESL post IPO for the establishment of laboratories / offices etc., cannot be relied in the absence of any proof thereof. From the records, it is observed that almost the entire amount of the said ICDs were actually transferred to M/s Shiva Impexs and M/s Mahadev Impexs either through the ESL directly or through the Noticees being the layers.
29. The Noticees in their support also submitted a General Valuation Report dated November 20, 2012 in respect of interior works and movable items lying in the office branches of ESL. Upon perusal of the said report, which basically relates to the value of item/goods lying at the particular places, it is observed (from page 2 opening para of said report) that the interior works / supply of the movables had been undertaken and completed by Shri K. Rajendran / the Noticee No.1. However, no reference of any material / evidences / payment receipts / purchase of raw material or finished items by the Noticee No.1 from other vendors etc., is given in said report to suggest that Noticee No.1 only carried out such work.
30. Further, the comments of SEBI were also sought on the aforesaid valuation report of the Noticees. It is observed that the said valuation report majorly covers the computer systems and air conditioning installation which is away from carpentry work of the Noticees. The said report also depicts the present market value of the properties lying at said places / offices, but does not discuss about money received by the Noticees from ESL had been utilized for the same. The said report also does not indicate the period of setting up the said interior work, as against the claim of the Noticees to have been done during the period of 2009.
31. Keeping in view the aforesaid detailed observations /discussions /records, I am of the opinion that the Noticees who received the funds from ESL (which was raised by the ESL through ICDs), had in collusion with ESL, acted as layers in transferring the entire sum to M/s Mahadev Impexs, M/s Shiv Impexs, S.K. Alloys & Trading and Ramco International either on same day or the next day, and had thereby aided/abetted the ESL in fraudulently siphoning off the funds. The said act/mechanism/practices/artifice of the Noticees are in violations of section 12 A (b) & (c) of the SEBI Act, regulation 3 (c) & (d) of the PFUTP Regulations and

the violation of which is punishable under section 15HA of the SEBI Act. Section 15HA reads as follows:

15HA. Penalty for fraudulent and unfair trade practices.

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

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

15J - Factors to be taken into account by the adjudicating officer

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.*

33. The investigation report neither indicate the quantum of any direct or indirect unfair gain made by the Noticees nor the default of the Noticees is shown to have been of repetitive in nature. However, as regards to the loss to the investors, certainly the amount which was siphoned off by the ESL through the Noticees, is a loss to those investors who were already the shareholders of the ESL or who applied and were allotted shares under the said IPO. It can be observed from the above analysis that the said loss is caused mainly by the ESL along with layers, and it is not established that the Noticees were the actual beneficiary of said siphoned amount. They were the channels only who, in collusion, passed on the said amount to other layers. However, it cannot be ignored that such act/practice as adopted by the Noticees, is serious in nature which has the cascading adverse effect towards the investors/shareholders. Hence, a considerable penalty needs to be imposed upon the Noticees, taking into account the gravity of the violations committed.

Order:

34. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15 I of the SEBI Act and rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 10,00,000/- (Rupees Ten Lakh only) upon each Noticees for the violation of section 12 A (b) & (c) of the SEBI Act, and ₹ 10,00,000/- (Rupees Ten Lakh only) upon each Noticees for the violation of regulation 3 (c) & (d) of the PFUTP Regulations. Thus a total penalty of ₹ 40,00,000/- (Rupees Forty Lakh only) is

imposed on the Noticees under the provisions of section 15 HA of the SEBI Act. I am of the view that the said penalty would commensurate with the violations committed by the Noticees.

35. The Noticees shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The demand draft shall be forwarded to the Chief General Manager, Investigation Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.

36. Copy of this order is being sent to both the Noticees and also to the SEBI, in terms of rule 6 of the Adjudication Rules.

Date: November 26, 2013

Place: Mumbai

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**