BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/NH/YK/2024-25/ 30614-30622]

UNDER SECTION 23-I OF THE 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:

Noticee No.	Noticee	PAN
1	Hayward Technologies Private Limited	AABCH1016M
2	Altruistic Trading Private Limited	AALCA0325L
3	Vijay Kumar	ALYPK7731M
4	Neelabh Spinning Mills Private Limited	AAACN5756H
5	Tango Commosales LLP	AAJFT4529J
6	Unity Global Financial Services Private Limited	AABCU7794H
7	Harsimrat Investments Private Limited	AAACH2956F
8	Patliputra International Limited	AAACP4476E
9	Hemant Kumar Gupta	AATPG2707R

*(The Noticees are individually referred to by their respective Noticee No. as mentioned above and collectively referred to as **'Noticees'**)*

In the matter of Optiemus Infracom Limited

FACTS OF THE CASE

1. Optiemus Infracom Limited (hereinafter referred to as "**Optiemus**") is a company listed on the National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**") and BSE Ltd. (hereinafter referred to as **"BSE"**). Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint, *inter alia*, alleging manipulation in the scrip of Optiemus. Thereafter, SEBI conducted an investigation into the matter for

the period from October 13, 2017, to August 29, 2019 (hereinafter referred to as "**IP"/"Investigation Period"**). During the course of the investigation, it was, *inter alia,* alleged that the Noticees have entered into off-market transactions in the shares of Optiemus without complying with the provisions of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA"**). Therefore, it was alleged that the Noticees have violated the provisions of Section 16 of the SCRA read with SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013 (hereinafter referred to as **"SEBI Notification dated October 03, 2013"**) and Sections 13 and 18 of the SCRA read with Section 2(i) of the SCRA.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had appointed Shri Santosh Kumar Sharma as the Adjudicating Officer (hereinafter referred to as ''**AO**'') in the matter vide communique dated October 17, 2023 under Section 23-I of the SCRA read with Rule 3 of the Securities Contract Regulations (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as the "**SCRA Rules"**) to inquire into and adjudge under the provisions of Section 23H of the SCRA for the aforementioned violations of the provisions of law alleged to have been committed by the Noticee. Subsequently, the undersigned was appointed as AO vide communique dated March 18, 2024.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice ref no. AO/SK/VP/43649/1-9/2023 dated October 26, 2023 (hereinafter referred to as **'SCN/Notice'**) was issued to the Noticees by the erstwhile AO in terms of Rule 4 of the SCRA Rules read with Section 23-I of the SCRA to show cause as to why an inquiry should not be held against the Noticees and why penalty, if any, not be imposed on them in terms of the provisions of Section 23H of the SCRA for the violations alleged to have been committed by the Noticees.

4. The SCN dated October 26, 2023, *inter alia*, alleged the following:

"

- *It was observed during the investigation period that certain entities had carried out off-market transactions. The details received from the depositories were analyzed to establish connections between the entities. On analyzing the bank account provided in the Unique Client Code (UCC) details of the entities under investigation, no corresponding entries for any such transactions could be observed. In order to ascertain reasons for the aforesaid off-market transfer and relationship/association with counterparty etc., information along with documentary evidence were sought from the entities.*
- *The details of the off-market transfers, is as under and the summary of responses received from the Noticees are as follows:*

Table 1

Date	***Transferor***	***Counter-party***	***Qty.***	***Amount as per the DIS Slip***	***Reason recorded on the DIS Slip***	***Whether amount paid / received ****	***Reason provided by Transferor and reply dates wherever applicable***	***Whether conditions of spot transactions complied***
28/03/2019	*Hayward Technologies Pvt. Ltd.*	*Altruistic Trading Pvt Ltd*	*450000*	*43290000*	*Margin*	*No*	*unauthorised transactions by broker vide reply dated July 28, 2023*	*No*
08/05/2019	*Harsimrat Investment Private Limited*	*Unity Global Financial Services Private Limited*	*300000*	*Not mentioned*	*Collateral*	*No*	*shares as collateral for the proviso of the margin for trading vide reply dated July 19, 2023*	*No*

Date	***Transferor***	***Counter-party***	***Qty.***	***Amount as per the DIS Slip***	***Reason recorded on the DIS Slip***	***Whether amount paid / received ****	***Reason provided by Transferor and reply dates wherever applicable***	***Whether conditions of spot transactions complied***
23/05/2019	*Hayward Technologies Pvt. Ltd.*	*Vijay Kumar*	*200000*	*23000000*	*Off-Market Sale*	*No*	*Collateral for property development transaction and consideration not applicable vide reply dated July 28, 2023*	*No*
27/05/2019	*Pataliputra International Limited*	*Unity Global Financial Services Private Limited*	*300000*	*Not mentioned*	*Collateral*	*No*	*Shares as collateral for the proviso of the margin for trading vide reply dated July 19, 2023.*	*No*
31/05/2019	*Unity Global Financial Services Private Limited*	*XYZ*[1]	*100000*	*Not mentioned*	*Loan Return*	*No*	*No reply received from the transferor*	*No*
31/05/2019	*Unity Global Financial Services Private Limited*	*Pataliputra International Limited*	*70000*	*Not mentioned*	*Loan Return*	*No*	*No reply received from the transferor*	*No*
06/06/2019	*Unity Global Financial Services Private Limited*	*Harsimrat Investment Private Limited*	*40000*	*Not mentioned*	*Loan Return*	*No*	*No reply received from the transferor*	*No*
10/06/2019	*Unity Global Financial*	*Harsimrat Investment*	*40000*	*Not mentioned*	*Loan Return*	*No*	*No reply received*	*No*

[1] *Name excised for the sake of confidentiality.*

Date	***Transferor***	***Counter-party***	***Qty.***	***Amount as per the DIS Slip***	***Reason recorded on the DIS Slip***	***Whether amount paid / received ****	***Reason provided by Transferor and reply dates wherever applicable***	***Whether conditions of spot transactions complied***
	Services Private Limited	*Private Limited*					*from the transferor*	
10/06/ 2019	*Hayward Technologies Pvt. Ltd.*	*Altruistic Trading Pvt Ltd*	*1000000*	*75500000*	*Margin Top Up*	*No*	*unauthorised transactions by broker vide reply dated July 28, 2023*	*No*
28/06/ 2019	*XYZ*[2]	*Hemant Kumar Gupta*	*100000*	*Not mentioned*	*Loan*	*No*	*Transferor has died and counterparty replied that reason for the transaction is the personal and professional relationship between them vide reply dated March 14, 2023 and November 24, 2022*	*No*
22/08/ 2019	*Neelabh Spinning Mills Private Limited*	*Tango Commosales LLP*	*400000*	*16880000*	*Off-Market Sale*	*No*	*offering the shares as collateral against the loan vide reply dated*	*No*

[2] Name excised for the sake of confidentiality.

Date	Transferor	Counter-party	Qty.	Amount as per the DIS Slip	Reason recorded on the DIS Slip	Whether amount paid / received *	Reason provided by Transferor and reply dates wherever applicable	Whether conditions of spot transactions complied
							July 26, 2023	
22/08/2019	*Hayward Technologies Private Limited*	*Neelabh Spinning Mills Private Limited*	*500000*	*21000000*	*Off-Market Sale*	*No*	*the cheque was not cleared and the payment was received on July 27, 2023*	***No*
** statement of bank account provided in the UCC details of the entities were analysed ** 1434Days*								

- *It was observed that Noticee No. 5-Tango, Noticee No. 2-Altruistic, and Noticee No.6-Unity Global had not submitted their reply to the emails/ letters sent by the Investigating Team.*

- *The summary of the responses received from remaining Noticees is as under:*

- *Noticee No. 1-Hayward had stated that it is not related to the counterparties. It had not provided any documentary evidence in support of its claims regarding unauthorised trading by broker; Collateral for property development transaction or the cheque was not cleared.*

- *Noticee No. 3-Vijay had stated that he is not related to the counterparty and the reason for the transfer of shares with Noticee No. 1-Hayward a collaboration agreement to develop his property. Therefore, the payment of consideration was not applicable. He had not provided any documentary evidence with respect to the afore-said collaboration agreement.*

- *Noticee No. 4-Neelabh had stated that it had a commercial relationship related to buying/selling of shares and borrowing of money against shares with the counterparties. It had paid to Hayward through RTGS on July 26, 2023. Further, no documentary evidence is provided in respect of Noticee No. 5-Tango.*

- *Noticee No. 7-Harsimrat and Noticee No. 8 Patliputra had stated that it had commercial relationship regarding borrowing of money against shares with the Noticee No. 6- Unity Global. Noticee No. 6-Unity Global did not return all the transferred shares. Noticee No. 7- Harsimrat also submitted the copy of a complaint against Unity at EOW, Delhi dated January 09, 2023.*

- *Noticee No. 9- Hemant Kumar Gupta stated that XYZ[3] was his stockbroker and director of Astitva Capital Market Private Limited. He did not provide any details regarding consideration paid.*

- *Based on the above it is alleged that Noticee No. 1-Hayward, Noticee No. 2- Altruistic, Noticee No. 3- Vijay, Noticee No. 4- Neelabh, Noticee No. 5-Tango, Noticee No. 6- Unity Global, Noticee No. 7- Harsimrat, Noticee No. 8- Pataliputra and Noticee No. 9- Hemant have violated the provisions of Section 16 of the SCRA read with SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013 (hereinafter referred to as "SEBI Notification dated October 03, 2013") and Sections 13 and 18 of the SCRA read with Section 2(i) of the SCRA."*

<u>Service of the SCN to the Noticees No. 1, 3, 4, 7, 8, And 9</u>

5. The SCN along with the annexures was served upon the Noticees 1, 3, 4, 7, 8, and 9 in the following manner as mentioned below:

[3] *Name excised for the sake of confidentiality.*

Table 2

Noticee No.	Addresses/ E-mail IDs[4]	Remarks
1	*Address: No 6……………Delhi – 110 001* *E-mail ID: ha……………@gmail.com*	Digitally Signed SCN was duly delivered on October 26, 2023. The Noticee vide e-mail dated November 17, 2023, requested an additional 15 days to submit its reply to SCN. In the interest of natural justice, the request of the Noticee to grant additional time to submit its reply to the SCN was considered, and vide e-mail dated November 21, 2023, the Noticee was advised to submit its reply to the SCN, if any, at the latest by November 30, 2023, which was submitted by the Noticee vide letter dated January 15, 2024.
3	*Address: 930…………………...Gurgaon – 122 001* *E-mail IDs:* *vi....................@gmail.com* *vi…………….1@gmail.com* *vi.......@........motor.in* *ra.....................@.......group.in*	Digitally Signed SCN was duly delivered on October 26, 2023. The Noticee vide undated letter received by SEBI on January 27, 2024, submitted its reply to SCN.
4	*Address: 9933………………….New Delhi - 110 005* *Email ID: ne..................@gmail.com*	Digitally Signed SCN was duly delivered on October 26, 2023. The Noticee vide e-mail dated November 17, 2023, requested an additional 15 days to submit its reply to the SCN. In

[4] *E-mail ID and address excised for the sake of confidentiality.*

Noticee No.	Addresses/ E-mail IDs[4]	Remarks
		the interest of natural justice, the request of the Noticee to grant additional time to submit its reply to the SCN was considered, and vide e-mail dated November 21, 2023, the Noticee was advised to submit its reply to the SCN, if any, at the latest by November 30, 2023, which was submitted by the Noticee vide letter dated November 30, 2023.
7	*Address: 701…………………..New Delhi – 110 001.* *E-mail ID: in...................@gmail.com*	Digitally Signed SCN was duly delivered on October 26, 2023. The Noticee vide e-mail dated November 17, 2023, requested an additional 15 days to submit its reply to SCN. In the interest of natural justice, the request of the Noticee to grant additional time to submit its reply to the SCN was considered, and vide e-mail dated November 21, 2023, the Noticee was advised to submit its reply to SCN, if any, at the latest by November 30, 2023, which was submitted by the Noticee vide letter dated November 30, 2023.
8	*Address: 9929-9935…………..Delhi – 110 005*	Digitally Signed SCN was duly delivered on October 26, 2023. The

Noticee No.	Addresses/ E-mail IDs[4]	Remarks
	E-mail ID: ac...................@ymail.com	Noticee vide e-mail dated November 17, 2023, requested an additional 15 days to submit its reply to the SCN. In the interest of natural justice, the request of the Noticee to grant additional time to submit its reply to the SCN was considered, and vide e-mail dated November 21, 2023, the Noticee was advised to submit its reply to the SCN, if any, at the latest by November 30, 2023, which was submitted by the Noticee vide letter dated November 30, 2023.
9	*Address: Hno 35………………Delhi – 110 092* *E-mail ID: Ca.................@gmail.com*	Digitally Signed SCN was duly delivered on October 26, 2023. The Noticee vide letter dated November 06, 2023, submitted its reply to the SCN.

Replies of the Noticees No. 1, 3, 4, 7, 8, and 9

6. In the letters mentioned in Table 2, the Noticees 1, 3, 4, 7, 8, and 9 have made their submissions in response to the SCN, which are discussed in the subsequent paragraphs under different headings for ease of discussion.

Hearings held with the Noticees No. 1, 3, 4, 7, 8, and 9

7. In consonance with the SCRA Rules, an opportunity of hearing was granted to the Noticees which was as follows:

Table 3

Noticee No.	Hearing Details
1	An opportunity for a personal hearing was granted on May 29, 2024, vide hearing notice dated May 09, 2024. On the scheduled date of the personal hearing, the Noticee 1 appeared through its Authorized Representatives (ARs), who reiterated the submissions made by the Noticee 1 vide letter dated January 15, 2024. During the hearing, ARs requested additional time to make further submissions in the matter that was acceded to, and the Noticee 1 was advised to file its additional submissions, if any, by June 05, 2024, which was submitted by the Noticee 1 vide email dated June 06, 2024. Vide email dated June 06, 2024, the Noticee 1 has made its additional submissions in response to the SCN, which are discussed in the subsequent paragraphs under different headings for ease of discussion.
3	An opportunity for a personal hearing was granted on May 29, 2024, vide hearing notice dated May 09, 2024. On the scheduled date of the personal hearing, the Noticee 3 appeared through its ARs, who reiterated the submissions made by the Noticee 3 vide undated letter received by SEBI on January 27, 2024.
4	An opportunity for a personal hearing was granted on May 30, 2024, vide hearing notice dated May 09, 2024. On the scheduled date of the personal hearing, the Noticee 4 appeared through its ARs, who reiterated the submissions made by the Noticee 4 vide letter dated November 30, 2023. During the hearing, ARs requested additional time to make further submissions in the matter that was acceded to and the Noticee 4 was advised to file its additional submissions, if any, by June 05, 2024 which was submitted by the Noticee 4 vide email dated June 05, 2024. Vide email dated June 05, 2024, the Noticee 4 has made its additional submissions in response to the SCN, which are discussed in the subsequent paragraphs under different headings for ease of discussion.
7	An opportunity for a personal hearing was granted on May 30, 2024, vide hearing notice dated May 09, 2024. On the scheduled date of the personal hearing, the

Noticee No.	Hearing Details
	Noticee 7 appeared through its ARs, who reiterated the submissions made by the Noticee 7 vide letter dated November 30, 2023. During the hearing, ARs requested additional time to make further submissions in the matter that was acceded to, and the Noticee 7 was advised to file its additional submissions, if any, by June 05, 2024 which was submitted by the Noticee 7 vide email dated June 04, 2024. Vide email dated June 04, 2024, the Noticee 7 has made its additional submissions in response to the SCN, which are discussed in the subsequent paragraphs under different headings for ease of discussion.
8	An opportunity for a personal hearing was granted on May 30, 2024, vide hearing notice dated May 09, 2024. On the scheduled date of the personal hearing, the Noticee 8 appeared through its ARs, who reiterated the submissions made by the Noticee 8 vide letter dated November 30, 2023. During the hearing, ARs requested additional time to make further submissions in the matter that was acceded to, and the Noticee 8 was advised to file its additional submissions, if any, by June 03, 2024 which was submitted by the Noticee 8 vide email dated June 03, 2024. Vide email dated June 03, 2024, the Noticee 8 has made its additional submissions in response to the SCN, which are discussed in the subsequent paragraphs under different headings for ease of discussion.
9	An opportunity for a personal hearing was granted on May 29, 2024, vide hearing notice dated May 09, 2024. On the scheduled date of personal hearing, the Noticee 9 appeared through its ARs, who reiterated the submissions made by the Noticee 9 vide letter dated November 06, 2023. During the hearing, ARs requested additional time to make further submissions in the matter that was acceded to and the Noticee 9 was advised to file its additional submissions, if any, by June 10, 2024 which was submitted by the Noticee 9 vide email dated June 10, 2024. Vide email dated June 10, 2024, the Noticee 9 has made its additional submissions in response to the SCN, which are discussed in the subsequent paragraphs under different headings for ease of discussion.

Service of the SCN and Hearing Notice to the Noticees No. 2, 5, and 6

8. The SCN along with the annexures was issued to the Noticees 2, 5, and 6 on October 26, 2023 by the erstwhile AO, in the following manner as mentioned below:

Table 4

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[5]	Remarks
Noticee 2			
1.	Through e-mail	al...........@gmail.com	Digitally Signed SCN duly delivered on October 26, 2023.
2.	Through Speed Post with Acknowledgment Due	*G-………New Delhi – 110 092*	Returned undelivered with the remark “Left”.
Noticee 5			
3.	Through e-mail	ta...........@gmail.com	Digitally Signed SCN duly delivered on October 26, 2023.
4.	Through Speed Post with Acknowledgment Due	*13/21-………Mumbai – 400 002*	Returned undelivered with the remark “No Such Person in the Address”.
Noticee 6			
5.	Through e-mail	un...........@gmail.com cs………………..@gmail.com	Digitally Signed SCN duly delivered on October 26, 2023.

[5] *E-mail ID and address excised for the sake of confidentiality.*

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[5]	Remarks
6.	Through Speed Post with Acknowledgment Due	*307…………New Delhi – 110 001*	Returned undelivered with the remark “Left”.

9. Thereafter, pursuant to the appointment of the undersigned as AO in the instant matter, the SCN, along with the annexures and the documents which are relevant and relied upon in the SCN, was issued to the Noticees 2, 5, and 6 on May 09, 2024. These were issued in the communication addresses and e-mail IDs of the Noticees 2, 5, and 6, obtained from the Unique Client Code details, KYC documents, and Client Registration form available with their brokers, and the master data pertaining to these Noticees in the MCA Portal. The SCN, along with the annexures and the documents which are relevant and relied upon in the SCN, was issued in the following manner, as mentioned below:

Table 5

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[6]	Remarks
Noticee 2			
1.	Through e-mail	al...........@gmail.com;	Duly delivered on May 10, 2024.
2.	Through Speed Post with Acknowledgment Due	*G-………New Delhi – 110 092* *J3…………New Delhi – 110 019*	Returned undelivered with the remark “No Such Person in the Address”.
3.	Through Courier	*G-………New Delhi – 110 092*	Returned undelivered with the remark

[6] *E-mail ID and address excised for the sake of confidentiality.*

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[6]	Remarks
		J3…………New Delhi – 110 019	"C'Nee shifted from the given address".
Noticee 5			
3.	Through e-mail	ta............@gmail.com	Duly delivered on May 10, 2024.
4.	Through Speed Post with Acknowledgment Due	*13/21-………Mumbai – 400 002*	Returned undelivered with the remark "No Such Person in the Address".
6.	Through Courier	*13/21-………Mumbai – 400 002*	Returned undelivered with the remark "Consignee's Address Incomplete/Incorrect".
Noticee 6			
7.	Through e-mail	un............@gmail.com cs………………..@gmail.com un............2017@gmail.com	Duly delivered on May 10, 2024.
8.	Through Speed Post with Acknowledgment Due	*307…………New Delhi – 110 001*	Returned undelivered with the remark "Left".
		100…………Amroha – 244 235	Returned undelivered with the remark "No add. found".
9.	Through Courier	*307…………New Delhi – 110 001*	Returned undelivered with the remark "C'Nee shifted from the given address".

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[6]	Remarks
		100…………Amroha – 244 235	Delivered on May 15, 2024 as per consignment details tracked online in the website of the courier agency.

10. Thereafter, the service of the SCN, along with the annexures and the documents, which are relevant and relied upon in the SCN, was attempted by way of affixture at the last known address. The status of the affixture was, *inter alia*, mentioned as *"No Such Consignee".*

11. Thereafter, an opportunity for personal hearing was granted to the Noticees 2, 5, and 6 on June 28, 2024, vide hearing notice dated June 05, 2024. The hearing notice dated June 05, 2024, was issued to the Noticees 2, 5 and 6, in the following manner as mentioned below:

Table 6

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[7]	Remarks
Noticee 2			
1.	Through e-mail	al...........@gmail.com;	Duly delivered on June 06, 2024.
2.	Through Speed Post with Acknowledgment Due	*G-………New Delhi – 110 092* *J3…………New Delhi – 110 019*	Returned undelivered with the remark "No Such Person in the Address".

[7] *E-mail ID and address excised for the sake of confidentiality.*

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[7]	Remarks
3.	Through Courier	*G-………New Delhi – 110 092* *J3…………New Delhi – 110 019*	Returned undelivered with the remark "C'Nee shifted from the given address".
Noticee 5			
3.	Through e-mail	ta............@gmail.com	Duly delivered on June 06, 2024.
4.	Through Speed Post with Acknowledgment Due	*13/21-………Mumbai – 400 002*	Returned undelivered with the remark "No Such Person in the Address".
6.	Through Courier	*13/21-………Mumbai – 400 002*	Returned undelivered with the remark "Consignee's Address Incomplete/Incorrect".
Noticee 6			
7.	Through e-mail	un............@gmail.com cs………………..@gmail.com un............2017@gmail.com	Duly delivered on June 06, 2024.
8.	Through Speed Post with Acknowledgment Due	*307…………New Delhi – 110 001*	Returned undelivered with the remark "Left".
		100…………Amroha – 244 235	Returned undelivered with the remark "Item

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[7]	Remarks
			returned insufficient address”.
9.	Through Courier	*307…………New Delhi – 110 001*	Delivered on June 08, 2024 as per consignment details tracked online in the website of the courier agency.
		100…………Amroha – 244 235	Delivered on June 10, 2024 as per consignment details tracked online in the website of the courier agency.

12. In view thereof and in the interest of natural justice, the service of the SCN dated October 26, 2023, and the hearing notice dated June 05, 2024, was also undertaken on the Noticees No. 2, 5 and 6 through newspaper publication in terms of the provisions of Rule 7(3) of the SCRA Rules. The notice regarding the issuance of SCN and Hearing Notice in the instant matter was published in ‘The Times of India’ (English newspaper) in Delhi edition, ‘The Indian Express’ (English newspaper) in Mumbai edition, ‘Hindustan Times’ (English newspaper) in Lucknow edition , ‘Punjab Kesari’ (Hindi newspaper) in Delhi Edition, ‘Amar Ujala’ (Hindi newspaper) in Lucknow and Moradabad Edition, ‘Nav Bharat’ (Hindi newspaper) in Mumbai Edition, and ‘Loksatta’ (Marathi newspaper) in Mumbai Edition on June 20, 2024. In this regard, the following may be noted:

12.1. Vide the said publication, the Noticees No. 2, 5 and 6 were informed about the issuance of SCN dated October 26, 2023 and were advised to download the soft copies of the said SCN along with the annexures from the SEBI Website.

12.2. The Noticees No. 2, 5 and 6 were also informed through the publication that, in the interest of natural justice, an opportunity for a personal hearing is granted to them on June 28, 2024, at 03:30 P.M.

12.3. It was also mentioned in the said publication that in case the Noticees No. 2, 5 and 6, fail to submit their replies to the aforesaid SCN and/or fail to avail the opportunity of a personal hearing within the granted time, the Adjudicating Officer will proceed further on the basis of material available on record.

13. Thereafter, vide e-mail dated July 01, 2024, through the e-mail ID ta............@gmail.com, the Noticee 5 has, *inter alia,* stated as under:

"*We have come to know regarding the adjudication proceedings through the advertisement in the newspaper.*

We say that we have neither received a copy of the Show Cause Notice nor Personal hearing Noticee. We request you to send us a copy of show cause notice on ta............@gmail.com *and give us 6 weeks' time to file our reply pursuant to receipt of the show cause notice and schedule a personal hearing in the matter thereafter."*

14. In this regard, it is noted that the SCN dated October 26, 2023 was served upon the Noticee 5 vide e-mail dated October 26, 2023 on the same e-mail ID ta............@gmail.com by the erstwhile AO. Thereafter, upon the appointment of the undersigned as AO in the present matter, a copy of the SCN dated October 26, 2023, along with the annexures and the documents that are relevant to and relied upon in the SCN dated October 26, 2023, were served on the Noticee 5 vide e-mail dated May 10, 2024 on the e-mail ID ta............@gmail.com, and the Noticee 5 was advised to submit its reply, if any, within 15 days of the receipt of the letter.

15. However, until June 05, 2024, the Noticee 5 had not submitted any reply to the SCN. Thereafter, in the interest of natural justice, an opportunity of hearing was granted to the Noticee 5 on June 28, 2024, vide hearing notice dated June 05, 2024, and it was also advised to submit its reply, if any, at the latest by June 19, 2024. The hearing notice, along with the copy of the SCN and the documents relevant to and relied upon in the SCN, were served upon the Noticee 5 vide e-mail dated June 06, 2024, on the e-mail ID ta............@gmail.com*.* The hearing details were also advertised in the newspapers, wherein it was mentioned that the hearing was scheduled on June 28, 2024. The Noticee 5 had also acknowledged the advertisement in newspapers in its e-mail dated July 01, 2024. However, the Noticee 5 had neither appeared for the hearing nor submitted any reply to the SCN on merit.

16. In the interest of natural justice, once again the SCN dated October 26, 2023, along with the documents that are relevant to and relied upon in the SCN, were served upon the Noticee 5 on the e-mail ID ta............@gmail.com on July 01, 2024*,* and the Noticee 5 was advised to submit its reply, if any, at the latest by July 12, 2024. However, until July 15, 2024, the Noticee 5 had not submitted any reply to the SCN on merit. Thereafter, in the interest of natural justice, one more opportunity of hearing was granted to the Noticee 5 on July 24, 2024, vide hearing notice dated July 15, 2024, and advised to submit its reply, if any, at the latest by July 22, 2024. In response to the notice for hearing scheduled on July 24, 2024, the Noticee 5 vide e-mail dated July 24, 2024 has, *inter alia*, stated as follows:
"Kindly grant us 2-3 weeks of time as we are approaching for an Advocate/Counsel to represent the Firm."

17. In this regard, it is noted that the Noticee 5 was already granted the opportunity to submit its reply to the SCN five times and to appear for hearing before the AO two times. However, in the interest of natural justice, the Noticee 5 was provided a final opportunity of hearing on July 30, 2024, and was also advised to submit its

submissions, if any, on or before July 29, 2024. However, the Noticee 5 had neither submitted any reply to the SCN on merit nor appeared for hearing.

18. In this context, I would like to refer to the following judgments of Hon'ble SAT:

18.1. In the matter of *Vipul Babulal Jain v. SEBI* (Appeal No. 828 of 2022 decided on November 14, 2022), Hon'ble SAT has, inter alia, held as under:

"5. There is no assertion in the memorandum of appeal alleging non-receipt of the show cause notice through email. ***In view of Rule 7(b) of the Rules, service of the show cause notice was duly served through email. We are consequently of the opinion that the procedure adopted by the AO for serving the show cause notice was in accordance with the Rule 7(b) of the Rules.*** *"* (Emphasis supplied)

18.2. In the matter of *Menika & Ors. v. SEBI* (Appeal No. 468 of 2022 decided on January 05, 2023) Hon'ble SAT has, *inter alia,* held as under:

"6. On the issue of service, we find that the show cause notice was sent to Menika vide speed post acknowledgment due on July 16, 2020 on her residential address which is the same as indicated in the memo of appeal. Since the acknowledgement card was returned with a remark "No Status", the respondent served the show cause notice vide email on the email I.D. "menika124@gmail.com" and also at "deepakkgrade@gmail.com". ***The show cause notice was delivered on the aforesaid email address, which, in our opinion, is sufficient service as per the proviso to Rule 7(b) of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules of 1995').*** *In addition to the aforesaid, the show cause notice was also published on March 2, 2021 in various newspapers, namely, Times of India (Chandigarh and Varanasi edition), The Hindustan Times (Delhi edition), Navbharat Times (Delhi edition), Dainik Jagran (Ghaziabad and Varanasi edition) and Dainik Bhaskar (Chandigarh edition). …*

…

9. The aforesaid facts have not been disputed by the appellants. We are of the opinion, ***that in view of the glaring evidence that has been filed by the respondent, service of the show cause notice, etc. was properly done by the respondent under the Rules of 1995. We are satisfied that the appellants were duly served with the show cause notice and as well as the notice for hearing. In spite of service, the appellants chose not to appear.”*** (Emphasis supplied)

19. In view of the aforesaid discussions, it is noted that sufficient opportunities were given to all the Noticees to make submissions in reply to the SCN and for personal hearing. It is further noted that the SCN, along with the documents relevant to and relied upon in the SCN and the hearing notice, were duly served on all the Noticees as per due procedure.

CONSIDERATION OF ISSUES

20. I have carefully perused the charges levelled against the Noticees in the SCN, their replies, and the material/documents available on record. In the instant matter, the following issues arise for consideration and determination: -

I. **Whether the Noticees have violated the provisions of Section 16 of the SCRA read with the SEBI Notification dated October 03, 2013, and Sections 13 and 18 of the SCRA read with Section 2(i) of the SCRA by being part of off-market transactions of Optiemus shares, during the IP, that were not compliant with the relevant SCRA provisions?**

II. **Does the violation, if any, on the part of the Noticees attract a monetary penalty under Section 23H of the SCRA?**

III. **If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors stipulated in Section 23J of the SCRA?**

21. Before proceeding further, it is pertinent to refer to the relevant provisions of the law, allegedly violated by the Noticee. The same is reproduced hereunder:

"SCRA

Definitions.

***2**. In this Act, unless the context otherwise requires,—*

(i) "spot delivery contract" means a contract which provides for,-

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

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

Contracts in notified areas illegal in certain circumstances.

***13.** If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal :*

Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall—

(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

(ii) *(ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.*

Power to prohibit contracts in certain cases.

16. *(1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.*

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

SEBI Notification dated October 03, 2013[8]"

[8] *The text of SEBI Notification dated October 03, 2015 is available at the below mentioned link: https://www.sebi.gov.in/legal/acts/oct-2013/notification-under-section-16-and-28-of-securities-contracts-regulation-act-1956_25481.html*

Issue I. Whether the Noticees have violated the provisions of Section 16 of the SCRA read with the SEBI Notification dated October 03, 2013, and Sections 13 and 18 of the SCRA read with Section 2(i) of the SCRA by being part of off-market transactions of Optiemus shares during the IP that were not compliant with the relevant SCRA provisions?

<u>Noticee 1</u>

22. It was alleged in the SCN that the Noticee 1 was party to the following off-market transactions that took place in the shares of Optiemus during the IP. It was further alleged that these transactions were not in consonance with the applicable provisions of the SCRA:

Table 7

Date	Transferor	Counter-party	Qty.	Amount	Whether Amount Paid
28/03/2019	Noticee 1	Noticee 2	4,50,000	4,32,90,000*	No
23/05/2019	Noticee 1	Noticee 3	2,00,000	2,30,00,000*	No
10/06/2019	Noticee 1	Noticee 2	10,00,000	7,55,00,000*	No
22/08/2019	Noticee 1	Noticee 4	5,00,000	2,10,00,000*	Delay of 1,434 days
*Amount as mentioned on the Delivery Instruction Slip (hereinafter referred to as **"DIS"**).					

23. In response to the above allegations, the Noticee 1 has, *inter alia*, submitted various grounds as its defense, which are discussed in the following paragraphs under different headings for ease of discussion.

23.1. **<u>Off – Market Transaction with the Noticee 2</u>**

23.1.1. The Noticee 1 in its replies dated January 15, 2024, and June 06, 2024, has, *inter alia*, stated:

"We have opened a De-mat account with KSBL Securities Limited ("KSBL"), a stock broker of securities market registered with Stock Exchanges/SEBI.

Subsequently, we had transferred our shares of Optiemus Infracom Limited in this De-mat account in due course of operation, however, KSBL has misused the transaction slips and illegally transferred 4,50,000 and 10,00,000 from our account to the de-mat account of Altruistic by filling the DP Slip as Margin. It is pertinent to say that Altruistic was one of the group company of KSBL.

When we got insight about misappropriation of our shares by KSBL and transfer the same to one of its related entity i.e. Altruistic, we had registered a complaint with them. Later on, we came to know that KSBL was in financial difficulties and had defaulted with stock exchanges and other brokers, therefore it seems that KSBL along with its group companies had misappropriated the funds as well securities of its clients.

After putting in relentless and unwavering efforts, we were able to get back only 10,00,000 shares from KSBL.

Your honor, in this matter, you will appreciate that these shares were intended to be transferred for the purpose of the sale. We had just opened the account with KSBL for trading but KSBL himself transferred the shares as margin to its group company, hence, the provisions of "Spot Delivery Contract" are not applicable for these transactions.

10,00,000 shares have been received back on 09.10.2020 from Altruistic. Copy of demat statement as evidence receipt of 10,00,000 shares from Altruistic is attached herewith."

23.1.2. In this regard, it is noted that the Noticee 1 has not disputed the transfer of shares of Optiemus to the Noticee 2 without receiving any payment.

23.1.3. The Noticee 1 has submitted that the KSBL has misused the transaction slips and illegally transferred 4,50,000 shares and 10,00,000 shares from their account to the de-mat account of the Noticee 2 by filling the DP slips as margin.

23.1.4. In this regard, from the perusal of the DIS slips pertaining to the transfer of 4,50,000 shares and 10,00,000 shares, I note that the DIS slips specifically mentioned the name of the counterparty as "Altruistic Trading", and the Noticee 1 has acknowledged the same through the signature made on its behalf in the DIS slips. These DIS slips were provided to the Noticee 1. In its submissions, the Noticee 1 has not disputed the signature made on its behalf in the DIS slips.

23.1.5. It is further noted that the value of these 14,50,000 shares, as mentioned in the DIS slips, were amounting Rs. 11.88 Crores. However, the Noticee 1 in its submissions has not adduced any evidence that substantiate its claims regarding getting back the shares.

23.1.6. In view of the above, the contention of the Noticee 1 that its broker has illegally transferred 4,50,000 shares and 10,00,000 shares from its account to the account of the Noticee 2 cannot be accepted.

23.1.7. The Noticee 1 in its replies further submitted that it had received back 10,00,000 shares from Noticee 2 on October 09, 2020. However, no document has been adduced to support its claims that these 10,00,000 shares were transferred from Noticee 2 to Noticee 1. Even the statement of transaction provided by Noticee 1 along with its replies does not establish that the shares were transferred from Noticee 2 to Noticee 1.

23.1.8. I further note that Section 2(i) of the SCRA, *inter alia*, states as under:

"Spot Delivery Contract" means a contract which provides for:
(a) actual delivery of securities and ***the payment of a price therefore either on the same day as the date of the contract or on the next day****, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;" (emphasis supplied)*

23.1.9. Hence, even, if it is presumed that these shares were transferred back by the Noticee 2 as claimed by the Noticee 1 in its submission, then also the transaction made on October 09, 2020 is not complied with the provisions of Section 2(i) of the SCRA since in the instant case, payment has not been made in the same day or the next day.

23.1.10. In view of the above, the contention of the Noticee 1 in this regard cannot be accepted.

23.2. **<u>Off – Market Transaction with the Noticee 3</u>**

23.2.1. The Noticee 1 in its replies dated January 15, 2024, and June 06, 2024, has, *inter alia*, stated:

"We had entered into a property development agreement dated 15.05.2019 with Mr. Vijay Kumar wherein, we had agreed to transferred 2,00,000 equity shares of Optiemus Infracom Limited to him as a security/EMD.

As the terms of this agreement, we had to invest Rs. 10 Crores towards development of the property owned by Mr. Vijay Kumar and required to transfer 2,00,000 equity shares of Optiemus Infracom Limited as Security to Mr. Vijay Kumar.

We have transferred these equity shares in the compliance of the agreement, hence no any cash consideration was required to receive against these shares.

Your honor will appreciate that these shares were transferred under the compliance of an agreement and no cash consideration was required to receive by us, hence, the provisions of "Spot Delivery Contract" are not applicable of this transaction."

23.2.2. In this regard, it is noted that the Noticee 1 has not disputed the transfer of shares of Optiemus to Noticee 3 without receiving any payment.

23.2.3. The Noticee 1 has submitted that the shares were transferred to the Noticee 3 pursuant to a property development agreement dated May 15, 2019 executed with the Noticee 3. The Noticee 1 has also enclosed a copy of the property development agreement dated May 15, 2019 along with its submissions. From perusal of the said property development agreement dated May 15, 2019 as submitted by the Noticee 1, I note that Clause 3.2 of the agreement, *inter alia*, states as under:

"3.2 That the developer agrees to place 2,00,000 equity shares of Optiemus Infracom Limited (herein after called as "Security") held by developer as contribution/interest free security in favor of the owner."

23.2.4. In this regard, it is noted that, as per the agreement, the Noticee 1 was required to place shares of Optiemus as security in favour of the Noticee 3 and not to sale. It is further noted that the reason recorded in the DIS slip for the off-market transaction was "Off Market Sale". Hence, the aforesaid contention of the Noticee 1 in this regard cannot be accepted.

23.3. **<u>Off – Market Transaction with the Noticee 4</u>**

23.3.1. The Noticee 1 in its replies dated January 15, 2024, and June 06, 2024, has, *inter alia*, stated:

"We have transferred 5,00,000 equity shares of Optiemus Infracom Limited to Neelabh Spinning Mills Private Limited ("Neelabh").

We had received a cheque of Rs. 2,10,00,000/- towards consideration of above shares transferred and had debited Iedger account of Neelabh on 22.08.2019 in our books of account.

Subsequently, we have been consistently demanding to Neelabh to make the payment, however every time we just get the reply that Neelabh is arranging loan from a 3rd party and after receiving the loan Neelabh will make the payment.

Finally, we have received the consideration on 26.07.2023."

23.3.2. In this regard, it is noted that the Noticee 1 has not disputed the transfer of shares of Optiemus to Noticee 4 on August 22, 2019, and submitted that the payment for the said transfer was received on July 26, 2023. The Noticee 1 has also enclosed a copy of the bank statement in which payment was received along with its submissions. From perusal of the bank statement as submitted by the Noticee 1, I note that the Noticee 4 has transferred an amount of Rs. 2.10 Crores to the Noticee 1 on July 26, 2023.

23.3.3. Hence, the fact that the Noticee 1 has received the payment after a period of 1,434 days from the date of transfer as alleged in the SCN has been admitted by the Noticee.

23.3.4. I further note that Section 2(i) of the SCRA, *inter alia*, states as under:

"Spot Delivery Contract" means a contract which provides for:
(a) actual delivery of securities and ***the payment of a price therefore either on the same day as the date of the contract or on the next day****, the actual period*

taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;" (emphasis supplied)

23.3.5. In view of the above, I find that since the payment was received after 1,434 days from the date of the transfer of shares, the aforesaid transfer of 5,00,000 shares of Optiemus by Noticee 1 to Noticee 4 on August 22, 2019 was not in compliance with the provisions of the SCRA.

Noticee 3

24. It was alleged in the SCN that the Noticee 3 was party to the following off-market transactions that took place in the shares of Optiemus during the IP. It was further alleged that these transactions were not in consonance with the applicable provisions of the SCRA:

Table 8

Date	Transferor	Counter-party	Qty.	Amount as per the DIS Slip	Whether Amount Paid
23/05/2019	Noticee 1	Noticee 3	2,00,000	2,30,00,000*	No
*Amount as mentioned on the DIS slip.					

25. In response to the above allegations, the Noticee 3 in its undated reply received by SEBI on January 27, 2024 has, *inter alia*, submitted as under:

"These shares were transferred under a development agreement executed with Hayward on 15th May 2019.

As the terms of this agreement, Hayward has to invest Rs. 10 Crores for the jointly development of the property owned by me.

As per the clause 3.2 of the said agreement, Hayward was required to transfer transferred 2,00,000 equity shares of Optiemus lnfracom Limited as Security in my favor.

Since, Hayward has transferred 2,00,000 equity shares of Optiemus lnfracom Limited in my favor through off-market transaction under the compliance of the development agreement, therefore there was no any cash Consideration was required to pay by me against these shares.

Your honor will appreciate that as per the development agreement I was not liable to pay any amount at the time of transfer of shares under question, therefore provision of "Spot Delivery Contract" are not applicable of this transaction."

26. In this regard, it is noted that the Noticee 3 has not disputed the transfer of shares of Optiemus from the Noticee 1 to the Noticee 3 without receiving any payment.

27. The Noticee 3 has submitted that the shares were transferred from the Noticee 1 to the Noticee 3 pursuant to a property development agreement dated May 15, 2019 executed with the Noticee 1. The Noticee 3 has also enclosed a copy of the property development agreement dated May 15, 2019 along with its submissions. From perusal of the said property development agreement dated May 15, 2019 as submitted by the Noticee 3, I note that Clause 3.2 of the agreement, *inter alia*, states as under:

"3.2 That the developer agrees to place 2,00,000 equity shares of Optiemus Infracom Limited (herein after called as "Security") held by developer as contribution/interest free security in favor of the owner."

28. In this regard, it is noted that, as per the agreement, the Noticee 1 was required to place shares of Optiemus as security in favour of the Noticee 3 and not to sale. It is further noted that the reason recorded in the DIS slip for the off-market transaction was "Off Market Sale". Hence, the aforesaid contention of the Noticee 3 in this regard cannot be accepted.

Noticee 4

29. It was alleged in the SCN that the Noticee 4 was party to the following off-market transactions that took place in the shares of Optiemus during the IP. It was further alleged that these transactions were not in consonance with the applicable provisions of the SCRA:

Table 9

Date	Transferor	Counter-party	Qty.	Amount	Whether Amount Paid
22/08/2019	Noticee 4	Noticee 5	4,00,000	1,68,80,000*	No
22/08/2019	Noticee 1	Noticee 4	5,00,000	2,10,00,000*	Delay of 1,434 days
*Amount as mentioned on the DIS slip.					

30. In response to the above allegations, the Noticee 4 has, *inter alia*, submitted various grounds as their defense which are discussed in the following paragraphs under different headings for the ease of discussion.

30.1. **Off – Market Transaction with the Noticee 5**

30.1.1. The Noticee 4 in its replies dated November 30, 2023 and June 05, 2024, has, *inter alia*, stated:

"Reason for off market transactions related to debit of 400000 share of OIL, was giving shares as Collateral against loan. Please find copy of confirmation of receiving party regarding provision of loan against shares transferred to them as per Annexure-·1. After transferring the shares, receiving party neither could arrange the loan against the shares transferred to them nor they returned the shares.

That inspite of various reminder when we neither received the loan nor received back the shares transferred to them as collateral against loan, we debited the receiving party account on 22/09/2019 against transfer the shares to them, vide debit note no.

NEEL/DNOTE/TANGO/19-20 dated 22/09/2019. Copy of the said debit note is enclosed as per Annexure ·2.

That aforesaid receiving party did not make the payment even after various reminders. On 20/06/2023 Company and receiving party concluded this matter by settling this matter through settlement letter dated 20/06/2023 duly acknowledged by the confirming party. Copy of Settlement letter is enclosed as per Annexure – 3."

30.1.2. In this regard, it is noted that the Noticee 4 has not disputed the transfer of shares of Optiemus to the Noticee 5 without receiving any payment.

30.1.3. The Noticee 4 has submitted that it has transferred the shares to the Noticee 5 as collateral against loan. However, the Noticee 5 had neither arranged the loan nor returned the shares transferred to them. The Noticee 4 along with its submission enclosed a copy of letter dated August 19, 2019, claiming to have been received from the Noticee 5, which, *inter alia*, states as under:

".....we can arrange funds to fulfill your financial needs but you have to provide us security which shall carry the value of 1.5 times of the loan amount required by you. As per agreed terms you will transfer following shares to be received as collateral against loan to provided/arranged to you."

30.1.4. In this regard, it is noted that the Noticee 4 has not adduced any concrete documentary evidence, like agreement entered with the Noticee 5, sanction letter, etc., that substantiate its claim. Even if it is presumed that there was a loan arrangement between the Noticee 4 and the Noticee 5 as claimed by the Noticee 4 in its submission, then also as per the letter enclosed, the Noticee 1 was required to place shares of Optiemus as security/collateral in favour of the Noticee 5 and not to sale. It is further noted that the reason recorded in the DIS slip for the off-market transaction was "Off Market Sale".

30.1.5. It is further noted that the value of these 400,000 shares, as mentioned in the DIS slips, amounts to Rs. 1.69 Crores. However, the Noticee 4 in its submissions has not adduced any evidence to substantiate its claims regarding getting back the shares.

30.1.6. The Noticee 4 has further submitted that it has settled the amount receivable from the Noticee 5 on June 20, 2023. The Noticee 4 along with its submission enclosed a copy of the letter dated June 20, 2023, claiming to be sent to the Noticee 5 which, *inter alia*, states as under:

"This is with reference to our debit note dated 22/09/2019 regarding off market sale of 400000 shares of Optiemus Infracom Ltd for Rs. 16880000/- to your firm.

In this regard, please note after so many reminders, you have not cleared the dues till time in order to settle the above outstanding we have found out the solution towards this problem. Through debit & credit adjustment your outstanding with us can be squared off in our books of accounts.

As of today, your company hold debit balance of Rs. 16880000/- as per our books, while your company hold outstanding balance from M/s Bhikshu Enterprises Private Limited, to whom we have to pay balance of much higher amount than your outstanding, hence we propose the balance adjustment through journal entry with the above stated specific amount to clear the outstanding of both the parties.

You are hereby requested to kindly contact with M/s Bhikshu Enterprises Private Limited & do the needful under intimation to us."

30.1.7. The Noticee 4 along with its submissions, also enclosed a copy of the letter dated June 23, 2023, claiming to have been received from the Noticee 5 wherein the Noticee 5 addressed the letter to M/s. Bhikshu Enterprises Private Limited, which, *inter alia*, states as under:

"This is with reference to debit note letter dated 20/06/2023 received from M/s Neelabh Spinning Mills Private Limited regarding settlement amount of Rs.

1,68,80,000/- Which we owe to them, against the amount receivable from you upto the same amount.

On the basis of aforesaid debt note letter, we hereby set-off the amount of Rs.1,68,80,000/- from your total outstanding amount due to our company. Hence you are requested to pass the necessary entries in your books of accounts in order to give effects the above said settlement."

30.1.8. In this regard, it is noted that no documentary evidence has been adduced by the Noticee 4 in support of its claim that it had to pay the amount of more than Rs. 1.68 Crores to M/s. Bhikshu Enterprises Private Limited, and the Noticee 5 had the receivable from M/s. Bhikshu Enterprises Private Limited of an amount more than Rs. 1.68 Crores. Further, no documentary evidence has been adduced by the Noticee 4 as to whether M/s. Bhikshu Enterprises Private Limited has accepted this settlement as claimed by the Noticee.

30.1.9. In view of the aforesaid discussions, the contention of the Noticee 4 in this regard cannot be accepted.

30.2. **Off – Market Transaction with the Noticee 1**

30.2.1. The Noticee 4 in its replies dated November 30, 2023, and June 05, 2024, has, *inter alia*, stated:

"Due to delay in receiving the loan against shares, and subsequently payment against the shares transferred as mentioned in point no. (iii) to (v) above, we could not make the payment to M/s Hayward Technologies Pvt Ltd (hereinafter referred to as selling party) against off-market sale of 500000 shares of OIL. However, selling party debited our account on account of sale of captioned shares on the same date of transfer of shares. Copy of Debit note dated 22/08/2019 issued by selling party is enclosed as per Annexure ·4.

After settlement with the receiving party on 20/06/2023, company managed to pay the entire sale consideration as mentioned in point no. (vi) above through RTGS dated 26/07/2023 Copy of bank statement said showing payment is enclosed as per Annexure-5."

30.2.2. In this regard, it is noted that the Noticee 4 has not disputed the transfer of Optiemus shares from Noticee 1 to Noticee 4 on August 22, 2019, and submitted that the payment for the said transfer was paid on July 26, 2023. The Noticee 4 has also enclosed a copy of the bank statement through which payment was paid along with its submissions. From perusal of the bank statement as submitted by the Noticee 4, I note that the Noticee 4 has transferred an amount of Rs. 2.10 Crores to the Noticee 1 on July 26, 2023.

30.2.3. Hence, the fact that the Noticee 4 has paid the payment after a period of 1,434 days from the date of transfer as alleged in the SCN has been admitted by the Noticee 4.

30.2.4. I further note that Section 2(i) of the SCRA, *inter alia*, states as under:

> *"Spot Delivery Contract" means a contract which provides for:*
> *(a) actual delivery of securities and* ***the payment of a price therefore either on the same day as the date of the contract or on the next day****, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;" (emphasis supplied)*

30.2.5. In view of the above, I find that since the payment was paid after 1,434 days from the date of the transfer of shares, the aforesaid transfer of shares by Noticee 1 to Noticee 4 was not in compliance with the provisions of the SCRA.

Noticee 7

31. It was alleged in the SCN that the Noticee 7 was party to the following off-market transactions that took place in the shares of Optiemus during the IP. It was further alleged that these transactions were not in consonance with the applicable provisions of the SCRA:

Table 10

Date	Transferor	Counter-party	Qty.	Amount as per the DIS Slip	Whether Amount Paid
08/05/2019	Noticee 7	Noticee 6	3,00,000	3,47,40,000**	No
06/06/2019	Noticee 6	Noticee 7	40,000	37,60,000**	No
10/06/2019	Noticee 6	Noticee 7	40,000	25,68,000**	No
**Amount was not mentioned on the DIS slip. Approximate value was computed using the closing price of the scrip on the exchange on the same day.					

32. In response to the above allegations, the Noticee 7 in its replies dated November 30, 2023 and June 04, 2024, has, *inter alia*, stated as under:

"We further submit that we had opened a trading and DMAT account with Astitva Capital Market Private Limited (ACMPL-SEBI registered share broker, having SEBI registration.no. - INZ000160330).

When company applied to aforesaid broker for margin trading, broker asked the company to transfer the shares as Collateral to its associate company i.e. Unity Global Financial Services Private Limited (UGFSPL), which will provide loan against shares for the purpose of Margin trading.

Please find enclosed copy of Email from the Share Broker regarding transfer of Collateral securities to it associate company as per Annexure-A and Copy of Dmat transfer slip, showing reason of transfer also, as per Annexure –B.

As the shares were transferred off-market on the specific request of SEBI registered broker to its nominee/ associate for the purpose of margin trading there was no *payment required to be received against the aforesaid off-market transfer of shares, as the shares were transferred on temporary purpose for the and for the purpose of margin trading only.*

Thereafter ACMPL asked us transfer some more quantity of shares and funds to avail the margin trading facility which was not mutually agreed prior to the transfer of aforesaid off-market transfer. Due to this reason we asked ACMPL to get the shares transferred back to us from its associate company UGFSPL.

After being asked to return the shares, UGFSPL only returned 80000 shares out of total 300000 shares. We kept on asking ACMPL and UGFSPL to return the remaining quantity of shares various times, but we could not receive the remaining quantity of shares transferred to them. Copy of various Emails written to them is enclosed as per Annexure-C

When we could not receive back the balance quantity of shares, we filed a Police Complaint at EOW Delhi against UGFSPL and its associate SEBI Registered broker company i.e. ACMPL. Copy of Police Complaint is enclosed as per Annexure –D

A number of police complaints have been filed against UGFSPL and its associate SEBI Registered broker company i.e. ACMPL at various of Police stations at Delhi and some of them have been lodged at EOW Delhi only. Promoters of ACMPL & UGFSPL are not traceable and their common registered office located at House No 307 3rd Floor New Delhi House, Central Delhi, New Delhi, Delhi, India, 110001 is locked since very long time.

ACMPL has been admitted to NCLT [(18)397 (ND)/2021) for the purpose of liquidation under Insolvency and Bankruptcy Code 2016."

33. In this regard, it is noted that the Noticee 7 has not disputed the transfer of 3,00,000 shares of Optiemus to the Noticee 6 and the transfer of 80,000 shares from the Noticee 6 to the Noticee 7 without receiving any payment.

34. The Noticee 7 has submitted that it has transferred the shares to the Noticee 6 as collateral to avail margin trading facility from its broker, Astitva Capital Market Private Limited. The Noticee 7 along with its submissions has enclosed a copy of an e-mail dated May 07, 2019 (received from e-mail ID: unityfincap@gmail.com), claiming to have been received from its broker, Astitva Capital Market Private Limited, which, *inter alia*, states as under:

"as per discussion held with you, we are willing to provide financing facility against security of your shares, please transfer shares in our below given Demat Account

DP ID 12087000

Client ID 00000058

Client name – Unity Global Financial service Pvt Ltd.

DP Name – Astitva Capital Market Pvt Ltd."

35. In this regard, it is noted that the shares have to be deposited as collateral with the stock broker in order to avail a margin trading facility from a stock broker against shares. However, in the instant case, as claimed by the Noticee 7, it had transferred the shares to some other company, i.e., the Noticee 6 in order to avail margin trading facility from Astitva Capital Market Pvt. Ltd. The Noticee 7 in its replies submitted that it was advised by its stock broker (Astitva Capital Market Pvt. Ltd.) to transfer the shares to the Noticee 6 and enclosed a copy of an e-mail received from the e-mail ID - unityfincap@gmail.com. However, it is noted that as per Unique Client Code details, e-mail ID - unityfincap@gmail.com belongs to Noticee 6. Further, no documentary evidence has been adduced by the Noticee 7 in its submissions that substantiate its claims of such an arrangement with M/s. Astitva Capital Market Pvt. Ltd. to avail margin trading facility.

36. It is further noted that the Noticee 7 in its replies submitted that it had filed a police complaint against the Noticee 6 and its broker, Astitva Capital Market Pvt. Ltd. The Noticee 7 has also enclosed a copy of the police complaint filed by it. From perusal of

the copy of complaint, it is noted that the complaint was filed by the Noticee 7 on January 09, 2023, i.e., after a period of more than three years from the date of transfer.

37. It is further noted that the value of these 300,000 shares transferred to the Noticee 6 on May 08, 2019, as mentioned in the DIS slips, was Rs. 3.47 Crores and until June, 2019, the Noticee 6 has transferred back only 80,000 shares to the Noticee 7. However, the Noticee 7 in its submissions has not adduced any evidence that substantiate its claims regarding getting back the shares during the period from May 08, 2019 (Date of transfer of shares) to January 09, 2023 (Date of filing complaint).

38. In view of the aforesaid discussions, the contention of the Noticee 7 in this regard cannot be accepted.

Noticee 8

39. It was alleged in the SCN that the Noticee 8 was party to the following off-market transactions that took place in the shares of Optiemus during the IP. It was further alleged that these transactions were not in consonance with the applicable provisions of the SCRA:

Table 11

Date	Transferor	Counter-party	Qty.	Amount	Whether Amount Paid
27/05/2019	Noticee 8	Noticee 6	3,00,000	2,94,60,000**	No
31/05/2019	Noticee 6	Noticee 8	70,000	68,00,500**	No
**Amount was not mentioned on the DIS slip. Approximate value was computed using the closing price of the scrip on the exchange on the same day.					

40. In response to the above allegations, the Noticee 8 in its replies dated November 30, 2023, and June 03, 2024, has, *inter alia*, stated as under:

“We further submit that we had opened a trading and DMAT account with Astitva Capital Market Private Limited (ACMPL-SEBI registered share broker, having SEBI registration.no. - INZ000160330).

When company applied to aforesaid broker for margin trading, broker asked the company to transfer the shares as Collateral to its associate company i.e. Unity Global Financial Services Private Limited (UGFSPL), which will provide loan against shares for the purpose of Margin trading.

Please find enclosed copy of Email from the Share Broker regarding transfer of Collateral securities to it associate company as per Annexure-A and Copy of Dmat transfer slip, showing reason of transfer also, as per Annexure –B.

As the shares were transferred off-market on the specific request of SEBI registered broker to its nominee/ associate for the purpose of margin trading there was no payment required to be received against the aforesaid off-market transfer of shares, as the shares were transferred on temporary purpose for the and for the purpose of margin trading only.

Thereafter ACMPL asked us transfer some more quantity of shares and funds to avail the margin trading facility which was not mutually agreed prior to the transfer of aforesaid off-market transfer. Due to this reason we asked ACMPL to get the shares transferred back to us from its associate company UGFSPL.

After being asked to return the shares, UGFSPL only returned 70000 shares out of total 300000 shares. We kept on asking ACMPL and UGFSPL to return the remaining quantity of shares various times, but we could not receive the remaining quantity of shares transferred to them. Copy of various Emails written to them is enclosed as per Annexure-C

When we could not receive back the balance quantity of shares, we filed a Police Complaint at EOW Delhi against UGFSPL and its associate SEBI Registered broker company i.e. ACMPL. Copy of Police Complaint is enclosed as per Annexure –D

A number of police complaints have been filed against UGFSPL and its associate SEBI Registered broker company i.e. ACMPL at various of Police stations at Delhi and some of them have been lodged at EOW Delhi only. Promoters of ACMPL & UGFSPL are not traceable and their common registered office located at House No 307 3rd Floor New Delhi House, Central Delhi, New Delhi, Delhi, India, 110001 is locked since very long time.

ACMPL has been admitted to NCLT [(18)397 (ND)/2021) for the purpose of liquidation under Insolvency and Bankruptcy Code 2016."

41. In this regard, it is noted that the Noticee 8 has not disputed the transfer of 3,00,000 shares of Optiemus to the Noticee 6 and the transfer of 70,000 shares from the Noticee 6 to the Noticee 8 without receiving any payment.

42. The Noticee 8 has submitted that it has transferred the shares to the Noticee 6 as collateral to avail a margin trading facility from its broker, Astitva Capital Market Private Limited. The Noticee 8 along with its submissions has enclosed a copy of an e-mail dated May 07, 2019 (received from e-mail ID: unityfincap@gmail.com), claiming to have received from its broker, Astitva Capital Market Private Limited which, *inter alia*, states as under:

"as per discussion held with you, we are willing to provide financing facility against security of your shares, please transfer shares in our below given Demat Account

DP ID 12087000

Client ID 00000058

Client name – Unity Global Financial service Pvt Ltd.

DP Name – Astitva Capital Market Pvt Ltd."

43. In this regard, it is noted that the shares have to be deposited as collateral with the stock broker in order to avail a margin trading facility from a stock broker against shares. However, in the instant case, as claimed by the Noticee 8, it had transferred the shares to some other company, i.e., Noticee 6, in order to avail margin trading facility from Astitva Capital Market Pvt. Ltd. The Noticee 8 in its replies submitted that it was advised by its stock broker (Astitva Capital Market Pvt. Ltd.) to transfer the shares to the Noticee 6 and enclosed a copy of an e-mail received from the e-mail ID – un..............@gmail.com. However, it is noted that as per Unique Client Code details, e-mail ID – un...............@gmail.com belongs to the Noticee 6. Further, no documentary evidence has been adduced by the Noticee 8 in its submissions that substantiate its claim of such an arrangement with M/s. Astitva Capital Market Pvt. Ltd. to avail margin trading facility.

44. It is further noted that the Noticee 8 in its replies submitted that it had filed a police complaint against the Noticee 6 and its broker, Astitva Capital Market Pvt. Ltd. The Noticee 8 has also enclosed a copy of the police complaint filed by it. From perusal of the copy of the complaint, it is noted that the complaint was filed by the Noticee 8 on January 09, 2023, i.e. after a period of more than three years from the date of transfer.

45. It is further noted that the value of these 300,000 shares transferred to the Noticee 6 on May 27, 2019 as mentioned in the DIS slips was Rs. 2.95 Crores and until May 2019, the Noticee 6 has transferred back only 70,000 shares to the Noticee 8. However, the Noticee 8 in its submissions has not adduced any evidence that substantiate its claims regarding getting back the shares during the period from May 27, 2019 (Date of transfer of shares) to January 09, 2023 (Date of filing complaint).

46. In view of the aforesaid discussions, the contention of the Noticee 8 in this regard cannot be accepted.

Noticee 9

47. It was alleged in the SCN that the Noticee 9 was party to the following off-market transactions that took place in the shares of Optiemus during the IP. It was further alleged that these transactions were not in consonance with the applicable provisions of the SCRA:

Table 12

Date	Transferor	Counter-party	Qty.	Amount	Whether Amount Paid
28/06/2019	XYZ[9]	Noticee 9	1,00,000	55,87,301**	No
**Amount was not mentioned on the DIS slip. Approximate value was computed using the closing price of the scrip on the exchange on the same day.					

48. In response to the above allegations, the Noticee 9 in its replies dated November 06, 2023, and June 10, 2024, has, *inter alia*, stated as under:

"As per the SCN, Noticee didn't provide any details regarding the consideration paid for the said offline transaction. It is pertinent to mention that the Noticee has given all required details along with details of payment with the reply to the SEBI letter. The Noticee had made an advance payment of Rs. 60,00,000.00 (Rupees Sixty Lakh Only) to XYZ[10] as consideration for Quantity 1,00,000 (one Lakh) shares of Optiemus Infracom Limited.

Copy of the Bank Certificate about payment of Rs. 60,00,000.00 (Rupees Sixty Lakh Only) made to Transferor XYZ[10] annexed herein as Annexure-SR4."

49. In this regard, it is noted that the Noticee 9 has not disputed the transfer of 1,00,000 shares of Optiemus from XYZ[10] to the Noticee 9 on June 28, 2019.

50. The Noticee 9 has submitted that it had made an advance payment of Rs. 60,00,000 to XYZ[10] on May 27, 2019 as payment for 1,00,000 shares of Optiemus transferred to

[9] *Name excised for the sake of confidentiality.*
[10] *Name excised for the sake of confidentiality.*

it on June 28, 2019 by XYZ[10]. The Noticee 9, along with its submissions, has enclosed a copy of the bank certificate obtained from Canara Bank about the payment of Rs. 60,00,000 made to the transferor on May 27, 2019.

51. In this regard, it is noted that no documentary evidence, like agreement with the XYZ[10], any correspondences with the XYZ[10], etc., has been adduced by the Noticee 9 in its submissions that substantiate its claim that the payment of Rs. 60,00,000 made by the Noticee 9 to the XYZ[10] on May 27, 2019 pertains to the shares transferred to the Noticee 9 on June 28, 2019.

52. I further note that Section 2(i) of the SCRA, *inter alia*, states as under:

"Spot Delivery Contract" means a contract which provides for:
(a) actual delivery of securities and ***the payment of a price therefore either on the same day as the date of the contract or on the next day****, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;" (emphasis supplied)*

53. As stated by the Noticee 9 in its submissions, even if it is assumed that the payment of Rs. 60,00,000 that the Noticee 9 made to XYZ[11] on May 27, 2019 relates to the shares that were transferred to the Noticee 9 on June 28, 2019, the transfer of shares on June 28, 2019 was not in compliance with the applicable provisions of the SCRA since the payment was made much prior to the delivery of securities. However, the law requires the payment to be made either on the same day as the date of the contract or on the next day.

54. In view of the aforesaid discussions, the contention of the Noticee 9 in this regard cannot be accepted.

[11] *Name excised for the sake of confidentiality.*

55. **Alleged delay in the initiation of the present proceedings**

55.1. The Noticees 1, 3, 4, 7, and 9 in their submissions have, *inter alia*, stated:

Noticee 1

"We, further submit that your honor has issued the present SCN after an inordinate delay of more than 4 years from the date of alleged violations as mentioned in the SCN."

Noticee 3

"I further submit that the present SCN is issued after an inordinate delay of approx. 5 years from the date of alleged violations as mentioned in the SCN and in initiation of proceedings by the Authority."

Noticees 4, 7 and 9

"At the outset, we state that the present SCN has been issued after a gap of more than 4 years from the date of alleged violations as mentioned in the SCN. Hence, there is an inordinate delay in initiation of proceedings by SEBI."

55.2. In this regard, I note that the Noticees 1, 3, 4, 7, and 9 in their submissions have also placed reliance on the order of the Hon'ble SAT in the matter of ***Mr. Rakesh Kathotia vs. SEBI*** (Appeal No. 07 of 2016). Further, Noticees 4, 7, and 9 have also placed reliance on the orders of the Hon'ble SAT in the matter of ***Ashok Shivlal Rupani & Anr. vs. SEBI*** (Appeal No. 417 of 2018) and in the matter of ***HB Stockholdings Limited vs. SEBI*** (Appeal No. 114 of 2012).

55.3. All the submissions of the Noticees 1, 3, 4, 7, and 9 in this regard, including case laws, have been considered.

55.4. In this regard, it is pertinent to refer to the observations of the Hon'ble SAT in the matter of ***Metex Marketing Pvt. Ltd. Vs SEBI*** *(Appeal No. 95 of 2016)*, wherein Hon'ble SAT, *inter alia*, held that:

"23. It is no doubt true that no period of limitation is prescribed in the SEBI's Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695.

24. This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."

55.5. I further find that the investigation in the instant case pertains to the period from October 2017 to August 2019. During the course of the investigation, correspondences were exchanged between the SEBI and the Noticees. The investigation was completed in September 2023. Thereafter, SEBI approved adjudication proceedings in the matter. The erstwhile AO was appointed in the matter vide communique dated October 17, 2023, and the SCN was issued on October 26, 2023. Therefore, in light of the above chronology, the submission of the Noticees in this regard cannot be accepted.

Noticees 2, 5, and 6

56. It was alleged in the SCN that the Noticees 2, 5, and 6 were parties to the following off-market transactions that took place in the shares of Optiemus during the IP. It was further alleged that these transactions were not in consonance with the applicable provisions of the SCRA:

Table 13

Date	Transferor	Counter-party	Qty.	Amount as per the DIS Slip	Whether Amount Paid
Noticee 2					
28/03/2019	Noticee 1	Noticee 2	4,50,000	4,32,90,000*	No
10/06/2019	Noticee 1	Noticee 2	10,00,000	7,55,00,000*	No
Noticee 5					
22/08/2019	Noticee 4	Noticee 5	4,00,000	1,68,80,000*	No
Noticee 6					
08/05/2019	Noticee 7	Noticee 6	3,00,000	3,47,40,000**	No
27/05/2019	Noticee 8	Noticee 6	3,00,000	2,94,60,000**	No
31/05/2019	Noticee 6	XYZ[12]	1,00,000	97,15,000**	No
31/05/2019	Noticee 6	Noticee 8	70,000	68,00,500**	No
06/06/2019	Noticee 6	Noticee 7	40,000	37,60,000**	No
10/06/2019	Noticee 6	Noticee 7	40,000	25,68,000**	No
*Amount as mentioned on the DIS slip. **Amount was not mentioned on the DIS slip. Approximate value was computed using the closing price of the scrip on the exchange on the same day.					

57. As noted in the preceding paragraphs, I note that various efforts have been undertaken for the service of SCN and hearing notice to the Noticees 2, 5, and 6. The service of SCN and hearing notice were attempted through e-mail, SPAD, courier, affixture, and publication. It is further noted that the SCN, along with the documents relevant to and relied upon in the SCN and the hearing notice, were duly served on the Noticees 2, 5, and 6 as per due procedure.

58. However, it is noted that the Noticees 2 and 6 have neither submitted any response to the SCN or hearing notice nor attended the hearing. It is further noted that the

[12] *Name excised for the sake of confidentiality.*

Noticee 5, through its e-mails dated July 01, 2024, and July 24, 2024, had requested the additional time to submit a reply to the SCN on merit. However, despite granting the opportunity to submit its reply to the SCN six times and to appear for hearing before the AO three times, the Noticee 5 has neither submitted any reply on merit nor appeared for the hearing.

59. In view of the above, I am constrained to proceed with the materials available on record in respect of the Noticees 2, 5, and 6.

60. In this context, I would like to refer to the following orders of the Hon'ble SAT:

60.1. In the case of ***Sanjay Kumar Tayal & Others v. SEBI*** (Appeal No. 68 of 2013 decided on February 11, 2014), the Hon'ble SAT, *inter alia*, has held as under:

"...appellants have neither filed reply to show cause notices issued to them nor have availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices..."

60.2. In the case of ***Classic Credit Ltd. v. SEBI*** (Appeal No. 68 of 2003 decided on January 08, 2007) Hon'ble SAT, *inter alia*, has held as under:

"the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them."

Findings on Issue I

61. In view of the discussions in the preceding paragraphs, I note that no justifiable reason has been brought on record by the Noticees with regard to the violations alleged in the SCN. As noted from previous paragraphs, it is rather an undisputed fact that the Noticees were parties to the following off-market transactions that took place in the shares of Optiemus during the IP. It is further noted that the payment for these

transactions were either not paid/received at all or not paid/received within the stipulated time period as per Section 2(i) of the SCRA:

Table 14

Date	Transferor	Counter-party	Qty.	Amount
28/03/2019	Noticee 1	Noticee 2	4,50,000	4,32,90,000*
08/05/2019	Noticee 7	Noticee 6	3,00,000	3,47,40,000**
23/05/2019	Noticee 1	Noticee 3	2,00,000	2,30,00,000*
27/05/2019	Noticee 8	Noticee 6	3,00,000	2,94,60,000**
31/05/2019	Noticee 6	XYZ[13]	1,00,000	97,15,000**
31/05/2019	Noticee 6	Noticee 8	70,000	68,00,500**
06/06/2019	Noticee 6	Noticee 7	40,000	37,60,000**
10/06/2019	Noticee 6	Noticee 7	40,000	25,68,000**
10/06/2019	Noticee 1	Noticee 2	10,00,000	7,55,00,000*
28/06/2019	XYZ[13]	Noticee 9	1,00,000	55,87,301**
22/08/2019	Noticee 4	Noticee 5	4,00,000	1,68,80,000*
22/08/2019	Noticee 1	Noticee 4	5,00,000	2,10,00,000*
*Amount as mentioned on the DIS Slip. **Amount was not mentioned on the DIS slip. Approximate value was computed using the closing price of the scrip on the exchange on the same day.				

Violation of Section 16 of the SCRA read with SEBI Notification dated October 03, 2013 and Section 2(i) of the SCRA

62. In this regard, I would like to refer to Section 16 of the SCRA which states as under:

"Power to prohibit contracts in certain cases.

16. (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

[13] *Name excised for the sake of confidentiality.*

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal."

63. I would also like to refer to the SEBI Notification dated October 03, 2013 which, *inter alia*, states as under:

"In exercise of the powers conferred by sub-section (2) of section 28 and sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India notification number S.O. 573(E), dated the 30th July, 1992 issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as 'the Board') hereby rescinds the notification number S.O.184(E), dated the 1st March, 2000, except as respects things done or omitted to be done before such rescission, and ***declares that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than a contract falling under any one or more of the following, namely:-***

(a) spot delivery contract; (Emphasis Supplied)"

64. In this regard, I would also like to refer to the order of Hon'ble SAT in the matter of ***Alok Kehtan vs. SEBI*** *(Appeal No. 55 of 2007)*, in which Hon'ble SAT stated that:

"In view of the aforesaid admitted fact it is clear that the appellant sold his unlisted shares on 25.08.1999 in an off market transaction and received the sale consideration of Rs.22,50,000/- only in January, 2000 which is much beyond the time permitted by section 2(i) of the SCRA. ***Since the transaction was off market the contract for the sale of shares could only be by way of spot delivery in view of the restriction imposed by the Board under section 16 of SCRA which mandates that the sale consideration ought to have been received either on the same day of the transaction or on the following day.*** *It is, thus, clear that the sale of shares by the*

appellant on 25.08.1999 in the off market transaction is violative of the restriction imposed under section 16 read with section 2(i) of SCRA. ***(Emphasis Supplied)****"*

65. As discussed in the preceding paragraphs, the transactions aforementioned in Table 14 were off-market transactions. Therefore, they were in the nature of spot delivery contracts. Since these transactions were not found to be in compliance with 'spot delivery contracts' in terms of 2(i) of the SCRA, it is established that the Noticees have violated the provisions of Section 16 of the SCRA read with the SEBI Notification dated October 03, 2013 and Section 2(i) of the SCRA.

Violation of Section 13 and 18 of the SCRA read with Section 2(i) of the SCRA

66. In this regard, I would like to refer to Section 13 of the SCRA which, *inter alia*, states as under:

"Contracts in notified areas illegal in certain circumstances.
13. *If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal"*

67. I would also like to refer to Section 18 of the SCRA which, *inter alia*, states as under:

*"**Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.***
18. *(1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts."*

68. In this regard, I would also like to refer to the order of Hon'ble SAT in the matter of ***Mrs. Bhanuben Jaisukhlal Shah vs. SEBI*** *(Appeal No. 271 of 2009)*, in which Hon'ble SAT, *inter alia*, stated that:

"A reading of the aforesaid provisions would make it clear that the Central Government has the power under section 13 of the Act to make the provisions of this section applicable in any State or States or area and upon its doing so, every contract in such State, States or area is required to be entered into from the date of the notification only between the members of a recognized stock exchange or recognized stock exchanges or through or with such member(s). Section 13 also provides that contracts entered into in any other manner shall be illegal. …………………………………………………….

Section 18(1) of Act, however, carves out an exception. It provides that nothing contained in Section 13 shall apply to spot delivery contracts. ***A combined reading of Sections 13 and 18(1) would lead us to conclude that as a general rule, every contract in securities should be executed through members of recognised stock exchange (s) or through or with such member(s) and the only exception thereto is spot delivery contract(s). In other words, every contract in securities must be executed through the stock exchange mechanism unless it is a spot delivery contract. It would follow that a contract in securities which is not executed through or with member(s) of a recognised stock exchange(s) and is not a spot delivery contract would be illegal." (Emphasis Supplied)***

69. As discussed in the preceding paragraphs, the transactions aforementioned in Table 14 were off-market transactions. Therefore, they were in the nature of spot delivery contracts. Since these transactions were not found to be in compliance with 'spot delivery contracts' in terms of 2(i) of the SCRA, it is established that the Noticees have violated the provisions of Sections 13 and 18 of the SCRA read with Section 2(i) of the SCRA.

Issue II. Does the violation, if any, on the part of the Noticees attract a monetary penalty under Section 23H of the SCRA?

70. As it has been established that the Noticees have violated the provisions of law as alleged in the SCN, the Noticees are liable for payment of a monetary penalty in terms of Section 23H of the SCRA.

71. In this context, I would also like to refer to 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 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 A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

72. The text of the above said Section 23H of the SCRA is reproduced below:
"Penalty for contravention where no separate penalty has been provided.
23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised 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."*

Issue III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in Section 23J of the SCRA?

73. While determining the quantum of penalty under Section 23H of the SCRA it is important to consider the factors stipulated in Section 23J of the SCRA, which reads as under:

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

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

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

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

(c) the repetitive nature of the default."

Factors Considered While Imposing Penalty

74. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees nor the amount of loss, if any, caused to an investor/clients as a result of the default of the Noticees. As regard the repetitive nature of the default, there is nothing on record to show that the nature of the default by the Noticees is repetitive.

75. In the instant case, it is an undisputed fact that the Noticees were parties to the following off-market transactions that took place in the shares of Optiemus during the IP:

Table 15

Date	Transferor	Counter-party	Qty.	Amount
28/03/2019	Noticee 1	Noticee 2	4,50,000	4,32,90,000*
08/05/2019	Noticee 7	Noticee 6	3,00,000	3,47,40,000**
23/05/2019	Noticee 1	Noticee 3	2,00,000	2,30,00,000*
27/05/2019	Noticee 8	Noticee 6	3,00,000	2,94,60,000**
31/05/2019	Noticee 6	XYZ[14]	1,00,000	97,15,000**
31/05/2019	Noticee 6	Noticee 8	70,000	68,00,500**
06/06/2019	Noticee 6	Noticee 7	40,000	37,60,000**
10/06/2019	Noticee 6	Noticee 7	40,000	25,68,000**
10/06/2019	Noticee 1	Noticee 2	10,00,000	7,55,00,000*
28/06/2019	XYZ[14]	Noticee 9	1,00,000	55,87,301**
22/08/2019	Noticee 4	Noticee 5	4,00,000	1,68,80,000*
22/08/2019	Noticee 1	Noticee 4	5,00,000	2,10,00,000*
*Amount as mentioned on the DIS Slip. **Amount was not mentioned on the DIS slip. Approximate value was computed using the closing price of the scrip on the exchange on the same day.				

76. As per the relevant provisions of the SCRA, every contract in securities should be executed through members of recognised stock exchange (s) or through or with such member(s) and the only exception thereto is spot delivery contract(s). As discussed in the preceding paragraphs, the transactions aforementioned in Table 15 were off-market transactions. Therefore, they were in the nature of spot delivery contracts as defined under Section 2(i) of the SCRA, i.e., actual delivery/ transfer of shares, and the payment should be on the same day as the date of the contract or the next day. However, as discussed in the preceding paragraphs, in the instant case, payment for these transactions were either not paid/received at all or not paid/received within the stipulated time period in compliance with the provisions of Section 2(i) of the SCRA.

[14] *Name excised for the sake of confidentiality.*

Therefore, the aforesaid transactions are in violation of the relevant provisions of the SCRA.

77. In this regard, I would also like to refer to the order of Hon'ble Supreme Court in the matter of ***SEBI vs. M/s. Opee Stock-Link Ltd. & Anr*** *(Appeal No. 2252 of 2010)*, in which Hon'ble Supreme Court, *inter alia*, stated that:

"21. We also note that the Securities Contracts (Regulation) Act, 1956 (SCRA) has been enacted to prevent undesirable transactions in securities by regulating the business of dealing therein, by providing for certain other matters connected therewith like regulating functioning of recognised stock exchanges and working of the members of such stock exchanges. The SCRA is a special law to regulate the sale and purchase of shares and securities and hence it prevails over the provisions of the Indian Contract Act, 1872 and Sale of Goods Act, 1930, insofar as the matters which are specifically dealt with by the SCRA. The contracts for sale and purchase of securities, as envisaged under the SCRA, can be entered into only in a prescribed manner in a notified area and that can only be effected through registered members of a recognised stock exchange (i.e. stock brokers) and the only exception to this is a Spot Delivery Contract.

22……………………………….Considering the facts and circumstances of the present case, the transfer of shares did not comply with the requirements of the provision of either Section 13 or Section 2(i) of the SCRA. Therefore, the off market trading indulged into by the Respondents was rightly held to be per se illegal by the Whole Time Member."

78. The provisions of SCRA's are meant to prevent undesirable transactions from happening in the securities market. Consequently, adherence to the SCRA's provisions is essential to the market's seamless operation and the preservation of market integrity. Therefore, the act of the Noticees needs to be dealt with sternly.

79. The aforementioned factors have been taken into consideration while adjudging the penalty.

ORDER

80. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in the preceding paragraphs, and in the exercise of powers conferred upon me under Section 23-I of the SCRA read with Rule 5 of the SCRA Rules, I hereby impose a monetary penalty on the Noticees as given in the table below**:**

Table 16

Noticee No.	Noticee	Penal Provision	Penalty Amount
1	Hayward Technologies Private Limited	Section 23H of the SCRA	Rs. 11,00,000/- (Rupees Eleven Lakhs only)
2	Altruistic Trading Private Limited		Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only)
3	Vijay Kumar		Rs. 1,50,000/- (Rupees one Lakh Fifty Thousand only)
4	Neelabh Spinning Mills Private Limited		Rs. 4,00,000/- (Rupees Four Lakhs only)
5	Tango Commosales LLP		Rs. 2,00,000/- (Rupees Two Lakhs only)
6	Unity Global Financial Services Private Limited		Rs. 4,25,000/- (Rupees Four Lakhs Twenty-Five Thousand only)
7	Harsimrat Investment Private Limited		Rs. 2,00,000/- (Rupees Two Lakhs only)
8	Pataliputra International Limited		Rs. 2,00,000/- (Rupees Two Lakhs only)
9	Hemant Kumar Gupta		Rs. 1,00,000/- (Rupees One Lakh only)

81. I am of the view that the said penalties are commensurate with the lapses/omissions on part of the Noticees.

82. The Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order through the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

83. In terms of the provisions of Rule 6 of the SCRA Rules, a copy of this order is being sent to the Noticees and also to the SEBI.

Date: July 31, 2024

Place: Mumbai

N HARIHARAN

CHIEF GENERAL MANAGER

AND ADJUDICATING OFFICER