<u>BEFORE THE ADJUDICATING OFFICER</u>
<u>SECURITIES AND EXCHANGE BOARD OF INDIA</u>
[ADJUDICATION ORDER No. Order/MC/RM/2022-23/20383-20386]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of –

1. **Delphina Distributors Private Limited (PAN: AAECD3064A)** having address at 55, F.I.E, Patparganj Industrial Area, New Delhi-110092
2. **Placido Marketing Private Limited (PAN: AAGCP6892C)** having address at 55, F.I.F, Patparganj Industrial Area, Delhi-110092
3. **Ms. Rachna Sharma (PAN: BMWPS7405L)** having address at 108 Anand Niketan Hospital Road Jaipur Rajasthan India 302015
4. **Susane Traders Private Limited (PAN: AARCS7045M)** having address at 55 F.I.E Patparganj Industrial Area New Delhi-110092

In the matter of Delta Leasing & Finance Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings against Delphina Distributors Private Limited (**Noticee-1),** Placido Marketing Private Limited **(Noticee-2),** Ms. Rachna Sharma **(Noticee-3)** and Susane Traders Private Limited **(Noticee-4)** for the alleged violations of Section 11C(2) & 11C(3) of SEBI Act, 1992; and Regulation 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') *vide* order dated December 21, 2020 to inquire into and adjudge under

Section 15A(a) and 15HA of the SEBI Act, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated *vide* order dated January 13, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/RM/2022/1700 dated January 12, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('SEBI Adjudication Rules') to show cause as to why an inquiry should not be held and penalty not be imposed against Noticees in terms of Section 15A(a) & 15HA of the SEBI Act for the aforesaid alleged violations.

4. The allegations levelled against the Noticees in the SCN are summarized as below:

5. Delta Leasing & Finance Ltd. (DLFL) was incorporated in November 1983 and was listed on DSE on June 27, 1984 and at BSE on April 18, 2013. As per the website of DLFL, the company is engaged in investments and providing loan & advances and other related activities. The Noticees engaged in some off-market transactions in the scrip of DLFL during the year 2013 which were required to be settled as spot delivery contract. The off market transactions executed during the investigation period were carried out electronically in dematerialized form by transfer from the account of a Beneficial Owner (Transferor or Source Client) to the account of another beneficial owner (Transferee or the Target Client) through Delivery Instruction Slips (DIS).

6. A "spot delivery contract" is defined in SCRA to mean a contract which provides for actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality.

7. On scrutiny of the DIS of some of the Source clients of aforesaid off market transactions, it was observed that consideration amount for the off market transfer of shares have been stated in the DIS. In certain other cases, the consideration amount was indicated to have been received in cash and in some other cases, though the consideration amount is mentioned but the mode and manner of the amount received have not been stated. In view of the same during investigation, among others summons were also issued to the Noticees.

8. The Noticees (Source client/Target client in the off market transactions) did not substantiate their claim of consideration received/paid with any documentary evidences in response to the summons issued seeking the aforementioned information. Though they responded to the summons issued to them, but they did not provide any reply to specific query of date of receipt/payment of consideration as the case may be for the transactions. The details of the delivery of summons and reminders issued to the Noticees are tabulated below and copies of email communications exchanged with the Noticees were provided as Annexure-2 of the SCN.

Sr no.	Name of Entity	Status of delivery	Date of Delivery	Proof of Delivery	Dates on which reminders sent
1	Delphina Distributors Private Limited	Delivered through email to 'jindal21@ymail.com'; and 'jindal21@hotmail.com'	30.10.2019	Email delivery receipt	11.12.2019 & 02.01.2020
2	Placido Marketing Private Limited	Physical copy delivered on 04.11.2019 and Delivered through email to jindal21@ymail.com	04.11.2019	Email delivery receipt and acknowledgement	11.12.2019 & 02.01.2020
3	Rachna Sharma	Physical copy delivered on 26.11.2019 and Delivered through email to rachna@yahoo.com on 19.11.2019	26.11.2019	Email delivery receipt and acknowledgement	30.12.2019
4	Susane Traders Private Limited	Physical copy delivered on 04.11.2019 and Delivered through email to jindal21@hotmail.com	04.11.2019	Email delivery receipt and acknowledgement	11.12.2019 & 02.01.2020

9. Despite issuance of reminders to the summons, the Noticees failed to furnish bank statements/cash receipt/share bills in respect of their transactions which

was a crucial and essential information for ascertaining the compliance status of the off market transactions with the time frame for settlement as stipulated in Section 2(i)(a) of SCRA, 1956. Failure on Noticees part to give complete reply to summons impeded the investigation as it could not be ascertained as to whether these transactions were carried out in the manner stipulated in Section 2(i)(a) of SCRA and therefore not in contravention of the provisions of section 13, section 16 & section 18 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013. The Noticees thereby sought to avoid regulatory action.

10. In view of the above, Noticees were alleged to have violated Section 11C(2) and 11C(3) of the SEBI Act.

11. The relevant clauses of SC(R)A and SEBI Act are reproduced as under:

<u>*SC(R)A:-*</u>

2 (i) *In this Act, unless the context otherwise requires,— spot delivery contract" means a contract which provides for,-*

(a) *actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;*

<u>*SEBI Act:-*</u>

Investigation.

11C - *where the Board has reasonable ground to believe that-*

(2) *Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by it in this behalf, all the books, registers, other documents and record of, or relating to, the* *company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.*

(3) *The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.*

Incorrect information in DIS Slips

12. During the Investigation, it was observed that the Noticee 1, 2 and 4 as source clients mentioned "Bad delivery/Delivery Return" as the reason for transfer in the DIS for the following transactions:

Srno. (1)	**Name, PAN, Demat Id of source client (2)**	**Name, PAN, Demat Id of target client (3)**	**Quantity transferred (4)**	**Consideration (Rs.) received by source client (5)**	**Market rate (6)**	**Market value (Rs.) (7)**	**Date of payment by target client (8)**	**Date of transfer of shares by source client (9)**	**No. of days of delay (10)**
1	DELPHINA DISTRIBUTORS PRIVATE LIMITED 11027148	ARCHIT JINDAL 10123657	49000	Not Mentioned	38.25	1874250	N.A	24.09.2013	Could not be computed
2	PLACIDO MARKETING PRIVATE LIMITED 11027156	ARCHIT JINDAL 10123657	49000	Not Mentioned	38.25	1874250	N.A	24.09.2013	Could not be computed
3	SUSANE TRADERS PRIVATE LIMITED 11025183	ARCHIT JINDAL 10123657	49000	Not Mentioned	38.25	1874250	N.A	24.09.2013	Could not be computed

13. In order to verify the claims of the Noticees 1, 2 and 4 having stated the reason for transfer in the DIS as Bad delivery/Delivery Return, vide emails dated June 15, 18 and 20, 2020 the RTA of the company i.e. M/s Beetal Financial Computer Services Pvt Ltd. (hereinafter referred as "RTA") was asked to provide the complete information of any instance of bad delivery rectification request received from Noticees (among other source clients) and to confirm whether bad delivery rectification has been done by the RTA for shares in physical mode during the period January 01, 2010 to December 31, 2014. The RTA vide emails dated June 17, 19 and 22, 2020 provided the complete transfer register maintained by the RTA along with the list of bad delivery rectification requests rejected during the said period.

14. On analysis of the information provided by the RTA and comparison of the transactions involved in the transfer register with the off-market transactions, it was observed that there were neither any requests from the Target Clients (involved in the category of Bad Delivery/Delivery Return transactions) to the RTA for transfer of shares in their names nor from the Source Clients for Bad Delivery Rectification in the case of shares transferred in Physical form. Further, there can be no case of Bad Delivery/Delivery Return when the shares are transferred in Demat form through a depository.

15. For effecting transfer of shares electronically, the Source Clients, in the aforesaid transactions, Noticee 1, 2 & 4 had issued the DIS duly filled in and signed to the Source DP. Therefore, the Noticee 1, 2 and 4 being Source clients are accountable and responsible for the contents filled in by them in the DIS for the aforesaid off market transactions. When the aforesaid Noticees have stated the reasons for transfer in the DIS as Bad Delivery/Delivery Return which is not true and when the other records exist contrary to the reasons stated in the DIS by the Source Clients, the act of the aforesaid Noticees in giving false reason of Bad Delivery/Delivery Return for transfer of shares would amount to an act of deceit and undermine the ethical standards and good faith dealings while dealing in securities.

16. Noticees 1, 2 and 4 by stating their off market transfer of shares as Bad Delivery/Delivery Return transactions in the DIS committed an act of deceit by giving false in DIS for transfer of shares in order to evade or avoid regulatory compliance stipulated in Section 2(i)(a) SCRA, 1956 for off market transfer of shares.

17. For the reasons detailed above, the Noticees were alleged to have violated Regulation 4(1) of SEBI PFUTP Regulations, 2003, which is reproduced as under:

    SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003

    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.

18. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15A(a) & 15 HA of the SEBI Act.

19. In response to SCN, Noticees neither filed any reply nor attended personal hearing before undersigned. The details of the delivery of SCN and Hearing Notice (HN) to the Noticees is as follows:

Noticee Name	**SCN/HN delivered by**
Delphina Distributors Private Limited	SCN served by SPAD and by email (on email address jindal21@ymail.com) on 12.01.2022 and HNs on 07.07.2022, 14.07.2022 and 04.10.2022 respectively
Placido Marketing Private Limited	SCN served by SPAD and by email (on email address jindal21@ymail.com) on 12.01.2022 and HNs on 07.07.2022, 14.07.2022 and 04.10.2022 respectively
Ms. Rachna Sharma	SCN served by SPAD and by email (on email address brahmanands22@gmail.com) on 12.01.2022 and HNs on 07.07.2022, and 14.07.2022 respectively

Susane Traders Private Limited	SCN served by SPAD and by email (on email address jindal21@ymail.com) on 12.01.2022 and HNs on 07.07.2022, 14.07.2022 and 04.10.2022 respectively

20. From the details of delivery of SCN and HN as given in the table above, I note that Noticees did not submit any reply to the SCN, and did not appear for personal hearing, despite being provided with sufficient opportunity for filing the reply to the SCN and to appear for hearing. In these facts and circumstances, with respect to these Noticees, the matter can be proceeded ex-parte on the basis of material available on record in terms of Rule 4(7) of the Adjudication Rules which reads as under: -

"4(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so."

CONSIDERATION OF ISSUES AND FINDINGS

21. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticees violated Section 11C(2) and 11C(3) of SEBI Act; and Regulation 4(1) of SEBI PFUTP Regulations, 2003?

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(a) and 15HA of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I Whether the Noticees violated Section 11C(2) and 11C(3) of SEBI Act; and Regulation 4(1) of SEBI PFUTP Regulations, 2003?

22. The first allegation against the Noticees is that they did not respond to the summons issued and delivered to them as illustrated in the table above. In this regard, I have perused the documents available on record and note that none of the Noticees responded to the summons during investigations. Further, the Noticees have also failed to respond to SCN and HN issued to them during the instant proceedings.

23. I note that in absence of any response from the Noticees, it is presumed that they have admitted the charge of violation of provisions as alleged in the case. In this regard, it is pertinent to note that the Hon'ble SAT in the matter of *Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006)* has, inter-alia, observed that, "............ *the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". It is also pertinent to note that the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs. SEBI (Appeal No. 68 of 2013 decided on February 11, 2014)*, has also, inter alia, observed that: "........... *appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*". Therefore, it can reasonably be presumed that the allegations made against them in regard to their failure of reply to summons have been admitted by the Noticees in this case. The material on record does not indicate anything to ex facie hold otherwise.

24. On the basis of documents available on records, I note that the aforesaid Noticees by not responding to summons failed to furnish bank statements/cash receipt/share bills, and other details in respect of their transactions; which would have provided SEBI, crucial and essential information for ascertaining the compliance status of the impugned transactions with the time frame for settlement as stipulated in Section 2(i)(a) of SCRA, 1956. Failure on their part to give reply to summons impeded the investigation, as it could not be ascertained

as to whether the impugned transactions were carried out in in the manner stipulated in Section 2(i)(a) of SCRA and therefore, not in contravention of the provisions of section 13, section 16 & section 18 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013.

25. In view of the above, I find that **that Noticees failed to provide information to SEBI upon receipt of summons, and thereby violated Section 11C(2) and 11C(3) of SEBI Act.**

26. The second allegation on the Noticees 1, 2 and 4 is that they have stated incorrect information in DIS Slips to evade regulatory compliances for transfer of shares and thereby committed an act of deceit, and thereby violated Regulation 4(1) of SEBI PFUTP Regulations. In this regard, I note that the aforesaid Noticees were Source clients in the impugned transactions, and to facilitate the transfer of shares electronically, Noticees as Source Clients duly filled in and signed the DIS slips and issued to the Source DP. I also note that in DIS Slips issued by the aforesaid Noticees for the impugned off market transfers, the reason for transfer stated in the DIS Slips was "Bad delivery/Delivery Return". SCN states that from the information provided by the RTA and upon comparison of the transactions involved in the transfer register with the off-market transactions, it was observed that there were neither any requests from the Target Clients (involved in the category of Bad Delivery/Delivery Return transactions) to the RTA for transfer of shares in their names nor from the Source Clients for Bad Delivery Rectification in the case of shares transferred in Physical form. Further, there can be no case of Bad Delivery/Delivery Return when the shares are transferred in Demat form through a depository. Hence, the reason stated by Noticees 1, 2 and 4 in the DIS slips for the transfer of the shares was false and incorrect.

27. Regulation 4(1) of PFUTP Regulations states that "*no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets".* The

issue to be examined here is whether an incorrect reason given in the DIS slip by a transferor amounts to manipulative, fraudulent or unfair trade practice.

28. In this regard, I refer judgement of Hon'ble SC in the matter of SEBI vs. Kanaiyalal Patel [CA No. 2595 of 2013] of 20.09.2017 wherein the SC held as follows:

"Market manipulation is normally regarded as an "unwarranted" interference in the operation of ordinary market forces of supply and demand and thus undermines the "integrity" and efficiency of the market."

"Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions"

29. Based on the above, incorrect entry in DIS slip does not amount to market manipulation as by itself, it does not affect the market forces of demand and supply. A trade practice would be unfair if it is unfair to the parties involved in the transactions or otherwise affects fairness and integrity in the markets. The wrong entry for reason of sale on a DIS slip, as in this case, has not been shown to have created unfairness for the parties engaged in the transaction. It is also not demonstrated as to whether the fairness or integrity of trading in DLFL is impacted by the wrong entry in DIS slips by the Noticees.

30. As regards fraudulent trade practice, regulation 2(c) of the PFUTP Regulations defines fraud as *"any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss".* In the SC order in SEBI vs. Kanaiyalal Patel(supra), it is held that

"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."

31. While the act of giving wrong reason for transfer of shares in a DIS slip may be considered to be deceitful, by itself, it has not been demonstrated as to how this act could induce another person to deal in securities. There is no inference in the allegation that any person was induced to act in the manner that he did but for the inducement.

32. In view of the above, I find that violation of Regulation 4(1) of SEBI PFUTP Regulations, 2003 against Noticees on account of giving wrong reason for sale in DIS slip is not established.

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(a) and 15HA of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

33. As it is established that Noticees failed to provide information to SEBI upon receipt of summons, and thereby violated Section 11C(2) and 11C(3) of SEBI Act, as brought out in the foregoing paragraphs, they are liable for monetary penalty under Section 15A(a) of SEBI act which states as follows:

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,—*

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

34. While determining the quantum of penalty under 15A(a) of SEBI Act the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

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.

35. I note that the material on record has not brought out any disproportionate gain made by the Noticees or loss caused to investors by the Noticees. I also note that while the summons were issued in 2019-20, the transactions pertain to the period 2013-14. In view of the above, taking into consideration facts and circumstances of the case and mitigating factors, I am of the view that a penalty of Rs.1,00,000/- each on Noticees under Section 15A(a) of SEBI Act will be commensurate with the violations committed by the Noticees.

ORDER

36. After taking into consideration all the facts and circumstances of the case, in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 15A(a) of SEBI Act for violation of Section 11C(2) and 11C(3) of SEBI Act, on each of the following Noticees - Delphina Distributors Private Limited (**Noticee-1),** Placido Marketing Private Limited **(Noticee-2),** Ms. Rachna Sharma **(Noticee-3)** and Susane Traders Private Limited **(Noticee-4).**

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

38. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action – IV of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:
    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment –Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

39. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: October 18, 2022
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER