BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/AK/AS/2022-23/24643-24644

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

Name of Noticee (PAN)	**Address**
K Murugavel (AKIPN9312K)	6/9 Patel Street, Ananda Nagar, Tamabaram East, Chennai, Tamil Nadu - 600059
Aswin Logistic Ventures (AAYPU1084C)	

In the matter of Midvalley Entertainment Ltd

BACKGROUND OF THE CASE

1. Pursuant to the allotment of shares of Midvalley Entertainment Ltd. (hereinafter referred to as **"MVEL"**) @ Rs. 70/- per equity share in the IPO, the scrip of MVEL was listed on the Bombay Stock Exchange (hereinafter referred to as **"BSE"**) on January 27, 2011. There was a fall in the price of scrip of MVEL on listing day, i.e. January 27, 2011, wherein the price touched a low of Rs. 55/-per share and finally closed at Rs. 58.05 per share, witnessing a fall of 17% on listing day from its IPO allotment price. Subsequently, during one-month period i.e. from January 28, 2011 to February 28, 2011, the price of the scrip fell further to Rs. 50.50/-per share (as on February 10, 2011), then witnessed a sudden increase wherein the price of the scrip of MVEL touched Rs. 99.15/-per share (as on February 25, 2011) and finally closed at Rs. 89.15/- on February 28, 2011. Therefore, an investigation was conducted by Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) in the matter of IPO of MVEL for the period of January 27, 2011 to February 28, 2011 (hereinafter referred to as **"Investigation Period"**) with regard to the bidding in the IPO of MVEL, fund flow from IPO

proceeds, utilization of IPO proceeds, disclosures made by MVEL in the IPO prospectus and dealings in the scrip of MVEL during the Investigation Period.

2. Based on the investigation conducted by SEBI, Adjudication Proceedings were initiated against certain entities in the matter, vide Show Cause Notice dated January 20, 2017 (hereinafter referred to as **"SCN"**) and Supplementary Show Cause Notice dated May 07, 2021 (hereinafter referred to as **"Supplementary SCN"**). Vide the said SCN and Supplementary SCN, it was alleged, interalia, that K. Murugavel (hereinafter referred to a **"Noticee No. 1"**) violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a), (d), (e), (f), (k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**) and that Aswin Logistic Ventures (hereinafter referred to as **"Noticee No. 2"**) violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) of the PFUTP Regulations. Vide Adjudication Order ref no Order/PM/GD/2022-23/16782-16811 dated May 31, 2022, penalty was imposed, interalia, on the Noticees as per the details given below:

Name of Noticee	Penal provisions	Penalty Amount (in Rs)
K Murugavel	Section 15HA of the SEBI Act	Rs 10,00,000/-
Aswin Logistic Ventures		Rs 5,00,000/-

3. The Noticees challenged the Adjudication Order dated May 31, 2022 in the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**), and the details thereof are provided below:

3.1 Noticee No. 1 challenged the AO Order vide Appeal No. 61 of 2023 and Misc. Application No. 1705 of 2022, on the grounds that no opportunity of hearing was provided to him. The Hon'ble SAT allowed the appeal, vide Order dated January 18, 2023, and held that,

"3……….We therefore set aside the impugned order insofar as the appellant is concerned. The appeal is allowed. The matter is remitted to the Adjudicating Officer

to decide the matter afresh in accordance with law after giving an opportunity of hearing to the appellant.

4. In this regard, the appellant shall appear before the Adjudicating Officer on 1st February, 2023 on which date the matter will be proceed in accordance with law".

3.2 Noticee No. 2 challenged the AO Order vide Appeal No. 1012 of 2022, on the grounds that the SCN or Supplementary SCN or date of hearing was never served on it. The Hon'ble SAT allowed the appeal vide Order dated January 11, 2023, and held that,

"3………The matter is remitted to the AO to pass a fresh order in accordance with law after serving the show cause notice. In this regard the appellant shall appear before the AO on January 23, 2023 on which date the show cause notice would be served and the matter will proceed from there onwards.".

APPOINTMENT OF ADJUDICATING OFFICER

4. Pursuant to the aforesaid directions of the Hon'ble SAT, SEBI, in exercise of powers under Section 19 read with sub-section (1) of Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **"Adjudication Rules"**), appointed the undersigned as the Adjudicating Officer (AO) to inquire into and adjudge under Section 15-I read with Section 15HA of the SEBI Act, vide Orders dated January 23, 2023 and January 13, 2023, the alleged violations by Noticee Nos. 1 and 2 respectively.

SHOW CAUSE NOTICE AND PERSONAL HEARING

5. The details of communication with Noticee No. 1 and Noticee No. 2 are provided below:

5.1 <u>Noticee No. 1</u>

The undersigned was having a prior professional commitment for February 01, 2023 and hence, vide email dated January 25, 2023, Noticee was conveyed that due a professional engagement, the opportunity of personal hearing was being adjourned to February 06, 2023. Thereafter, personal hearing in the matter was held on the scheduled date i.e. February 06, 2023. During the course of hearing, Adv Amrita Jain appeared on behalf of the Noticee and contended that even though the Noticee signed Red Herring Prospectus/ Prospectus, he was not aware of veracity of the contents therein, and was therefore, was not responsible for the same. She further contended that there has been an inordinate delay in the matter. Further, as requested, time till February 10, 2023 was granted to make written submissions as regards the matter, if any. Vide email dated February 09, 2023, Noticee made post hearing submissions in the matter.

5.2 Noticee No. 2

Vide email dated January 16, 2023, Noticee was, interalia, advised to collect copy of the SCN/ Supplementary SCN in the matter on January 23, 2023. Vide email dated January 17, 2023, Noticee requested that the copy of SCN/ Supplementary SCN might be served directly to her residential address via SPAD or email. Vide letter dated January 19, 2023, SCN and Supplementary SCN were served on the Noticee, and the same was conveyed to the Noticee vide email dated January 20, 2023. Vide email dated February 06, 2023, Noticee made submissions in the matter. Vide email dated February 06, 2023, Noticee was granted opportunity of personal hearing in the matter. Personal hearing in the matter was held on February 10, 2023. During the course of hearing, Adv Amrita Jain appeared on behalf of the Noticee and contended that Ms Usha Murugavel was not the proprietor of Noticee i.e. Aswin Logistic Ventures, and therefore, was not aware of the transactions as alleged in SCN and Supplementary SCN. She further made submissions relying upon the response sent vide email dated February 06, 2023. Further, time till evening of February 10, 2023 was granted to make additional submission in the matter, if any. Vide email dated February 10, 2023, Noticee made post hearing submissions in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

6. The issues that arise for consideration are as under:
   6.1 Whether Noticee No. 1 violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a), (d), (e), (f), (k) and (r) of the PFUTP Regulations?
   6.2 Whether Noticee No. 2 violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) of the PFUTP Regulations?
   6.3 If yes, whether the violations, if any, attract monetary penalty under the provisions of Section 15HA of the SEBI Act? If so, what quantum of monetary penalty should be imposed on the Noticees after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

7. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticees and the same are reproduced below:

SEBI Act

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

12A. No person shall directly or indirectly—
(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

3. Prohibition of certain dealings in securities
No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: —

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

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

e) any act or omission amounting to manipulation of the price of a security;

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

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

8. Before proceeding to consider the matter on merits, I note that Noticee No. 1 and 2 have, interalia, relied upon the judgement of the Hon'ble SAT in the matter of Shriram Insight Brokers Ltd vs SEBI decided on January 04, 2022, and contended that due to the inordinate delay in receiving the SCN, important documents to prove non-violation could not be retrieved, and that the instant proceedings stand vitiated on this ground. In this regard, I note that investigation in the instant matter was initiated and SEBI officials had first visited MVEL's office in Chennai in the course of said investigation, on November 22 and 23, 2012. Thereafter, as certain entities were not complying with the request for information, formal investigation in the matter was started on August 04, 2015.

After the completion of formal investigation in the matter, Adjudication Proceedings were approved against Noticee No. 2, and parallel proceedings viz. Adjudication proceedings under Section 15HA of the SEBI Act and proceedings under Sections 11(1), 11(4) and 11B of the SEBI Act were approved against certain entities, interalia, including Noticee No. 1, on September 30, 2016. Thereafter, Show Cause Notice dated January 20, 2017 was issued by the erstwhile AO. Parallelly, Order dated February 18, 2020 was passed under Sections 11, 11(4) and 11B of the SEBI Act in the matter, interalia, against Noticee No. 1. Further, as part of the Adjudication Proceedings, Supplementary Show Cause Notice was issued on May 07, 2021. After the culmination of Adjudication Proceedings, AO Order dated May 31, 2022 was passed. Thereafter, the Hon'ble SAT had remanded the matter in respect of Noticee Nos. 1 and 2, vide orders as detailed in paragraph 3. Pursuant to the said orders, the instant proceedings were initiated. From the sequence of events noted above, I note that based on the detailed investigation in the matter involving analysis of possible violations in the IPO of MVEL, Adjudication Proceedings were initiated. Also that, post issuance of SCN in the Adjudication Proceedings, the correspondence with multiple Noticees, including the service of SCN and conduct of personal hearings, in the course of erstwhile proceedings had consumed substantial time. I also note that the Noticees were aware of the ongoing investigation and proceedings against them, and that Noticee No. 1 was also a party to the parallel proceedings under Section 11B of the SEBI Act in the matter. Therefore, the contention that they do not have possession of documents to defend themselves does not hold much ground. In conclusion, I note that the time gap in the matter serves as a factor which will be relied upon as a mitigating factor while considering the matter, and deciding quantum of monetary penalty, if any. However, the same cannot be a ground to vitiate the instant proceedings.

Issue No. I: Whether Noticee No. 1 violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a), (d), (e), (f), (k) and (r) of the PFUTP Regulations?

9. The allegations against Noticee No. 1 are summarized below:

9.1. MVEL had filed Red Herring Prospectus dated December 20, 2010 (RHP) and Prospectus dated January 14, 2011. It was observed from the database of Ministry of Corporate Affairs that Vasan Chidambaram was a director in five companies as on the date of filing of the Red Herring Prospectus. However, his directorship in two entities namely Tanmathra Creative Solutions Private Limited and UNV Media Private Limited were not disclosed in Red Herring Prospectus dated December 20, 2010 and Prospectus dated January 14, 2011 filed by MVEL. Therefore, it was alleged that MVEL had provided false information regarding the directorship of Noticee in its RHP and Prospectus.

9.2. On Page No. 12 of Red Herring Prospectus dated December 20, 2010 and Prospectus dated January 14, 2011, under the section Internal Risk Factors - Para 1, MVEL had stated the following:

"Our Company intends to use part of the proceeds up to Rs. 1,200.00 lacs out of the total Issue proceeds for acquisitions as described in the paragraph titled ''Acquisition of company, acquisition of screening rights of company having similar line, range and objects of business" on page 62 under the Section titled "Objects of the Issue" beginning on page 60 of the Prospectus. This forms approximately 20% of the Issue Proceeds. We have not yet entered into any definitive agreements to utilize the funds allocated for acquisitions. There can be no assurance that we will be able to conclude definitive agreements for such expenditures on terms anticipated by us. As on the date of the Prospectus, we have not yet identified specific acquisition targets." (emphasis supplied)

9.3. Therefore, MVEL disclosed not having identified any specific acquisition targets in terms of abovementioned objective. However, from the analysis of bank account statements of MVEL, it was observed that it had made a payment of Rs.19 Crore to Eduexel Infotainment Limited (hereinafter referred to as **"EIL"**) on January 25, January 27 and February 9, 2011. Upon enquiring regarding the said fund transaction by SEBI, the Company submitted that the aforesaid payments were made by it to EIL for acquiring screening rights from EIL and provided copy of an agreement entered into by MVEL with EIL. It is alleged on the basis of the said agreement between MVEL and EIL that MVEL had entered into an arrangement with EIL as early as on November 15, 2010 for the purpose of acquisition of screening rights, screening arrangements along with film contents from market for supplying the same to MVEL. However, MVEL allegedly did not disclose the said information in the RHP/Prospectus for the IPO. It was further alleged that EIL is an entity connected to MVEL as Vasan Chidambaram, who was a director of MVEL was a promoter director of EIL. At the same time, EIL was also alleged to be connected with AFSL, the BRLM appointed by MVEL for its IPO. In view of these, it was alleged that MVEL had already identified its acquisition targets and, therefore, has provided false information regarding non-identification of acquisition targets in its RHP/prospectus to prospective investors.

9.4. It was observed from the bank statements of various bank accounts of MVEL that it had transferred proceeds of IPO to 4 entities as suppliers ostensibly for meeting the objects of RHP namely: (i) Aman Tie Up Pvt. Ltd. (ii) EIL, (iii) Aswin Logistics Ventures/ Noticee No. 2 and (iv) Omni Ax's Software Ltd (hereinafter referred to as **"Omni Ax's"**). However, it is observed that the said four entities did not appear in the list of its suppliers appearing under the heading 'Equipments' at page 62 of the RHP from whom MVEL had claimed to have sought quotes. Therefore, it was alleged that MVEL had provided false list of suppliers and the real entities to whom it had claimed to have transferred funds for meeting the objects of RHP/Prospectus had not been disclosed to the public.

9.5. It was observed that, interalia, Noticee No. 1 had certified at Page 291 of the RHP dated December 20, 2010 and Prospectus dated January 14, 2011 that all the statements in RHP/ Prospectus were true and correct. However, on the basis of the above observations and allegations, it was further alleged that the said certification was wrongfully provided by MVEL to SEBI. Therefore, it was alleged that, by not making the correct disclosures in the RHP/Prospectus, MVEL, and, interalia, Noticees 1, being a signatory to the RHP/Prospectus, had violated the provisions of section 12A (a), (b) and (c) of the SEBI Act and the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations.

10. The submissions made by Noticee No. 1 as regards the SCN are summarized below:

10.1 Noticee was not a beneficiary of any of the transactions mentioned in the SCN. He was neither a promoter of MVEL nor held any shares in MVEL. He was only an employee of MVL. As an employee, Noticee followed the orders of the Board of Directors, dutifully, righteously and within the four walls of the law of the land. Therefore, Noticee had not violated any laws, regulation etc.. Noticee was not a related party, to the persons mentioned in SCN who had allegedly conducted operations in shares of MVEL.

10.2 Noticee was unaware of the steps taken for utilization of funds of IPO. As soon as Noticee joined as an employee of MVEL in 2010, he was proposed to be the authorized signatory to sign on cheques by the chairman and the Board as the previous Director and the signatory were out of the country. Noticee, being unaware of the circumstances, accepted the proposal in lieu of hike in his salary.

10.3 Though Noticee was a signatory to the Prospectus, he was not aware of the contents of the same. The said prospectus was released in less than six months from Noticee's joining in MVEL as an employee.

10.4 Noticee did not incur any undue gain from the alleged fraudulent utilization of IPO funds by MVEL. He never held shares in MVEL as a director, and was also not part of the Promoter's group.

10.5 Noticee has relied upon the judgement of the Hon'ble SAT in the matter of Sayanti Sen vs SEBI, and contended that he was not aware of the alleged fraud by MVEL, and that merely because he was a Director of MVEL or a signatory to the Prospectus, does not make him prima facie liable for the alleged acts or transactions of MVEL.

11. I note that vide the AO Order dated May 31, 2022, it was held that MVEL had failed to disclose information correctly in RHP, interalia, on the basis of following findings:

11.1 Mr. Vasan Chidambaram, as per MCA Database, as on date of filing of the Red Herring Prospectus, held directorship in five companies. However, his directorship in two entities namely Tanmathra Creative Solutions Private Limited and UNV Media Private Limited was not disclosed in Red Herring Prospectus dated December 20, 2010 and Prospectus dated January 14, 2011.

11.2 The arrangement between MVEL and Eduexel, entered on November 15, 2010 for the purpose of acquisition of screening rights, screening arrangements along with film contents from market for supplying the same to MVEL, were not disclosed in the RHP/ Prospectus for the IPO.

Therefore, it was held in the AO Order dated May 31, 2022, that MVEL had violated the provisions of Clauses 43 and 43A(1) of the listing agreement, Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a), (d), (e), (f), (k) and (r) of the PFUTP Regulations.

12. In view of the above, I note that the remit of current proceedings is to decide whether Noticee No. 1, as the Director of MVEL, and signatory to RHP/ Prospectus, was liable for not making correct disclosures in the RHP/ Prospectus. I note that Noticee No. 1 was Executive Director and Chief Operating Officer of MVEL when RHP/ Prospectus was signed. As per Rule 2(1)(k) of the Companies (Specification of definitions details) Rules, 2014 "Executive Director" means a Whole Time Director as defined in clause (94) of section 2 of the Companies, Act, 2013. Further, as per Clause 2(94) of Companies Act, 2013 ""whole-time director" includes a director in the whole-time employment of the Company. I note that Executive Director receives remuneration from the Company as a full time employee, and is expected to be aware of his roles and responsibilities in the Company. Also, Executive Director is generally responsible for the executive functions in the administration of a Company, and is involved in running day to day operations of the Company.

13. Further, Noticee was also member of the Audit Committee of MVEL. I note that the Hon'ble SAT in the matter of Mr N. Narayanan vs SEBI, dated October 05, 2012 had held that,

"…The members of the audit committee are expected to exercise due oversight of the company's financial reporting process and to ensure that the financial statement is correct, sufficient and credible. It is also expected to conduct a meaningful review with special emphasis on major accounting entries and significant adjustments made in the accounts before putting up the statements for the approval of the Board. The board of directors of the company has entrusted the audit committee with an onerous duty to see that the financial statements are correct and complete in every respect…"

14. I note from the above paragraphs that Noticee was aware of the contents of RHP/ Prospectus, especially since it was a signatory to it. In this regard, I note the judgement of the Hon'ble Supreme Court in the matter of Official Liquidator vs P.A. Tendolkar, as also relied upon in the AO Order dated May 31, 2022, wherein it was held that,

"A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially".

15. Noticee has, interalia, submitted that he was not aware of the contents of the RHP/ Prospectus, and merely followed the orders of the Board of Directors, as an employee of MVEL. He has also submitted that he was unaware of the steps being taken for utilization of proceeds of the IPO. He also did not make any undue gains from the proceeds of the IPO. In this regard, I note that Noticee, as the Executive Director, Chief Operating Officer and an Audit Committee member, was expected to be aware of contents of veracity of the RHP/ Prospectus. Being a signatory to the same, he attested the contents of

RHP/ Prospectus as being true and correct, and therefore, to claim ignorance as regards the same cannot be justified. Thus, the said contentions of Noticee are devoid of merit.

16. Further, Noticee has relied upon relied upon the judgement of the Hon'ble SAT in the matter of Sayanti Sen vs SEBI, and contended that he was not aware of the alleged fraud by MVEL, and that merely because he was a Director of MVEL or a signatory to the Prospectus, does not make him prima facie liable for the alleged acts or transactions of MVEL. I note that in the matter of Sayanti Sen vs SEBI, the Hon'ble SAT had, interalia, held that mere fact that a person is a director would not make him automatically responsible for the affairs of the Company. However, I note that in the instant matter, the role of Noticee as an Executive Director, who was also a signatory to the RHP/ Prospectus has been brought out. As a senior official of the Company who was also a signatory to the said documents, the Noticee became directly liable for the contents of RHP/ Prospectus, and claiming unawareness about the same does not have credibility in light of facts of the case.

17. Therefore, in view of the above, I note that Noticee No. 1 has violated the provisions of Section 3 (a), (b), (c), (d), 4(1), 4(2)(a), (d), (e), (f), (k) and (r) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992.

Issue No. II: Whether Noticee No. 2 violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) of the PFUTP Regulations?

18. The allegations levelled against Noticee No. 2 are summarized below:

    18.1 MVEL had disclosed the objects of the IPO and the proposed utilization of the IPO proceeds towards the object in the RHP dated December 20,2010 and Prospectus dated January 14,2011 as following:

Objects of the IPO	To be utilized as per RHP/ Prospectus (Rs. in crore)
Entering into screening agreement with 300 cinema theatres	15.00
Renovation and Up-gradation of cinema infrastructure with Digital Equipment and other related assets for select 100 screens	25.95
Acquisition of company, acquisition of screening rights of company having similar line, range and objects of business	12.00
To meet general Corporate Expenses	3.799
Meeting the IPO expenses	3.251
Total	**60.00**

18.2 Out of Rs. 60 Crore raised from the IPO, MVEL received Rs. 57 Crore after deduction of merchant banker fees of Rs. 3 Crore in the following bank accounts:

Bank Name	Date of Receipt	Bank Account No	Amount (in Rs. cr)
Indusind Bank	January 25, 2011	0007W11639050	28
Bank of Maharastra	January 25, 2011	60061922245	18
Lakshmi Vilas Bank	January 25, 2011	0431351000002482	5
Axis bank	January 25, 2011	910020047813917	5
	January 27, 2011	910020047813917	**1**
Total			**57**

SEBI conducted investigation as regards the movement of the said Rs. 57 Crore in respect of the objects mentioned in the RHP/Prospectus for raising of funds through IPO.

18.3 As regards Noticee No. 2, it was observed that, MVEL, at page 63 of the prospectus dated December 20, 2010, had earmarked Rs. 3.799 Crore out of IPO proceeds for General corporate expenses, interalia, mentioning production of movies. It was observed from the bank account statements of MVEL that it had transferred an amount of Rs 2.7030 Crore to Noticee No. 2 by way of transactions dated January 25, 27 and February 01, 2011. As per the submissions of MVEL vide its letter dated July 16, 2013 the said payment was for "Contents Advance".

18.4 It was also observed that MVEL had transferred Rs 0.560 Crore to Ax's vide transaction dated February 21, 2011 stating it as payment to vendor. The said funds were immediately transferred by Omni Ax’s to Noticee No. 2. Thus, Noticee No. 2 received a total of Rs. 3.263 Crore (Rs. 2.703 crore + Rs. 0.560 crore) out of the IPO proceeds of MVEL.

18.5 Vide its reply dated July 16, 2013, MVEL submitted that Noticee No. 2 and Omni Ax’s were related to it as vendors. However, neither any documentary evidence of such relation was provided by MVEL in terms of quotation or previous experience of Noticee No. 2 and Omni Ax’s for this purpose nor were these entities disclosed as vendors of MVEL in the RHP/Prospectus for the IPO. It was also alleged that Omni Ax’s was related to the merchant banker to the IPO, through common director Shreyas Shrenik Shah.

18.6 In view of all the above observations regarding Noticee No. 2 and Omni Ax’s, SEBI conducted further analysis of funds received by them from MVEL. It was observed that the following transactions had taken place in the accounts of Noticee No. 2 and Omni Ax’s which allegedly included funds raised by the Company by way of IPO:

- It was observed that a sum of Rs. 2.70 crore was transferred by MVEL to Noticee No. 2 by way of transactions dated January 25 and February 01, 2011 and a sum of Rs. 0.56 crore was received by Omni Ax’s from MVEL on February 21, 2011, which Omni Ax’s, in-turn, immediately transferred to Noticee No. 2. Thus, Noticee No. 2 received total of Rs. 3.26 crore.
- From the bank account statement of Noticee No. 2, it was observed that Noticee No. 2 had drawn Demand Drafts DD Nos. 60652 for an amount of Rs. 1.5 Crore dated January 25, 2011 and DD Nos. 60676, 60677, 60678, 60679, 60680 for an amount of Rs. 9 Lac each and DD No. 60681 for an amount of Rs. 5 Lac dated February 01, 2011 in favour of Indiabulls Housing Finance Limited, to repay the outstanding amount relating to loan of M/s Saimira Holdings And Services Private Limited.

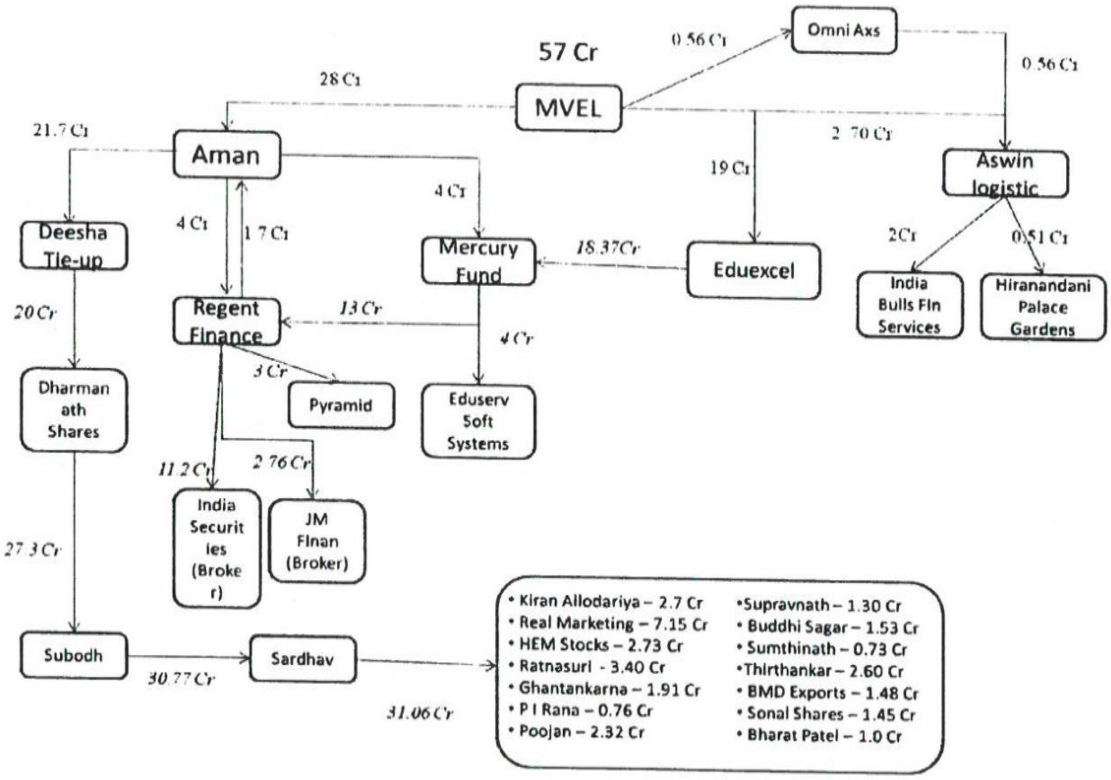
- Further, six Demand Drafts (5 for an amount of Rs. 9 Lac each and 1 for an amount of Rs. 5.78 Lac - total of Rs. 50.78 Lac) were drawn in favour of Hiranandani Palace Gardens Pvt. Ltd towards sale consideration of Flat purchased by Mrs. Uma Swaminathan & Mr. Saminathan in Chennai.

18.7 In view of the above, it was alleged that the explanation given by MVEL for the transfer of Rs. 3.263 crore to Noticees No. 2 and Omni Ax's was fabricated and the funds raised in the IPO for the object "General Corporate Expenses" had been siphoned off by MVEL with the help of Noticees No. 2 and Omni Ax's.

18.8 Therefore, to sum up the allegation of siphoning off the funds raised by way of IPO of the Company, it is observed from the Bank accounts of MVEL, that the following major payments were made to the following entities which allegedly involved IPO funds:

Date of transaction	**Entity**	**Amount (Rs. in cr)**	**Source Account No. (MVEL)**	**Reasons for payments as stated by MVEL**
25-01-2011	Aman Tie-up Private Limited	28	Indusind Bank (A/c no. 007W11639050)	Purchase of DCI 2K digital Cinema Projector BARCO DP 2K - 20 Cine Lens
25-01-2011	Eduexel Infotainment Limited	**17.5**	Bank of Maharashtra (A/c no. 60061922245)	Acquiring Screening rights
27-01/2011		0.5	Lakshmi Vilas Bank account (A/c	
09-02-2011		1	Axis Bank (A/c No. 910020047813917)	
25-01-2011	Aswin Logistic Ventures ('**Noticee No. 2**')	2	Lakshmi Vilas Bank account (A/c	Contents Advance
27-01-2011		0.003		
01-02-2011		0.70		
21-02-2011	Omni Ax's Software Limited	0.56	Axis Bank (A/c No. 910020047813917)	Vendor
Total		**50.263**		

18.9 Therefore, it was alleged that, interalia, financial transactions involving Noticee No. 2, as mentioned in previous paragraphs, stated by MVEL as being advances for the purpose of fulfilling IPO objects, were fraudulent transactions. It was further alleged that the said amount advanced to, interalia, Noticee No. 2 was not utilized for the objects of the IPO and siphoned off to various entities in the following manner:



18.10 In view of the allegations and observations above regarding the IPO proceeds utilization, a table on the actual utilization of IPO proceeds by MVEL vis-a-vis the proposed utilization as mentioned in the RHP/Prospectus is as under:

Sr. no.	**Objects of the IPO**	**To be utilized as per RHP/Prospectus (Rs. in cr)**	**Utilization as per MVEL's letter dated December 05, 2012 (Rs. in cr)**	**Utilization as per Investigation (Rs. in cr)**
1	Entering into screening agreement with 300 cinema theatres	15.00	2.37	NIL
2	Renovation and Up-gradation of cinema infrastructure with Digital Equipment and other related assets for select 100 screens	25.95	26.68	NIL

Sr. no.	Objects of the IPO	To be utilized as per RHP/Prospectus (Rs. in cr)	Utilization as per MVEL's letter dated December 05, 2012 (Rs. in cr)	Utilization as per Investigation (Rs. in cr)
3	Acquisition of company, acquisition of screening rights of company having similar line, range and objects of business	12.00	20.64	NIL
4	To meet general Corporate Expenses	3.799	3.61	-
5	Meeting the IPO expenses	3.251	2.86	3*
	Total	**60.00**	**56.16**	**3**

**Payment of fees to Merchant Banker.*

18.11 In view of the above table, it was alleged that a sum of Rs 50.263 Crore out of the Rs 60 Crore received by MVEL in the IPO was not utilised for the objects mentioned in RHP/Prospectus of the IPO and were siphoned off by MVEL with the help of its related entities. Therefore, it was alleged that MVEL had played fraud on IPO subscribers who trusted MVEL and its Board of Directors with their money to be properly utilized as per IPO objects.

18.12 It was also alleged that the entities which received the IPO proceeds from MVEL and the entities which in turn received the proceeds from these entities and then acted as conduit for transfer of the money to other entities had aided and abetted in the siphoning off of proceeds of IPO by MVEL. In view of this, it was alleged that, interalia, Noticee No. 2 had aided and abetted MVEL in the siphoning off of proceeds of IPO and have therefore violated the provisions of Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act.

19. The submissions of Noticee No. 2 are summarized below:

19.1 The proprietor of Noticee No. 2 viz. Usha Murugavel was unaware if any amount has been transacted to Noticee No. 2. She was also unaware of existence of any proprietorship firm named Aswin Logistic Ventures.

19.3 Noticee has relied upon the judgement of the Hon'ble High Court of Punjab and Haryana in the matter of Sardar Bhupinder Singh vs M/s Green Feeds and contended that even if Noticee No. 2 is alleged to be owned by Usha Murugavel, all the persons responsible to the said proprietary concern must be held liable.

19.4 Usha Murugavel has never been employed with MVEL and has not incurred any undue gain from the alleged fraudulent utilization of IPO funds by MVEL.

20. I note that vide the AO Order dated May 31, 2022, it was, interalia, held that MVEL had entered into fraudulent transaction with certain entities and therefore, had misutilized the proceeds of IPO, deviating from the objects of IPO. Therefore, I note that in the instant matter, remit of the proceedings is to decide, whether, Noticee No. 2, being a party to the alleged transactions by MVEL, had acted as conduit for transfer of the money to other entities, and had aided and abetted in the siphoning off of proceeds of IPO by MVEL.

21. In this regard, I note that Rs. 2.70 crore was paid by MVEL to Noticee No. 2 on January 25, 2011 and February 01, 2011. Further, Rs. 0.56 crore was paid to Omni Ax's on February 21, 2011, which were then transferred to Noticee No. 2. Thus, Noticee No. 2 received a total of Rs. 3.26 crore. From the bank account statement of Noticee No. 2, I note that Noticee No. 2 had drawn Demand Drafts (DD Nos. 60652 for an amount of Rs. 1.5 crore dated January 25, 2011 and DD Nos. 60676, 60677, 60678, 60679, 60680 for an amount of Rs. 9 Lac each and DD No. 60681 for an amount of Rs. 5 Lac dated February 01, 2011) in favor of Indiabulls Housing Finance Limited, to repay the outstanding amount relating to loan of M/s Saimira Holdings and Services Private Limited. Further, six Demand Drafts (5 for an amount of Rs. 9 Lac each and 1 for an amount of Rs. 5.78 Lac - total of Rs. 50.78 Lac) were drawn in favor of Hiranandani Palace Gardens Pvt. Ltd towards sale consideration of Flat purchased by Mrs. Uma Swaminathan & Mr. Saminathan in Chennai.

22. Vide its reply dated July 16, 2013, MVEL had submitted that, interalia, Noticee No. 2 was related to it as a vendor. However, no documentary evidence in support of the said claim had been submitted by MVEL nor were these entities

disclosed as vendors of MVEL in the RHP/Prospectus for the IPO. In view of the above, I note that the explanation given by MVEL for the transfer of Rs. 3.263 crore to Noticees No. 2 AND Omni Ax's was fabricated and the funds raised in the IPO for the object "General Corporate Expenses" had been siphoned off by MVEL with the help of, interalia, Noticee No. 2.

23. Therefore, I note that Noticee No. 2 acted as one of the links in the chain of transactions, through which MVEL siphoned of the funds it had raised in the IPO. The transactions involving Noticee No. 2 were clearly not meant to meet the object of IPO, and instead, were used to repay loan or pay consideration in lieu of purchase of flat through Demand Drafts.

24. In this regard, I note that proprietor of Noticee No. 2 has submitted that she was not aware of the transactions as detailed above, nor was she aware of any firm named Aswin Logistic Ventures. Therefore, without denying the role of Noticee No. 2 as a conduit of transfers of MVEL resulting in siphoning of funds of IPO, Usha Murugavel has denied being the proprietor of Noticee No. 2. In this regard, from the KYC documents pertaining to the account number of Noticee No. 2, I note that copy of PAN card of Usha Murugavel, duly signed by her had been provided as the KYC document, which proves beyond doubt that Usha Murugavel was the proprietor of Noticee No. 2. I also note that Usha Murugavel had appealed the AO Order dated May 31, 2022 in the Hon'ble SAT on grounds that she had not received the SCN/ Supplementary SCN in the matter. I note that if she was not associated with Noticee No. 2 in any capacity, she would not have brought the said fact before Hon'ble SAT. Therefore, in light of the aforesaid facts, I note that the said contention by Noticee No. 2/ Usha Murugavel is unfounded and the contentions made by her are not tenable.

25. In view of the above, I note that Noticee No. 2, by virtue of the said transactions had aided and abetted MVEL in siphoning off the IPO proceeds and has violated the provisions of regulations 3 (a), (b), (c), (d), and 4(1) of PFUTP Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992.

Issue No. III: If yes, whether the violations, if any, attract monetary penalty under the provisions of Section 15HA of the SEBI Act? If so, what quantum of monetary penalty should be imposed on the Noticees after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

26. It has been established in the foregoing paragraphs that Noticee No. 1 has violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a), (d), (e), (f), (k) and (r) of the PFUTP Regulations and Noticee No. 2 has violated the provisions of Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act and therefore, the aforesaid violations committed by the Noticees attract monetary penalty under Section 15HA of the SEBI Act, which reads as under:

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

27. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under: -

SEBI Act

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

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

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

c) the repetitive nature of the default.

28. I note that the amount of disproportionate gain or unfair advantage made by Noticees is not available. Further, it is not possible from the material on record to the calculate loss caused to investors as a result of the aforesaid default. With respect to the repetitive nature of the default, I find that there is nothing on record to indicate any past violations committed by the Noticee No. 2. I note that directions under Section 11, 11(4) and 11B of the SEBI Act had been issued against Noticee No. 1, vide Order dated February 18, 2020 in the instant matter.

ORDER

29. After taking into consideration the facts of the matter and the violations established against Noticees, I impose the following penalty on them:

Noticee No	Noticees (PAN)	Violation of provisions	Penalty u/s	Penalty
1	K Murugavel (AKIPN9312K)	Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a), (d), (e), (f), (k) and (r) of the PFUTP Regulations	Section 15HA of the SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakhs Only)
2	Aswin Logistic Ventures (proprietor-Usha Murugavel) (AAYPU1084C)	Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) of the PFUTP Regulations		Rs. 5,00,000/- (Rupees Five Lakhs Only)

I find that the said penalty is commensurate with the violations committed by Noticees in this case.

30. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

31. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Place: Mumbai **AMIT KAPOOR**

Date: March 16, 2023 **ADJUDICATING OFFICER**