BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/BD/BM/2019-20/7089-7093

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 & 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 BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

1. **MPF Systems Limited (PAN: AADCM7896A)**
2. **Ms. Kirti Salvi (PAN:ADHPJ9221C)**
3. **Anil Kothari (PAN: BZAPS5179J)**
4. **Aakesh Chopra (PAN: AENPC7889Q)**
5. **Ambrish Barsati Pal (PAN: APFPP2586L)**

In the matter of MPF Systems Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI")** was in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 09, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as **"MCA"**) vide which MCA has annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA has also annexed the letter of Serious Fraud Investigation Office

(hereinafter referred to as **"SFIO"**) dated May 23, 2017 which contained the data base of shell companies along with their inputs.

2. On examination of the books of accounts/funds of MPF Systems Limited (hereinafter referred to as MPFSL/Company/Noticee 1), the observations of Forensic Audit Report(FAR) dated September 25, 2018 were as under:

    a. There are no operational business activity since 2014 and the company owns no fixed asset.
    b. There are loans and advances given to the company by the directors including independent directors which is not in line with the SEBI Regulations. The loans are provided to run day to day affairs of the company which should have come in the form of capital from the promoters and not directors. (Section 149 (6) (c) of Companies Act, 2013 and Regulation 16 (1) (b) (iv) of the LODR Regulations.
    c. Further, the company has accepted loans & advances from directors including independent directors without specifying the terms of repayment and paying / charging any Interest.
    d. Not all directors have been able to provide affidavit in spite of SEBI order and the Auditor's repeated reminders.
    e. The major debtors of the company are of ₹5.97 cr. The provision for the same has been provided for by the earlier management prior to the acquisition of the company by the new promoters. The details of debtors are unavailable and yet the provision continues. The same should have been written off as Bad Debts. Hence, there is misrepresentation of financial statements.
    f. There are creditors appearing in Balance Sheet which pertain to the routine course of expenditure incurred by the company in order to meet the compliances of the company. These are recorded as Trade payables instead of Sundry Creditors.
    g. The company premises are being used for storage of goods without doing any business activity nor generating any kind of operational income.

h. There is no confirmation regarding exact number of employees working for the organization as the statements issued to the Forensic Auditor in this regard are different.

i. In one letter dated January 29, 2018, the company states "there are no employee to paid salary", indicating employees are there but no salary is being paid which is contradicting to another email by Mr. Ambrish Pal of June 22 stating that there are "1+3 employees".

j. No attendance register, provident fund / ESI records are maintained to verify staff details.

3. Therefore, SEBI initiated Adjudication Proceedings for violation of Section 12(A)(a)(b) and (c) and 11(2)(ia) of SEBI Act, 1992 and Regulation 3(b),(c) and (d) and Regulation 4(1) and 4(2)(f) and (r) of SEBI (Prohibition of Fraudulent and Trade Practices)Regulations 2003 (hereinafter referred to as PFUTP Regulations), Regulation 4(1)(a),(b),(c),(e)and(g), Regulation 4(2)(f)(i)(2), 4(2)(f)(2)(6) and (7), 4(3)(f)(iii)(1),(3),(6) and (12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b), Regulation 19(1) (c) and Regulation 33(2) (a) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as LODR Regulations), Section 21 of the Securities Contract Regulations Act 1956(hereinafter referred to as SCRA) by MPFSL, Section 12(A)(a)(b) and (c) of SEBI Act, 1992 and Regulation 3(b),(c) and (d) and Regulation 4(1) and 4(2)(f) and (r) of PFUTP Regulations, Regulation 4(1)(a),(b),(c), (e) and (g), Regulation 4(2) (f) (i)(2), 4(2)(f)(ii)(6) and (7),4(2)(f)(iii)(1),(3),(6)&(12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b), Regulation 19(1)(c) and Regulation 33(2)(a) of LODR Regulations, Section 21 of the SCRA and Section 11(2)(i) and 11(2)(ia) of the SEBI Act 1992 by Ms. Kirti Salvi, the Managing Director of MPFSL, Anil Kothari (Independent Director), Aakesh Chopra(Independent Director) and Ambrish Barsati Pal, the Chief Financial Officer (hereinafter referred to as Noticee 2-5) for the period from April 01, 2015 till January 15, 2018.

APPOINTMENT OF ADJUDICATING OFFICER

4. Based on the findings of the examination, SEBI has initiated adjudication proceedings and I have been appointed as the Adjudicating Officer vide order dated January 18, 2019 under section 15 I of SEBI Act, 1992 and Section 23 I of SCRA to inquire into and adjudge the alleged against the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/BKM/20494/1-5/2019 dated August 09, 2019 was issued to the Noticees under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer)Rules, 2005 (hereinafter referred to as Adjudication Rules) to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under section 15A(a) and 15HA of the SEBI Act 1992 and Section 23E of SCRA against MPFSL and Sections 15A(a), 15HA and Section 23H of SCRA against Kirti Salvi, Anil Kothari, Aakesh Chopra and Ambrish Barsati Pal for the alleged contravention of provisions of Law.

6. Vide identical letters all dated August 16, 2019 Noticees sought inspection of the documents relied upon which was allowed vide email dated September 16, 2019. Vide letter dated January 15, 2020 the Noticees submitted their common reply on merits.

7. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, vide notice dated January 02, 2020 Noticees were granted an opportunity of personal hearing on January 16, 2020, 2018. Noticees attended the hearing scheduled and reiterated the submission as made earlier vide letter dated January 15, 2020.

8. I am proceeding further in the matter based on the written and oral submission made by the Noticees and material available on record.

CONSIDERATION OF ISSUES

9. On careful perusal of the material available on record, I note that the issues that arise for consideration in the present case are:

    a) *Whether the Noticee 1 has violated Section 12(A)(a)(b) and (c) and 11(2)(ia) of SEBI Act, 1992 and Regulation 3(b),(c) and (d) and Regulation 4(1) and 4(2)(f) and (r) of PFUTP Regulations, Regulation 4(1)(a),(b),(c),(e)and(g), Regulation 4(2)(f)(i)(2), 4(2)(f)(2)(6) and (7), 4(3)(f)(iii)(1),(3),(6) and (12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b), Regulation 19(1) (c) and Regulation 33(2) (a) of LODR Regulations, Section 21 of SCRA?*

    b) *Whether Noticee 2-5 have violated Section 12(A)(a)(b) and (c) of SEBI Act, 1992 and Regulation 3(b),(c) and (d) and Regulation 4(1) and 4(2)(f) and (r) of PFUTP Regulations, Regulation 4(1)(a),(b),(c), (e) and (g), Regulation 4(2) (f) (i)(2), 4(2)(f)(ii)(6) and (7),4(2)(f)(iii)(1),(3),(6)&(12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b), Regulation 19(1)(c) and Regulation 33(2)(a) of LODR Regulations, Section 21 of the SCRA and Section 11(2)(i) and 11(2)(ia) of the SEBI Act 1992?*

    c) *Does the violation, if any, attract monetary penalty under section 15A(a) and 15HA of the SEBI Act 1992 and Section 23E of SCRA against MPFSL and under Sections 15A(a), 15HA and Section 23H of SCRA against Noticee 2-5?*

    d) *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act and Section 23J of SCRA?*

FINDINGS:

10. I note that the charges against the Noticees to be adjudged in the instant proceedings are categorized as under:

    a. Loan from independent directors;

    b. Verification of Sundry debtors/receivables;

    c. Recording of Sundry creditors as Trade payables;

d. Proof of other Transaction;

e. Failure to file Affidavit & Details with respect to employees of the Company

a. Loan from independent directors

11. I note from the SCN that the independent directors of the Company gave certain loans to the Company (shown under the head of "short term borrowings). Due to loan given by the independent directors they are not considered to be independent as per the definition provided under Regulation 16(1)(b)(iv) of LODR Regulations. In view thereof, the tenure of repayment or the rate of interest of the loan would also be prejudicial to the interest of shareholder. The Company and the directors were alleged to have violated Regulation 4(1)(a),(b),(c), (e) and (g), Regulation 4(2) (f) (i)(2), 4(2)(f)(2)(6) and (7), 4(3)(f)(iii)(1),(3),(6) and (12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b), Regulation 19(1) (c) and Regulation 33(2) (a) of LODR Regulations and Section 21 of SCRA.

12. In this regard vide letter dated January 15, 2020 Noticees, inter alia, submitted as under:

"*The Company was not earning any operational revenue/income since December 2012 nor did the Company had any fixed assets. The present promoters of the Company had acquired the Company only on 01st July, 2014 and thereafter for day to day functioning/expenses of the Company the Directors of the Company gave an interest free loan to the Company and had also in some instances paid the expenses directly (such as listing fees, depository fess, RTA fees etc.). The said loans or the amounts due were duly disclosed in the Annual Returns filed by the Company. As on date, the amounts due to the Directors have been repaid by the Company as under:*

Name of Director	Loan Amount (in Rs.)	Time Period	Date of Repayment
Kirti Salvi	39,84,744	22nd January, 2016 - 23rd May, 2019	06th July, 2019 – 01st August, 2019
Anil Kothari	15,000	30th January, 2017	28th June, 2019
Aakesh Chopra	12,90,000	30th January, 2017-21st February, 2018	04th July, 2019-12th July, 2019

No loans or amounts are outstanding between the Company and the Independent Directors. In view of the facts that the present loan was given by the Directors without any interest component, it is submitted that the above transaction cannot be termed as "Pecuniary Relationship" as understood under the provisions of Companies Act, 1956. Section 188 of the Companies Act, 2013 excludes transactions done under ordinary course of business at arm's length price from the purview of Related Party Transactions and therefore an Independent Director will not be said to have "pecuniary relationship" under Section 149(6)(c) of Companies Act, 2013. The present case transaction (loan by Directors) was in fact on terms beneficial to the Company and not the Directors and is therefore even better than that of an arm's length price and thus it can be stated that there is no pecuniary relation of the Independent Directors with MPFSL and consequently MPFSL is in compliance of the relevant LODR Regulations. The Ministry of Corporate Affairs had vide Circular No. 14/2014 dated 09th June, 2014 had clarified the said position. Hereto annexed and marked as ***Annexure B*** *is copy of the Circular dated 09th June, 2014.".*

13. I find from the annual report 2015-16 that Ms. Kirti Salvi (Noticee 2) is the Managing Director and Executive Chairman of Noticee 1 and Anil Kothari (Noticee 3) is the independent director of Noticee 1.

14. I also note from the annual report 2016-17 that Aakesh Chopra (Noticee 4) has signed the balance sheet, Profit and Loss account, cash flow statement and Notes to Financial statements as a director along with the managing director Kirti M. Salvi (Noticee 2). I find that the loan was given by Aakesh Chopra during January 30, 2017 – February 21, 2018 when he was executive director not an independent director and repayments of the loan by the Noticee 1 to him was made during July 04, 2019-July 12, 2019.

15. Further, I note from Financial statement for 2017-18 that Anil Kothari (Noticee 3) as a director along with Kirti M Salvi, Managing Director has signed the financial statement, Cash Flow statement and Notes to the financial statements for 2017-18. I find that the loan was given by Anil Kothari on January 30, 2017 when he was

executive director not an independent director and repayments of the loan by the Noticee 1 to him was made on June 28, 2019

16. I find that during the examination period i.e. from April 01, 2015 till January 15, 2018 Noticee 2-4 independent directors signed as directors for sometimes and sometimes they signed as executive directors. Therefore, I don't agree with the argument of the Noticee 2-4 that they were independent directors for the entire examination period i.e. April 01, 2015 to January 15, 2018 and they were not involved in day to day affairs of the company. I don't find merit in the submission of the Noticees that all Noticees are independent directors.

17. I note from Circular dated 09th June, 2014 that independent director is said to be not in 'pecuniary relationship' if he or she acted at arm's length price in the ordinary course of business. However, I find that there is no information regarding the terms and conditions of the loan. Copy of agreement also is not made available to know about the rate of interest and also the objectives of the loan have not been disclosed

18. Further, for taking loan from directors the compliances had to be made as under:

Amount received from directors out of their own funds, *whether he is also a shareholder or not, are treated as loans and do not require compliance with section 73(2) or Section 76 of companies Act 2013. However, to avail this relief the director must furnish to the company at the time of giving the money, a declaration in writing, that the amount is not being given out of funds gathered or collected by borrowing or accepting loans or deposits from others. However, information regarding the loan should be disclosed in the Director's Report as well as the notes to accounts of the Financial statements of the company.*

Amount received out of funds borrowed by the director

Director is not a shareholder: *In this scenario, funds received are treated as Deposits and attract Section 76 read with Companies (Acceptance of Deposits) Rules 2014. In such a case, these deposits can only be accepted by a PUBLIC company having either a Net worth of ₹ 100* *crores or a Turnover of ₹ 500 crores (i.e. Private limited companies and ineligible Public companies cannot receive loans/deposits from director's borrowed funds). Section 76 requires such public company to obtain credit rating every year and to create a charge on its assets in favour of the deposit holders for an amount not less than the amount of Deposits accepted. Section 180 is also attracted in this case (Discussed below).*

Director is also a Shareholder: *In this case, funds received from directors are also treated as deposits, however, they are treated as deposits from a member and attract provisions of Section 73(2) read with Companies (Acceptance of Deposits) Rules 2014.*

Section 180 of Companies Act, 2013 provides for the board to take consent of the company by a special resolution (and file such SR in Form MGT-14) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

19. I note that the Noticees failed to submit any document in terms of the compliance for transactions between the company and its directors. The non-compliance in terms of providing loans by directors to the company amounts to the violation of the principles of corporate governance.

20. Regulation 4 of LODR, inter alia, states that the listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

The listed entity shall refrain from misrepresentation and ensure that the information provided to recognized stock exchange(s) and investors is not misleading.

The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:

The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

21. *Regulation 16(1) (b) of LODR, inter alia, states that "independent director" means a non-executive director, other than a nominee director of the listed entity: who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.*

23. *Regulation 17 of LODR, inter alia, states where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:*

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

22. *According to Regulation 18(1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:(a)…*

(b)Two-thirds of the members of audit committee shall be independent directors and in case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors

23. *As per Regulation 19 of LODR the board of directors shall constitute the nomination and remuneration committee as follows: (a)the committee shall comprise of at least three directors ; all directors of the committee shall be non-executive directors; and at least fifty percent of the directors shall be independent directors and in case of a listed entity having outstanding SR equity shares, two thirds of the nomination and remuneration committee shall comprise of independent directors.*

24. *Section 21 of SCRA, 1956 states that where securities are listed on the application of any person on any recognized stock exchange, such person shall comply with the conditions of the listing agreement with the stock exchange. It is, therefore, alleged that the company, by not complying with the aforesaid provisions of LODR, has violated Section 21 of SCRA, 1956.*

25. I note that Noticee 1 has failed to comply with the mandates on several counts as under:

(i) Information has not been prepared and disclosed in accordance with applicable standards of accounting and financial disclosure as it is evident that Noticees 2-4 are alleged are directors some point of time which had not been reported as per accounting standard.

(ii) Noticee 1 has misrepresented by not providing the complete details regarding the loan and status of the directors as required by law.

(iii) Principles of corporate Governance as mandated are to protect the rights of the minor shareholders. By concealing the facts regarding the terms and conditions of loan arrangement from the directors Noticee 1 failed to follow the principles of corporate Governance as mandated to protect the rights of the minor shareholders.

(iv) The board of directors are responsible for passing the board resolution in the specific manner which is the condition precedent for approving loan transactions between the company and directors which the Noticee 1 grossly failed to comply.

(v) As per Regulation 17 of LODR where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors. However, I find that the status regarding the number of independent director during the investigation period is not clear from the material available on record, the non-compliance of Regulation 17 of LODR cannot be ruled out.

(vi) There must be two-thirds of the members of audit committee shall be independent directors as per Regulation 18(1) (b) of LODR. I find there is a provision of Audit committee in the Annual Report of 2014. However, there is no provision of independent director mentioned in the annual report 2014. Further, for the financial year 2017-18, there is no provision of audit committee as evident from the financial statement for 2017-18 submitted by the Noticee.

26. I note that the Noticees on one hand stating that there was no business/operations being carried out by Noticee-1 have on the other hand have also contended that the loan was taken in the ordinary course of business. I find the said submissions of the Noticees mutually contradictory. Further, the fact that such loan was taken by Noticee-1 without stating any clear objectives or purpose for taking the same rises suspicion over the entire loan transaction. I also further note that the independent directors from whom the loan was taken by Noticee-1 are also seen to have been associated with the Noticee-1 in other capacities as mentioned in the paras 15 and 16 above. Therefore the submission of the Noticees that such loan transaction was allowed as per the laws is not acceptable. Furthermore, the submission of the Noticee is further found to be lacking merit from the fact that no document pertaining to board resolution to rise such loan from independent directors is even brought on record before me. All the submissions of the Noticee goes on to show that the Noticees have attempted to validate the prohibited loan transaction in the guise of loans that are exempted. In this regard, I find further corroboration to the same from the fact, as

observed in the table of loan repayment provided by the Noticees with their reply, that the aforesaid loan was repaid only after SEBI passed the order dated September 14, 2017 under Section 11, 11(4), 11A and 11B of SEBI Act, 1992 against the Noticees.

27. In view of above, I conclude that Noticee 1 has violated Regulation 4(1)(a),(b),(c), (e) and (g), Regulation 4(2) (f) (i)(2), 4(2)(f)(2)(6) and (7), 4(3)(f)(iii)(1),(3),(6) and (12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b), Regulation 19(1) (c) of LODR Regulations. Noticee 1 has acted through Noticee 2-5 for the investigation period. Therefore, Noticee 2-4 as directors and Noticee 5 as Chief Financial Officer also are held responsible for the violation of Regulation 4(1)(a),(b),(c), (e) and (g), Regulation 4(2) (f) (i)(2), 4(2)(f)(2)(6) and (7), 4(3)(f)(iii)(1),(3),(6) and (12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b) and Regulation 19(1) (c) of LODR Regulations.

b. Verification of Sundry debtors/receivables

28. Regulation 33(2) (a) of LODR Regulations states as under:

The quarterly financial results submitted shall be approved by the board of directors: Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

29. It was observed that MPFSL by showing sundry debtors as well as provision for doubtful debt had incorrectly indicated that the Company has "doubt" that these receivables will not be recovered and therefore the financial statements are misrepresented to that extent.

30. In this regard the Noticee has submitted that "*the new management/promoters of the Company had taken over the Company only after July 2014. The provision for doubtful debt was made by the earlier management.*

Further there is no misrepresentation on part of the Company with respect to these debts as doubtful, as 100% provision was made against the doubtful debts and it is to be assumed that chances of recovery from debtors is nil. The very fact that the provision has been made for the entire amount of the doubtful debts, this fact itself shows that the Company also represented that there is no chance of recovery of the said debt else the provision would not have been made for the entire amount. The value of the debtors taken into main balance sheet is also shown as nil. Therefore it cannot be alleged that the management or the Company gave a wrong impression that there is slight chance of recovery of these debts.

The reason for which the earlier management of the Company had shown ₹ 5.97 Crores as Sundry Debtors and also created provision for the same was a management decision made by the Company at that time and once the new management came into picture, it has tried to rectify all the prior mistakes/errors by the Company and are trying to revive the Company as on date."

31. I note that sundry debtors/receivables are the amount the company is to receive from the debtors which are considered doubtful in recovering. Further the amount being substantial in the instant case, the recovery of the same gathers further significance. While the Noticees has not denied that the sundry amounts were due for recovery when they took over the management in 2014. However it is their submission that they have charge that the sundry deposits the provision of sundry debtors was made by the earlier management. The new management has taken the charge in July 2014. Noticees have submitted that they have tried to rectify the errors made by the earlier management. However, no documents have been filed to substantiate the submission made by Noticees. Therefore, I don't find merit in the submission of the Noticees. Further, the Noticees failed to demonstrate any step that had been taken to recover the sundry debts and also failed to file any document to substantiate their submission that they rectify the error made by earlier management. Therefore, the alleged

violation of Regulation 12(A)(a)(b) and (c) of SEBI Act, 1992 and Regulation 3(b),(c) and (d) and Regulation 4(1) and 4(2)(f) and (r) of PFUTP Regulation 33(2) (a) of LODR Regulations as against the Noticees stand established.

c. Recording of Sundry creditors as Trade payables

32. It was observed that by showing certain transactions as "trade payables" instead of "sundry creditors", MPFSL had done incorrect recording/grouping and disclosure of balances in the financial statement and such entries will give wrong impression/indication to the shareholders that the company is in operation.

33. In this regard the Company has submitted that *it is not in operation since December 2012 and the Company in all its filing with the ROC as well as stock exchange has shown in the profit & loss statement for the financial year 2013-14 to 2018-19 that the revenue from operations and other operating revenue is nil and therefore, the question of misleading the investors or shareholder to believe that the Company is operational does not arise.*

Further the sum of ₹ 8.6 Lakhs was correctly shown under the category of 'trade payables' as it was relating to cheques issued but not deposited by the creditors for goods purchased or services received.

Reading the Accounts as a whole it can clearly be seen that there is no manner of doubt that the Company had no operations since financial year 2013-14 and thus is not in operation or is generating no revenue.

Without prejudice to the above, if at all it is admitted that the grouping of trade payable and sundry creditor done by the Company was wrongful at the highest it can be alleged to be a technical mistake and not a misrepresentation/wrongful indication on part of the Company as both are covered under the head of Current Liabilities and also the fact that for all the relevant years the Company has shown nil revenue from operations in all its financial statements. Hereto annexed and marked as Annexure C is copy of the Annual Reports for the financial years 2013-2014 to 2018-2019. "

34. I agree that both 'trade payables' and 'other current liabilities (sundry creditors)' are under the heading of 'current liabilities' in the balance sheet format provided under the Schedule III under section 129 of the Companies Act, 2013.

35. Sundry Creditors are one-time supplier and interacting business with them is minimal. Trade payables constitute the money a company owes its vendors for inventory-related goods, such as business supplies or materials that are part of the inventory.

36. I also note from the annual report for financial year 2013-14 to 2018-19 that the company has shown nil revenue from operations in all its financial statements. Noticees themselves have submitted that the Company had no operations since financial year 2013-14 and thus is not in operation or is generating no revenue.

37. I note that trading payables are operative when there is regular business and when there is regular transaction. But in absence of regular transaction the term sundry creditors had to be used which the Noticees failed to maintain and thereby misrepresented in the financial statement as alleged.

38. I note from the submission of the Noticees that the amount involved as sundry credit is ₹ 8.6 Lakhs which the vendor has not encashed. However, it rises serious suspicion when such substantial amount is seen to have not been claimed by the vendor for such long period.

39. I further note that the Noticees admitting that the grouping of trade payable and sundry creditor by the company was wrong has contended that the same was a technical mistake. I am not inclined to accept the said submission of the Noticee as the Noticee, especially in the capacity of being a listed company, is required to strictly adhere to the principles of accounting and accounting standard prescribed by Accounting Standards Board as per LODR. Further, when such wrong reporting has

involved significant amount as in the instant case, I am of the opinion that Noticee's failures cannot be viewed leniently. Therefore, I conclude that the alleged violation of the accounting standard leading to misrepresentation stands established as against the Noticees.

d. Proof of other Transaction

40. It was observed that MPFSL had not provided any documentary proof in support of other income reported to the tune of ₹ 8.34 Lakhs (sale of shares of United Spirits Ltd.) during Financial Year 2015-16 and further BSE Ltd., NSDL, CDSL & NSEIL vide their respective emails confirmed that no transaction in the scrip of United Spirits Ltd. was entered by MPFSL. Therefore, the transaction shown as other income were alleged as non-genuine.

41. In this regard Noticees have submitted that MPFSL had 266 shares of United Spirits in physical form and had in fact sold these shares to one Mr. Suresh Ganpat Tambe in June/July 2015 for a consideration of ₹ 8,50,000/- (Eight lacs fifty thousand only) at a price of ₹ 3196 (approx.)/per share. Noticees have also submitted documentary proof in support thereof.

42. I find from the letter, demat statement and bank statement of Suresh Ganpat Tambe submitted by Noticees that the source of consideration of ₹ 8,50,000/- (Eight lacs fifty thousand only) was genuine.

e. Failure to file Affidavit and to give the details with respect to employees of the company

43. I note that the past Directors of MPFSL had failed to submit Affidavits and Noticee 2-5 had failed to give the details with respect to employees of the company. Therefore,

the violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 were alleged against the Noticees.

44. In this regard, the Noticee 2-5 have submitted that the Company or the present Directors cannot be made liable for non-filing of Affidavits by past Directors of the Company under Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 because the new management took over the Company only on 01st July 2014 and they could not have forced the past Directors to file an affidavit after a period of more than 2 years of their resignation. If SEBI or the Forensic Auditor wanted any information or Affidavit from any past Director, it could have written directly to that concerned person and if that person did not reply or file an affidavit then in that case SEBI can take action against those entities for violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992.

45. I note that with respect to the details of employees of the Company Noticees have submitted as under:

"As the Company is currently not having any operations, it has no employees other than the Managing Director (Ms. Kirti Salvi), 2 Independent Directors (Mr. Anil Kothari & Mr. Aakesh Chopra) and one CFO (Mr. Ambrish Barsati Pal) and therefore the submission of Mr. Ambrish Pal is not incorrect with regards the fact that there are only 1+3 employees of the Company. With regards the contradiction in the minutes of discussion dated 24th March, 2018, it is submitted that the said meeting was attended by all the 3 Directors along with the CFO of the Company and the statement that "Managing Director says in this co. there is no other employee" has to be read to mean that other than the 3 Directors and the CFO there are no other employees of the Company. The submission was made in the context of no other employees."

46. I find from the material available on record that the detail of the number of employees have been correctly stated by the Noticee 2-5. I also find that the affidavits as required have been filed by the current management. They cannot force the former

management to file the affidavit. Therefore, I find merit in the submission of the Noticee 2-5 that the Noticee 2-5 are not responsible for failure to file the affidavits by the former management. Therefore, the violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 as alleged against Noticee 2-5 does not stand established.

47. However, failure to comply with principles of corporate governance and accounting standard leading to misrepresentation by Noticee 1-5 as found in the instant case should be dealt with by imposing monetary penalty under 15A(a), 15 HA of SEBI Act. Further, in addition to above the Noticee 2-5 are also found to be dealt with imposing monetary penalty under 23 H of SEBI Act.

48. The provisions of Section 23 E and 23H of SCRA and Section 15 A(a) and 15HA of SEBI Act are reproduced hereunder.

Section 23E SCRA. 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.

Section 23H SCRA. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognized stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees

Section 15A SEBI Act 1992. If any person, who is required under this Act or any rules or regulations made thereunder, – (a)to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a *penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

Section 15HA SEBI Act 1992. 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.

49. Here, it is important to refer to the observation of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein it was 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…".

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

Factors to be taken into account by the adjudicating officer- *While adjudging quantum of penalty under Section 23-I of SCRA and Section 15-I of SEBI Act, the adjudicating officer shall have due regard to the following factors, namely:-*

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

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

(c) the repetitive nature of the default.

51. It is not possible from the material available on record to ascertain the actual disproportionate gain or unfair advantage made by the Noticees or the amount of loss caused to an investor or group of investors as a result of the default. However, I have analyzed the data available on record to assess the seriousness of the violation made by the Noticees and found that the Noticees grossly failed to adhere to the principles of corporate governance and accounting standards leading to the misrepresentation which is against the integrity of the capital market.

52. In the backdrop of above information the allegations against the Noticees are serious in nature. Therefore, there is a need to impose penalty on the Noticees which will act as deterrent in future.

ORDER

53. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 23-I of SCRA and Section 15-I of the SEBI Act and Rule 5 of Adjudication Rules, I hereby impose a monetary penalty on Noticees as under:

Sr No.	Noticees	Violation of provisions	Actions Recommended	Penalties
1	MPF Systems Limited	Regulation 12(A)(a)(b) and (c) of SEBI Act, 1992 and Regulation 3(b),(c) and (d) and Regulation 4(1) and 4(2)(f) and (r) of PFUTP, Regulation 4(1)(a),(b),(c), (e) and (g), Regulation 4(2) (f) (i)(2), 4(2)(f)(2)(6) and (7), 4(3)(f)(iii)(1),(3),(6) and (12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b), Regulation 19(1) (c) and Regulation 33(2) (a) of LODR and Section 21 of the SCRA	Section 15A (a) and 15HA of the SEBI Act 1992, 23E of SCRA	₹6,00,000/- (Rupees Six Lakh Only)

2	Ms. Kirti Salvi	Regulation 12(A)(a)(b) and (c) of SEBI Act, 1992 and Regulation 3(b),(c) and (d) and Regulation 4(1) and 4(2)(f) and (r) of PFUTP, Regulation 4(1)(a),(b),(c), (e) and (g), Regulation 4(2) (f) (i)(2), 4(2)(f)(ii)(6) and (7),4(2)(f)(iii)(1),(3),(6)&(12), Regulation 16(1)(b)(iv), Regulation 17(1)(b), Regulation 18(1)(b), Regulation 19(1)(c) and Regulation 33(2)(a) of LODR	Sections 15A(a), 15HA of SEBI Act 1992 and Section 23H of SCRA	₹4,00,000/- (Rupees Four Lakh Only)
3	Anil Kothari			₹4,00,000/- (Rupees Four Lakh Only)
4	Aakesh Chopra			₹4,00,000/- (Rupees Four Lakh Only)
5	Ambrish Barsati Pal			₹4,00,000/- (Rupees Four Lakh Only)
	Total			**₹22,00,000/- (Rupees Twenty Two Lakh Only)**

54. I am of the view that the said penalty would be commensurate with the violations committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors and markets.

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

56. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format as 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	Penalty

57. 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 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

58. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date: February 28, 2020 **B J DILIP**

Place: Mumbai **ADJUDICATING OFFICER**