BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SD/KS/2022-23/18773-18775]

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.

In respect of:

1) **Jaidev Gupta HUF (PAN- AAFHU5373N)** having address at Plot No. 9, Spectra Compound, 4th Floor, Ramchandra Lane Extn., Kanchpada II, Malad (West), Mumbai, MH – 400 064 IN
2) **Vinod Gupta HUF (PAN- AAAHV5024M)** having address at Plot no. 9, Ganesh Plot Owners Assn., Ramchandra Lane Extn., Kachpada, Malad (West), Mumbai, MH – 400 064 IN
3) **Bharat Bhushan Gupta (PAN- ADEPG4177B)** having address at Vibhushan Villa, Plot No. 97D, Behind Ranisati Ngr, S. V. Rd, Chincholi Phatak, Malad (West), Mumbai, MH – 400 064 IN

In the matter of
M/s Esaar India Limited

Facts of the Case in Brief

1. Securities and Exchange Board of India (hereinafter be referred to as, "**SEBI**") initiated adjudication proceedings under Section 15HA of SEBI Act, 1992 (hereinafter be referred to as, the **"SEBI Act)** against **Jaidev Gupta HUF** (PAN- AAFHU5373N), **Vinod Gupta HUF** (PAN- AAAHV5024M), **Bharat Bhushan Gupat** (PAN- ADEPG4177B) (hereinafter be referred to as, **"Noticee No. 1, Noticee No. 2** and **Noticee No. 3** respectively or Collectively as **the Noticees")** for the alleged violation of Section 12A (a), (b), (c) of the Securities and Exchange Board of India Act,

1992(SEBI Act) r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as '**PFUTP Regulations**')

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer, vide communique dated August 23, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticees.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. Show Cause Notices ref. SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/5/2021, SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/6/2021 and SEBI/HO/EFD1/EFD1_DRA5 /P/OW/29066/7/2021 dated October 20, 2021 (hereinafter referred to as '**SCN'**) were issued to the Noticee No.1 to Noticee No.3 respectively in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against her and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act, 1992

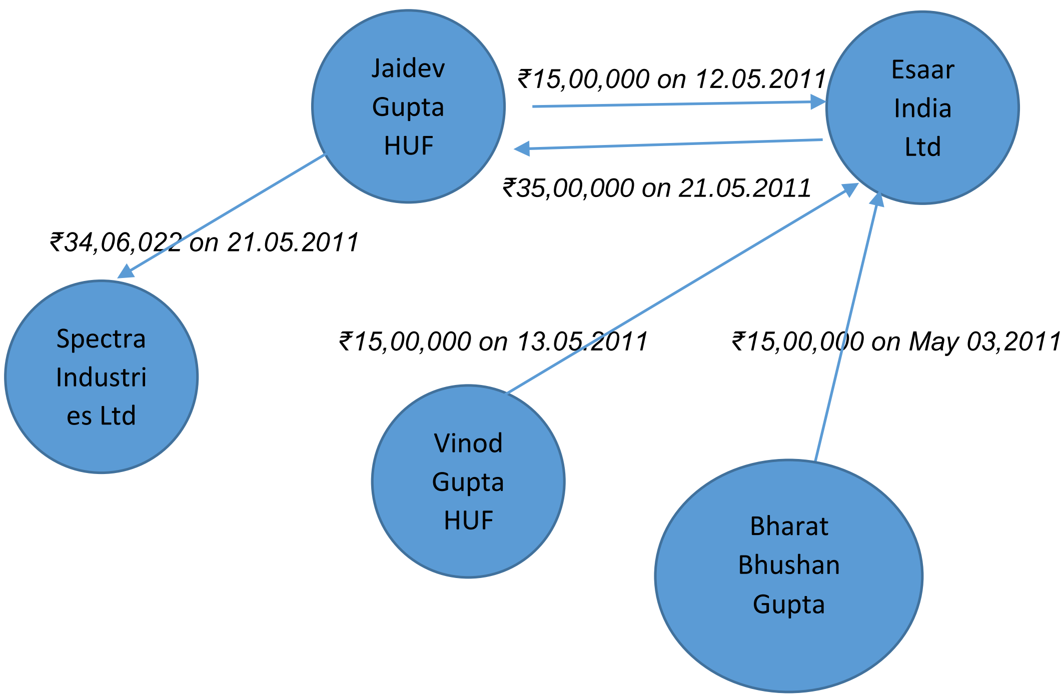
4. The allegations levelled against the Noticees in the SCNs, *inter alia*, mentioned as below-:

   i. it is observed that Jaidev Gupta HUF (Noticee 6) was allotted with 30,000 shares in the preferential allotment for which it had transferred amount of ₹15,00,000/- from account number 11990109155290 with the Fedral Bank on May 12, 2011., it was observed from the analysis of its bank statement that the said account had received ₹15,00,000 on May 12, 2011, from bank account having account number 11995500001597 maintained with Fedral Bank. Further, it was also observed that the bank account number 11995500001597 belongs to Veebee Associates and authorized signatories for the said bank account are Noticee-6 and Noticee-7. In this regard, the account statement of Veebee Associates was analyzed and it was observed that account had maintained sufficient credit balance for the transfer. It was also observed that Noticee-6 had received ₹35,00,000/- from EIL post the preferential allotment of shares on May 21, 2011 in his bank account having account number 0017101000050966 maintained with Indian Bank. It was also observed that Vinod Gupta HUF and Bharat Bhushan Gupta were also allotees for the said

EIL's preferential allotment. On perusal of account number 001710100050966, it was observed that ₹34,06,200/- was transferred on May 21, 2011, to the bank account of Spectra Industries Ltd having account number 010630100001082 i.e. the same day it had received ₹35,00,000 from EIL.

ii. It is noted that Spectra Industries Ltd is listed on Bombay Stock Exchange (Scrip Code – 513687). On perusal of annual reports of Spectra Industries for the year 2011-12, it was observed that Vinod Gupta was the Managing director and Jaidev Gupta was the executive director of Spectra Industries. It was also observed that Mr. Bharat Bhushan Gupta was the chairman of Spectra Industries Ltd. Further, It was observed that Bharat Bhushan Gupta was also one of the allottees in the said preferential allotment of EIL dated May 25, 2011. In this regard, it is alleged that the flow of money forms a 'to and fro' pattern where the personnel on the boards of directors of Spectra Industries Limited remitted ₹45,00,000/- as subscription amount to EIL and received ₹35,00,000/- in return on May 21, 2011 from the said company.

The same is diagrammatically represented as under:



iii. From the above analysis it is observed that the Company EIL received ₹45,00,000 as subscription amount Vinod Gupta HUF, Jaidev Gupta HUF & Bharat Bhushan Gupta towards allotment of shares in the preferential allotment dated May 25, 2011. Pursuant thereof EIL transferred ₹35,00,000 on May 21,2011 to Jaidev Gupta HUF, who in turn transferred ₹34,06,200/- to Spectra Industries Ltd wherein the said 3 allottees were in the list of its Board of Directors of

Spectra Industries Ltd(Chairman Bharat Bhushan Gupta & 2 Directors namely Vinod Gupta HUF, Jaidev Gupta HUF).

iv. In this regard, SEBI vide e-mail dated June 21, 2021 had sought information and reasons from Vinod Gupta HUF, with regard to receipt of amount of ₹35,00,0000 from EIL. Further, SEBI sought the information related to the nature of relationship / Association (Past or present) of Jaidev Gupta HUF, Vinod Gupta HUF and Bharat Bhushan Gupta with the company EIL. However, it was observed that no reply has been received in this regard from the NoticeeNo. The bank statement indicating their fund transfers are annexed as Annexure 4.

v. In View of the above, it is alleged that Esaar India Limited , Vinod Gupta HUF, Bharat Bhushan Gupta and Jaidev Gupta HUF have violated Section 12A(a), (b), (c) of the SEBI Act, 1992 read with Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003 for refunding the subscription amount of paid by the three allottees namely Vinod Gupta HUF, Jaidev Gupta HUF & Bharat Bhushan Gupta out of Issue Proceeds thereby funding the preferential allotment dated May 25,2011 to the extent of amount refunded i.e ₹35,00,000/-.

5. SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/5/2021, SEBI/HO/EFD1/EFD1_DRA5/P/OW /29066/6/2021 and SEBI/HO/EFD1/EFD1_DRA5 /P/OW/29066/7/2021 dated October 20, 2021 were issued to the Noticees via Speed Post Acknowledgement Due (SPAD), which were duly served on the Noticee No.1 and 2 as per the Tracking details obtained from the India Post website. However, the said SCN was delivered to Noticee No.3 by way of hand delivery.

6. In response to the said SCN, vide email dated May 11, 2022, Noticee No.3 and vide email dated May 24, 2022, Noticee No. 1 and 2 have submitted replies, wherein they inter-alia submitted the following submissions:

Reply of Vinod Gupta HUF

i. At the outset and without prejudice to what has been stated hereinafter we deny all the contentions, observations and allegations leveled against us in the SCN. Nothing contained therein shall be deemed to be admitted by us on account of non-travers, unless the same is specifically admitted in this reply. We vehemently deny that we have violated any provisions of Regulations Section 12 A of the SEBI Act 1992 or Regulations 3 and 4 of the PFUTP Regulations Act, 2003 as alleged. We submit that we have not indulged in any fraudulent and unfair trade practices relating to the securities so as to warrant any kind of penalty to be imposed u/s 15 HA of the SEBI Act.

ii. *Noticee submitted that Investigation Report and other documents were not provided it during the proceedings.*

iii. *Noticee submitted that inordinate delay of more than 10 years after the impugned transaction happened in issuance of SCN and the delay has not been explained by SEBI. On this ground alone the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped. Noticee also submitted the various case laws viz., Order passed on January 31, 2020 by the Hon'ble Securities Appellate Tribunal in the matter of Ashlesh Gunvantbhai Shah Vs SEBI (SAT Appeal no 169 of 2019):, Order passed on September 04, 2019 by the Hon'ble Securities Appellate Tribunal in the matter of AstraZeneca Pharma India Ltd and Anr. Vs SEBI (SAT Appeal no 358 of 2018):, November 5, 2008 by the Hon'ble Securities Appellate Tribunal in the matter of Shri. Ashok K Chaudhary Vs SEBI and other case laws.,*

iv. *Noticee inter-alia submitted that "We state that, our HUF was formed on April 1, 1978 where following are the members :-*
Mr. Vinod Gupta- Karta (Expired on May 25, 2018)
Mrs. Anju Gupta - Wife of Mr. Vinod Gupta (present karta)
Ms. Sheela Gupta- Daughter of Mr. Vinod Gupta
A copy of death certificate of Late Mr. Vinod Kumar Gupta is enclosed herewith as Annexure-F.

v. *We have been investing and trading in securities market since January, 2011 and we do long term investments in shares. Based on our long term view on investments and as market was doing well and after discussion with other and further studies, we decided to invest in the preferential issue of EIL and were allotted 30,000 shares against which we made payment of Rs. 15,00,000/- to EIL.*

vi. *Further, there is no connection between payment of Rs.15,00,000/- made by us (as HUF) on May 13, 2011 to EIL towards preferential allotment and the amount of Rs.35,00,000/- received by Mr. Jaidev Gupta (individual Account No. ending with 50966) from EIL on May 21, 2011. Though the said amount of Rs.35,00,000/- received by Mr. Jaidev Gupta is irrelevant to us, however as Mr. Jaidev Gupta is son of Late Mr. Vinod Gupta and therefore as per our information, the said amount of Rs.35 Lakh was actually a loan taken by Mr. Jaidev Gupta from EIL through some broker (unable to recollect the name now) under loan agreement dated May 20, 2011, and the said amount was used by him to repay the loan of Rs. 34,06,200/- taken from Spectra Industries Ltd. (hereinafter referred to as "Spectra") for purchase of flat. As per loan agreement Mr. Jaidev Gupta had to pay interest and repay the loan within time period of three years to EIL, and therefore initially he paid Rs.15 Lakh towards repayment of principal amount and sought time to pay the interest due to financial difficulties, however, later he underwent more serious financial issues and business losses and was unable to pay interest and repay the same in time despite follow ups by EIL and therefore he informed about his personal and financial problems and after discussion with EIL it was agreed that he will atleast repay the entire outstanding principal amount of Rs.20 Lakh, which he undertook to repay it* vide letter dated October 14, 2019 and accordingly on November 29, 2019 he repaid the balance principal loan amount of Rs.20 Lakh. Hence, the entire loan amount of Rs.35 Lakh was repaid by Mr. Jaidev Gupta, details of which are given below;-

Date	Particulars	Debit Amt. (Rs.)	Credit Amt. (Rs.)
21/05/2011	Loan Amount taken	-	35,00,000
02/03/2013	Repayment of loan	15,00,000	-
29/11/2019	Repayment of loan	20,00,000	-
Total	35,00,000	35,00,000	

vii. Since, the aforesaid transactions are too old i.e. of 2011, it is difficult to trace out all old correspondences/documents by Mr. Jaidev Gupta, however, anyhow after long search he could only trace out the aforesaid loan agreement copy and the last letter dated October 14, 2019. Hence, as we are finding it difficult to search and trace out and produce all old relevant records of year 2011 which almost eleven years old, the same be not taken to conclude against us in any manner which will cause severe prejudice to us. The said agreement and letter is produced along with the reply of Jaidev Gupta HUF as Annexure-F and Annexure-G respectively and therefore, we refer to and rely upon the same. However, a copy of ledger statement reflecting repayment of the said loan amount by Mr. Jaidev Gupta to EIL is enclosed herewith as Annexure-G,

viii. Facts with respect to loan taken from Spectra by Mr. Jaidev Gupta for purchase of flat is explained in paragraph hereinafter. Please note that, since there is a repayment of loan amount by Mr. Jaidev Gupta taken from EIL, it cannot be alleged that the subscription amount paid by us towards preferential allotment was refunded by EIL and therefore we deny that there was any funding of preferential allotment dated May 25, 2011.

ix. With respect to our HUF having received Rs.15,00,000/- from Veebee Associates on May 12, 2011, we state that, Veebee Associates is a proprietary concern of Late Shri Vinod Kumar Gupta who was the father of Mr. Jaidev Gupta. Mr. Vinod Kumar Gupta had transferred the said amount to his Son's HUF i.e. Jaidev Gupta HUF's account to buy shares, and later on June 11, 2011 and November 1, 2012 the said amount was returned back by them. A copy of the ledger statement of Jaidev Gupta HUF reflecting the said transaction is enclosed herewith as Annexure-H.

x. With respect to facts of transfer of Rs.34,06,200/- on May 21, 2011 by Mr. Jaidev Gupta to Spectra Industries Ltd. (hereinafter referred to as "Spectra") and loan of Rs.35 Lakh taken by Mr. Jaidev Gupta from EIL on same day, we state that:-

xi. Since the transaction is of 2007 and 2008 they are unable to trace out all relevant documents with respect to loan amount taken from Spectra and booking receipts issued by Ekta Supreme, however, the said loan amount has been accounted for and therefore, Jaidev Gupta HUF have *produced ledger statement of Mr. Jaidev Gupta as Annexure-K reflecting the said payment of advance amount to Ekta Supreme.*

xii. *Thereafter, since Mr. Jaidev Gupta wanted to repay the aforesaid loan amount of Rs.34,06,200/- taken from Spectra, he decided to obtain loan and accordingly on May 21, 2011 through some broker he took Loan of Rs.35,00,000/- from EIL on May 21, 2011 under a loan agreement, which he used it to repay the loan of Spectra on same day i.e. May 21, 2011, which is apparent from the bank statement of Mr. Jaidev Gupta annexed to SCN. It is to be noted that, thereafter, Mr. Jaidev has repaid the loan taken from EIL, details of which are already mentioned in above paragraphs. A copy of leger statement o/ Jaidev Gupta reflecting repayment of said loan to Spectra is enclosed herewith as* ***Annexure-I.***

xiii. *It is thus apparent that, on May 21, 2011 after the loan amount of Rs.35 Lakh was taken from EIL by Mr. Jaidev Gupta, the same was transferred to Spectra to the extent of Rs.34,06,200/- towards repayment of loan amount, Thereafter, the said loan of EIL was also repaid by Mr. Jaidev Gupta. Hence, there is no question of any funding of preferential issue by way of refund by EIL to Mr.Jaidev Gupta, as alleged.*

xiv. *It is a matter of record that Spectra Industries Ltd is listed on Bombay Stock Exchange("BSE") and in the year 2011-12 Mr. Vinod Gupta was the Managing Direcor, Mr. Jaidev Gupta was the Executive Director and Mr. Bharat Bhushan Gupta was the Chairman of Spectra Industries Limited*

xv. *Further, we deny the allegation that, the flow of money forms a "to and fro" pattern where the personnel on the Board of Directors of Spectra Industries Ltd. remitted Rs.45,00,000/- as subscription amount to Essar India Ltd and Rs.35,00,000/- in return on May 21, 2021 from the said company/EIL*

xvi. *There ,s no connection of payment of subscription amount paid and loan amount taken by Mr. Jaidev Gupta (individual) from EIL on May 21 2011 whtch was used to repay loan of Spectra by him on May 21, 2011 '(same day) and later he has also repaid loan amount of EIL. Therefore, it cannot be alleged that the subscription amount paid by us towards preferential allotment was refunded by EIL and therefore we deny that there was any funding of preferential allotment dated May 25, 2011*

xvii. *With respect to Paragraph No.,7 of the SCN, we say that Rs.45,00,000/- paid by Vinod Gupta, Jaidev Gupta and Bharat Bhushan Gupta towards allotment of shares is a matter of fact. Further, transfer of Rs.35,00,000/- given as loan by EIL to Jaidev Gupta on May 2!, 2011 has no connection with transfer of the said R.45,00,000/- to EIL, as aforesaid. Further, even transfer of Rs.34,06,200/- Jaidev Gupta to Spectra Industries Ltd on May 21, 2011 was towards return of loan amount of R,34,06,200/- taken by him for purchase of flat and it has no connection with transfer of Rs.45,00,000/- except that the loan of R,35,00 000/- from EIL was used to repay the said loan of Spectra on same day, as set out hereinabove.*

With respect to paragraph No. 18 of SCN. We say that SEBI's e-mail dated June 21, 2021 sent to us seeking information on receipt of Rs. 35,00,000/- from Esaar India Limited actually relates *to Jaidev Gupta and therefore, the said e-mail ought to have been sent to him. However, it is already submitted hereinabove that the said amount was actually taken as loan from EIL by Jaidev Gupta and was used to replay loan of Specta and thereafter Mr. Jaidev Gupta has even repaid the said loan of EIL which is set out in detail in above paragraph. It appears from the banks statement of Mr. Jaidev Gupta that the credit entry of loan amount from EIL has wrongly been shown subsequent to debit entry of repayment of loan amount to Specta, as apprarently the credit balance as on May 19, 2011 is hardly Rs. 1,06,579/- and thereafter on May 21, 2011 against the said balance amount there is a debit of total Rs. 34,06,200 to Spectra which is not possible and apparent error. Only after amount from EIL got credited the same was used to repay loan of Spectra. Hence, no adverse inference be drawn on the basis of the said Annexure-4 of the SCN.*

Reply of Jaidev Gupta HUF:

i. *At the outset and without prejudice to what has been stated hereinafter we deny all the contentions, observations and allegations leveled against us in the SCN. Nothing contained therein shall be deemed to be admitted by us on account of non-travers, unless the same is specifically admitted in this reply. We vehemently deny that we have violated any provisions of Regulations Section 12 A of the SEBI Act 1992 or Regulations 3 and 4 of the PFUTP Regulations Act, 2003 as alleged. We submit that we have not indulged in any fraudulent and unfair trade practices relating to the securities so as to warrant any kind of penalty to be imposed u/s 15 HA of the SEBI Act.*

ii. *Noticee submitted that Investigation Report and other documents were not provided it during the proceedings.*

iii. *Noticee submitted that inordinate delay of more than 10 years after the impugned transaction happened in issuance of SCN and the delay has not been explained by SEBI. On this ground alone the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped. Noticee also submitted the various case laws viz., Order passed on January 31, 2020 by the Hon'ble Securities Appellate Tribunal in the matter of Ashlesh Gunvantbhai Shah Vs SEBI (SAT Appeal no 169 of 2019):, Order passed on September 04, 2019 by the Hon'ble Securities Appellate Tribunal in the matter of AstraZeneca Pharma India Ltd and Anr. Vs SEBI (SAT Appeal no 358 of 2018):, November 5, 2008 by the Hon'ble Securities Appellate Tribunal in the matter of Shri. Ashok K Chaudhary Vs SEBI and other case laws.,*

iv. *Noticee inter-alia submitted that "We state that, our HUF was formed on February 01, 2010 where following are the members :-*
Mr. Jaidev Gupta- Karta
Mrs. Rashi Gupta- Wife of Mr. Jaidev Gupta
Mast. Aditya Gupta- Minor son of Mr. Jaidev Gupta
Ms. Aditi Gupta- Minor Daughter of MR. Jaidev Gupta.

- v. *We have been investing and trading in securities market since January, 2011 and we do long term investments in shares. Based on our long term view on investments and as market was doing well and after discussion with other and further studies, we decided to invest in the preferential issue of EIL and were allotted 30,000 shares against which we made payment of Rs. 15,00,000/- to EIL.*
- vi. *Further, there is no connection between payment of Rs.15,00,000/- made by us (as HUF) on May 13, 2011 to EIL towards preferential allotment and the amount of Rs.35,00,000/- received by Mr. Jaidev Gupta (individual Account No. ending with 50966) from EIL on May 21, 2011. Though the said amount of Rs.35,00,000/- received by Mr. Jaidev Gupta is irrelevant to us, however as Mr. Jaidev Gupta is son of Late Mr. Vinod Gupta and therefore as per our information, the said amount of Rs.35 Lakh was actually a loan taken by Mr. Jaidev Gupta from EIL through some broker (unable to recollect the name now) under loan agreement dated May 20, 2011, and the said amount was used by him to repay the loan of Rs. 34,06,200/- taken from Spectra Industries Ltd. (hereinafter referred to as "Spectra") for purchase of flat. As per loan agreement Mr. Jaidev Gupta had to pay interest and repay the loan within time period of three years to EIL, and therefore initially he paid Rs.15 Lakh towards repayment of principal amount and sought time to pay the interest due to financial difficulties, however, later he underwent more serious financial issues and business losses and was unable to pay interest and repay the same in time despite follow ups by EIL and therefore he informed about his personal and financial problems and after discussion with EIL it was agreed that he will atleast repay the entire outstanding principal amount of Rs.20 Lakh, which he undertook to repay it vide letter dated October 14, 2019 and accordingly on November 29, 2019 he repaid the balance principal loan amount of Rs.20 Lakh. Hence, the entire loan amount of Rs.35 Lakh was repaid by Mr. Jaidev Gupta, details of which are given below;-*

Reply of Bharat Bhushan Gupta

Vide reply dated April 26, 2022, BB Gupta sought an additional time of 10 days to submit the reply and vide reply dated May 11, 2022 inter-alia submitted that

- i. *Inordinate delay of more than 10 years in issuance of Show Cause Notice. And submitted the various case laws.*
- ii. *Further submitted that I invested in the preferential issue of EIL and was allotted 30,000 shares against which I had made payment of Rs. 15,00,000/- to EIL.*
- iii. *Further, there is no connection between payment of Rs. 15,00,000/- made by me on May 03, 2011 to EIL against preferential allotment and the amount of Rs.35,00,000/-received by Mr. Jaidev Gupta (individual) from EIL on May 21, 2011.*
- iv. *With respect to transfer of Rs.34,06,200/- on May 21, 2011 by Jaidev Gupta to Spectra Industries Ltd. (hereinafter referred to as "Spectra") and loan of Rs.35,00,000/- taken by Mr.*

Jaidev Gupta from EIL on same day, I have to state that I have nothing to do with the same and further state that:-

v. *a)As far as transfer of Rs.34,06,200/- by Mr. Jaidev Gupta to Spectra Industries Ltd. is concerned, I state that, I have been informed that in May 2007 Mr. Jaidev Gupta had requested Spectra to extend him a loan of Rs.34,06,200/- by directly making payment of the said amount on his behalf to M/s. Ekta Supreme Housing against the purchase of flat. Hence, accordingly Spectra had made payment of said amount on his behalf to Ekta Supreme Housing, which was accounted by Mr. Jaidev Gupta in his Books of Account and thereafter, Mr. Jaidev Gupta has repaid the said loan amount of Rs.34,06,200 to Spectra on May 21, 2011 which is apparent from the bank statement of Mr Jaidev Gupta annexed to the SCN.*

vi. *It needs to be noted that, I had sold the shares of EIL after lock-in period.*

PARA WISE SUBMISSION

vii. *With respect to Paragraph No.l of the SCN, I deny that I have violated any provisions of SEBI Act or PFUTP regulations.*

viii. *With respect to Paragraph No. 15 of the SCN, I say that:-*

It is a matter of record that, I was allotted 30,000 shares in the preferential allotment and for that I had paid a sum of Rs. 15,00,00/- to Essar India Ltd.

ix. *Further, I am not aware that a sum of Rs. 15,00,000/- were transferred on May 12, 2011 from Veebee Associates from Account No.l 1995500001597 to Jaidev Gupta HUF.*

With respect to transfer of Rs.34,06,200/- on May 21, 2011 by Jaidev Gupta to Spectra Industries Ltd. I state that I have nothing to do with the same and further state that:-

x. *i As far as transfer of Rs.34,06,200/- by Mr. Jaidev Gupta to Spectra is concerned, I state that, I have been informed that in May 2007 Mr. Jaidev Gupta had requested Spectra to extend him a loan of Rs.34,06,200/- by directly making payment of the said amount on his behalf to M/s. Ekta Supreme Housing against the flat. Hence, accordingly Spectra had made payment of said amount on his behalf to Ekta Supreme Housing which was accounted by Mr. Jaidev Gupta in his Books of Account.*

xi. *Thereafter, Mr. Jaidev Gupta has repaid the said loan amount of Rs.34,06,200 to Spectra on May 21, 2011 which is apparent from the bank statement of Mr Jaidev Gupta annexed to the SCN.*

xii. *With respect to Paragraph No. 16 of the SCN I say that:-*

a. It is a matter of record that, Spectra Industries Ltd. is listed on Bombay Stock Exchange ("BSE") and in the year 2011-2012 Mr. Vinod Gupta was the Managing Director, Mr. Jaidev Gupta was the Executive Director and I, Bharat Bhushan Gupta (myself) was the Non-Executive Chairman of Spectra Industries Ltd.

With respect to Paragraph No. 17 of the SCN, I say that I am concerned with Rs. 15,00,000/- paid by Bharat Bhushan Gupta (myself) towards allotment of shares is a matter of fact.

xiii. *Further, transfer of Rs.35,00,000/- from EIL to Jaidev Gupta HUF on May 21, 2011 has no connection with payment of Rs. 15,00,000/- to Essar India Ltd., as aforesaid. Further, transfer of Rs.34,06,200/- by Jaidev Gupta HUF to Spectra Industries Ltd on May 21, 2011 has no connection with transfer of Rs. 15,00,000/- or Rs.35,00,000/- for the reasons aforesaid.*

xiv. *However, it is already submitted hereinabove that the said amount was taken as loan and has already been repaid by Mr. Jaidev Gupta.*

7. Thereafter, In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide Hearing Notice dated March 30, 2022, the Noticees were granted an opportunity of Personal Hearing in the matter on April 26, 2022. Mr. Shantibhushan Nirmal, (Profess Law Associates) i.e. Authorized Representative ("AR") of Noticee No.1 and No.2 vide email dated April 25, 2022 sought adjournment of Personal Hearing. In this regard, vide email dated April 26, 2022 another opportunity of Personal Hearing was granted to Noticees on May 10, 2022 and AR again requested for adjournment of the hearing. Thus, vide email dated May 09, 2022 another opportunity of Personal Hearing was granted to Noticee No. 1 and Noticee No.2 on May 24, 2022 through the online Cisco Webex Platform. During the said personal hearing held on May 24, 2022, Authorized Representative of the Noticee No.1 and No.2 reiterated the submissions made in their earlier replies dated May 24, 2022.

8. Further with regard to Noticee No.3 vide email dated June 10, 2022 an opportunity of Personal Hearing was granted to Noticee No.3 on June 23, 2022. However, vide June 23, 2022, Noticee No.3 sought adjournment of Personal Hearing, in this regard another opportunity was granted to him on July 04, 2022 and same was again adjourned to July 19, 2022 on the request of the Noticee No.3. The said Personal Hearing was held through Cisco Webex Platform and the Noticee No.3 attended the hearing and reiterated the earlier submission made in his reply dated May 11, 2022. During the Personal Hearing the Noticee was advised to submit the bank details pertaining to the relevant period. In this regard, vide email dated July 20, 2022, Noticee No.3 submitted the bank transaction statement pertaining to him.

CONSIDERATION OF ISSUES AND FINDINGS:

9. I have taken into consideration the facts and circumstances of the case, the material available on record.

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

Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of SEBI Act, 1992? And

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 Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

11. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are reproduced below:--

Relevant Provisions of Securities and Exchange Board of India Act, 1992

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;

Relevant provisions of 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 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:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security

12. Before proceeding with the matter on merits, I first deal with the preliminary submissions of the Noticees that there has been an unexplained inordinate delay in issuance of SCN, proceedings did not initiate within reasonable time, and this delay

has made it difficult for Noticees to retrieve data and offer submissions effectively. In this regard, I note that the investigation in the matter for period April 01, 2011 to February 28, 2015. The aforesaid investigation was concluded in July 2021, and in August, 2021 competent authority approved adjudication proceedings in respect of Noticees. The undersigned was appointed Adjudicating Officer in the matter in August, 2021 and the SCN was issued in October, 2021. Considering the time taken to complete the investigation, I do not find that there is inordinate delay in initiation of the proceedings. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act or Regulations which may have the effect of prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case.

13. In this regard, I am inclined to rely upon the decision of Hon'ble SAT in the matter of Bipin R Vora vs SEBI held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market'*.

14. Further, I note that in Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 08, 2013, Hon’ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI(Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon’ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)reported in2003 (158) ELT 129 (S.C.),held as under:

“....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every

case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."

15. The decision of Hon'ble SAT in the aforesaid case, were reiterated by it, in a subsequent order in the matter of Kunal Pradip Savla & Ors. v. SEBI (Appeal no. 231 of 2017) decided on April 13, 2018.

16. Further, I note that in Rajendra Aggarwal. v. SEBI(Appeal No. 552/ 2019) decided on September 17, 2021, Hon'ble SAT held that

"*On issue of delay, we find that the show cause notice was issued in the year 2013 and the trades were executed in 2009. The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay in the delivery of the impugned order after the last date of hearing by the AO. We are of the opinion that after the conclusion of the arguments the data of 35 entities was required to be analysed and collated which took time and, therefore, we do not see any reason to vitiate the judgment only on the ground of delay in delivering the order. In any case, such delay in the delivery of the judgment does not cause any prejudice to the appellants"*

17. The Hon'ble SAT in the matter of M/s Adamina Traders P. Ltd (Appeal No. 331/2020) decided on December 15, 2021 held that

"We find that the trades in question are of the year 2013. The show cause notice was issued on September 28, 2017 by the WTM and January 18, 2018 by the AO. We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected."

18. In view of aforesaid Judgments, I conclude that there is no merit in the preliminary objections made by Noticees, regarding the delay in issuance of SCN in the instant proceedings.

19. I note that Noticees have contended that Investigation Report was not provided to them during the instant proceedings. In this regard, I note that in Shruti Vora matter, the Hon'ble SAT has clearly mentioned that "the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence". Thus, I note that all documents relied upon for the present proceedings have been shared with the Noticees along with SCN as per the ratio mentioned in the Shruti Vora matter in the backlight of principles of natural justice.

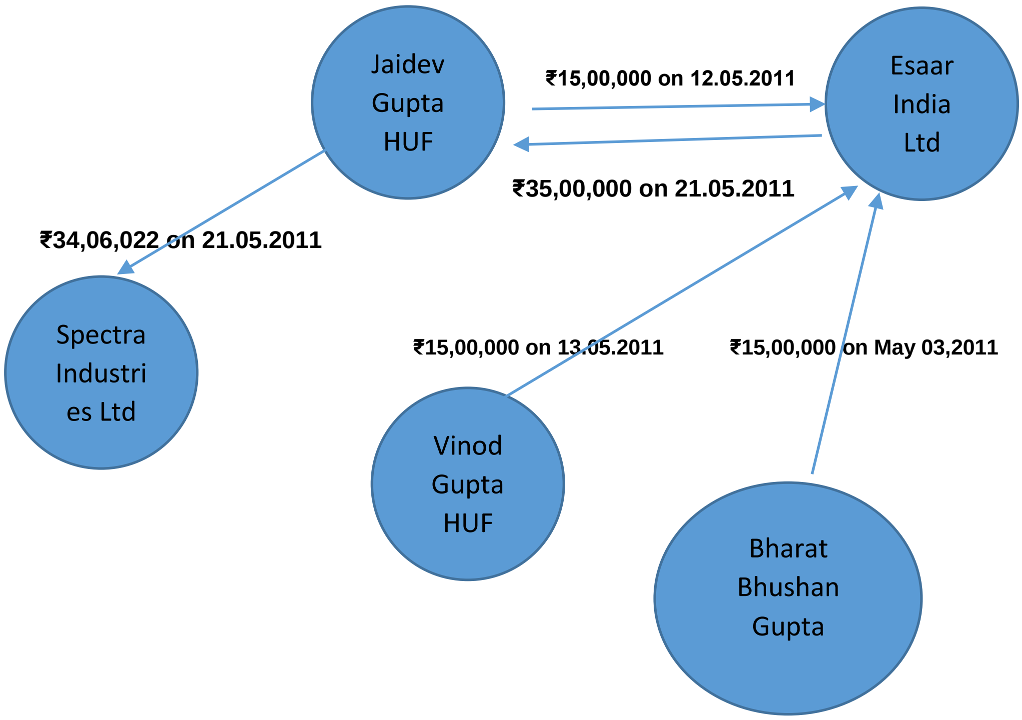
20. Further, the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that "the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".

21. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticees along with SCN as annexures, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticees. Having decided the preliminary objections raised by the Noticees, now I proceed to deal with the merits of the matter.

22. Further, I note from the SCN that Noticee No.1 was allotted with 30,000 shares in the preferential allotment for which it had transferred amount of ₹15,00,000/- from account number 11990109155290 with the Fedral Bank on May 12, 2011. Noticee No-1 had received ₹35,00,000/- from EIL post the preferential allotment of shares on May 21, 2011 in his bank account having account number 0017101000050966 maintained with Indian Bank. I also note from the SCN that Noticee No.2 and Noticee No.3 were also allotees for the said EIL's preferential allotment. On perusal of account number 001710100050966, it was observed that ₹34,06,200/- was transferred on May 21, 2011, to the bank account of Spectra Industries Ltd having account number 010630100001082 i.e. the same day it had received ₹35,00,000 from EIL.

23. The Spectra Industries Ltd is listed on Bombay Stock Exchange (Scrip Code – 513687). On perusal of annual reports of Spectra Industries for the year 2011-12, it was observed that Vinod Gupta was the Managing director and Jaidev Gupta was the executive directors and Mr. Bharat Bhushan Gupta was the chairman of Spectra Industries Ltd. I also note that Bharat Bhushan Gupta was also one of the allottees in the said preferential allotment of EIL dated May 25, 2011. In this regard, it was alleged that the flow of money forms a 'to and fro' pattern where the personnel on the boards of directors of Spectra Industries Limited remitted ₹45,00,000/- as subscription amount to EIL and received ₹35,00,000/- in return on May 21, 2011 from the said company.

The same is diagrammatically represented as under:



24. From the above analysis I note that the Company EIL received ₹45,00,000 as subscription amount Vinod Gupta HUF, Jaidev Gupta HUF & Bharat Bhushan Gupta towards allotment of shares in the preferential allotment dated May 25, 2011. Pursuant thereof EIL transferred ₹35,00,000 on May 21,2011 to Jaidev Gupta HUF, who in turn transferred ₹34,06,200/- to Spectra Industries Ltd wherein the said 3 allottees were

in the list of its Board of Directors of Spectra Industries Ltd(Chairman Bharat Bhushan Gupta & 2 Directors namely Vinod Gupta HUF, Jaidev Gupta HUF).

25. I note that Noticees were contended that the amount used for preferential allotment was their own amount and there was no relation with the fund flow from Esaar India Limited. Noticee No.1 submitted that Rs. 35 lakhs received by Mr. Jaidev Gupta (individual Account No. ending with 50966) from EIL on May 21, 2011, was actually a loan taken by Mr. Jaidev Gupta from EIL through some broker under loan agreement dated May 20, 2011, and the said amount was used to repay the loan of Rs.34,06,200/- taken from Spectra Industries Ltd and the said amount was used for purchase of flat.

26. Noticee No1 also submitted that as per loan agreement with EIL, he had to pay interest and repay the loan within time period of three years to EIL, and therefore initially he paid Rs.15 Lakh towards repayment of principal amount. He submitted that due to financial difficulties, he was unable to repay the same in time and after discussion with EIL, it was agreed that he will atleast repay the entire outstanding principal amount of Rs.20 Lakh, which he undertook to repay it vide letter dated October 14, 2019 and accordingly on November 29, 2019 he repaid the balance principal loan amount of Rs.20 Lakh.

27. In this regard, the Noticee was advised to provide the letter of Esaar India Ltd, accepting the request of the Noticee No.1 to waive off the interest part. However, the Noticee No.1 had failed to provide the relevant document. I find the entire premise of loan transaction as dubious since no supporting documents of accepting extension of time for repayment of loan (i.e. for delay of 5 years) and exemption to pay interest amount. Therefore, I do not agree with the contention of the Noticee No.1, since he couldn’t provide any document to support his premise. Moreover, the said transaction of Rs. 35 lakhs to Noticee No.1 was happened during the same period of preferential allotment of the company.

28. Further, with regard to the transfer of Rs.34,06,200/- on May 21, 2011 by Noticee No.1 to Spectra Industries Ltd on the same day he received Rs. 35 lakhs from Esaar India Limited, Noticee submitted that Spectra extended him a loan of Rs.34,06,200/- by directly transferring the said loan amount to M/s. Ekta Supreme Housing as payment on his behalf against the said flat in 2007 and 2008 in two trench of transaction Rs. 25

lakhs and Rs. 9,06,200/-. It is observed from the bank statement of Spectra Industries Limited for the period of 2007 and 2008 that the transaction was happened to Ekta Supreme Housing. However, Noticee No.1 failed to produce the record of the Loan Agreement between Spectra Industries Ltd and Noticee No.1. Since, Noticee No.1 had failed to submit the basic document such as Loan Agreement,, I do not agree with the contention of the Noticee No.1 that he had taken loan from Spectra Industries Limited and the transfer of Rs. 34,06,200/- was for the repayment of such loan.

29. I find that there are allegations against Noticee No.2 and Noticee No.3 that the Rs. 34,06,200/- was transferred to Spectra Industries Limited wherein they were directors and thus being responsible for the flow of funds transferred from Esaar India Limited through Noticee No.1 for their preferential allotment to an extent of Rs. 30,00,000/-.

In this regard, during the Personal Hearing, I note that Noticee No.3 submitted that the amount of Rs. 15,00,000/- transferred from him to Esaar India Limited for preferential allotment was pertaining to him. He further vide email dated July 21, 2022 provided a Bank Statement for the period of April to June 2011, I note from the said bank statement that there is no record of direct transaction to his own account from Spectra Industries Limited for the said preferential allotment.

I also note that there are no records available to prove any fund flow from Spectra Industries Limited to Noticee No.2. Therefore, except being Noticee No.2 as Managing Director and Noticee No.3 as Chairman of Spectra Industries Limited there is no material available on record to prove the transaction of Rs. 15 lacs from Spectra Industries Limited either to Noticee No.2's personal account or Noticee No.3's account. Thus, in absence of direct or indirect supporting evidence, I find the allegation against Noticee No.2 and Noticee No.3 does not stand established.

30. However, with regard to the allegation of Noticee No.1 engaging in fraudulent scheme by giving an impression of capital infusion through preferential allotment, while in reality company's own funds were used by allottees is a serious allegation and upon perusal of material on records and replies of the Noticee, I observe that the payments made by Noticee No.1 to Esaar India Pvt Ltd towards preferential allotment were actually the funds of Esaar India and it is observed based on preponderance of probability that the transaction of the amount of Rs. 15,00,000/- out of fund flow of Rs. 35 lakhs is fraudulent in nature.

31. Therefore, in view of the above, I find from material available on record that there is an involvement of Noticee No.1 in the preferential allotment of Esaar India Limited to a extent of Rs. 15,00,000/- out of Rs. 35 lacs in fraudulent manner and thus violated the provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as 'PFUTP Regulations').

Issue No. II *If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of SEBI Act, 1992?*

32. I am of the view that the Noticee No.1 is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, which reads as under :

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.*

33. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, **SEBI Vs Shriram Mutual Fund** { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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…………...*"

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 Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?*

34. The provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of the Noticee's failure. I also note that no prior default of the Noticees is available on record. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. In this case, I find that the act of Noticees to involve in false representation through preferential allotment has the potential to mislead and induce genuine investors to trade in the scrip and harm them and, thus, violate the fundamental tenets of market integrity. Such acts of Noticees, If dealt with lightly, could seriously undermine investors' confidence in the securities market and therefore, deserve suitable penalty commensurate with such serious violations

ORDER

36. (a) Having considered the facts and circumstances of the case, the material available on record, and the factors mentioned in the preceding paragraphs and in Section 15J of the SEBI Act, the purpose of SEBI PFUTP Regulations 2003, taking note of Section 15HA of the SEBI Act, and also taking into account judgement of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee No.1:

Name of the Noticee	Provisions Violated	Penalty
Jaidev Gupta HUF (PAN-AAFHU5373N)	*Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003*	Rs. 5,00,000 (Rupees Five Lakhs only)

b) In view of the findings noted in the preceding paragraphs, the adjudication proceedings initiated against the Noticee No.2 and Noticee No.3 vide SCN dated October 20, 2021 are disposed of.

37. I am of the view that the said penalty is commensurate with the default committed by the Noticee No.1.

38. The Noticee No.1 shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department - I (EFD), Division of Regulatory Action - I [EFD1-DRA-2] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

OR

Payment can also be made online by following the below path at SEBI website www.sebi.gov.in **ENFORCEMENT → Orders → Orders of AO →** Click on **PAY NOW** or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

39. 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.

Place: Mumbai	**SANDEEP P DEORE**
Date: August 30, 2022	**ADJUDICATING OFFICER**