BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AS/VC/2022-23/22032-22036)

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

In respect of

Noticee No.	Name and PAN of the Noticees
1	Ejecta Marketing Ltd. (PAN: AAFCA1262N)
2	Tanumay Laha (PAN: AIVPL5095K)
3	Sudip Laha (PAN: AJDPL6771H)
4	Bhagwan Das Soni (PAN: ALQPS3699Q)
5	Kamal Kumar Bararia (PAN: AEDPB8638J)

In the matter of Ejecta Marketing Limited

BACKGROUND OF THE CASE

1. Ejecta Marketing Limited (hereinafter referred to as ***"EML/ Company/ Noticee 1"***) was incorporated on February 19, 1983 in Kolkata under the name of Appu Marketing & Manufacturing Limited. EML is a trading company, providing competitive, faster and professional services and facilitates a smooth flow of products from the manufacturers, dealers, and distributors to the customers. Its registered office address is 1, Old Court House Corner, 1st Floor, Room No. 15, Kolkata – 700001, West Bengal. The Company's shares were listed in the Calcutta Stock Exchange Association Limited. It got listed on the Bombay Stock Exchange (hereinafter referred to as ***"BSE"***) on September 19, 2014. As per the BSE

notification dated January 5, 2018, the name of the scrip was changed from Appu Marketing & Manufacturing Limited to Ejecta Marketing Limited.

2. BSE had carried out a preliminary examination of the utilization of funds raised by certain companies including EML, based on the observation of its auditor's committee and the disciplinary action committee (DAC). Pursuant to the same, BSE concluded that, *prima facie*, there has been a mis-utilization of funds by these companies including EML. Accordingly, based on the said findings of BSE, an investigation was carried out by SEBI in the matter. The period of investigation was from May 06, 2013 to March 31, 2014 *(hereinafter referred to as the **"Investigation Period")**.*

3. Based on the findings of investigation, Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) had initiated adjudication proceedings against:

   3.1. EML (**"Noticee 1"**), Tanumay Laha (hereinafter referred to as ***"Noticee 2"***), Sudip Laha (hereinafter referred to as ***"Noticee 3"***), Bhagwan Das Soni (hereinafter referred to as ***"Noticee 4"***) and Kamal Kumar Bararia (hereinafter referred to as ***"Noticee 5"***) (Noticees 1 to 5 are hereinafter collectively referred to as the ***"Noticees")*** for the alleged violation of section 12A (a), (b), (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the ***"SEBI Act"***) read with regulations 3 (a), (b), (c), (d), and 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 the ***"SEBI PFUTP Regulations"***). Noticees 2 to 5 were the directors of the Company during the investigation period.

   3.2. EML (**"Noticee 1"**) for the alleged violation of section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as ***"SCRA"***) read with clause 43 of the erstwhile Listing Agreement, which is now regulation 32 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as the ***"SEBI LODR Regulations").***

APPOINTMENT OF ADJUDICATING OFFICER

4. In exercise of the powers under section 19 of the SEBI Act, SEBI appointed Shri Prasanta Mahapatra as the adjudicating officer under section 15-I of the SEBI Act read with rule 3 of the SEBI (Procedure of Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as ***"SEBI Adjudication Rules"***) and section 23-I of the SCRA read with rule 3 of the Securities Contracts (Regulation) (Procedure of Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as ***"SCRA Adjudication Rules"***) to inquire into and adjudge against (a) the Noticees under section 15HA of the SEBI Act; and (b) Noticee 1 under section 23E of SCRA, for the alleged violations stated in aforesaid paragraph 3. Pursuant to the transfer of erstwhile Adjudicating officer Shri Prasanta Mahapatra, the instant matter *vide* order dated June 06, 2022, was transferred to the undersigned.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A common Show Cause Notice dated August 31, 2021 (hereinafter referred to as **'SCN'**) was served on the Noticees, in terms of the provisions of rule 4 of the SEBI Adjudication Rules read with section 15-I of SEBI Act, and rule 4 of the SCRA Adjudication Rules read with sections section 23-I of the SCRA, requiring the Noticees to show cause as to why an inquiry should not be held against them under rule 4 of the SCRA Adjudication Rules and why penalty should not be imposed on them under section 15HA of the SEBI Act for the alleged violations of the provisions of section 12A(a), (b), (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), and 4(1), 4(2) (f), (k) and (r) of the SEBI PFUTP Regulations for Noticees 1 to 5, and under section 23E of the SCRA for the alleged violation of the provisions of section 21 of SCRA read with clause 43 of the erstwhile Listing Agreement, which is now regulation 32 of the SEBI LODR Regulations for Noticee 1.

6. SCN issued to Noticee 1 via SPAD returned undelivered. Thereafter, a certified copy of the SCN was affixed at the last known address of Noticee 1. However, Noticee 1 was not available at the said address. Therefore, the notice regarding

issuance of SCN published in The Times of India (English), Sanmarg (Hindi) and Ei Samay (Bengali) in their Kolkata editions on September 02, 2022. It was also published in the said newspaper publications that, the Noticee shall collect the Show Cause Notice from Enquiry and Adjudication Department-8 (EAD-8), Securities and Exchange Board of India, SEBI Bhavan II, C-7, G Block, BKC, Bandra (E) Mumbai 400051. It was further published that the said SCN has been published / uploaded for on www.sebi.gov.in under the section "Enforcement: Unserved Summons/ Notices". Vide the said publication an opportunity of personal hearing was also granted to the Noticees on September 16, 2022 at the above address, and if Noticees so desire through online platform. However, the Noticee 1 did not submit any response / reply to the SCN / Hearing notice and also failed to appear for the scheduled hearing.

7. SCN's issued to the Noticee 2 to 5 were duly served to the Noticees by Speed Post Acknowledgement Due and by e-mails. Vide separate letters dated October 18, 2021, Noticees 2 , 3 and 4 replied seeking additional time to respond to the SCN. No reply was received from Noticee 5. Pursuant to the transfer of the matter to the undersigned, in the interest of natural justice, an opportunity for submitting reply to SCN by September 5, 2022 and opportunity of hearing was granted to the Noticee 2 to 4 on September 07, 2022 vide hearing notice (HN) dated August 19, 2022. Noticee 5 was advised to furnish reply to SCN by September 9, 2022 and opportunity of hearing was granted on September 12, 2022 through video conference on cisco Webex *vide* HN dated August 19, 2022.

8. On September 07, 2022, the Authorised Representative (hereinafter referred to as **'AR'**) of the Noticee 2 to 4 appeared and requested for extension time till September 22, 2022 for making written submissions to the SCN and adjournment of hearing. The request was acceded to and the hearing was rescheduled to September 29, 2022. Noticee 5 requested for adjournment of hearing telephonically which was acceded to and rescheduled to September 29, 2022. On September 29, 2022, the AR on behalf of Noticee 2 to 5 appeared for the scheduled

personal hearing and requested for further extension. Accordingly, hearing was rescheduled to November 10, 2022 and they were advised to furnish their reply to the SCN by November 8, 2022. However, vide email dated November 10, 2022, the AR requested for adjournment. Accordingly, a final opportunity of personal hearing was granted to Noticee 2 to 5 on November 29, 2022 and they were again advised to furnish their reply to the SCN by November 25, 2022. Noticees 2 to 5 neither appeared for the scheduled hearing on November 29, 2022 nor furnished reply to the SCN.

9. I note that the Noticees 2 to 5 have not furnished reply to the SCN in spite of multiple reminders given to them and they have not availed the multiple opportunities of hearing for making any submission in the matter as indicated under:

Noticee Name	**Opportunities of personal hearing granted to the Noticees 2 to 5 and for submitting replies**			
	1st date of hearing	**2nd date of hearing**	**3rd date of hearing**	**4th date of hearing**
Tanumay Laha	September 07, 2022	September 29, 2022	November 10, 2022	November 29, 2022
Sudip Laha	September 07, 2022	September 29, 2022	November 10, 2022	November 29, 2022
Bhagwan Das Soni	September 07, 2022	September 29, 2022	November 10, 2022	November 29, 2022
Kamal Kumar Bararia	September 12, 2022	September 29, 2022	November 10, 2022	November 29, 2022

10. I note that sufficient opportunities have been provided to the Noticees to represent their case by way of reply to the SCN and also by way of personal hearing. However, it is a matter of record that Noticees failed to furnish their reply and also failed to appear for personal hearing. Further, after requesting adjournments of hearings, Noticee 2 to 5 failed to appear for the subsequent personal hearing before the undersigned. Therefore, in the absence of reply on the merits of the SCN from the Noticees and/or their failure to make any submission during the personal hearing and failure to avail further multiple opportunities of personal hearings granted to them, I am inclined to presume that the Noticees have nothing

to offer in their defense and therefore, it has admitted to the allegations levelled against the Noticees in the SCN. In this context, Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Sanjay Kumar Tayal vs SEBI**, *vide* Order dated February 11, 2014 held that *"appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted to the charges levelled against them in the show cause notice."*

I also refer to the judgment of Hon'ble SAT dated December 08, 2006 in the matter of **Classic Credit Ltd. v SEBI** (Appeal No. 68 of 2003) wherein, it is observed, *"… the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".*

Further, the same position is reiterated by the Hon'ble SAT in the matter of ***Dave Harihar Kirtibhai Vs SEBI*** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:*"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*

11. In view of the aforesaid observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against Noticees as ex-parte.

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

*12.1. "A board meeting of the Company was held on April 10, 2013 (hereinafter referred to as the "**April 2013 BM**"), wherein a resolution was passed to issue equity shares on preferential basis upto 42,35,000 equity shares of Rs.10 each to non-promoters (hereinafter referred to as the "**April 2013 BM Resolution**"). In the said April 2013 BM, following directors were present (a) Noticee 2 (Tanumay Laha); (b) Noticee 3 (Sudip Laha); (c) Noticee 4 (Bhagwan Das Soni); and (d) Noticee 5 (Kamal Kumar Bararia). Subsequently, the members of the Company in its extra ordinary general meeting held on May 06, 2013 accorded the approval for raising Rs. 4,23,50,000 through preferential issue of 42,35,000 equity shares of Rs.10 each (hereinafter referred to as the **"May 2013 EGM"**). The preferential issue of equity shares approved in the April 2013 BM and May 2013 EGM were duly allotted in the board meeting held on September 20, 2013 to 49 preferential allottees. Further, the Company in the annual general meeting held on September 17, 2018 approved the intimation and ratification of utilization of funds raised through the preferential issue (hereinafter referred to as the "**September 2018 AGM**").*

12.2. In order to examine the possible mis-utilization of funds raised through the said preferential issue by the Company, the detailed utilization of proceeds of preferential issue was sought from the Company by SEBI. As per the submissions of the Company, the proceeds of the preferential issue i.e, Rs 4,23,50,000 was utilized in the following manner:

(a) *Rs. 3,91,50,000 were utilised for giving loans to 21 entities (hereinafter referred to as **"Loan 1"**).*

(b) *Rs. 32,00,000 were utilised as working capital of the Company.*

12.3. During the investigation, copies of the registered loan agreements executed by the Company with the 21 entities were sought from the Company. The Company vide email dated February 02, 2021 submitted that "the previous

Directors of the Company have not provided the copy of registered loan agreement for aforementioned 21 Entities. As there are no records of the loan agreement in our records so we are not being able to provide the same.” However, the Company vide email dated March 04, 2021 submitted that they had received the file and forwarded the copies of the loan agreements executed with the 21 entities. The copies of the loan agreements were provided by EML to BSE–Surveillance & Supervision Department. Upon perusal of the copies of the loan agreements, it was noted that:

(a) *The loan agreements were executed on plain paper.*

(b) *The agreements did not contain a schedule for repayment of loan, and the loan granted was repayable on demand.*

(c) *No collateral was secured for the loans provided.*

(d) *No interest rate was mentioned in the loan agreements of R S P Overseas Pvt Ltd, Shree Shakti Developers and Snowtemp Vyapaar Pvt Ltd. The agreement mentions that the interest rate may be mutually agreed by the borrower as well as the lender.*

(e) *The agreements were not registered.*

(f) *The loan agreements were entered between the various entities which received the loan and the Company (then Appu Marketing and Manufacturing Ltd). On behalf of the Company, the Noticee 3, i.e., Mr. Sudip Laha, the managing director, had executed all the agreements.*

(g) *The Noticee 2, i.e., Mr. Tanumay Laha, director, had signed as witness for these agreements.*

12.4. The copies of board approvals for loans provided to the 21 entities were also sought from the Company. The Company vide letter dated November 27, 2020 provided copies of two board resolutions dated June 01, 2013 and August 01, 2013. It was observed that in the board resolution dated June 01, 2013, EML had approved providing loans to the entities viz. R P Jayswal & Sons, Gujrat Craft Industries Ltd and Shree Shakti Developers. In the board resolution dated August 01, 2013, EML had approved providing loan to Snowtemp

Vyapaar Pvt Ltd. The Company did not provide copies of the board approvals for the remaining entities i.e., the Company failed to provide board approvals for 17 entities out of the 21 entities.

12.5. *The details of repayment of Loan 1 was also examined and it was observed that all the entities had repaid the loan except the following entities:*

Table No. 1

(Amount in Rs.)

Sr. No.	***Name***	***Loan From Preferential Allotment***	***Interest***	***TDS***	***Repayment***	***Balance***
1	*Geotex Textile Pvt Ltd*	*25,00,000*	*17,52,171*	*1,75,218*	*10,00,000*	*30,76,953*
2	*Gujrat Craft Industries Ltd*	*20,00,000*	*5,00,000*	*50,000*	*21,44,000*	*3,06,000*
3	*Shree Shakti Developers*	*3,50,000*				*3,50,000 (Written off as Bad Debt on March 31, 2016)*
4	*Nandlal Kamal Kishore Vyapaar*	*10,00,000*	*5,86,181*	*50064*	*5,00,000*	*10,36,117*
	Total	***58,50,000***	***28,38,352***	***2,75,282***	***36,44,000***	***47,69,070***

12.6. *It was further observed that Polpit Financial Consultants Pvt Ltd had received a loan of Rs. 25,00,000 from preferential issue funds and Rs. 15,00,000 out of Company's own funds. Polpit Financial Consultants Pvt Ltd had repaid Rs. 25,00,000 and was not charged interest on the Rs. 25,00,000 loan. Hence, the loan taken by Polpit Financial Consultants Pvt Ltd from the proceeds of the preferential issue is considered fully paid and its name is not reflected in the above table no. 1.*

12.7. *Apart from Polpit Financial Consultants Pvt. Ltd., out of the 21 entities who had received loan from EML, interest was also not charged from the following entities: R P Jayaswal & Sons, Nandalal Kamal Kishore Vyapaar Pvt. Ltd., and Snowtemp Vyapaar Pvt. Ltd. In this regard, clarification was sought from EML, the Company vide email dated November 06, 2020 had submitted that "As per the then CFO, basis of charging different interest rates was the need &*

credibility of party, fluctuation in market rate, availability of surplus funds with the company, tenure of loan etc. The above mentioned 4 entities were not charged interest Reason being that decision to lend to them was a bad business call and at one time it seemed that Principal was in Risk. To recover the loans given (Principal) interest was waived or consider at NIL".

12.8. From the recovery details submitted by EML with respect to Loan 1, it is observed that out of the amount Rs. 3,91,50,000 given as loan, the Company has recovered an amount of Rs. 4,48,11,672.00 (principal Rs. 3,53,00,000 and interest Rs. 95,11,672). EML vide email dated March 02, 2021, and March 03, 2021 submitted details regarding the consolidated utilization of amount recovered. It was submitted by EML that out of the amount recovered from Loan 1, an amount of Rs. 2,23,72,288 has again been utilized to provide loans to various entities (hereinafter referred to as "Loan 2"). The details with respect to the loan given under Loan 2 are follows:

Table No. 2

Sr. No.	Entity	Date	Loan Amount (Rs.)
1	Aishwariya Sales Promotion	18/03/2014	25,00,000
	Aishwariya Sales Promotion	25/03/2014	25,00,000
2	Toshniwal Enterprises Control Pvt. Ltd.	13/05/2014	30,00,000
3	RT Fashion Pvt. Ltd.	25/06/2014	20,00,000
	RT Fashion Pvt. Ltd.	25/06/2014	24,00,000
4	Aruna Murarka	17/02/2015	25,00,000
	Aruna Murarka	17/02/2015	4,72,288
5	R K Cement Supply Agency	18/05/2015	10,00,000
	R K Cement Supply Agency	18/05/2015	5,00,000
6	George School of Competitve Exims	20/05/2015	5,00,000
7	MM Carbon Products	25/07/2018	5,00,000
8	Safcon Seals	27/07/2018	5,00,000
	Safcon Seals	30/07/2018	5,00,000
	Safcon Seals	20/08/2018	5,00,000
9	Anil Kumar Jain	20/08/2018	5,00,000
10	Dhananjay Kumar Saha	21/12/2018	5,00,000
	Dhananjay Kumar Saha	21/12/2018	10,00,000
11	Aditya Agarwal	14/10/2020	5,00,000
	Aditya Agarwal	14/10/2020	5,00,000
	Total		**2,23,72,288**

12.9. *The details of the payment, the repayment and the balance to be repaid with respect to the loan given under Loan 2 was given in Annexure. From Annexure, the following is observed:*

a) *Rs 2,24,88,606 has been recovered in total which includes the principal amount and the interest amount.*

b) *The balance amount to be recovered is as follows:*

Table No. 3

(Amount in Rs.)

Sr. No.	Name	Loan		Interest	TDS	Repayment	Balance
		From Repayment	From other source				
1	Aditya Agarwal	10,00,000		-		-	10,00,000
2	Aishwariya Sales Promotion Pvt. Ltd	50,00,000		6,07,808	(60,781)	7,027	55,40,000
3	Dhananjay Kumar Saha	15,00,000		1,72,356			16,72,356
4	Toshniwal Enterprises Control Pvt. Ltd.	30,00,000		4,55,957	(41,659)	30,00,000	4,14,298
5	Safcon Seals Pvt. Ltd.	15,00,000	20,00,000	4,68,493	(46,849)	1,37,367	37,84,277
	Total	**1,20,00,000**	**20,00,000**	**17,04,614**	**-1,49,289**	**31,44,394**	**1,24,10,931**

12.10. *Apart from giving loans under Loan 2 as explained in the aforementioned paragraph 12.8, EML utilized the repayment received from Loan 1 in the following manner:*

a) *EML submitted that an amount of Rs. 31,44,354 was utilized as investments in the manner given below:*

Table No. 4

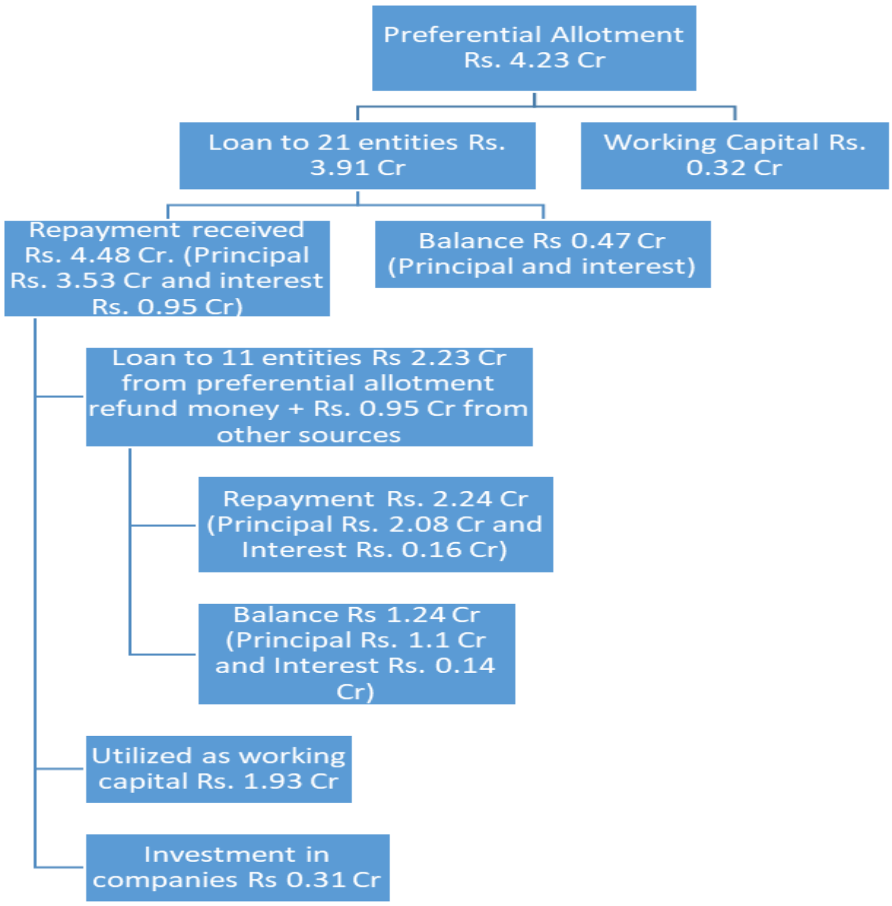
Date	Party	Utilization (Rs.)
27/08/2013	V.K Industrial Corporation Ltd	25,00,000

Date	Party	Utilization (Rs.)
25/04/2014	*Supreme India Impex Limited*	*1,30,348*
25/04/2014	*Supreme India Impex Limited*	*2,48,548*
18/05/2015	*Hamilton Trade Comm Limited*	*2,65,458*
	Total	***31,44,354***

However, when details regarding the investments provided in the table no.3 above were sought, EML feigned ignorance and did not provide the same. EML vide its email dated March 02, 2021 submitted that it is not able to provide details regarding the investments as the matter was old and well known to the past directors.

b) *EML submitted that an amount of Rs. 1,92,63,775.60 was utilized as working capital.*

12.11. For the sake of convenience, utilization of the preferential allotment funds by EML is summarized in the flow chart given below:



12.12. From paragraph 12.11 above, the following is observed:

a) Under Loan 1, out of Rs. 3.91 crore given as loan, principal amount of only Rs. 3.53 crore was recovered (i.e., principal amount of Rs 0.38 crore was not recovered).

b) Further, the repayment received from Loan 1 was partly used for providing Loan 2 to certain entities (i.e., Rs. 2.23 crore was again given towards loan from the preferential issue money along with an additional amount of Rs. 0.95 crore). From the loan given under Loan 2, principal amount of Rs. 2.08 crore has been recovered (i.e., principal amount of Rs 0.15 crore has not been recovered).

c) Even presuming that the entire Rs. 2.08 crore repaid was from the loan amount from the preferential allotment proceeds, a total of Rs. 0.53 crore has not been recovered by the Company (i.e., summation of unrecovered amount being Rs 0.38 crore under Loan 1 and Rs. 0.15 crore under Loan 2 as explained in sub para a and b above).

d) It was observed during the investigation that certain amounts have been received as late as October, 2020.

12.13. The auditor's committee of the BSE at its meeting held on June 28, 2016, made the following observations:

(a) *As per the notice dated April 10, 2013 conveying Extra Ordinary General Meeting (EOGM) sent by Ejecta Marketing Ltd to their shareholders for the proposed preferential issue of 42,35,000 equity shares of Rs. 10/- each totalling to Rs. 4.23 crores to non-promoter entities, it has mentioned the object of the issue as "To strengthen its equity base and to meet the long term funds requirements for expansion of business, funding long term working capital requirements, marketing, investments and for other approved corporate purposes." It appears that, the shareholders at an Extra Ordinary General Meeting held on May 06, 2013 had approved the aforesaid proposal of issue of equity shares on preferential basis and* *company allotted the 42,35,000 equity shares of Rs. 10/- each to the non-promoter entities at the Board Meeting held on September 20,2013.*

(b) *In the Auditor certificate of S. C. Swaika & Co. dated February 24, 2016, submitted by the company, Auditors have certified that the company has utilized the amount raised for providing Inter-Corporate Deposits (ICDs) to various parties and for expansion of trading business.*

(c) *As per the utilization statement provided by the company, it is observed that an amount of Rs. 391.50 lacs were utilized for giving deposits to 21 entities and balance Rs. 32 lacs were utilized for making investment in equity shares of a private limited company.*

(d) *As per the annual report of the company for the year 2013-14, it is observed that company is engaged in the business of trading and distribution of different types of commodities and materials. Thus it appears the funds raised has not been utilised in accordance with approval granted by the shareholders of the company.*

(e) *The utilisation of funds is prior to the date of allotment of equity shares under the preferential issue.*

(f) *The Auditor certificate confirming that there is no mis-utilization appears to be faulty.*

(g) *ICDs are given to various entities, including partnerships, individuals their Hindu Undivided Family besides companies. Therefore, it is incorrect to state that company has given inter-corporate deposits. On examining, few of ICDs / Loans, it is observed that, they are interest free and without security. Therefore, same does not benefit the company in any way. None of the ICD / loan agreements specified the period for which ICD / loan is granted.*

(h) *There are variances in what shareholders have passed at BOGM, Auditors Certificate & actual utilization of funds raised under preferential issue.*

12.14. In conclusion, the audit committee of BSE was of the opinion that, prima facie, there appears to be mis-utilization funds raised under preferential issue. The said committee, also observed that the Company has not followed the process laid down in case of deviation/ variation of the fund raised under preferential issue in terms of clause 43 of the erstwhile Listing Agreement further substantiating that there has been mis-utilization of funds.

12.15. It was observed by the SEBI investigation that:

(a) *As per the resolution approved in the May 2013 EGM, the funds raised by preferential allotment of shares shall be utilized:*

i. to fulfill the additional fund requirements for strengthening its equity base,

ii. to meet the long term funds requirements for expansion of business,

iii. for funding long term working capital requirements, marketing, investments,

iv. for other approved corporate services.

(b) *From the replies of the Company, it did not have any identified area for expansion when it issued the preferential shares. The Company did not have any concrete plan as regards the declared objects of the preferential issues. The Company has not elaborated what are the approved corporate services.*

(c) *Almost entire proceeds of the preferential issue were given as loan to partnerships firms, individuals, HUFs and companies.*

(d) *The Company had given loans for an indefinite period without any legally binding documents, any mention of timeframe of repayment, and any collateral, which a listed company is reasonably expected to do in the interest of its shareholders. Further, many such loans were interest free. In this regard, it is pertinent to note that section 372A (3) of Companies Act, 1956 states that "Rate of interest on loan shall not be lower than* *prevailing bank rate, being the standard rate made public under section 49 of RBI Act, 1934".*

(e) *Some of the principal amount as well as the interest amounts under both Loan 1 and 2 have not been repaid.*

(f) *As per the annual report of the Company for the year 2013-14, it is observed that the Company is engaged in the business of trading and distribution of different types of commodities and materials. Therefore, the funds raised have not been utilized in accordance with approval granted by the shareholders of the Company.*

(g) *The BSE vide the show cause notice dated July 05, 2016 sent to EML (hereinafter referred to as the "BSE SCN") noted that EML had not observed the process required for disclosure under clause 43 of the Listing Agreement. As per the said clause 43, the company has to furnish on a quarterly basis a statement to the exchange indicating the variations between projected utilization of funds and actual utilization of funds. In response to the BSE SCN, EML vide its reply letter dated July 25, 2016, inter alia, denied that there was any variation between the funds received and its deployment, hence, the Company was not required to provide the said disclosure under clause 43 of the Listing Agreement.*

(h) *Further, EML in its response to the BSE SCN, provided a generic statement about the purpose of the preferential issue which was devoid of details regarding the extent of proposed allocation of funds for various purposes listed under the May 2013 EGM. Further, EML utilized almost the entire proceeds of the preferential issue (92.43%) for providing loans, whereas it informed to its shareholders in the notice of the September 2018 AGM that the funds raised by preferential allotment of shares were utilized, inter alia, to strengthen its equity base and for expansion of business. Thus, the object of the issue as presented to its shareholders were not true and the Company misled the shareholders.*

Given the aforesaid events, it is alleged that the Company did not utilize the funds raised from the preferential allotment of shares for the purposes for which it was approved by the members of the Company in the May 2013 EGM and later ratified in the September 2018 AGM.

12.16. *In view of the aforesaid facts, it was alleged that Noticee 1 has violated the provisions of section 21 of the SCRA read with clause 43 of the erstwhile Listing Agreement, which is now regulation 32 of the SEBI LODR Regulations and also provisions of section 12A(a), (b), (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of the SEBI PFUTP Regulations.*

12.17. *The directors, Mr. Tanumay Laha (Noticee 2), Mr. Sudip Laha (Noticee 3), Mr. Bhagwan Das Soni (Noticee 4) and Mr. Kamal Kumar Bararia (Noticee 5) were present in April 2013 BM wherein the April 2013 BM Resolution was passed. However, the Company has misutilized the majority of preferential issue proceeds (i.e., Rs. 3.91 crore out of Rs. 4.23 crore) by providing loans. On behalf of EML, Mr. Sudip Laha (Noticee 3), the managing director, had executed the loan agreements with the 21 entities under Loan 1. Mr. Tanumay Laha (Noticee 2), the director, had signed as witness for the aforesaid agreements. The Company vide email dated March 04, 2021, submitted that Mr. Tanumay Laha (Noticee 2), Mr. Sudip Laha (Noticee 3) and Mr. Bhagwan Das Soni (Noticee 4) were the authorized signatories to the corporation bank account bearing no. CBCA/01/000533 during the financial year 2013-2014, in which the preferential allotment money was received. Through the aforesaid account, the loan amount was disbursed to the various entities.*

12.18. *In view of the above paragraphs, it was alleged that the fraudulent act conducted by EML was done with the knowledge of the directors of the Company. The directors i.e., Mr. Tanumay Laha (Noticee 2), Mr. Sudip Laha (Noticee 3), Mr. Bhagwan Das Soni (Noticee 4) and Mr. Kamal Kumar Bararia (Noticee 5) by virtue of holding such directorships and being responsible for the conduct of the business of EML, are guilty of fraud. Therefore, Noticees 2* *to 5 are alleged to have violated the provisions of section 12A(a), (b), (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), 4(1), 4 (2) (f), (k) and (r) of the SEBI PFUTP Regulations.*

CONSIDERATION OF ISSUES AND FINDINGS

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

    I. Whether the Noticees have violated the following provisions:

        a. Whether Noticees have violated the provisions of section 12A(a), (b), (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of the SEBI PFUTP Regulations?

        b. Whether Noticee 1 has violated the provisions of section 21 of SCRA read with clause 43 of the erstwhile Listing Agreement, which is now regulation 32 of the SEBI LODR Regulations?

    II. Do the violations, if any, attract monetary penalty under section 15HA of SEBI Act and/or section 23E of the SCRA?

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

14. Before proceeding forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

    <u>Section 12A (a), (b), (c) of the SEBI Act</u>

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

    12A. No person shall directly or indirectly—

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

Regulations 3(a), (b), (c), and (d) and 4(1), 4(2) (f), (k) and (r) of the SEBI PFUTP 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 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 manipulative, fraudulent or an unfair trade practice in markets.

[Explanation–For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market]

(2) Dealing in securities shall be deemed to be a [manipulative] fraudulent or an unfair trade practice if it involves any of the following:—

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

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

<u>Section 21 of SCRA</u>

Conditions for listing

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

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.

Regulation 32 of SEBI LODR Regulations

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

(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.

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

a. **Whether Noticees have violated the provisions of section 12A(a), (b), (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of the SEBI PFUTP Regulations?**

b. **Whether Noticee 1 has violated the provisions of section 21 of SCRA read with clause 43 of the erstwhile Listing Agreement, which is now regulation 32 of the SEBI LODR Regulations?**

15. I note that the Noticees have failed to respond to the SCN and as a result there is nothing on record to challenge the findings of the SEBI investigations as alleged in

the SCN and it is presumed that the Noticees have admitted the charges levelled against it.

16. I note that the allegations against the Noticees is that the Noticee 1 did not utilize the funds raised through preferential issue for the purpose for which it was raised and approved by the members of the company and this was done with the knowledge of the directors i.e. Noticee 2, Noticee 3, Noticee 4 and Noticee 5. Further Noticee 1 did not make the required disclosures under clause 43 of the Listing Agreement (now Regulation 32 of SEBI LODR Regulations) with respect to the variation between the projected utilization of funds vis-à-vis the actual utilization of funds.

17. I note that a resolution was passed by the board of the Company to issue equity shares on preferential basis upto 42,35,000 equity shares of Rs.10 each to non-promoters on April 10, 2013. Noticee 2, Noticee 3, Noticee 4 and Noticee 5 being the directors were present for the said board meeting.

18. Subsequently, the members of the Company in its extra ordinary general meeting held on May 06, 2013 accorded the approval for raising Rs. 4.23 crore through preferential issue of 42,35,000 equity shares of Rs.10 each. As per the resolution approved, the funds raised by preferential allotment of shares were to be utilised for the following purposes:

    (a) to fulfill the additional fund requirements for strengthening its equity base,

    (b) to meet the long term funds requirements for expansion of business,

    (c) for funding long term working capital requirements, marketing, investments,

    (d) for other approved corporate services.

19. I note from the SCN that out of the proceeds of Rs. 4.23 crore raised through the preferential issue, almost 92% i.e. Rs. 3.91 crore was utilised for giving loans to 21

entities. The balance Rs. 32.00 lakh were utilised as working capital of the Company.

20. As regards the loan agreements, SCN indicates the following:
    (a) The loan agreements were executed on plain paper.
    (b) The agreements did not contain a schedule for repayment of loan, and the loan granted was repayable on demand.
    (c) No collateral was secured for the loans provided.
    (d) The agreements were not registered.
    (e) No interest rate was mentioned in the loan agreements of R S P Overseas Pvt Ltd, Shree Shakti Developers and Snowtemp Vyapaar Pvt Ltd. The agreement mentions that the interest rate may be mutually agreed by the borrower as well as the lender.
    (f) On behalf of the Company, Noticee 3 (Mr. Sudip Laha, the managing director), had executed all the agreements and Noticee 2 (Mr. Tanumay Laha, director), had signed as witness for these agreements.

21. I also note that Noticee 1 failed to provide copies of the board approvals for loans given to 17 entities out of the 21 entities which was sough during the investigation by SEBI.

22. Thus, from above it is observed that the Company gave loans for an indefinite period with any legally binding documents and collaterals. Few such loans were even interest free loans. Board approvals for 17 out of 21 loans were not provided to SEBI.

23. From the records available, I find that out of the amount Rs. 3.91 crore given as loan, the Company had recovered an amount of Rs. 4.48 crore (principal Rs. 3.53 crore and interest Rs. 0.95 crore) and thus, principal amount of Rs 0.38 crore was not recovered.

24. Further, I find that out of the amount recovered, an amount of Rs. 2.23 crore was again utilised to provide loans to 11 entities. Out of this, principal amount of Rs. 2.08 crore has been recovered and thus amount of Rs 0.15 crore has not been recovered.

25. Therefore, from the proceeds of preferential allotment, a total amount of Rs. 0.53 crore (Rs. 0.38 crore + Rs. 0.15 crore) has not been recovered by the company.

26. From annual report of the Company for the year 2013-14, it is observed that company was engaged in the business of trading and distribution of different types of commodities and materials and the object of the preferential allotment was to meet long term fund requirement for expansion of business among other things. However, 92% of the preferential issue proceeds was used to give loans. I note from the replies of Noticee 1 given during SEBI investigations was that it did not have any identified area for expansion when it issued the preferential shares and did not have any concrete plan as regards the declared objects of the preferential issues. Thus, the funds raised were not utilised in accordance with approval granted by the shareholders of the Company and thus funds raised under preferential issue were mis-utilised by the company.

27. The object of the preferential issue as presented to its shareholders were not true and the Company misled its shareholders. Therefore, in view of the aforesaid facts and findings, I hold that Noticee 1 has violated the provisions of section 12A(a), (b), (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of the SEBI PFUTP Regulations.

28. I find that the directors, Mr. Tanumay Laha (Noticee 2), Mr. Sudip Laha (Noticee 3), Mr. Bhagwan Das Soni (Noticee 4) and Mr. Kamal Kumar Bararia (Noticee 5) were present in April 2013 board meeting wherein, the board resolution for preferential issue of equity shares was passed. On behalf of Noticee 1, Mr. Sudip Laha (Noticee 3), the managing director, had executed the loan agreements with

the 21 entities and Mr. Tanumay Laha (Noticee 2), the director, had signed as witness for the aforesaid agreements.

29. The SCN also alleges that the Company vide email dated March 04, 2021, submitted that Mr. Tanumay Laha (Noticee 2), Mr. Sudip Laha (Noticee 3) and Mr. Bhagwan Das Soni (Noticee 4) were the authorized signatories to the corporation bank account bearing no. xxxx/000533 during the financial year 2013-2014, in which the preferential allotment money was received. Through the aforesaid account, the loan amount was disbursed to the various entities.

30. As a company acts through its directors and not by itself, the aforementioned acts could not have been done without knowledge of the directors. In this context, I would like to place reliance on the observations of the Hon'ble Supreme Court of India in the matter of **Shri N. Narayanan vs. SEBI** decided on 26.04.2013, wherein it was observed that - *"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence."*

31. Further, Hon'ble High Court of Madras in **Madhavan Nambiar vs Registrar of Companies** has held that – *"… Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors; (b) the whole-time director or whole-time directors; (c) the manager; (d) the secretary; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors. …*

    Section 29 of the Companies Act provides the general power of the board…. Therefore, it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be *answered against the petitioner…. There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible...”*

32. Further, I note that Section 27 of SEBI Act also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

33. In view of the above, I hold that the mis-utilisation of funds received from preferential issue of equity shares by EML was done with the knowledge of the directors of the Company i.e., Mr. Tanumay Laha (Noticee 2), Mr. Sudip Laha (Noticee 3), Mr. Bhagwan Das Soni (Noticee 4) and Mr. Kamal Kumar Bararia (Noticee 5). Further Noticees 2 to 5 by virtue of holding such directorships and being responsible for the conduct of the business of EML, has committed fraud as defined under Regulation 2(1)(c) of SEBI PFUTP Regulations by deviating and mis-utilising the proceeds of preferential issue which is prohibited under the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (f), (k) and (r) of SEBI PFUTP Regulations. Therefore, I hold that the Noticees 2 to 5 have violated the provisions of section 12A(a), (b), (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), and 4(1), 4 (2) (f), (k) and (r) of the SEBI PFUTP Regulations.

34. As per clause 43 of the Listing Agreement, the Company is required to furnish a statement to the Exchange indicating the variations between projected utilisation of funds and the actual utilisation of funds, on a quarterly basis. I find that BSE *vide* its show cause notice dated July 05, 2016 sent to the company (hereinafter referred to as the “BSE SCN”) noted that the company had not observed the process required for disclosure under clause 43 of the Listing Agreement. I note that in response to the BSE SCN, the company *vide* its letter dated July 25, 2016, *inter*

alia, denied that there was any variation between the funds received and its deployment, hence, the Company was not required to provide the said disclosure under clause 43 of the Listing Agreement.

35. As it has already been established in the foregoing paragraphs that the company has mis-utilised the funds raised in the preferential issue, the response of the Company that there is no variation is in funds utilisation is devoid of merit. Thus I hold that Noticee 1 has violated the provisions of section 21 of the SCRA read with clause 43 of the erstwhile Listing Agreement, which is now regulation 32 of the SEBI LODR Regulations.

Issue II. Does the violations, if any, attract monetary penalty under section 15HA of the SEBI Act and/or section 23E of the SCRA?

36. It has been established in the foregoing paragraphs that the Noticees have violated the following provisions:

    a. Noticees have violated the provisions of section 12A(a), (b), (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of the SEBI PFUTP Regulations.

    b. Noticee 1 has violated the provisions of section 21 of SCRA read with clause 43 of the erstwhile Listing Agreement, which is now regulation 32 of the SEBI LODR Regulations.

37. In this regard, I place reliance on the judgment of Hon’ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC), *inter-alia,* has held that –

“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...”.

38. In view of the above, since it is established that Noticees have violated the provisions of section 12A(a), (b), (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of the SEBI PFUTP Regulations and Noticee 1 has violated the provisions of section 21 of SCRA read with clause 43 of the erstwhile Listing Agreement, which is now regulation 32 of the SEBI LODR Regulations, I find it a fit case for imposition of monetary penalty under the provisions of section section 15HA of the SEBI Act and 23E of the SCRA which reads as under:

Relevant provisions of SEBI Act

Penalty for fraudulent and unfair trade practices.

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

Relevant provisions of SCRA

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

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

39. With regard to section 23E of the SCRA, I note that the Hon'ble SAT in the matter of **Suzlon Energy Ltd. and Anr. vs. SEBI** (Appeal No. 201 of 2018) dated May 03, 2021 has held the following:

"*Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then* *penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E....."*

40. I note that a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 17 and 18 of the aforesaid order and an appeal has been filed before the Hon'ble Supreme Court against the aforesaid order *vide* civil appeal no. 4741 of 2021. I note that the aforesaid stay application and the appeal is pending. I also note that *vide* orders in the matter of M/s NDTV vs. SEBI (Appeal no. 358 of 2015) dated August 07, 2019, and Oasis Securities Ltd. & Ors. Vs. SEBI (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under Section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement.

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

reading of the section, I note that any company which fails to comply with listing conditions or delisting conditions or grounds or commits a breach thereof shall be liable to monetary penalty under this section and in this case the Noticee 1 is a company which has failed to comply with listing conditions, as established above and therefore, will be squarely liable under section 23E of SCRA for imposition of monetary penalty.

42. For adjudging under Section 23E of the SCRA, the limited purpose of these proceedings qua Noticee is to determine if the said Noticees have violated section 21 of SCRA read with clause 43 of the erstwhile Listing Agreement, which is now regulation 32 of the SEBI LODR Regulations and if so, determine whether penalty should be imposed and assess the quantum of such penalty. However, the enforcement of this order qua Noticee for the penalty imposed under Section 23E of SCRA, shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court of India.

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

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

<u>SEBI Act</u>

Factors to be taken into account while adjudging quantum of penalty

15J *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

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

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

(c) the repetitive nature of the default.

[Explanation. - For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

SCRA

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

23J. While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely:-

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

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

(c) the repetitive nature of the default.

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

44. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the mis-utilisation of funds received from preferential issue of equity shares by EML is not available. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on

account of violations by the Noticees. With respect to the repetitive nature of the default, I find that no past defaults by Noticee 1, 3, 4 and 5 are available on record. Noticee 2 (Tanumay Laha) was earlier restrained from accessing the securities market and prohibited from dealing in securities or being associated with the securities market for a period of one year and a penalty of Rs. 6.00 Lakh was imposed on him for the violation of Regulation 33(2)(a) of SEBI LODR Regulations for misrepresenting the financials in the matter of Jaisukh Dealers Limited *vide* order dated August 6, 2021. Further, I observe that the Company by not utilizing the proceeds of preferential issue of shares for the purpose for which it was raised and by mis-utilising the majority of preferential issue proceeds (92.43%) for providing loans to various entities, and by informing to its shareholders that the funds raised by preferential allotment of shares were utilized to strengthen its equity base and for expansion of business, have defrauded the investors at large and ultimately would have affected the investment decisions of the prospective investors at large. Further, there is no doubt that investors have been induced by the misleading and false statements made by the Company and a fraud has been committed upon the investors and shareholders of the Securities Market, more particularly upon the 49 preferential allottees. Such practices employed by the Company and its directors, are serious in nature, thus, attract and deserve considerable penalties. The modus operandi adopted by the Noticees is detrimental to the smooth functioning of the securities market, and hence, deserve to be viewed seriously.

ORDER

45. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, and section 23-I of the SCRA read with Rule 5 of the SCRA Adjudication Rules, I hereby impose the following monetary penalty on the Noticees:

Noticee No.	Name of Noticee	Penalty Provisions	Amount of penalty (in ₹)
1	Ejecta Marketing Ltd.	Section 23E of the SCRA*	₹ 5,00,000/- (Rupees five lakhs only)
		Section 15HA of SEBI Act	₹ 5,00,000/- (Rupees five lakhs only)
		Total penalty of ₹ 10,00,000/- (Rupees ten lakhs only) on Noticee 1	
2	Tanumay Laha	Section 15HA of SEBI Act	₹ 5,00,000/- (Rupees five lakhs only) The Noticees 2 to 5 are jointly and severally liable to pay the penalty.
3	Sudip Laha		
4	Bhagwan Das Soni		
5	Kamal Kumar Bararia		

***SEBI has appealed the order of Hon'ble SAT in the matter of **Suzlon Energy Ltd. Vs. SEBI**, in order to ascertain whether penalty can be imposed under Section 23E of SCRA, 1956 for violations of provisions of Listing Agreement and the same is pending before the Hon'ble Supreme Court. Accordingly, the enforcement of this order w.r.t. penalty imposed under Section 23E of SCRA, 1956 shall be subject to the outcome of the appeal filed by SEBI before the Hon'ble Supreme Court on July 19, 2022.

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

46. 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 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

47. The Noticees shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

48. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Place: Mumbai **ASHA SHETTY**

Date: December 15, 2022 **ADJUDICATING OFFICER**