BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/21679-21682]

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

In respect of:

Noticee No	Noticee Name	PAN
1.	**Mystic Electronics Limited**	**AAGCP1710R**
2.	**Krishan Khadaria**	**AAHPK3724G**
3.	**Asha Khadaria**	**AAMP1313N**
4.	**Madhumati Gawade**	**AKLPG1374L**

*(hereinafter collectively referred to as "**Noticees**")*

In the matter of Mystic Electronic Limited

BACKGROUND

1. Securities and Exchange Board of India (herein referred to as "**SEBI**") received a reference from the Director General of Income Tax (Investigation), Delhi, alleging price manipulation in the scrip of Mystic Electronics Limited (earlier known as Pearl Electronics Limited) (hereinafter referred as '**MEL/company/Noticee 1**') and avoidance of LTCG tax by certain entities. Therefore, SEBI conducted an investigation in the matter, *inter alia*, with a focus on utilization of preferential issue proceeds and disclosure violations under SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '**LODR Regulations'**) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter also referred to as "**PFUTP Regulations**") during March 19, 2013 to December 31, 2015 (hereinafter referred as '**Investigation Period'/'IP**'). On conclusion of the investigation, SEBI observed certain violations of provisions of, *inter-alia*, Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), PFUTP Regulations and LODR Regulations by

Noticees. The shares of the company are listed on the BSE Limited (hereinafter referred to as '**BSE/ Exchange**').

2. Based on findings of investigation, SEBI initiated adjudication proceedings against the Noticees as follows: -
   2.1. Noticee 1 for the alleged violation of provisions of Clause 35(C) of Listing Agreement read with Regulation 31 of LODR Regulations read with Regulations 103(1) and (2) of LODR Regulations;
   2.2. Noticees 1 to 4 for the alleged violation of provision of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations and Clause 43 of Listing Agreement read with Regulation 32 of LODR Regulations read with Regulations 103(1) and (2) of LODR Regulations and Section 21 of SCRA.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated December 02, 2020, undersigned was appointed as the Adjudicating Officer ('**AO**') under Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules'**) and under Section 23I of Securities Contract (Regulations) Act, 1956 (hereinafter referred to as '**SCRA**') read with Rule 3 of Securities Contract (Regulation)(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as '**SCRA Adjudication Rules'**) (both rules collectively being referred to as "**Adjudication Rules**"), to inquire into and adjudge under the provisions of Section 15HA of the SEBI Act, Section 23E of Securities Contracts (Regulation) Act, 1956(herein after referred to as "**SCRA**") and Section 23A of SCRA, the aforesaid alleged violations by Noticees as applicable as specified in paragraph 2 above.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice dated May 06, 2022 (hereinafter referred to as '**SCN'**) was issued to Noticees under the provisions of Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against them and why penalty, if any, not be imposed on them under:

   4.1. Section 15HA of the SEBI Act, for the alleged violation of provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations by Noticees 1 to 4.

4.2. Section 23E of SCRA, for the alleged violations of provisions of Clause 35(c) of Listing Agreement read with Regulation 31 of LODR Regulations read with Regulations 103(1) and (2) of LODR Regulations by Noticee 1.

4.3. Section 23A of SCRA, for the alleged violation of provisions of Clause 43 of Listing Agreement read with Regulation 32 of LODR Regulations read with Regulations 103(1) and (2) of LODR Regulations and Section 21 of SCRA by Noticees 1 to 4.

5. The summary of allegations levelled against Noticees in the SCN are given as below:

5.1. *Rs. 4.15 crore raised initially and Rs. 12.43 crore raised through premium, was not utilised by MEL for the purposes of the preferential issue proceeds and was in fact diverted and misutilised. It was further alleged that the objects of the issue as presented to shareholders/public in notice of EOGM of the Company held on May 25, 2013 was deceitful and presented information in a distorted manner. Thus, it is alleged that by deviating from the stated objects of issue as disclosed to shareholders and instead loaning out those funds and purchasing shares of unlisted companies which was misleading to the shareholders and investors, Noticee 1. i.e., the company, has committed a fraud as defined under 2(1)(c)(1)(2)(3)(4) of SEBI PFUTP Regulations, 2003, and thereby has violated the provisions of Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations.*

5.2. *It was also alleged that the aforementioned acts could not have been done without knowledge of the directors of MEL as a company acts through its directors and not by itself. In terms of Section 27(1) of SEBI Act, Mr. Krishan Khadaria, Ms. Asha Krishan Khadaria and Ms. Madhumati Gawade, the then non-independent directors of the company, by virtue of holding such directorships, were responsible to the company for the conduct of its business. In view of the same, it is alleged that the non-independent directors of the company, i.e., Noticees 2 to 4 were also part of the fraudulent act of the company as defined in 2(1)(c)(1)(2)(3)(4) of SEBI PFUTP Regulations, 2003 and thereby violated the provisions of Regulation 3(a)(b)(c)(d), 4(1),4(2)(f),(k) and (r) of PFUTP Regulations.*

5.3. *As per Clause 43 of the Listing Agreement, companies which mobilise funds through preferential issue are required provide to the Stock Exchanges and publish a statement showing the variations between the projected utilisation of the fund made by it in its object/s stated in the explanatory statement to the notice issued for the general meeting for considering preferential issue of securities and the actual utilisation of funds. In this regard, SEBI sought clarification from BSE regarding disclosure, if any, made to them by* *the company under Clause 43 of the Listing Agreement. BSE vide email dated November 20, 2019 stated that MEL had not submitted any separate disclosures in terms of Clause 43 of the Listing Agreement. It is, therefore, alleged that Noticees 1 to 4 have violated Clause 43 of the Listing Agreement read with Regulation 32 of the LODR Regulations, read with Regulation103(1) and (2) of LODR Regulations and f Section 21 of SCRA.*

5.4. *The company brought into effect the change in shareholding of Public shareholders pertaining to June 2013 quarter in December 2013 quarter, in terms of Clause 35(c) of Listing Agreement. Hence, on account of such delayed disclosure of change in public shareholders, it is alleged that Notice1 has violated Clause 35(c) of Listing Agreement read with Regulation 31 of LODR Regulations read with Regulation 103(1) and (2) of LODR Regulations*

6. The SCN was sent to Noticees 1 to 4 through Speed Post Acknowledgement Due (hereinafter referred to as '**SPAD**') on May 06, 2022. The SCN was also sent to Noticees 1 to 3 through digitally signed email dated May 09, 2022. The SCN issued through SPAD and digitally signed email duly served to Noticees 1 to 3. The SCN issued to Noticee 4 through SPAD returned undelivered. Vide email dated June 03, 2022, an alternate address and email id of Noticee 4 was sought from BSE. BSE, vide email dated June 06, 2022, provided the requisite information. Subsequently, vide letter dated June 06, 2022, SCN along with annexures was sent to the alternate address of Noticee as provided by BSE through SPAD and Hand delivery and the same was duly served on Noticee 4. Noticees were given fifteen (15) days' time to make the submissions in respect of the allegations made in the SCN. Vide letter dated May 23, 2022, Noticees 1 to 3 requested four (4) weeks' time to submit their reply to SCN. The request of Noticees 1 to 3 was acceded to and they were granted time till June 15, 2022 to submit their reply to the SCN. However, vide email dated June 15, 2022, Noticees 1 to 3 further requested for a week's time to submit the reply to the SCN. The request Noticees 1 to 3 once again acceded to and they were granted time till June 22, 2022 to submit the reply to the SCN. Subsequently, vide letter dated June 21, 2022, Noticees 1 to 3 requested for a copy of the Investigation Report in the matter and also requested for an opportunity of personal hearing in the matter. Vide letter dated July 04, 2022, relevant extracts of the investigation report and annexures were forwarded to Noticees 1 to 3 and they were granted time of seven (7) days to submit reply to the SCN. Noticees 1 to 3 once again, vide letter dated July 13, 2022, requested additional time of seven (7) days to submit the reply to the SCN. Vide email dated July 14, 2022, an opportunity of personal hearing was granted to Noticees 1 to 3 on July 26, 2022 and they were directed to submit the reply to the SCN on or before the schedule date of hearing. Vide email as well as letter dated July

26, 2022, Noticees 1 to 3 submitted the reply to the SCN. On the scheduled date of hearing Authorized Representative (**AR**) of Noticees 1 to 3, namely, Vinay Chauhan and K.C. Jacob, appeared for the hearing and reiterated the submission made by Noticees 1 to 3. Further, AR requested additional time till August 02, 2022, for making additional submission on behalf of Noticee 1. The request of AR acceded to and AR was granted time till August 02, 2022 for submitting additional reply. However, Noticee 1 made additional submission vide email and letter August 10, 2022.

7. W.r.t. Noticee 4, Noticee 4 submitted her preliminary reply vide email dated June 23, 2022. Vide hearing notice dated July 20, 2022, an opportunity of personal hearing was granted to Noticee 4 on August 03, 2022. The said hearing notice was duly served to Noticee 4 through SPAD and digitally signed email dated July 20, 2022. Vide email dated August 02, 2022, Noticee 4 informed that she has not appointed any representative to appear for hearing and in the process of submitting the details and final reply to SCN. On the scheduled date of hearing, Noticee 4 failed to attend the hearing. On August 05, 2022, Noticee 4 submitted her additional reply to the SCN. In the interest of natural justice vide email dated September 29, 2022, another opportunity of personal hearing was granted to Noticee 4 on October 07, 2022. However, Noticee 4 once again failed to attend the opportunity of personal hearing granted to her. Accordingly, vide email dated October 11, 2022, a last and final opportunity of personal hearing was granted to Noticee 4 on October 14, 2022. However, Noticee 4 once again failed to attend the opportunity of personal hearing granted to her.

8. I note that sufficient opportunities have been given to Noticee 4 to avail of the opportunity of personal hearing but she has failed to avail of these. Therefore, I am of the view that principles of natural justice have been complied with and the matter can be proceeded with against Noticee 4 based on documents/ material available on record and reply submitted by Noticee 4.

9. The replies submitted by Noticees are summarized as follow:

Reply submitted by Noticee 1: -

9.1. *Noticee denied the allegation levelled against them.*

9.2. *The impugned proceedings suffer from enormous laches. The present SCN has been issued on May 06, 2022 (i.e. almost 9 years after the impugned transaction). Noticee has placed reliance on the judgements of Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of Ashlesh Gunvantbhai Shah Vs SEBI (Order dated January 31, 2020 in Appeal No. 169 of 2019), Parag Sarda Vs SEBI (Order dated November 21, 2020 in*

Appeal No. 279 of 2020), Morepan Laboratories Limited (Order dated April 16, 2021 in Appeal No. 62 of 2020), Ashok Shivlal Rupani and anr. Vs SEBI (Order dated August 22, 2019 in Appeal No. 417 of 2018) and Anita Jajodia and anr. Vs SEBI (Order dated January 21, 2021 in Appeal No. 30 of 2021) for the delay in initiating proceedings.

9.3. *The utilization/transfer of funds raised by them through preferential allotment were bonafide and not actuated by any sinister intent or design. Out of the total preferential allotments proceeds of Rs. 37.08 crore the erroneous allegation of misutilisation is qua an amount of Rs. 16.58 crore which was given as loan, investment in shares, other investments etc. There is no allegation for the balance amount of Rs. 20.50 crore.*

9.4. *The funds raised by Noticee 1 through preferential allotments were utilized for the benefit of the company and its shareholders. As per the bank statement and ledger statement, the preferential allotment amounts were, inter- alia, utilised for giving loans, for making investment in securities, advance against the property etc. The majority of the loan given have been returned by the borrowing entities with interest and same is lying with them. Further, amounts utilised by them for making investments are lying with them in the form of securities. Further the said allotment had the approval of the shareholders and stock exchanges and details about the same were in public domain. Neither SEBI nor stock exchange had raised any grievance about the same, including with regard to any shortcomings/discrepancies (as being raised now) in the disclosures made in the Notices of EGM issued to the shareholders, seeking their approval for the preferential allotment. The preferential allotment funds were utilized strictly in consonance with the "objects of the issue" as disclosed to shareholders. The funds deployed by them under the head of general corporate purpose were used for objects provided in the Memorandum of Association of the Company.*

9.5. *Noticee has also provided justification for the <u>advances against property</u> amounting to Rs. 13.25 crore.*

9.5.1. ***M/s Wonder Procon Private Limited ("Wonder"): -*** *The company had signed MOU with Wonder on June 01, 2013 and transferred Rs. 5 crore to them for the purpose of setting up an establishment in Kolkata for the Company's expansion project. Unfortunately, Wonder could not effectively deploy the said amount for locating properties as stated in the MOU, and the MOU was cancelled by both the parties. Subsequent to cancellation of the MOU, the entire amount of Rs. 5 crores were refunded back to them. Since the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Further, the MOU clearly states* *that the amount was given as an advance for locating properties in Kolkata for the purpose of setting up an establishment for the company's expansion project. Therefore, based on the MOU, no adverse inference can be drawn against them. Further, on the basis of the revenue of Wonder (Rs. 20.93 Crore) as on March 31, 2014 and the loss incurred by them for the FY 2013-14, no adverse inference can be drawn against them. Further, with regard to the observation that Wonder has been struck off, their transactions with Wonder were only during the FY 2013-14 wherein on June 01, 2013, they advanced them Rs. 5 crores, and they refunded the entire amount back to them after 4-5 months (as stated in the SCN). Thereafter, they had no business connection with Wonder. In any event, as per the MCA website, Wonder had been struck off sometime after September 30, 2016, i.e. during the FY 2016-17. Therefore, based on the subsequent events, no adverse inference can be drawn against them.*

9.5.2. ***M/s Blosson Dealcom Private Limited ("Blossom")*** *- The company has signed an MOU with Blossom June 03, 2013 and transferred Rs. 1.5 crore to them for the purpose of setting up an establishment in Kolkata for the company's expansion project. Unfortunately, Blossom could not effectively deploy the said amount for locating properties as stated in the MOU, and the MOU was cancelled by both the parties. Post cancelling the MOU, the entire amount of Rs. 1.5 crore was refunded back to them. Merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Further, the MOU clearly states that the amount was given as an advance for locating properties in Kolkata for the purpose of setting up an establishment for the company's expansion project. Therefore, based on the MOU, no adverse inference can be drawn against them. Further, based on the revenue of Blossom (Rs. 14.86 Cr) as on 31st March, 2014 and the loss incurred by them for the FY 2013-14 no adverse inference can be drawn against them. Further, with regard to the observation that Blossom has been struck off, it is submitted that their transactions with Blossom were only during the FY 2013-14 wherein on June 01, 2013, wethey advanced them Rs. 1.5 crore, and they refunded the entire amount back to them after 4-5 months (as stated in the SCN). Thereafter, they had no business connection with Blossom. In any event, as per the MCA website, Wonder had been struck off* *sometime after 30th September, 2016, i.e. during the FY 2016-17. Therefore, based on the subsequent events, no adverse inference can be drawn against them.*

9.5.3. ***M/s Hemlata Vinimay Private Limited ("Hemlata")*** *- The company has signed an MOU with Hemlata on June 03, 2013 and transferred Rs. 1.75 crore to them for the purpose of setting up an establishment in Kolkata for the company's expansion project. Unfortunately, Hemlata could not effectively deploy the said amount for locating properties as stated in the MOU, and the MOU was cancelled by both the parties. Post cancelling the MOU, the entire amount of Rs. 1.75 crore was refunded back to them. Merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Further, the MOU clearly states that the amount was given as an advance for locating properties in Kolkata for the purpose of setting up an establishment for the company's expansion project. Therefore, based on the MOU, no adverse inference can be drawn against them. Further, with regard to the observation that Hemlata does not exist, it is submitted that the said company had changed its name to "Hansit Merchants Private Limited" w.e.f 13.06. 2018.. Further, it is submitted that the said Company is active as on date and they have been regularly filing their Annual Report, Balance Sheet and other Financial Statements with the appropriate authorities. It is submitted that during the entire proceedings SEBI never asked them about the erstwhile Hemlata from them had SEBI asked for the same it would have been provided. Clearly, the whole attempt has been to arrive at pre-conceived conclusions, by deliberately not seeking details/clarifications from us.*

9.5.4. ***M/s Visible Real-estate Ventures Private Limited ("Visible")*** *- The company has signed an MOU with Visible on June 01, 2013 and transferred Rs. 5 crores to them for the purpose of setting up an establishment in Kolkata for the company's expansion project. Unfortunately, Visible could not effectively deploy the said amount for locating properties as stated in the MOU, and the MOU was cancelled by both the parties. Post cancelling the MOU, the entire amount of Rs, 5 crores was refunded back to them. Merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU executed* *on a plain paper is legally invalid. Further, the MOU clearly states that the amount was given as an advance for locating properties in Kolkata for the purpose of setting up an establishment for the company's expansion project. Therefore, based on the MOU, no adverse inference can be drawn against them. Further, based on the revenue of Visible (Rs. 32.24 Cr) as on 31st March, 2014 and the loss incurred by them for the FY 2013-14 no adverse inference can be drawn against them. Further, with regard to the observation that Visible has been struck off, it is submitted that their transactions with them were only during the FY 2013-14 wherein on June 01, 2013, we advanced them Rs. 5 Crore and they refunded the entire amount back to us after 4-5 months (as stated in the SCN). Thereafter, they had no business connection with Visible. In any event, as per the MCA website, Visible had been struck off sometime after 30th September, 2016, i.e. during the FY 2016-17. Therefore, based on the subsequent events, no adverse inference can be drawn against them.*

<u>Redeployment of the refunded amount of Rs. 13.25 Crore</u>

9.6. *It is submitted that from the refunded amount of Rs. 13.25 Crore, the allegation of misutilization of preferential allotment is limited and restricted to Rs. 4.15 Crore. On the remaining amount i.e., 9.10 Crore there is no allegation of misutilization.*

9.7. ***Nouveau Global Ventures Limited ("Nouveau")** – An amount of **Rs. 2.56 crore** (Rs. 30 Lakhs on 19.09.2014 and Rs. 2.26 crore on 12.12.2014) was transferred to Nouveau as Loans & Advances in the ordinary course of business. The said amount was repaid by Nouveau to them along with interest on 20.07.2017, 28.08.2017, 01.09.2017, 14.09.2017, 09.10.2017, 16.10.2017, and 10.11.2017. The same would be evident from the Ledger statements and Bank statements. Merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Therefore, based the MOU, no adverse inference can be drawn against them. In any event, the funds which were transferred to them have been received back by them with interest.*

9.8. ***Globe Soya Products Limited ("Globe")** - They had regular fund transactions with Globe wherein they had given funds as loan to them on various instances and received back with interest. It is submitted that the alleged **Rs. 40 Lakhs** transferred to them on 14.01.2016 as was part of Loans & Advances in the ordinary course of business. It is submitted that as on March 31, 2017 they had paid the entire* *outstanding amount along with interest. The same would be evident from the Ledger statements and Bank statements. Merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Therefore, based on the MOU, no adverse inference can be drawn against them. In any event, the funds which were transferred to them have been received back by us with interest.*

9.9. ***Pearl Agriculture Limited ("Pearl")*** *- They had regular fund transactions with Pearl wherein they had given funds as loan to them on various instances and received back with interest. The alleged Rs. 50 Lac transferred to them on 13.05.2014 as was part of Loans & Advances in the ordinary course of business. It is submitted that as on March 31, 2015 they had paid the entire outstanding amount along with interest. The same would be evident from the Ledger statements and Bank statements.*

9.10. ***Lakshami Builders & Developers ("Lakshami")*** *- They had transferred Rs. 1.25 crore to them as Loans & Advances in the ordinary course of business. The said amount was repaid back to them in full along with interest, and the same is recorded in the SCN. With regard to the observation that no MOU was provided in support of documentary evidence, nothing turns on the same as they had received the said amount along with interest much prior to the issuance of SCN. Therefore, based on the alleged transactions with Lakshami, no adverse inference can be drawn against us.*

9.11. *It is submitted that from the Bank Statements and Ledger Statements with regard to the transactions with the aforesaid entities, it is clear that they had received principal amount along with interest from all the four entities. Therefore, the allegation that no interest was paid by the said entities cannot sustain.*

9.12. ***Luhariwala Reality Pvt Ltd ("Luhariwala")*** *- It is denied that no investment was made by them in Luhariwala as alleged. In this regard, the copy of application for equity shares issued to Board of Directors of Luhariwala has been submitted. In view of the same the allegation that no investment was made by them in Luhariwala cannot sustain. Further, it is submitted that since Luhariwala could not allot the shares to them they had refunded the amounts to us on June 19, 2014. The same would be evident from the Ledger statements and Bank statements.*

9.13. *Further, with regard to the observation that Mr. Krishnan Khadaria was a common director in Pearl and Nouveau, it is submitted that nothing turns on the same. As stated hereinbefore the fund transaction with Pearl and Nouveau were genuine commercial transactions carried out at arm's length basis. It is denied that Rs. 4.05 Crore was redeployed by them as loan without any loan agreement as alleged.*

Further, it is denied that the said amount was not used for their business purpose as alleged.

9.14. *It is denied that the money to the extent of Rs, 4.15 Crore had been misutilized as alleged. It is submitted that all these fund transactions were bonafide, genuine and were commercial in nature. The preferential allotment funds were utilized strictly in consonance with the "objects of the issue" as disclosed to shareholders including objects provided in the Memorandum of Association of the Company. Here it may be noted that that from the total amount of Rs. 23.07 Crore adverse <u>inference has been drawn qua Rs. 4.05 Crore (advance towards property) and Rs. 10 lakhs investment in shares). On the remaining amount i.e. 18.92 Crore there is</u> no allegation of misutilization. As stated herein before, as on date the funds <u>which were transferred as loans have already been received back with interest.</u> In view of the aforesaid submission the allegation of misutilization of preferential allotment cannot sustain qua them.*

<u>Utilization of amount raised through premium</u>

<u>Advance against Property – Rs. 3.65 Cr</u>

9.15. ***M/s Wizard Estate Private Limited ("Wizard")*** *and* ***M/s Frontier Mercantile Private Limited ("Frontier") –*** *In the context of advance against property wherein they had entered into MOU with Wizard and Frontier. Unfortunately, the said entities could not effectively deploy the said amount for locating properties as stated in the MOU, and the MOU was cancelled by both the parties. Post cancelling the MOU, the entire amount was refunded back to them. Merely because the one of the cancellation deed for MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the cancellation deed for MOU are not disputed. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Therefore, based on the MOU, no adverse inference can be drawn against them.*

9.16. ***Globe Soya Products Limited*** *- It is reiterated that they had regular fund transactions with Globe wherein they had given funds as loan to them on various instances and received back with interest. It is submitted that the alleged Rs. 40 Lac transferred to them on 14.01.2016 as was part of Loans & Advances in the ordinary course of business. It is submitted that as on March 31, 2017 they had paid the entire outstanding amount along with interest. The same would be evident from the Ledger statements and Bank statements.*

9.17. ***Krishkan Investments Private Limited*** *- With regard to the fund transaction with Krishkan Investments Pvt Ltd., it is submitted that they had transferred Rs. 10 Lac to them as short-term working capital in ordinary course of business. The said amount was repaid back to them on 02.07.2016 and 13.10.2016. The same would be evident from the Ledger statements and Bank statements*

9.18. ***3 M Enterprises*** *- It is submitted that the investment made in 3 M Enterprises was in the ordinary course of our business as the Company was a partner in the said firm. It is denied that 3M Enterprises was not in the same business as the Company. It is submitted that the Memorandum of Association of the Company clearly provides consultancy as one of the objects of the Company. Therefore, based on the introduction of capital in 3 M Enterprises, no adverse inference can be drawn against them.*

9.19. ***Payment towards purchase of shares*** *- It is submitted that the investments made in the shares of Kherapati Vincom Pvt Ltd, Finworth Investment Pvt Ltd, and Rising Sunrock Products Pvt Ltd were in the ordinary course of our business. However, with regard to the allegation that no documentary evidence was provided in support for the investment in the said companies, they have enclosed the copy of Bills/ Invoice/ Share Application and Allotment letter evidencing that theyhad invested in the shares of the said companies. In view of the aforesaid it is denied that they have misutilized funds to the extent of Rs. 2,52,52,000/- as alleged.*

Loan out of the premium amount - 7.61 Cr

9.20. ***MC Jain Info Services Pvt Ltd. ("MC Jain")*** *- With regard to the fund transaction with MC Jain, it is submitted that they had regular fund transactions with MC Jain. It is submitted that they had given an amount of Rs. 85 Lac (Rs. 35 Lac on 08.08.2014 and Rs. 50 Lac on 19.08.2014) to MC Jain as loan in the ordinary course of business. The said amount was repaid to them along with interest on various days. The same would be evident from the Ledger statements and Bank statements. Merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Therefore, based on the MOU, no adverse inference can be drawn against them. It is denied that no such loan had been given and the said amount was misutilized as alleged.*

9.21. ***The Right Address Ltd. ("Right")*** *- With regard to the fund transaction with The Right, it is submitted that on December 04, 2014 they had given an amount of Rs. 50 lakhs to them lac them as loan in the ordinary course of business. The said amount* *was repaid to them along with interest on 09.01.2015 and 13.08.2015. The same would be evident from the Ledger statements and Bank statements. With regard to the observation that no MOU was provided in support of documentary evidence, nothing turns on the same since they had received the said amount along with interest much prior to the issuance of SCN. It is denied that no such loan had been given and the said amount was misutilized as alleged.*

9.22. ***Riddhi Siddhi Ventures Pvt Ltd. ("Riddhi")*** *- With regard to the fund transaction with Riddhi, it is submitted that on December 30, 2014 they had given an amount of Rs. 50 Lac to them on December 30, 2014 after duly executing an MOU. It is submitted that they did not receive the entire funds from them therefore, the balance amount receivable was written off as bad debts in our financial statements for FY 2017-18. The same would be evident from the Ledger statements and Bank statements. Merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Therefore, based on the MOU, no adverse inference can be drawn against them.*

9.23. ***Mr. Janakrey Turakia*** *- With regard to the fund transactions with Mr. Janakrey Turakia it is submitted on December 12, 2014 they had given an amount of Rs. 50 lacs to him as short-term working capital in the ordinary course of business and an MOU was signed to give effect to the said transaction. The said amount was received back by us on 16.12.2014, i.e. within 4 days. The same would be evident from the Ledger statements and Bank Statements. Merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Therefore, based on the MOU, no adverse inference can be drawn against them. It is denied that no such loan had been given and the said amount was misutilized as alleged.*

9.24. ***Mr. Mahesh Gaggar*** *- With regard to the fund transaction with Mr. Mahesh Gaggar, it is submitted that on July 19, 2014, they had given an amount of Rs. 20 Lac to Mahesh as loan in the ordinary course of our business after duly executing MOU. The said amount was repaid back to them along with interest on 12.08.2014, 11.09.2014 and 24.03.2015. The same would be evident from the Ledger statements and Bank statements. Merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU* *executed on a plain paper is legally invalid. Therefore, based on the MOU, no adverse inference can be drawn against them. Further, it is denied that no such loan had been given and the said amount was misutilized as alleged.*

9.25. ***P & Y Enterprises** - With regard to the fund transaction with P&Y Enterprises, it is submitted that on November 26, 2014 they had given an amount of Rs. 1 crore to P & Y Enterprises as loan in the ordinary course of business after duly executing an MOU. The said amount was repaid back to them along with interest on various days. The same would be evident from the Ledger statements and Bank statements. Further, merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Therefore, based on the MOU, no adverse inference can be drawn against them. Further, it is denied that no such loan had been given and the said amount was misutilized as alleged.*

9.26. ***Singh Wahini Moulders & Holdings Pvt. Ltd. ("Singh")** - With regard to the fund transaction with Singh Wahini Moulders & Holdings Pvt. Ltd., it is submitted that they had granted a loan of Rs. 90 Lac (Rs. 45 Lac on 01.12.2014 and Rs. 45 Lac on 03.12.2014) to the said entity in the ordinary course of business after duly executing MOU. The said amount was repaid back to them along with interest on 17.01.2015, 19.01.2015 and 17.02.2015. The same would be evident from the Ledger statements and Bank statements. Merely because the MOU was not on a stamp paper, SEBI cannot draw adverse inference against them. Here, it may be appreciated that the contents of the MOU are not disputed. Further, there is nothing in the law which states that MOU executed on a plain paper is legally invalid. Therefore, based on the MOU, no adverse inference can be drawn against them. Further, it is denied that no such loan had been given and the said amount was misutilized as alleged.*

9.27. *The "objects of issue" as disclosed in the Notice of EGM of the Company held on May 25, 2013 were as follows: "The object of the issue is to raise resources to meet the future capital expenditure, long term capital requirements, to diversify into Electronics business and for general corporate purposes " Reading of the same would show that it is absolutely clear and unambiguous.*

9.28. *Admittedly, the allottees who were subscribing to the shares by way of preferential allotment at a premium were all sophisticated investors. None of them had any grievance with the objects of the issue, including in terms of not being able to comprehend the same or that the disclosure was misleading or that the same was deceitful or distorted. Further, there is not even a single complaint filed by any of the preferential allottees or any other shareholders/investors. In the absence of any* *complaint from the preferential allottees or any other shareholders/investors- the consumers of the information, it is inexplicable as to how it has been alleged that the "objects of issue" were deceitful or distorted. Further, in the explanatory statement of notice of EGM, the Auditor has certified that the preferential allotment is being made in accordance with the requirement of SEBI (ICDR) Regulations, 2009.*

9.29. *Admittedly, the said Notice containing the disclosures regarding the "objects of issue" was filed by the Company with the stock exchanges and the same was in public domain. At no point of time, either stock exchange or SEBI has raised any issues with the disclosures in the said Notice. It may be noted that both the preferential allotments were carried out in consonance with the then applicable provisions of Companies Act 1956, SEBI ICDR Regulations 2009 and Stock Exchange Circulars. Therefore, the allegations are misplaced and patiently misconceived.*

9.30. *Further, during the Investigation and even in this reply the details of fund transferred/received by the Company to/from other entities/persons have been properly explained by them with supporting bank statements and ledger statements.*

9.31. *It is submitted that, given the fact that the Company was well within its right to utilise the issue proceeds, amongst other things, for "general corporate purposes ", the issue of "misutilisation" cannot and does not arise. Further, the funds deployed by them under the head of "general corporate purposes" , were used for the objects provided in the Memorandum of the Company.*

9.32. *Without prejudice to the aforesaid, it is submitted that the loan amounts have been repaid by the entities with interest to the Company. Further, it is denied that they had not charged interest, as alleged. Admittedly, all other parties have paid interest.*

9.33. *lt is denied that by they have mislead their shareholders and investors and thereby committed fraud on them, as alleged. The said misplaced and unsubstantiated allegation is offshoot of mere surmises and conjectures. Admittedly, there is not even a single shareholder/investor complaint in this regard. Based on the purported theory of alleged misutilisation -which on the face of it is erroneous, allegation of committing fraud on shareholders and investors has been erected, which is legallv untenable and unsustainable. It is respectfully submit that the allegation of fraud lacks any plausible foundational basis.*

9.34. *It is denied that they have violated regulations 3(a), (b), (c) and (d) and 4(1), (2) (f) (k) and (r) of PFUTP Regulations, as alleged. Said provisions have been sweepingly invoked without substantiating as to how the same are applicable in the facts and circumstances of the case. In any event, with regard to alleged violation of provisions of PFUTP Regulations following be noted:*

9.34.1. It is denied that they have bought or sold or otherwise dealt in securities in a fraudulent manner as alleged.

9.34.2. It is denied that they have used or employed, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under as alleged.

9.34.3. It is denied that they have employed 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 as alleged.

9.34.4. It is denied that they have engaged in any act, practice, course of business which operates or would operate as fraud or deceit upon, any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under as alleged.

9.34.5. It is denied that they have indulged in a fraudulent or an unfair trade practice in securities as alleged.

9.34.6. It is denied that they have knowingly published or caused to publish any information relating to securities, including financial results, financial statements, mergers and acquisition, regulatory approvals, which is not true as alleged.

9.34.7. It is denied that they have indulged in disseminating information or advise, through any media which is false or misleading and which is designed or likely to influence the decision of investors dealing in securities as alleged.

9.34.8. It is denied that they have indulged in planting false or misleading news which may induce sale or purchase of securities as alleged.

9.35. *In so far as allegation of variations in utilization of issue proceeds is concerned, the same is again totally misplaced and completely contrary to factual position on record. There is no "variation " in utilization of issue proceeds as alleged. It was unambiguously stated that the "object of the issue is to raise resources to meet the future capital expenditure, long term capital requirements, to diversify into Electronics business and for general corporate purposes". Clearly, giving of loans and investment in shares are part of the business activities of the Company (as contained in the Memorandum of Association). Therefore, the utilization of issue proceeds by the Company, inter alia, for giving loans, investing in shares cannot result in allegation of "variation" of issue proceeds.*

9.36. *In their case, admittedly, they had not made any projections at all (either regarding the utilization of funds or the profitabilitv) in the object's stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities. Therefore, in the absence of fulfillment of the threshold requirement for the applicability of Clause 43, the issue of its breach by them cannot and does not arise. Further, since no projections were made the issue of variation can also not arise.*

9.37. *Additionally, they submit that even in the SCN, save and except making a sweeping and bald allegation, it has not been demonstrated, even remotely, as to:*

9.37.1. How it has been alleged that they had made any projections regarding utilization of the proceeds. Which part of the explanatory statement makes the projections-nothing has been spelled out.

9.37.2. How it has been alleged that there were variations between the projected utilization and the actual utilization. What was the projected utilization and what was the actual utilization and what was the variation-nothing has been spelled out

9.38. *It may also be noted that, it is an undisputed position that the funds loaned by the Company have come back to the Company. Further, the funds have come back not pursuant to issuance of SCN, but much prior to it - consequent to the follow up by the Company. Under the circumstances, it cannot be alleged that they had varied the utilization of the issue proceeds & misutilized the issue proceeds.*

9.39. *Pertinently, it may also be pointed out that at the relevant time (i.e. 2013), the preferential allotments by listed companies were governed by Regulations 70 to 79 (contained in Chapter VII) of the SEBI ICDR Regulations 2009. The preferential allotments made by them, in terms of issuance of notice, disclosures in the explanatory statement etc., were in consonance with the applicable provisions of Companies Act 1956, SEBI ICDR Regulations 2009 & Stock Exchange Circulars/requirements.* ***It may be noted that ICDR Regulations 2009 pertaining to preferential allotments did not obligate the companies to make projections.***

9.40. *In the Notice, in context of violation of Clause 43 of the Listing Agreement, reference has also been made to Regulation 32 of LODR Regulations. The said reference is also totally misplaced. Firstly, the said LODR Regulations (which became applicable from the year 2015), came much after the impugned preferential allotments (in the year 2013). Secondly, the substantive requirements of the present Regulation 32 cannot be read into Clause 43 of the Listing Agreement, in order to allege breach. Thirdly, the provisions of Regulation 32 (which are substantive in nature and breach thereof results in adverse civil and punitive consequences) cannot be applied retrospectively. It may be noted that to some extent the provisions of Regulation 32 (1) (b) are pari materia* *with Clause 43 of the Listing Agreement. However, the provisions of Regulation 32 (1) (a) are absolutely new and have come into force for the first time in the year 2015. The requirements of Regulation 32 (l) (a) also cannot be applied retrospectively in order to allege breach qua us. In view of the aforesaid, they have not breached the provisions of Clause 43 of the Listing Agreement, as alleged.*

9.41. *With regard to observation in Para 14 of the Notice it is submitted that the alleged delay in the disclosure of change in public shareholders pertaining to June 2013 quarter was an error of inadvertence and the same occurred because of bonafide error by secretarial department and not actuated by any sinister intent or oblique motives. That post December 2013 they have always filed the shareholding pattern with the exchanges within the prescribed time. That the alleged violation of the provisions of Clause 35 (c) of Listing Agreement, is at the highest a technical and procedural lapse, which is venial in nature. Further, the same was not deliberate and intentional.*

9.42. *It is submitted that they have not made any gains or derived unfair advantage, as a result of falsely alleged violations. There is nothing to indicate in the Notice, that they have made any gains. They have also not caused any loss to the investors or group of investors. In the true and correct facts and circumstances as hereinabove stated, it is clear that the allegations in the Notice do not flow out of the factual position and are based on mere surmises and conjectures and cannot be legally sustained.*

9.43. *We are setting out following mitigating/ extenuating factors for your kind consideration:*

9.43.1. Admittedly, <u>the loan amounts given by the Company to certain persons/entities — which are alleged to be misutilized, have already come back into the Company long-time back.</u> It is not the case that the alleged misutilized amounts were siphoned off (same is not even alleged) and have not come back. In fact, much prior to the issuance of the Notice, the amounts which are alleged to be misutilized had already come back to the Company.

9.43.2. That the funds raised by the Company have been profitably deployed by the Company and the same is also evidenced by the financials of the Company wherein the Profit after Tax has increased from Rs. 21.70 lacs in F/Y 2013-14 to 60.01 lacs in F/Y 2014-15 and to Rs. 57.3 lacs in F/Y 2015-16. Same is also reflected by our balance sheet and the financial information filed with the stock exchanges over the years.

9.43.3. There have been no investor complaints etc. against the Company.

9.43.4. That the alleged violations, if any, are not deliberate and intentional and in contumacious disregard of provisions of law.

9.43.5. *That the alleged violations have not caused any loss to any investor and have also not adversely affected the investors or the securities market in any manner. Further, it may be noted that there are no investor complaints in this regard.*

9.43.6. *There are no allegations that the Company had tried to manipulate its share prices or indulged in any fraudulent practices pertaining to volume creation etc.*

9.43.7. *There has been undue delay in initiation of proceedings (i.e. around 9 years). It is well settled now that "undue delay is a mitigating factor which has to be considered while imposing a penalty under section 15J of the SEBI Act". (Refer: Anita Jajodia vs SEBI - SAT Order dated 20.01.2021).*

9.43.8. *Clearly, the allegations pertain to a very old period i.e. around 9 years old. The alleged violations, if any, have already been cured and have been rendered academic. At this distance of time, no purpose would be served by penalizing the Company or its directors.*

9.44. *Therefore, imposition of any monetary penalty would be unjustified and unwarranted. In the circumstances, it is prayed that the charges in the Notice be dropped and no penalty be imposed.*

9.45. *They had not committed any fraud as they had not induced anybody to deal in securities by placing reliance on the order of Hon'ble Supreme Court of India in SEBI and Ors. Vs. Kanaiyalal Bladevbhai Patel and Ors. (2017) 15 SCC 753. Noticee 1 also stated that there was no complaint from any person including the preferential allottees or the shareholders of the company regarding any inducements etc.*

9.45.1. *Noticee 1 also stated that an act shall be considered as manipulative, fraudulent and unfair trade practice in the securities market if*

9.45.1.1. *Any act of (a) diversion (b) misutilization (c) siphoning off of assets or earnings or any concealment of aforesaid acts; OR any device, scheme or artifice to manipulate (a) the books of accounts or (b) financial statement*

9.45.1.2. *Would directly or indirectly manipulate the price of securities of that company.*

9.45.2. *Therefore, Noticee 1 stated that for the alleged act of misutilization/diversion to fall under the provisions of PFUTP Regulations, it will have to be first alleged that the alleged act of misutilization/diversion has directly / indirectly resulted in manipulation of price of securities of the company. However, there is no allegation in this regard. Therefore, the alleged violation of provision of PFUTP Regulations cannot sustain. In this context, reliance has been placed on the order passed by Whole Time Member of SEBI in the matter of JMD Ventures Limited (Order dated September 14,2 022), V B Industries Limited (Order dated July 08, 2021).*

9.46. *Noticee 1 submitted that no penalty can be imposed under section 23E of SCRA as the said provision is limited and restricted, only to those companies which are managing either 'Collective Investment Scheme' or 'Mutual Fund' or 'Real Estate Investment Trust' or 'Infrastructure Investment Trust' or 'Alternative Investment Fund' and they are not a company falling under any of the aforesaid categories. In this regard reliance is being placed on the observations of Whole Time Member, SEBI in the matte of JMD Ventures Limited (order dated September 14, 2022).*

9.47. *Noticee 1 had stated that they had not made any projections at all in the Explanatory Statement, therefore, issue of disclosing any variation in the projected utilization/profitability and the actual utilization/profitability does not rise.*

9.48. *Noticee 1 also stated that ICDR Regulation 2009 pertaining to preferential allotments did not obligate the companies to make projections and the projections were mandated only in case of IPOs. Therefore, the alleged violation of clause 43 is legally untenable and unsustainable.*

9.49. *Noticee 1 further states that firstly, violation of 32 of LODR Regulations is totally misplaced as the said LODR Regulations came much after the impugned preferential allotments. Secondly, substantive requirements of the present Regulation 32 cannot be read into clause 43 of the Listing Agreement in order to allege the breach. Thirdly, the provision of Regulation 32 cannot be applied retrospectively. It may be noted that to some extent the provisions of Regulation 32 (1) (b) are pari material with clause 43 of Listing Agreement. However, the provisions of Regulation 32(1) (a) are absolutely new and have come into force for first time in the year 2015. The requirements of Regulation 32(1)(a) also cannot be applied retrospectively in order to allege breach qua us. In any event there was no deviation in the use of proceeds from the objects stated in the Explanatory Statement to the notice sent to the shareholders. All the funds were utilized in consonance with the objects as stated in the Notice. In view of the aforesaid, they had not breached the provisions of Regulation 32 of LODR Regulations as alleged.*

9.50. *Noticee1 further stated that the information contained in the Notice was presented in a fair manner and strictly in consonance with the applicable regulatory requirement as contained in then applicable ICDR Regulations 2009.*

9.51. *Noticee 1 further submitted that the amount given as loan has come to back to them along with interest long time back. Noticee 1 has provided TDS to justify its contention. They also stated that the amount has not been siphoned off. In this regard, in addition to the bank and ledger statement already submitted, they have submitted the certificate from statutory auditor inter alia certifying the receipt of the money.*

Reply of Noticees 2 and 3

10. *From the reply submitted by Notice 2 and Noticee 3, I note that vide separate letter dated July 26, 2022, they have submitted the identical reply. The reply submitted is summarized below:*

    10.1. *Noticees 2 and 3 denied the allegation levelled against them.*

    10.2. *It is submitted that the said SCN is not legally maintainable and the same needs to be dropped forthwith. Admittedly, the said SCN has been issued to them, taking recourse to the provisions of Section 27 (l) of the SEBI Act by inter alia alleging that they being a director was responsible for the conduct of business of the Company. Section 27 of SEBI Act deals with vicarious liability of the directors for the acts of the company.*

    10.3. *With regard to the applicability of Section 27 of the SEBI Act, 1992, Noticee 2 and 3 point out during the relevant period i.e. March 19, 2013 to December 31, 2015 when the alleged violations took place, Section 27 did not provide for the vicarious liability of Directors in respect of the civil liability of the company arising out of the violations committed by such company. However, vicarious liability of directors in respect of the civil liability of the company, got covered by Section 27 (l) of the SEBI Act, only after the amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time i.e. from March 19, 2013 to December 31, 2015, did not create any vicarious liability on them as a Director for the violations committed by the Company, which were, admittedly, civil in nature. Noticee 2 and 3 has placed reliance on the judgement of order passed by Ld. Whole Time Member, SEBI in the matter of JMD Ventures Limited dated September 14, 2021 and V.B Industries Limited dated July 08, 2021.*

    10.4. *As a matter of judicial discipline, the said orders passed bv the Whole Time Member is binding on SEBI. In view of the aforesaid, it is respectfully submitted that in facts of the present case they are not vicariously liable for the alleged violations committed by the Company at the relevant time. Therefore, the proceedings need to be dropped qua them and no penalty be imposed.*

    10.5. *Since they are not covered by Section 27(1) of the SEBI Act (which is the sole basis for alleging the violations), the issue of violating the provisions of Regulations 3 (a), (b), (c), and (d), 4(1), 4(2) (f) (k) and (r) of PFUTP Regulations cannot and does not arise. In any event, it is denied that theyhave violated any of the provisions of Regulations 3 (a), (b), (c), and (d), 4(1), 4(2) (f) (k) and (r) of PFUTP Regulations as alleged.*

    10.6. *The Impugned proceedings suffer from enormous laches. Admittedly, the alleged violations relate to the preferential allotment made by the Company in the year 2013.*

The present SCN has been issued on May 06, 2022 (i.e. almost 9 years after the impugned transaction). The aforesaid inordinate delay has severely prejudiced them. The said inordinate delay has not been explained by SEBI. Further, the proceedings in the matter have been going on interminably. On this ground alone the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped qua them. It is well settled now that even though there is no period of limitation prescribed in the SEBI Act and Regulations for the completion of investigations or for the issuance of a show cause notice, the authority is required to exercise its powers within a reasonable period. Facts of the present case will amply demonstrate that the powers have not been exercised by SEBI within a reasonable period and therefore, in the facts and circumstances of the case, proceedings need to be discontinued and dropped and no penalty needs to be imposed. Noticee 2 and 3 has placed reliance on the judgements of Hon'ble SAT in the matter of Ashlesh Gunvantbhai Shah Vs SEBI (Order dated January 31, 2020 in Appeal No. 169 of 2019), in the matter of Parag Sarda Vs SEBI (Order dated November 21, 2020 in Appeal No. 279 of 2020) and in the matter of Morepan Laboratories Limited (Order dated April 16, 2021 in Appeal No. 62 of 2020.

10.7. *In the Notice the allegations are qua the Company. The Company has, with regard to the allegations in the SCN, already filed a detailed reply to the captioned SCN inter alia dealing with each of the allegations and denying all the allegations levelled against it and placing on record the correct factual position on record and demonstrating its bonafides. They adopt the submissions made by the Company in its reply, in support of their contention that both i.e. Noticee 2 and Noticee 3 as well as the Board of the Company have acted bonafide and in the best interests of the Company and its shareholders at all points of time, in consonance with the applicable provisions of law.*

10.8. *Noticees 2 and 3 have never indulged in any fraudulent practices relating to the securities. They have not made any gains or derived unfair advantage as a result of falsely alleged violations. There is nothing to indicate in the Notice that they have made any gains. They have also not caused any loss to the investors or group of investors.*

10.9. *They have not committed any wrong and no charge has been established against them for imposition of any monetary penalty. In the facts and circumstances imposition of any monetary penalty on them would be unjustified and unwarranted. In view of foregoing submissions, it is most respectfully and humbly submitted that the allegations in the Notice be dropped.*

Reply of Noticee 4

11. *The main contentions made by the Noticee 4 in her reply to SCN are summarized as follow:*

    11.1. *Noticee denied the allegation levelled against her.*

    11.2. *She has been appointed on the Board of MEL on 30.03.2015 as an Additional Non-Executive Director and regularized in the ensuing AGM. However, the preferential issue was made during the F.Y. 2013-2014 and total proceeds, as covered under the stated para, were utilized before the date of her appointment. Therefore, no adverse inference can be drawn against her.*

    11.3. *With regard to observations made in para 7 to 9.2.7 of the SCN, it is submitted that the said observations are a matter of record except the transaction of advance against property amounting to Rs. 40,00,000/- entered between her and the Company. She has no link / nexus/ relationship / connections with any of the parties as set out in the said para. Therefore, based on the transaction done by MEL with other entities no adverse inference can be drawn against me.*

    11.4. *With regard to observations made in para 9.2.8.1 and 9.2.8.1.1 of the SCN, it is submitted that on 01.08.2016, she entered into a Memorandum of Understanding ("MOU") with MEL towards sale of property against which she had received Rs. 40,00,000/- as advance. However, due to the lack of financial inflow in MEL, it could not make the balance payment purchase for the same and they mutually terminated the MOU and she executed a cancellation deed which has already been shared with the investigating authorities along with the MOU. Accordingly, she refunded the advance sum of Rs. 40,00,000/- to MEL. Hence, the observations made in the aforesaid paras pertain to others and, thus she offer no comments on it.*

    11.5. *She has been appointed I was appointed on the Board of MEL as Non-Executive Additional Director on 30.03.2015.*

    11.6. *Her pecuniary interest in the subjected matter of utilization was very nominal only upto the above referred transaction of Rs. 40,00,000/- and the same couldn't happen for the reasons already submitted hereinabove. Therefore, based on the said transaction no adverse inference can be drawn against her.*

    11.7. *Out of the total period of Investigation from 19.03.2013 to 31.12.2015, she was associated with Board for nine (9) months which is a very short term. However, as a Director, all the transaction as set out and covered in the Notice are genuine commercial transaction to her knowledge with proper documentation on records of the Company.*

    11.8. *Hence, stating that shehad knowledge of acts mentioned in the said para and was a party to the fraudulent act of the Company and alleging me by taking the shelter of Section 27 of the SEBI Act, is untrue, unjustified and unwarranted.*

11.9. *With regard to observations in Para 13 of the SCN, it is submitted that there is no "variation" in utilization of issue proceeds as alleged. It was unambiguously stated that the "object of the issue is to raise resources to meet the future capital expenditure, long term capital requirements, to diversify into Electronics business and for general corporate purposes.*

11.10. *The Clause 43(a) of the Listing Agreements talks about variations between projected utilisation of funds and/or projected profitability but in this case, admittedly, the Company had not made any projections at all (either regarding the utilization of funds or the profitability). Therefore, the issue of variation can also not arise. It may also be pointed out that at the relevant time (i.e. 2013), the preferential allotments by listed companies were governed by Regulations 70 to 79 (contained in Chapter Vll) of the SEBI ICDR Regulations 2009. It may be noted that ICDR Regulations 2009 pertaining to preferential allotments did not obligate the companies to make projections.*

11.11. *In the Notice, in context of violation of Clause 43 of the Listing Agreement, reference has also been made to Regulation 32 of LODR Regulations. The said reference is also totally misplaced. Firstly, the said, LODR Regulations (which became applicable from the year 2015), came much after the impugned preferential allotments (in the year 2013). Secondly, the substantive requirements of the present Regulation 32 cannot be read into Clause 43 of the Listing Agreement, in order to allege breach. Thirdly, the provisions of Regulation 32 (which are substantive in nature and breach thereof results in adverse civil and punitive consequences) cannot be applied retrospectively. It may be noted that to some extent the provisions of Regulation 32(1) (b) are pari materia with Clause 43 of the Listing Agreement. However, the provisions of Regulation 32 (1) (a) are absolutely new and have come into force for the first time in the year 2015. The requirements of Regulation 32 (1) (a) also cannot be applied retrospectively in order to allege breach qua us. In view of the aforesaid, the Company has not breached the provisions of Clause 43 of the Listing Agreement, as alleged.*

11.12. *With regard to observations in para 16 of the SCN, it is denied that she has violated the provisions of Regulations 3 (a), (b), (c), and (d), 4(1), 4(2) (f) (k) and (r) of PFUTP Regulations and Clause 43 of Listing Agreement read with Regulation 32 of LODR Regulations read with Regulations 103 (1) and (2) of LODR Regulations, as alleged.*

11.13. *With regard to observations in Para 17 of the Notice, it is submitted that she has not entered in any fraudulent and unfair trade practices, nor she failed to provide any information or documents required under SCRA. Therefore, any imposition of penalty on her would be unjustified and unwarranted.*

11.14. *The SCN and proceedings commenced is barred by laws of limitation. The instant proceedings are belated and devoid of any merit. At the outset, she would like to* *submit that the transactions in question pertains to investigation period of year 2013 to 2015 and therefore, issuing show cause notice in year 2022-23 i.e. after a period of 9 years of the alleged default is inordinate and unreasonable. Undoubtedly, no period of limitation is prescribed in the Act or the Regulations for issuance of show cause notice. However, it is a trite law laid down by Hon'ble Supreme Court and various High Courts that where no time limit is prescribed, the authority shall exercise its power within a reasonable period of time. Noticee 4 has placed reliance on the judgements of Hon'ble Supreme Court of India in the matter of Mohamad Kavi Mohamad Amin Vs Fatmabai Ibrahim [(1997) 6 SCC 71] that wherever a power is vested in a statutorily authority without prescribing any time-limit, such power should be exercised within a reasonable time.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

12. Before proceeding further, I note that Noticees have raised a preliminary objection regarding delay in issuance of SCN in the matter. Noticees have contended that the SCN has been issued after a period of more than 9 years from the alleged violations related to issuance of preferential allotment made by the company in the year 2013. In support of their contentions, Noticees have relied on certain judgements such as Ashlesh Gunvantbhai Shah vs. SEBI (SAT Appeal No. 169 of 2019) and Morepan Laboratories Limited (SAT Appeal No. 62 of 2020) etc. Noticees have further contended that the delay in issuance of proceedings have severely prejudiced them. In this regard, I note from the material available on record that investigation in the present matter was initiated in the month of April 2016. During the course of investigation, SEBI had gathered information *inter-alia*, from BSE, company, Registrar and Share transfer agent, various entities, banks etc. After the fact finding exercise, investigation was completed in the month of August 2020, pursuant to which, undersigned was appointed as Adjudicating Officer (AO) vide SEBI's order dated December 02, 2020.Subsequent to appointment of undersigned as AO, certain clarification was sought from SEBI in the month of July 2021, September 2021 and March 24, 2022. The requisite clarifications were received on September 02, 2021, January 25, 2022 and April 28, 2022 respectively and the SCN was issued on May 06, 2022. Thus, I note that there has been no delay in issuance of SCN and the SCN has been issued in a reasonable period of time.

13. I note that the Noticees, have merely stated that prejudice has been caused to them due to the alleged delay. However, the aforesaid Noticees have failed to state as to what record/document/evidence could not be accessed/obtained by them because of the alleged passage of time. From the material placed on record, I observe that after issuance of SCN, adequate opportunities were granted to Noticees, to represent their case and opportunities

of personal hearing were also granted to Noticees. I note that Noticees 1 to 3 vide letter dated June 21, 2022, requested copy of investigation report. Relevant extract of investigation report along with annexures were provided to Noticees 1 to 3 on July 04, 2022. I note that Noticees 1 to 3 filed reply along with certain documentary proof with regard to the allegations levelled against them in the SCN. Noticee 4 also has filed reply to the SCN. Thus, looking at the material available at the disposal of Noticees, I find that Noticees have been provided with all the material that would have been abundantly adequate to facilitate recollection of events or collection of relevant data and thereby enabling them to form a definite defence to the charges in the SCN, which Noticees have provided through their individual replies/ submissions. Therefore, I do not find any merit in the contention raised by Noticees that there has been inordinate delay in issuance of SCN due to which prejudice has been caused to them.

14. In this regard, I would like to rely upon the judgement of Hon'ble SAT in the case of *Ravi Mohan & Ors. vs. SEBI* (SAT Appeal No. 97 of 2014, DoD 16/12/2015) wherein it was held that : -

"....................Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice.................."

15. Further, I place reliance on the judgement of the Hon'ble Supreme Court in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (decided on February 28, 2019) in which it was held that:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc."

16. In addition to above, I also placed reliance on the judgement of Hon'ble SAT in the matter of Girrajkumar Gupta HUF (Appeal No. 424/ 2019) dated August 11, 2021, wherein Hon'ble

SAT held that, "*We find that the investigation started in the year 2015 which involved examining several entities in the order logs, trade logs, off market transactions and gathering evidence from the Stock Exchange. The show cause notice was issued in the October, 2017 and accordingly we find that there is no inordinate delay in the initiation of the proceedings. The contention raised is, thus, erroneous and cannot be accepted*."

17. Thus, in view of aforesaid facts and placing reliance on the aforesaid judgments, I find that instant adjudication proceeding has been initiated within a reasonable period of time and no prejudice has been caused to the Noticees. I also note that the facts and circumstances of the present proceedings are not similar to those in the judgments quoted by Noticees. Therefore, I do not find any merit in the contention raised by Noticees that there has been inordinate delay in issuance of SCN due to which prejudice has been caused to them.

18. I now proceed to deal with the case on merits.

19. I have carefully perused the charges levelled against Noticees, replies/submissions filed by Noticees 1 to 4 and other documents/ evidence available on records. The issues that arise for consideration in the present case are:

    I. Whether:
        a) Noticees 1 to 4 have violated the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations;
        b) Noticees 1 to 4 have violated the provisions of Clause 43 of Listing Agreement read with Regulation 32 of LODR Regulations read with Regulations 103(1) and (2) of LODR Regulations and Section 21 of SCRA;
        c) Whether Noticee 1 has violated Clause 35(c) of Listing Agreement read with Regulation 31 of LODR Regulations read with Regulations 103(1) and (2) of LODR Regulations, and;

    II. Do the violations, if any, attract monetary penalty under Section 15HA of SEBI Act and Sections 23A and 23E of SCRA as applicable?

    III. If so, what should be the quantum of monetary penalty?

20. Before moving forward, it is pertinent to refer to the aforesaid provisions of PFUTP Regulations, Listing Agreement, LODR Regulations and SCRA, which are reproduced as under:

Listing Agreement-

35. *"The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely: -*

a. One day prior to listing of its securities on the stock exchanges.

b. On a quarterly basis, within 21 days from the end of each quarter.

c. Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital"

43. *a) The Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilisation of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilisation of funds and/or actual profitability.*

b) The statement referred to in clause (1) shall be given for each of the years for which projections are provided in the prospectus/letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities and shall be published in newspapers simultaneously with the unaudited/audited financial results as required under clause 41.

c) If there are material variations between the projections and the actual utilisation/profitability, the company shall furnish an explanation therefore in the advertisement and shall also provide the same in the Directors' Report.

LODR Regulations

Holding of specified securities and shareholding pattern.

31. (1) The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to timewithin the following timelines –

(a) one day prior to listing of its securities on the stock exchange(s);
(b) on a quarterly basis, within twenty one days from the end of each quarter; and, (c) within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital: Provided that in case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty one days from the end

of each half year.

(2) The listed entity shall ensure that hundred percent of shareholding of promoter(s) and promoter group is in dematerialized form and the same is maintained on a continuous basis in the manner as specified by the Board.

(3) The listed entity shall comply with circulars or directions issued by the Board from time to time with respect to maintenance of shareholding in dematerialized form.

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

32. (1) The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc.,-

(a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;
(b)indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.
(2) The statement(s) specified in sub-regulation (1), shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.
(3) The statement(s) specified in sub-regulation (1), shall be placed before the audit committee for review and after such review, shall be submitted to the stock exchange(s).
(4) The listed entity shall furnish an explanation for the variation specified in sub-regulation (1), in the directors 'report in the annual report.
(5) The listed entity shall prepare an annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice, certified by the statutory auditors of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.
(6) Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency.
(7) Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on an annual basis, promptly upon its receipt. Explanation.- For the purpose of this sub-regulation, ―monitoring agency‖ shall mean the monitoring

agency specified in regulation 16 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

(8) For the purpose of this regulation, any reference to —quarterly/quarter‖ in case of listed entity which have listed their specified securities on SME Exchange shall respectively be read as —half yearly/half year".

Repeal and Savings

103. (1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

Section 21 of SCRA: - Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

PFUTP Regulations

"***Regulation 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

***“Regulation 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:-

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.

***Regulation 27(1) of SEBI Act: - Offences by companies**.*

27. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

21. On perusal of documents available on record, I note that MEL is engaged in the business of procurement and trading in Computer hardware and software. The Company was incorporated on August 30, 2011 as Pearl Electronics Limited. The company changed its name to Mystic Electronics Limited in March 16, 2016. Its registered address is 401/A, Pearl Arcade, Off J.P. Road, Opp. P.K. Jewellers, Dawood Baugh Lane, Andheri (W), Mumbai-400058. The details of the Board of directors of MEL during the IP were as under:

Sr. No.	Name of Director	Designation	Date of Appointment	Date of secession
1	Krishan Khadaria	Director	30/08/11	-
2	Asha Krishan Khadaria	Director	30/08/11	13/02/15
3	Manoj Ganeshdas Bhatia	Independent Director	30/08/11	-
4	Tarun Keram	Independent Director	30/09/14	-
5	Madhumati Gawade	Additional Director	30/03/15	27/01/17

22. I note from letter dated September 06, 2019 submitted during the course of investigation that Noticee 1as placed on record that the Company had done preferential allotment of 92,30,000 shares to 48 allottees. The said preferential allotment was approved by Shareholders of the company in Extraordinary General Meeting **(EGM)** on May 25, 2103. The shares were having face value of Rs. 10 were issued at a premium of Rs. 15/- and the company had raised an amount of Rs. 23,07,50,000/- initially through preferential issue. The shares were listed on BSE on July 30, 2013. Thereafter, MEL recomputed the prices of shares in terms of Regulation 76(3) of SEBI (Issue of Capital & Disclosure Requirements) Regulation, 2009 (hereinafter referred to as '**ICDR Regulations'**) which worked out to revised price of Rs. 60.74/- per share and out of 48 allottees, 30 allottees who were holding 39,20,000 shares, paid additional premium of Rs. 35.74 per share (Rs. 60.74 – Rs. 25= Rs. 35.74 per Share) amounting to Rs. 14,01,00,800/-. The details of the said allotment are given as under:

Date of allotment of shares issued on preferential basis	**Date of Listing**	**Quantity of shares allotted**	**No. of allottess**	**Amount of funds raised initially (in Rs.)**	**Amount of funds raised through premium (in Rs.)**
June 7, 2013	July 30, 2013	92,30,000	48	23,07,50,000	14,01,00,800

23. As observed from the notice for EGM, the objects of the issue of shares by MEL on preferential basis are as given below
    23.1. to raise the resources to meet the future capital expenditure.
    23.2. long term capital requirements
    23.3. to diversify into electronics business
    23.4. to meet expenditure for general corporate purposes

24. I note that Noticee 1 in its reply to the SCN has also acknowledged that the same were the object of the preferential allotment of shares.

25. I observe from the reply of the company dated September 6, 2019 that the company had planned to utilise the amount raised by it initially as under:

Purposes	**Particulars of the issue and use of proceeds**	**Amount utilized (in Rs.)**
1.	Advance against Property	13,25,00,000
2.	Trade Advance	9,00,00,000
3.	Inter-Corporate Deposit	21,00,000
4.	Payment to Sundry Creditor	61,42,500
	Total	**23,07,42,500**

(i) Advance of Rs. 13,25,00,000/- against property

26. I observe from the letter dated January 04, 2015, by MEL to SEBI that MEL had opened a separate bank account in Axis Bank vide A/c no. 913020024773994 for receiving the proceeds of the aforesaid preferential allotment. I note from the aforesaid bank account statement the Noticee 1 received the proceeds of preferential allotment from 48 allottees between June 01, 2013 to June 06, 2013. I further note from the bank account statement of MEL of the aforesaid Axis Bank Account (no. 913020024773994) that out of the proceeds of preferential allotment, MEL had transferred an amount of Rs. 5 crores to M/s. Wonder Procon Pvt Ltd, Rs. 1.5 crores to M/s. Blossom Dealcom Pvt Ltd, Rs. 1.75 crores to M/s. Hemlata Vinimay Pvt Ltd and Rs. 5 crores to M/s. Visible Real-estate Ventures Pvt Ltd i.e. a total amount of Rs. 13.25 crores were transferred to said 4 entities on June 07, 2013. The summary of the aforesaid fund flow is presented below:

Sr.No.	Name of the entity	Amount (in Rs.)	Date of transaction
1	M/s. Wonder Procon Pvt Ltd	5,00,00,000	June 07, 2013
2	M/s. Blossom Dealcom Pvt Ltd	1,50,00,000	June 07, 2013
3	M/s. Hemlata Vinimay Pvt Ltd	1,75,00,000	June 07, 2013
4	M/s. Visible Real-estate Ventures Pvt Ltd	5,00,00,000	June 07, 2013
Total		**13,25,00,000**	

27. Vide email dated September 06, 2019, MEL had submitted to Investigating Authority of SEBI (hereinafter referred to as '**IA**'), the Memorandum of Understanding (hereinafter referred to as '**MOU**') executed with 4 entities, namely, M/s. Wonder Procon Pvt. Ltd., M/s. Blossom Dealcom Pvt. Ltd., M/s. Hemlata Vinimay Pvt Ltd and M/s. Visible Real-estate Ventures Pvt Ltd. In its reply to the SCN, Noticee 1 has stated that the aforesaid MOUs were for the purpose of finding out suitable properties in Kolkata for setting up an establishment for the company's expansion project. On perusal of the said MOUs, I observe that MOUs executed by MEL with the aforesaid 4 entities were not executed on stamp paper. I also note that the said MOUs do not include the kind or type or the details of property which Noticee intends to acquire at Kolkata. Further, on perusal of MOU, I note that Noticee 1 has not authorized any of the four entities to acquire property on behalf of Noticee. Therefore, on account of these defects, I am of the view that the genuineness of the MOUs entered into by the Noticee 1 with the aforesaid 4 entities is questionable and therefore, I conclude that the said MOUs are not sufficient proof of the claim of Noticee 1 that the amount of Rs. 13.25 crores advanced by it to the aforementioned 4 entities was for the purpose of finding out suitable properties in Kolkata for setting up an establishment for the company's expansion project. In their submissions, Noticee 1 has contended that merely because MOUs were not on stamp paper, SEBI cannot draw adverse inference and conclude that these were not legally valid. In this regard, as stated before, I find that the said MOU did not contain the details and

also kind of property to define the purpose for which these were entered into, in addition to being on plain paper, and therefore, I find that these MOUs were not relevant to substantiate the claim of Noticee 1 that properties for company's expansion project were being set up by these 4 entities. Thus, I find no merit in this contention of Noticee 1.

28. Further, I note that MEL has stated that the advances given to the aforesaid 4 entities were returned by the entities as the said entities could not effectively deploy the said amount for locating the proprieties. I find from available records that the deed of cancellation of MOUs and ledger statements were also submitted by MEL to the IA during investigation. In this regard, I note from the ledger statements provided by MEL that the amount was refunded by the aforesaid 4 entities on or before March 10, 2014. However, I observe from the available records that the bank statement in support of the amount refunded by the aforesaid 4 entities were not placed on record. Thus, the proof i.e. bank statement, to substantiate the claim that the amount was indeed refunded, has not been submitted by Noticee 1 either during the investigation or during the present proceedings.

29. Therefore, the above observations and trail of fund flow show that out of the proceeds of the preferential allotment, an amount of Rs. 13.25 crore was ostensibly given to 4 entities by Noticee 1 as advance for purchase of property for MEL's expansion project, but the same was returned to the company without being deployed for the purposes stated for such advance within a period about 8 months. This clearly shows that the amount of Rs. 13.25 crores, out of the proceeds of the preferential allotment, which was supposed to have been utilised for property, as per MEL's own statement provided vide email date September 06, 2019, was not utilised for the stated purpose and returned to MEL.

30. I note that MEL, vide email dated September 28, 2019, submitted to IA that they had redeployed the amount of Rs. 13.25 crores refunded by aforesaid 4 entities in providing loans, payments to its creditors, investing in shares and investing in Fixed Deposit Receipt (hereinafter referred to as '**FDR**'). The summary of the utilization of the refunded amount is given below:

Sr. No.	Name of the entity	Amount	Date of transaction	Purpose
1	M/s Nouveau Global Ventures Limited	50,00,000	23/10/2013	Loan
2	M/s Nouveau Global Ventures Limited	10,00,000	18/11/2013	Loan
3	M/s Nouveau Global Ventures Limited	41,00,000	07/03/2014	Loan
4	M/s Globe Soya Products Limited	90,00,000	13/11/2013	Loan
5	M/s Globe Soya Products Limited	65,00,000	28/01/2014	Loan
6	M/s Globe Soya Products Limited	4,88,604	13/03/2014	Loan

Sr. No.	Name of the entity	Amount	Date of transaction	Purpose
7	M/s Pearl Agriculture Ltd.	1,45,00,000	24/02/2014	Loan
8	M/s Luhariwala Realty Pvt. Ltd.	10,00,000	10/03/2014	Share application
9	JMD Telefilms &Industries Ltd.	1,50,00,000	22/02/2014	payment to creditors
10	JMD Telefilms &Industries Ltd.	95,00,000	26/02/2014	payment to creditors
11	JMD Telefilms &Industries Ltd.	84,00,000	26/02/2014	payment to creditors
12	JMD Telefilms &Industries Ltd.	1,25,11,396	10/03/2014	payment to creditors
13	FDR with Axis Bank 60 days	1,00,00,000	22/08/2013	Investment in FDR
14	FDR with Axis Bank 75 days	1,25,00,000	22/08/2013	Investment in FDR
15	FDR with Axis Bank 75 days	95,00,000	22/08/2013	Investment in FDR
16	FDR with Axis Bank 61 days	75,00,000	13/01/2014	Investment in FDR
17	FDR with Axis Bank 61 days	60,00,000	13/01/2014	Investment in FDR
Total		**13,25,00,000**		

31. I note from the above table that out of the amount refunded to MEL, an amount of Rs. 1.01 crore, Rs. 1.60 crore/- and Rs. 1.45 crore had been provided by MEL as loan to M/s. Nouveau Global Ventures Limited, M/s. Globe Soya Products Limited and M/s. Pearl Agriculture Ltd. respectively. I note from available record that MOUs executed by MEL with M/s. Nouveau Global Ventures Limited dated April 01, 2013 and M/s. Pearl Agriculture Ltd dated February 14, 2014 for providing loans has been placed on record, however, MOU executed by MEL with M/s. Globe Soya Products Limited for providing loans has not been placed on record. In their reply to the SCN, Noticee 1 has stated that the amount of Rs. 2.56 crore, Rs.40 Lakh, Rs. 50 lakh has been transferred by them to M/s. Nouveau Global Ventures Limited, M/s Globe Soya Products Limited and M/s. Pearl Agriculture Ltd. respectively as loans and advances in the ordinary course of business. However, I further note from the bank statements and ledger statement submitted by MEL that the amount that had been transferred to the aforesaid 3 entities by MEL was Rs. 4.06 crores.

32. I observe from records that Noticee 1 had vide its email dated December 16, 2019, provided copies of the MOUs executed by it with M/s. Nouveau Global Ventures Limited (Noveau) dated April 01, 2013 and M/s. Pearl Agriculture Ltd. dated February 14, 2014 to SEBI. On perusal of the MOU executed with Noveau, I note that the said MOUs were executed for the purpose of providing loan for the total corpus upto Rs. 15 crore with 7.5% interest to be paid at the end of financial year on outstanding loan. Similarly, Noticee 1 has executed MOU with Pearl Agriculture Ltd. for the of providing loan for the total corpus upto Rs. 5 crore with 9% interest to be paid at the end of financial year on outstanding loan.

33. With regard to the loan amount, MEL in its submission has contended that the loan amount of Rs. 2.56 crore, Rs.40 Lakh, Rs. 50 lakh has been repaid by M/s. Nouveau Global Ventures

Limited, M/s. Globe Soya Products Limited and M/s. Pearl Agriculture Limited respectively along with interest. However, on perusal of the bank statement of Noticee 1, submitted along with its reply to the SCN, I find that the amount of Rs. 1.01 crore, Rs.1. 60 crore and Rs.1.45 crore as claimed to have been returned by Nouveau Global Ventures Limited, M/s. Globe Soya Products Limited and M/s. Pearl Agriculture Ltd. respectively do not reflect in the said bank statement. I also note that no proof of repayment has been provided by Noticee 1. Therefore, in absence of any substantiating evidence, I am unable to accept the contention of Noticee 1 that the aforesaid amount of Rs. 4.06 crore was received back by them.

34. Therefore, I find that the amount of. Rs. 4.06 crores was transferred to the aforesaid 3 entities as loan by MEL, which is not as per the stated object as well as utilisation of money received as proceeds from the preferential allotment of shares by MEL.

35. Further, I note from the above table that an amount of Rs. 10 lakhs were invested by MEL for the purchase of the shares of M/s. Luhariwala Realty Private Limited. MEL in its submission vide letter dated July 26, 2022 to SCN has submitted the copy of the application dated March 10, 2014 submitted to Board of Directors of M/s. Luhariwala Realty Private Limited, for equity shares. MEL in its submission has further stated that since M/s. Luhariwala Realty Private Limited could not allot shares to them, the amount was refunded back to them on June 19, 2014.In this regard, I note from the bank statements and ledger statements submitted by MEL that the amount of Rs. 10 lakh was paid by MEL on March 10, 2014 and it has received back Rs.15 lakh from M/s. Luhariwala Realty Private Limited on June 19, 2014. Therefore, I observe that out of the proceeds of the preferential allotment, an amount of Rs. 10 lakhs were ostensibly given for the purchase of the shares, but the same was returned to the company. In any case, it is an admitted fact that the aforesaid amount of Rs. 10 lakh was not deployed by MEL for the stated purpose of the preferential allotment.

36. I further observe from the above table that an amount of Rs. 4.55 crores, out of the refunded amount, was invested by MEL in Fixed Deposit Receipts (**FDR**) of certain banks. Vide email dated November 07, 2019, MEL provided the details of the amount received upon maturity of the FDR and the summary of the amount to SEBI which are presented below:

Sr.No.	**FDR details**	**Amount invested in FDR (in Rs.)**	**Amount received on maturity of FDR (in Rs.)**	**Date**	**Remarks**
1	FDR with Axis Bank 60 days	1,00,00,000	1,02,75,573	23/12/2013	
2	FDR with Axis Bank 75 days	1,25,00,000	1,30,38,295	10/03/20114	

Sr.No.	FDR details	Amount invested in FDR (in Rs.)	Amount received on maturity of FDR (in Rs.)	Date	Remarks
3	FDR with Axis Bank 75 days	95,00,000	1,02,02,993	19/11/2013	FDR was of Rs. 1 crore and out of which Rs. 95 lakhs was utilized from the refund of Rs. 13.25 crore
4	FDR with Axis Bank 61 days	75,00,000	76,92,881	21/06/2014	
5	FDR with Axis Bank 61 days	60,00,000	61,77,884	21/06/2014	
Total		**4,55,00,000**	**4,73,87,626**		

37. I note from the above table that an amount of Rs. 4,73,87,626/- was received by MEL from the maturity of the investment of Rs. 4.55 crores in FDR. I note from email dated November 07, 2019 submitted by MEL during investigation that such amount received from maturity of FDR was further deployed in providing loans and payment to creditors. In this regard, I note from the bank statement A/c no. 911020051033229 of MEL, bank statement of A/c no. 415010200000240 of Nouveau and bank statement of Union Bank of India provided by Lakshami Builders and Developer (**Lakshmi**) to SEBI on January 08, 2020, I note that MEL had transferred an amount of Rs.4.15 crores to the aforesaid 2 entities. I further note from the aforesaid email of MEL it had transferred an amount of Rs. 1.25 crore to another entity, namely, JMD Telefilms and Industries Limited. The summary of the amounts transferred is presented below:

Sr.No.	Name of the entity	Amount (in Rs.)	Date of transaction	Purpose
1	M/s Nouveau Global Ventures Limited	50,00,000	23/12/2013	Loan
2	M/s Nouveau Global Ventures Limited	40,00,000	23/12/2013	Loan
3	M/s Nouveau Global Ventures Limited	2,00,00,000	21/06/2014	Loan
4	M/s Lakhsami Builders & Developers	1,25,00,000	20/11/2013	Loan
5	JMD Telefilms &Industries Ltd.	1,25,11,396	10/03/2014	payment to creditors
Total		**5,40,11,396**		

38. I note from the bank statements and ledger statement available on record that the said amount of Rs. 4.15 crore was transferred to the aforesaid 2 entities by MEL during the period November 2013 to June 2014. Therefore, I observe that an amount of Rs. 2.90 crores and Rs. 1.25 crores were provided as loan to M/s. Nouveau Global Ventures Limited and M/s. Lakhsami Builders & Developers respectively out of the proceeds of preferential allotment which had been invested in FDRs. MEL, in its submission, has contended that amount has been repaid by the aforesaid 2 entities along with interest. However, I note that Noticee 1 has not provided any bank statement to demonstrate that they had received the amount from M/s. Nouveau Global Ventures Limited and from Lakhsami as claimed by them.

39. Therefore, I observe that MEL had transferred a total of Rs. 4.15 crores to the aforesaid 2 entities out of the proceeds of preferential allotment during the period December 23, 2013 to June 21, 2014 which clearly shows that Noticee did not deploy the aforesaid amount of Rs. 4.55 crores as per the stated objects of the preferential allotment.

40. To suumarize, I find that an amount of Rs. 3.91 crore, Rs. 1.60 crore, Rs. 1.45 crore and Rs. 1.25 crore (i.e. a total amount of Rs. 8.21 crores) was provided as loan to M/s Nouveau Global Ventures Limited, M/s Globe Soya Products Limited, M/s Pearl Agriculture Limited and M/s Lakhsami Builders & Developers respectively by MEL and an amount of Rs. 10 lakhs was invested by MEL for the purchase of the shares of M/s Luhariwala Realty Private Limited out of the initial proceeds of the preferential issue, which were not part of the stated objects of the preferential issue nor were these shown in the utilisation of proceeds by MEL.

(ii) Utilisation of amount raised through premium

41. The details regarding utilization of premium amount by MEL, as observed from the reply of the company dated November 22, 2019 are given hereunder:

Purposes	Particulars of the issue and use of proceeds	Amount utilized (in Rs.)
1.	Advance against Property	3,65,00,000
2.	Trade Advance	50,00,000
3.	Loan Granted	6,30,00,000
4.	Payment to Sundry Creditor	2,00,00,000
5.	Investment in Shares	1,33,44,980
6.	Advance towards purchase	75,00,000
	Total	**14,53,44,980**

42. The Company also informed in the aforesaid reply that it had received additional premium of Rs. 14,01,00,800/- from 30 allottees and the above mentioned detail is of Rs. 14,53,44,980/-. The difference of Rs. 52,44,180/- which the Company had utilized was out of Company's owned funds.

43. I observe that vide email dated December 16, 2019, MEL in its submission to IA had stated that they had recomputed the prices of shares in terms with Regulation 76(3) of SEBI (Issue of Capital & Disclosure Requirements) Regulation, 2009 which worked out to revised price of Rs. 60.74/- per share. Vide the said email, MEL also informed that out of 48 allottees, 30 allottees who were holding 39,20,000 shares, paid additional premium of Rs. 35.74 per share (Rs. 60.74 – Rs. 25= Rs. 35.74 per Share) which was amounting to Rs. 14,01,00,800/-

44. Further, I note that MEL, vide email dated December 16, 2019 submitted the details of the utilization of the amount received as premium from the preferential issue before the IA, which are summarized as below:

Purposes	Particulars of the issue and use of proceeds	Amount utilized (in Rs.)
1.	Advance against Property	3,65,00,000
2.	Trade Advance	50,00,000
3.	Loan Granted	6,30,00,000
4.	Payment to Sundry Creditor	2,00,00,000
5.	Investment in Shares	1,33,44,980
6.	Advance towards purchase	75,00,000
	Total	**14,53,44,980**

*Note: An additional amount of Rs. 52,44,180/- was out of companies owned fund

(i) Advance of Rs. 3,65,00,000/- against property

45. I note that MEL vide email dated December 16, 2019 had submitted before the IA that an amount of Rs. 70 lakhs and Rs. 2.95 crore was provided to 2 entities viz. M/s. Wizard Estate Pvt Ltd and M/s. Frontier Mercantile Pvt.. Ltd. respectively as advance against properties. However, I note from the available records that MEL had not submitted the bank details of the aforesaid transactions to substantiate their claim that the said amount had been transferred to the aforesaid 2 entities, rather, they had provided summary of the aforesaid fund flow by mentioning the date of MOUs as presented below:

Purpose 1: Advance against Property			
Date of Agreement	**Name of the Counter Party**	**Amount (Rs.)**	**Documentary evidence**
May 31, 2014	M/s. Wizard Estate Pvt. Ltd	70,00,000	MOUs entered into with these parties.
June 5, 2014	M/s. Frontier Mercantile Pvt Ltd	2,95,00,000	
	Total Amount	**3,65,00,000**	

46. I observe that in its reply to SCN, Noticee 1 has admitted to the aforesaid transactions, referring to these as matter of record.

47. I note that an MOU was executed by MEL (buyer) with M/s. Frontier Mercantile Pvt. Ltd. (seller) on June 05, 2014 which states that the same was for purchase of 16 acres out of 41 acres of agricultural land situated at Hissa No.3, Survey No. 179, Panchavati division, Nashik at Nashik for an amount of Rs. 4 crore and an amount of Rs. 75 lakhs needed to be paid on execution of this MOU and at least a minimum of Rs. 1.85 crore in inclusion with the above shall be paid by the purchaser on or before June 30, 2014 and the balance amount of Rs. 2.15 crore shall be paid by the purchaser on or before December 31, 2016. However, I note

that although Noticee 1 had paid Rs. 2.95 crores, the said MOU was subsequently cancelled, as it had failed to pay the amount of Rs.1.05 crore to seller.

48. Similarly, on perusal of MOU executed with M/s. Wizard Estate Pvt Ltd., I note that the said MOU was for the purpose of piece or parcel of land situated at Mehroli, Tehsil- Hauzkhas, Mehroli, New Delhi for the amount of Rs. 3 crore and an amount of Rs. 1,50,00,000/- had already been paid by Noticee 1 for the same and the balance amount of Rs. 1,50,00,000/- needed to be paid on or before September 30, 2015. I note that the said MOU was also cancelled as Noticee 1 failed to pay Rs. 1.50 crore to M/s. Wizard Estate Pvt. Ltd.

49. Based on the aforesaid records, it appears that Noticee 1 had advanced an amount of Rs.4.45 crores to the aforesaid 2 entities as advance towards purchase of property, which is at a variance with the amount of Rs. 3.65 crores, as submitted by Noticee 1 in its submissions.

50. In any case, I further note that vide email dated December 16, 2019, MEL informed IA that the properties were not purchased and the advance given were refunded by the said 2 entities and the deed of cancellation was also entered by MEL between the said 2 entities. Noticee 1 in its reply to SCN has admitted that Wizard Estate Pvt. Ltd. and Frontier Mercantile Pvt. Ltd could not effectively deploy the said amount for locating the properties as mentioned in MOU. Accordingly, MOUs were cancelled and entire amount was refunded to MEL.

51. From available records, I note that M/s. Wizard Estate Pvt. Ltd. had refunded back an amount of Rs. 40 lakhs on January 11, 2016 and Rs. 10 lakhs on January 14, 2016 to Noticee 1's bank account maintained with Axis Bank (Account Number: -911020051033229) and Rs. 25 lakh on October 25, 2017 in Noticee 1's Bank account maintained with Kotak Mahindra Bank (Account number: 1511890913).

52. I note that as per the submission by MEL vide email dated February 17, 2020 to SEBI MEL had received an amount of Rs. 40 lakhs on July 26, 2016 and Rs. 2 crore on April 27, 2017 from M/s. Frontier Mercantile Pvt. Ltd. However, I observee from the Axis Bank account statement that M/s. Frontier Mercantile Pvt. Ltd. had refunded back amount of Rs. 30 lakhs on March 24, 2017 and Rs. 25 lakhs on March 29, 2017 to Noticee 1. However, I note from the bank statement available on record that the bank statements for the said transactions of Rs. 40 lakhs on July 26, 2016 and Rs. 2 crore on April 27, 2017, as claimed by MEL, have not submitted by MEL and no such transaction from M/s. Frontier Mercantile Pvt Ltd. exist. The summary of the aforesaid fund flow is summarized below:

Sr.No.	Name of the entity	Amount (in Rs.)	Date	Bank	Bank A/c No.	Remarks
1	M/s. Wizard Estate Pvt Ltd	40,00,000	January 11, 2016	Axis Bank	911020051033229	
2	M/s. Wizard Estate Pvt Ltd	10,00,000	January 14, 2016	Axis Bank	911020051033229	
3	M/s. Wizard Estate Pvt Ltd	25,00,000	October 25, 2017	Kotak Mahindra Bank	1511890913	
4	M/s. Frontier Mercantile Pvt Ltd	40,00,000	July 26, 2016			Bank statement not available on record
5	M/s. Frontier Mercantile Pvt Ltd	25,00,000	March 24, 2017	Axis Bank	911020051033229	
6	M/s. Frontier Mercantile Pvt Ltd	5,00,000	March 24, 2017	Axis Bank	911020051033229	
7	M/s. Frontier Mercantile Pvt Ltd	25,00,000	March 29, 2017	Axis Bank	911020051033229	
8	M/s. Frontier Mercantile Pvt Ltd	2,00,00,000	April 27, 2017			No such transaction from M/s. Frontier Mercantile Pvt Ltd exist in the bank statement

53. Therefore, I observe from the above table that out of the amount of Rs. 4.45 crore advanced to Wizard Estate Pvt. Ltd. and Frontier Mercantile Pvt. Ltd., an amount of Rs. 1.30 crores only, was received by Noticee 1 after a period of 2 to 3 years. Although the aforesaid amount is more than that shown by Noticee 1 towards purchase of property, the fact remains that the said amount has been advanced from the proceeds received as premium in the preferential allotment.

54. In its submissions to the charges levelled against it, Noticee 1 has stated that the amounts advanced to the aforesaid 2 entities was for property for which MOUs had been entered into with the said entities. Noticee 1 has further stated that the amount so advanced could not be effectively deployed by the entities and the entire amount was refunded back to MEL, after cancellation of the MOUs.

55. Thus, I find that the amount of Rs. 4.45 crores, although given to aforesaid entities as advance for purchase of land, one of them was for purchase of agricultural land only and had no bearing on MEL's expansion project. Nevertheless, as stated by Noticee 1, part of the amount was returned to the company within a period of 2 to 3 years. This clearly shows

that the amount of Rs. 4.45 crores, out of the proceeds of the preferential allotment, which was supposed to have been utilised for property for their future capital expenditure, as per MEL's own statement, was not utilised for the stated purpose and returned to MEL. Further, it is an admitted position that part of the aforesaid amount of Rs 4.45 crores was returned to MEL without being utilised. Therefore, I note that the amount of Rs. 4.45 crores raised through premium of the preferential allotment was not utilised for property for expansion, as stated in the object of the issue.

56. I further note that MEL, vide email dated January 09, 2020, submitted to IA that the refunded amount had been redeployed by MEL in providing loans to entities, payment of statutory liabilities, capital introduction in partnership firm, advance against properties, working capital and payment towards purchase of shares of companies. The summary of the aforesaid redeployment of refunded amount, as furnished by MEL, is presented below:

Date of Refund	Name of the Party	Amount (Rs.)	Date of redeployment of the refunded amount	Party to whom paid	Amount (Rs.)	Purpose
January 11, 2016	Wizard Estate Pvt. Ltd.	40,00,000	January 14, 2016	M/s. Globe Soya Products Ltd	40,00,000	Loan Granted
January 14, 2016		10,00,000	January 29, 2016	M/s. Krishkan Investments Pvt. Ltd.	10,00,000	Loans & Advances
October 25, 2017		25,00,000	October 27, 2017	VAT Payment	18,00,000	Payment of Statutory Liabilities
			October 31, 2017	3 M Enterprises	7,00,000	Capital introduced in Partnership Firm
Total		**75,00,000**	**Total**		**75,00,000**	
July 26, 2016	Frontier Mercantile Pvt. Ltd.	40,00,000	July 29, 2016	Madhumati Gawde	40,00,000	Advance Against Property
March 24, 2017		25,00,000	March 24, 2017	Krishkan Investments Pvt. Ltd.	25,00,000	Paid towards purchase of shares of Kherapati Vincom Pvt Ltd
March 24, 2017		5,00,000	March 27, 2017	Suchitra finance & Trading Co. Pvt Ltd	5,00,000	Paid towards purchase of shares of Finworth Investment Pvt Ltd
March 29, 2017		25,00,000	March 29, 2017	Rising Sunrock Products P. Ltd	22,50,000	Payment towards share application Money

Date of Refund	Name of the Party	Amount (Rs.)	Date of redeployment of the refunded amount	Party to whom paid	Amount (Rs.)	Purpose
				Salary & Other Expenses	2,50,000	Working Capital
April 27, 2017		2,00,00,000	April 27, 2017	Rising Sunrock Products P. Ltd	2,00,00,000	Payment towards share application Money
	Total	**2,95,00,000**		**Total**	**2,95,00,000**	

57. I note from above table that an amount of Rs. 40 lakhs and Rs. 10 lakhs were given to M/s. Globe Soya Products Ltd. and M/s. Krishkan Investments Pvt. Ltd. by Noticee 1 on January 14, 2016 and January 29, 2016 respectively. I note from the bank statement of Bank A/c no. 911020051033229 of MEL that the said amount had been transferred to the aforesaid 2 entities. I further note that during investigation, MEL had informed the IA that no loan agreement or MOU was executed by MEL with the aforesaid 2 entities, though the said amount of Rs. 50 lakh was given by MEL to the aforesaid 2 entities, ostensibly, as loans. In its submissions to SCN, Noticee 1 has contended that the aforesaid sum of Rs. 40 lakh and Rs. 10 lakh had been given to M/s. Globe Soya Products Ltd and M/s. Krishkan Investments Pvt. Ltd. as loans and advances and short-term capital, respectively, in the ordinary course of business and they had received the amount back from the aforesaid 2 entities. Noticee 1 has also provided bank statement to justify its contention. On perusal of the bank statement provided by Noticee 1, I observe that Noticee 1 had received Rs. 10 lakh on May 05, 2016, Rs. 5 lakh on October 04, 2016, Rs. 3 lakh on October 26, 2016, Rs. 5 lakh on November 08, 2016, Rs. 18 lakh on February 03, 2017 and Rs. 2,52,082 on March 08, 2017 from M/s. Globe Soya Products Ltd. I also note that Noticee 1 had received Rs. 5 lakh on July 02, 2016 and Rs. 7.5 lakh on October 13, 2016 from M/s. Krishkan Investments Pvt. Ltd. Therefore, I find that Noticee 1 has admitted that out of the proceeds of the premium received in the preferential allotment, an amount of Rs. 50 lakh was given as loan to the aforesaid 2 entities.

58. I also note from the email dated January 09, 2020 of MEL to SEBI, while providing details regarding utilisation of funds received back from Wizard Estate Pvt. Ltd. and Frontier Mercantile Pvt. Ltd. that amount of Rs. 7 lakh was invested as a capital in partnership firm i.e. 3M Enterprises.

59. I further note that MEL had informed IA, vide email dated January 24, 2020, that investment in 3M Enterprises was for expansion of business purposes as MEL was also a partner of 3M Enterprises. In its submissions to the SCN, Noticee 1 has contended that the Memorandum of Association of the company clearly provides consultancy as one of the objects of the

company and therefore, it had invested Rs. 7 lakh in 3M Enterprises. In this regard, I note that while Noticee 1 has not denied the investment in 3M enterprises, it has not demonstrated how such investment was part of the stated object of its preferential allotment of shares. Therefore, I do not find any merit in this contention of Noticee 1.

60. In view of the above, I find that the following amount raised through premium had been misutilized by Noticee 1:

Purpose	**Amount (in Rs.)**
Loan to Globe Soya	40,00,000
Loan to Krishank Investment Pvt. Ltd.	10,00,000
Investment in 3M Enterprises	7,00,000
Total	**57,00,000**

(iii) Investment of Rs. 3.96 crores (approx.) in shares of some companies

61. I also note from available documents that out of the premium received in the preferential allotment, MEL had transferred an amount of Rs.25 lakhs to M/s. Krishkan Investments Pvt. Ltd. on March 24, 2017 for purchase of shares of Kherapati Vincom Pvt. Ltd., Rs. 5 lakh to Suchitra finance & Trading Co. Pvt. Ltd. on March 27, 2017 for purchase of shares of Finworth Investment Pvt. Ltd., Rs. 22.5 lakhs to Rising Sunrock Products P. Ltd. on March 29, 2017 for purchase of shares of Rising Sunrock Products P. Ltd and Rs. 2 crores to Rising Sunrock Products P. Ltd on April 27, 2017 for purchase of shares of Rising Sunrock Products P. Ltd. I note from the bank statement of Axis Bank A/c no. 911020051033229 of MEL that the transactions have been done by MEL in this regard on the following dates:

Sr. No.	**Name of the Entity**	**Amount (in Rs.)**	**Date**
1	Krishkan Investments Pvt. Ltd.	25,00,000	March 24, 2017
2	Suchitra finance & Trading Co. Pvt Ltd	5,00,000	March 27, 2017
3	Rising Sunrock Products P. Ltd	22,50,000	March 29, 2017
4	Rising Sunrock Products P. Ltd	2,00,00,000	April 27, 2017
		2,52,50,000	

62. I find that in its submissions to the SCN, Noticee 1 has not provided any reply in this regard nor has it disputed the aforesaid findings. Therefore, it is admitted position that that out of the refunded amount, MEL had redeployed Rs. 2,52,50,000 towards purchase of shares of companies and capital introduction in partnership firm. Thus, it is clear that out of the proceeds of the preferential allotment, an amount to the extent of Rs,2,52,50,000 were not deployed by MEL in accordance with the stated objects as well as utilisation of the proceeds of the preferential allotment.

63. I also note from the documents available on record that an amount of Rs. 40 lakhs was provided to Madhumati Gawde on July 29, 2016 as advance against property. I note that

MEL had informed IA, vide email dated January 24, 2020 that an MOU dated August 01, 2016 was executed between MEL and Ms. Madhumati Gawde and a copy of the same was also submitted to IA. I note from the MOU that it was executed for the purchase of a commercial premises at No. 606, 6th Floor, Shalimar Morya Park Premises Co-operative Society Limited, Oshiwara, Andheri W, Mumbai – 400053 for an amount of Rs. 1.40 crore along with Rs. 35 lakhs towards furniture and fixtures. I also note from the MOU that an amount of Rs. 40 lakhs were paid to Ms. Madhumati Gawde at the time of execution of MOU and the remaining amount of Rs. 1.35 crore was to be paid in a phased manner but not later than December 31, 2017. I also note that vide said email, MEL informed that due to lack of financial inflow in MEL, MEL could not make the balance payment to purchase the same and therefore, MOU was terminated by executing a cancellation deed and Rs. 40 lakhs which was provided as advance was refunded back to MEL. I note from the available record that bank statements in support of transferring money to Ms Madhumati Gawde and refund of the same was not placed on record. Therefore, in the absence of relevant bank statements, it is not possible to ascertain whether the funds had actually been transferred to Ms. Madhumati Gawde for the purpose of purchase of property, as stated by Noticee 1. I note that Noticee 1, in its reply to the SCN, has neither filed any submissions in respect of the aforesaid finding in the SCN nor refuted the same. Therefore, I hold that out of the proceeds of preferential allotment, the amount of Rs. 40 lakhs, transferred to Ms Madhumati Gawde, ostensibly for purchase of property, was not utilised for the same.

(iv) Loan of Rs. 7.61 crores out of the premium amount

64. W.r.t. allegation regarding loan granted, I note from the submission by MEL vide email dated December 16, 2019 that an amount of Rs. 7.61 crore has been provided as loan to 10 entities. The summary of the fund transaction as submitted by MEL is represented below:

Purpose 3: Loan Granted			
Date of the Agreement/ Transaction	**Name of the Counter Party**	**Amount (in Rs.)**	**Documentary Evidence**
May 13, 2014	M/s. Pearl Agriculture Limited	50,00,000	• Account Confirmation, • Ledger Statements, • Letters • MOUs
August 8, 2014	M/s. MC Jain Info Services Pvt Ltd	35,00,000	
August 19, 2014	M/s. MC Jain Info Services Pvt Ltd	50,00,000	
September 19, 2014	M/s. Nouveau Global Ventures Limited	30,00,000	
December 12, 2014	M/s. Nouveau Global Ventures Limited	2,26,00,000	
November 15, 2014	M/s. HNS Trading Pvt Ltd	10,00,000	
November 26, 2014	M/s. P & Y Enterprises Ltd	1,00,00,000	
December 1, 2014	M/s. Singh Wahini Moulders & Holdings Pvt. Ltd.	45,00,000	
December 3, 2014	M/s. Singh Wahini Moulders & Holdings Pvt Ltd	45,00,000	
December 4, 2014	M/s. The Right Address Ltd (No MoU executed)	50,00,000	

Purpose 3: Loan Granted			
Date of the Agreement/ Transaction	**Name of the Counter Party**	**Amount (in Rs.)**	**Documentary Evidence**
December 12, 2014	Mr. Janakrey Turakia	50,00,000	
December 30, 2014	M/s. Riddhi Siddhi ventures Pvt Ltd	50,00,000	
July 19, 2014	Mr. Mahesh Gaggar	20,00,000	
	Total Amount	**7,61,00,000**	

65. I note from the bank statements of (Bank A/c no. 911020051033229 of Axis Bank and 037705001984 (ICICI Bank) of MEL as well as bank statement of Mahesh Gajjar (Bank A/c no. 34585 of Abhyudaya Co-operative Bank) that the amount mentioned in the above table i.e. a sum of Rs. 7.61 crore was transferred to the 10 entities mentioned in the above table. Noticee 1 in its reply contended that they had regular fund transactions with MC Jain Info Services Pvt. Ltd. and with remaining entities the amount was given as loan in ordinary course of business. Noticee 1 has also stated that the amount granted to the aforesaid entities were duly received by them and provided copy of ledger and bank statement to justify its contention.

66. On account of admission by Noticee 1 itself, it is concluded that the amount of Rs. 7.61 crores, was transferred to the aforesaid entities as loan, which was not as per the object of the preferential issue. Therefore, I find that Noticee 1 has deviated from the stated objects of the preferential allotment while deploying the proceeds of the premium received.

67. In view of the foregoing observations and analysis, I find that the amount raised initially and through premium, was not utilised by MEL for the purposes of the preferential issue proceeds and was in fact diverted and misutilised. I further find that the objects of the issue as presented to shareholders/public in notice of EGM of the Company held on May 25, 2013 was deceitful and presented information in a distorted manner. Thus, I am of the view that by deviating from the stated objects of issue as disclosed to shareholders and instead loaning out those funds and purchasing shares of unlisted companies which was misleading to the shareholders and investors, Noticee 1. i.e., the company, has committed a fraud as defined under 2(1)(c)(1)(2)(3)(4) of PFUTP Regulations, and thereby has violated the provisions of Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations. Therefore, I conclude that the allegation that Noticee 1 has violated Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations stands established.

68. It has been alleged in the SCN that in terms of Section 27(1) of SEBI Act, Noticees 2 to 4, by virtue of holding directorship of MEL were responsible for the conduct of the company in violation of Regulation 3(a) to (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations. In this regard, I note from the investigation report and other documents on record that Noticee 2

was the director of the company from August 30, 2011 onwards. Similarly, Noticee 3 was the director of Noticee 1 from August 30, 2011 till February 13, 2015. Thus, I note that Noticees 2 and 3 were the directors of the company at the time of preferential allotment of shares.

69. I observe from the investigation report that Noticee 4 was director of the company from March 2015 till January 27, 2017. Noticee 4 in her reply has submitted that she was director of the company from March 30, 2015 as an additional non-executive director of the company and the same was regularized in the ensuing Annual General Meeting (**AGM**). Noticee 4 has further contended that the preferential issue was made during the year 2013-14 and its proceed were utilised before the date of her appointment and therefore, no adverse inference can be drawn against her. In this regard, I note that as noted earlier in the order, Noticee 1 made allotment of preferential shares on June 07, 2013 and received the funds from 48 allottees between June 01, 2013 to June 06, 2013. Similarly, I note that Noticee 1 had executed agreement with M/s. Wizard Estate Pvt Ltd and M/s. Frontier Mercantile Pvt Ltd on May 31, 2014 and June 05, 2014 respectively for the deployment of funds received by Noticee 1 out of the premium amounts from the issue of preferential issue of shares. Therefore, I observe that since she was not a director of MEL at the time of cause of action i.e. preferential issue, Noticee 4 is not liable for the deviation in the initial proceeds received by Noticee 1 from the allotment of preferential issue.

70. As noted earlier in the order, the agreement executed with M/s. Wizard Estate Pvt Ltd and M/s. Frontier Mercantile Pvt Ltd. was cancelled and the amount refunded by aforesaid entities were redeployed against loan to following entities:

Date	Name of party	Amount	Purpose
14.01.16	M/s. Globe Soya Products Ltd	40,00,000	Loan granted
29.01.16	M/s. Krishkan Investments Pvt. Ltd.	10,00,000	Loans & Advances
July 29, 2016	Madhumati Gawde	40,00,000	Advance Against Property

71. Thus, I note that Noticee 4 was the director of the company when loan was granted to M/s. Globe Soya Products Ltd. and M/s. Krishkan Investments Pvt. Ltd., which was not in accordance with the object of the preferential allotment. Noticee 4 in her reply has contended that being a non-executive director of the company, she was not associated with the day to day affairs of the company. I also note that there are no documents available on record such as Board Minutes to show that Noticee 4 was present when the loan was granted to Globe Soya Products Ltd. and M/s. Krishkan Investments Pvt. Ltd.

72. In this regard, I note that Noticees 2 and 3 in their reply have contended that during the relevant period i.e. March 19, 2013 to December 31, 2015, Section 27 of SEBI Act did not provide for the vicarious liability of Directors in respect of the civil liability of the company arising out of the violations committed by such company. Noticees 2 and 3 have further contended that vicarious liability of directors in respect of the civil liability of the company, got covered by Section 27(1) of SEBI Act, only after the amendments made to Section 27 of SEBI Act with effect from March 08, 2019 and therefore, Section 27 of SEBI Act, did not create any vicarious liability on them as a director for the violations committed by the company, which were civil in nature. Noticees 2 and 3 have also placed reliance on the order passed by Ld. Whole Time Member of SEBI in the matter of JMD Ventures Limited dated September 14, 2021 and in the matter of V.B. Industries Limited dated July 08, 2021 to support their contention. The relevant portion of the aforesaid order relied by Noticees 2 and 3 is given below:

- **Order dated September 14, 2021 in the matter of JMD Ventures Limited**:

"30 SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 2 to 8, who were the directors/CFO of JMD at the relevant time, are liable for the violations alleged to be committed by JMD viz: Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, 4(1) (a), (b), (c), (e) & (g), Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6) & (12), Regulation 17(8) read with Part B of Schedule II, Clause B(2) of Schedule III read with Reg. 30, Regulation 33(2)(a) and Regulation 48 of LODR Regulations and Section 21 of SCRA, 1956. Thus, SCN imputes all the allegations which are levelled against JMD, automatically, on the directors /CFO of JMD. As already discussed in the forgoing paras, as regards the violations of Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, as alleged in the SCN, liberty has been given to SEBI to further investigate and proceed with the matter and the role of directors quashes violations may also be examined by SEBI. In the previous paras, it has been found that JMD was in violation Regulations 34(3), 33(1)(c) and Reg. 48of the LODR Regulations and Section 21 of SCRA, 1956. Therefore, in the context of Noticee no. 2 to Noticee no. 8, it has to be determined whether these Noticees are liable for those violations for which JMD has been found to be in violation, either by virtue of Section 27 of the SEBI Act, 1992 or otherwise. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during the relevant period (i.e. Financial Years 2015-16 to 2017-18), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the

company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word "offence" with the word "contravention" in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by JMD, with reference to LODR Regulations for which proceedings under Section 11, 11A, 11B and monetary penalty has been proposed, which are civil in nature. ……….."

- **Order dated July 08, 2021 in the matter of V.B. Industries Limited**

39. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 1 to 7, who were the directors/CFO of VBIL at the relevant time, are liable for the violations alleged to be committed by VBIL, viz: Sections 12A(a), (b) & (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1), 4(2) (f) & (r) of PFUTP Regulation, 2003, Regulations 4(1)(a), (b), (c), (e) & (g), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3), (6) & (12), 16(1)(b)(ii), 30(4)(ii), 33(1)(d), 33(2)(a), 33(3)(a), 34(2)(c), 46(2)(i), 48 and 17(8) read with Part B of Schedule II, LODR Regulations read with Section 27 of SEBI Act, 1992 and Section 21 of SCRA, 1956. Thus, SCN imputes all the allegations which are levelled against VBIL, automatically, on the directors of VBIL. As already discussed in the forgoing paras, as regards the violations of Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, as alleged in the SCN, liberty has been given to SEBI to further investigate and proceed with the matter and the role of directors qua these violations may also be examined by SEBI. In the previous paras, it has been found that VBIL is in violation Regulations 30(4)(ii), 33(1)(d), 33(2)(a), 33(3)(a), 34(2)(c) and 46(2)(i) of the LODR Regulations and Section 21 of SCRA, 1956. Therefore, in the context of Noticee no. 1 to Noticee no. 7, it has to be determined whether these Noticees are liable for those violations for which VBIL has been found to be in violation, either by virtue of Section 27 of the SEBI Act, 1992 or otherwise. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during the relevant period (i.e. Financial Years 2015-16 to 2017-18), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word "offence" with the *word "contravention" in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by VBIL, with reference to LODR Regulations for which proceedings under Section 11, 11A, 11B and monetary penalty has been proposed, which are civil in nature. ………."*

73. In this regard, it is pertinent to refer Section 27(1) of SEBI Act., the text of which is given as under: -

Regulation 27(1) of SEBI Act: - Offences by companies.

27. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

74. I note that during the investigation period, Section 27(1) of SEBI Act provided for vicarious liability of certain persons who were in charge of and were responsible to the company where an offence is committed by a company, but it did not provide for vicarious liability in respect of civil liability of the company. However, after amendment made to Section 27(1) of SEBI Act, which came into with effect from March 08, 2019 by the Finance Act, 2018, the word "offence" has been replaced with the word "contravention" in Section 27(1) of the SEBI Act. Therefore, I am of the view that Section 27 (1) of the SEBI Act, as it existed at the relevant time, did not create any vicarious liability of directors, i.e., Noticees 2 to 4 for the violations of Regulations 3(a) to (d) and 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations committed by Noticee 1. In this regard, I also place reliance on the order passed by Ld. Whole time Member of SEBI in the matter of K-Life style & Industries Limited dated December 21, 2021, wherein it was held that, *"……. I note that during the relevant period (i.e. investigation period), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where the offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word*

"offence" with the word "contravention" in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992 does not create any vicarious liability of Noticee nos. 2, 3, 5 and 7 for the alleged violations committed by K-Lifestyle during the investigation period, with reference to PFUTP Regulation, 2003 or LODR Regulations for which proceedings under Sections 11, 11(4), 11A, 11B(1) and Section 12 A(1) of SCRA, 1956 or monetary penalty has been proposed, which are civil in nature."

75. In view of the above, and placing reliance on the aforesaid order, I find that in terms of Section 27(1) of SEBI Act, as prevailing at the relevant time, Noticees 2 to 4, by virtue of holding directorship of Noticee 1, cannot be held liable for the aforesaid violations of provisions of PFUTP Regulations by Noticee 1.

76. In view of the above, I find that the allegation levelled against Noticees 2 to 4 that they have violated Regulations 3(a) to (d) and Regulations 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations does not get established.

77. W.r.t. allegation levelled against Noticee 1 regarding violation of Clause 43 of Listing Agreement read with Regulation 32 of LODR Regulations read with Regulation 103(1) and (2) of LODR Regulations and Section 21 of SCRA, I note that as per Clause 43 of Listing Agreement, companies which mobilise funds through preferential issue are required to provide to the stock exchange and publish a statement showing the variations between the projected utilisation of the fund made by it in its objects stated in the explanatory statement to the notice issue for general meeting for considering preferential issue of securities and the actual utilisation of funds.

78. I note that during the course of investigation, SEBI had sought clarification from BSE regarding disclosure, if any, made to them by the company under Clause 43 of the Listing Agreement. I note from the BSE's email dated November 20, 2019 that MEL had not submitted any separate disclosures in terms of Clause 43 of the Listing Agreement. Noticees in their reply have contended that there was no variation in utilization of issue proceeds and the object of the issue was to raise resources to meet the future capital expenditure, long term capital requirements, to diversify into electronics business and for general corporate purposes. Noticee 1 has further contended that giving of loans and investments in shares were part of the business activities of the company as specified in Memorandum of Association and therefore, the utilization of issue proceeds by the company, *inter-alia* for giving loans, investing in shares cannot result in allegation of variation of issue proceeds. I note that even though investing in shares/ giving loans may be part of Memorandum of Association of company, however, the same were not part of the objects of the issue.

Therefore, I do not find any merit in the aforesaid contention of Noticee 1. In this regard, as established in the earlier part of this order, funds received in the preferential allotment were not utilized for the objects of the issue to the extent of amount raised initially and through premium. Therefore, in view of the foregoing, it is clear that Noticee 1 has not filed any disclosure regarding deviation in the use of amount received from preferential allotment.

79. Noticees 1 and 4 in their reply have contended that Clause 43(a) of the Listing Agreement talks about variations between projected utilisation of funds/ or projected profitability but in the present matter, company had not made any projections at all for utilization of funds or profitability and therefore, the issue of variations can also not arise. Noticees 1 and 4 have further contended that during the year 2013, the preferential allotments by listed companies were governed by Regulations 70 to 79 of ICDR Regulations and said Regulations did not obligate the companies to make projections and ICDR Regulations pertaining to preferential allotment did not obligate the companies to make projection

80. For reference, I reproduce hereunder the provisions of Clause 43(a) of Listing Agreement:

"Clause 43 (a): - The Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilisation of funds and /or projected profitability statement made by it in its prospectus or letter of offer or object /s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilisation of funds and/or actual profitability."

81. On perusal of Clause 43 (a) of Listing Agreement, I note that the company has to intimate on quarterly basis a statement to the Exchange for indicating variations between projected utilisation of funds for the objected stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities and the actual utilisation of funds or actual profitability. It is a matter of record that the company had mentioned the objects of the preferential issue in the notice for EGM. It has also been established earlier in the order that the amount raised initially and through premium in the preferential allotment, was not utilised by MEL for the purposes of the preferential issue proceeds and was in fact diverted for other purpose. Therefore, I do not agree with the contention raised by Noticees 1 and 4 that the company has not made any projections at all and issue of variation does not arise. Further, I note that it is not SEBI's case that Noticees 1 and 4 have violated provisions of ICDR Regulations. Therefore, I find the aforesaid contentions of Noticees 1 and 4 to be devoid of merit.

82. Noticees 1 and 4, in their reply have also contended that LODR Regulations became applicable in the year 2015 and the impugned preferential allotment took place in the year 2013 and also that Regulation 32 cannot be applied retrospectively, though Regulation 32(1)(b) are pari material with Clause 43 of the Listing Agreement and they cannot be charged under Regulation 32 of LODR Regulation read with Regulation 103 of LODR Regulation. In this regard, it is pertinent to refer Regulations 32 and 103 of LODR Regulations which are given as under: -

Regulation 32:

32. (1) The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc., -

(a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;
(b)indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.
(2) The statement(s) specified in sub-regulation (1), shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.
(3) The statement(s) specified in sub-regulation (1), shall be placed before the audit committee for review and after such review, shall be submitted to the stock exchange(s).
(4) The listed entity shall furnish an explanation for the variation specified in sub-regulation (1), in the directors 'report in the annual report.
(5) The listed entity shall prepare an annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice, certified by the statutory auditors of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.
(6) Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency.
(7) Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on an annual basis, promptly upon its receipt. Explanation.- For the purpose of this sub-regulation, ―monitoring agency‖ shall mean the monitoring agency specified in regulation 16 of the Securities and Exchange Board of India (Issue of

Capital and Disclosure Requirements) Regulations, 2009.

(8) For the purpose of this regulation, any reference to —quarterly/quarter‖ in case of listed entity which have listed their specified securities on SME Exchange shall respectively be read as —half yearly/half year".

Repeal and Savings

103. (1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

83. On perusal of the Regulation 32 of LODR Regulations, I note that as per the said Regulation, the company has to submit to the stock exchange any deviations in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for general meeting, category wise variation between projected utilisation of funds made by it in offer document or explanatory statement to the notice for the general meeting. I note that Regulation 32 is similar to Clause 43 of Listing Agreement and the same has also been admitted to by Noticees 1 and 4. As per Regulation 103(2) of LODR Regulations, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered in to between the stock exchange(s) and listed entity, in force prior to the commencement of LODR regulations, shall be deemed to have been done or taken under the corresponding provision of these regulations. Thus, as per LODR Regulations, action may be taken against a listed entity for violation of Listing Agreement. Thus, I am of the view that this contention of Noticees is untenable.

84. In view of the above, I find that allegation levelled against Noticee 1 that it has violated Clause 43 of Listing Agreement read with Regulation 32 of LODR Regulations read with Regulation 103(1) and (2) of LODR Regulation and Section 21 of SCRA stands established.

85. As regards the allegation that Noticees 2 to 4 have violated Clause 43 of Listing Agreement read with Regulation 32 of LODR Regulations read with Regulation 103(1) and (2) of LODR Regulation and Section 21 of SCRA, I find that crucial evidence to examine and establish

the role of directors towards such default, such as Board Meetings to show that Noticees 2 to 4 were present in such Board Minutes has not been brought on record. Further, it has also not been established that Noticees 2 to 4 were present in the Board Meetings where quarterly financial statement was placed, along with which the utilization of the issue proceeds of preferential issue would have been discussed. Therefore, I am of the view that in absence of any substantive evidence, it is not possible to ascertain the role of directors with regard to the violation of provisions of Listing Agreement, LODR Regulations and SCRA by the company.

86. In view of the foregoing, I find that the allegation levelled against Noticees 2 to 4 that they have violated Clause 43 of Listing Agreement read with Clause 32 of LODR Regulations read with Regulation 103(1) & and (2) of LODR Regulations and Section 21 of SCRA, does not stand established.

87. W.r.t. allegation levelled against Noticee 1 regarding alleged violation of Clause 35(c) of Listing Agreement read with Regulation 31 of LODR Regulations read with Regulations 103(1) and (2) of LODR Regulations that Noticee failed to bring into effect the change in shareholding of public shareholders pertaining to June 2013 till December 2013, I note that Noticee 1, in its reply to SCN dated July 26, 2022, has admitted to the aforesaid charge and stated that the said error occurred because of *bona fide* error by secretarial department and not actuated by any sinister intent or oblique motives. Noticee 1 has further submitted that post December 2013, they have always filed the shareholding pattern with the exchanges in prescribed time.

88. In view of the admission by Noticee 1 to the aforesaid violation, I find that allegation levelled against Noticee 1 that it has violated Clause 35(c) of Listing Agreement read with Regulation 31 of LODR Regulations read with Regulations 103(1) and (2) of LODR Regulations, stands established.

<u>Issue II: Do the violations, if established, attract monetary penalty under Section 15HA of SEBI Act and Section 23 A and Section 23E of SEBI Act?</u>

89. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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...…*". Therefore, placing reliance on the aforesaid judgement, I

find that the above violations, as established in the foregoing paragraphs, makes Noticee 1 liable for monetary penalty as per details below:

89.1. Under Section 15HA of the SEBI Act for violation of provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), 4(2) (k) and (r) of PFUTP Regulations;

89.2. Under Section 23E of SCRA for the violations of provisions of Clause 35(c) of Listing Agreement read with Regulation 31 of LODR Regulations read with Regulations 103(1) and (2) of LODR Regulations;

89.3. Under Section 23A of SCRA for the violation of provisions of Clause 43 of Listing Agreement read with Regulation 32 of LODR Regulations read with Regulations 103(1) and (2) of LODR Regulations and Section 21 of SCRA.

90. The text of Section 15HA of SEBI Act, Section 23E of SCRA and Section 23A of SCRA is reproduced below: -

Penalty for fraudulent and unfair trade practices

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

Section 23A of SCRA: *Any person, who is required under this Act or any rules made thereunder, —*

*(a) to furnish any information, document, books, returns or report to the recognized stock exchange or to the Board, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or the Act or rules made thereunder, or who furnishes[1] [*** false, incorrect or incomplete information, document, books, return or report][2], shall be liable to a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees] [3] for each such failure.*

[1] Substituted for the words "report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or who furnishes", by the Finance (No. 2) Act, 2019 w.e.f. 20-01-2020

[2] Inserted by the Finance Act, 2018 w.e.f. 08-03-2019.

[3] Substituted for the words "'of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014

Section 23E of SCRA: -*If a company or any person managing collective investment scheme or mutual fund [or real estate investment trust or infrastructure investment trust or alternative investment fund], [4][5]fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be [liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.][5]*

91. I note that Noticee 1 in its reply dated August 10, 2022, has contended that penalty cannot be imposed against them under Section 23E of SCRA, as their company is not a Collective Investment Scheme, or Mutual Fund, Real Estate Investment Trust or Infrastructure Investment Trust etc.

92. With regard to Section 23E of SCRA, the Hon'ble SAT in the matter of Suzlon Energy Ltd. and Anr. vs. SEBI (Appeal No. 201 of 2018) dated May 03, 2021 has held the following:
"*Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E....." (emphasis supplied)*

93. I note that a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 17 and 18 of the aforesaid order and an appeal has been filed before the Hon'ble Supreme Court against the aforesaid order vide civil appeal no. 4741 of 2021. I note that the aforesaid stay application and the appeal is pending. I note that vide orders in the matter of M/s NDTV vs. SEBI (Appeal no. 358 of 2015)

[4] Inserted by the Finance Act, 2018 w.e.f. 08-03-2019
5 Substituted for the words "liable to a penalty not exceeding twenty-five crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014.

dated August 07, 2019, and Oasis Securities Ltd. & Ors. Vs. SEBI (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under Section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement. Since the legal issue regarding Section 23E of SCR Act is under appeal, the enforcement the enforcement of this order qua Noticee 1 for the penalty imposed on it under Section 23E of SCRA, shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court of India.

Issue III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee 1 after taking into consideration the factors mentioned in Section 15J of the SEBI Act and Section 23J of SCRA?

94. While determining the quantum of penalty under Section 23 A of SCRA, Section 23E of SCRA and Section 15HA of SEBI Act factors stipulated in Section 23J of SCRA and Section 15J of the SEBI Act have to be given due regard. The text of the same is reproduced below:

Factors to be taken into account by adjudicating officer under SCRA

23J. *While adjudging the quantum of penalty under Section 23-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.

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

Factors to be taken into account by the adjudicating officer under SEBI Act

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

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

95. I note that it is not possible from the material on record to establish repetitive default of the same nature by Noticee 1 or quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee 1 or the consequent loss caused to investors as a result of the default. However, the conduct of the Noticee 1 being a listed company, is found to be fraudulent and deceptive towards its shareholders i.e., it has utilised the funds raised from preferential allotment of shares for purposes other than for what the approval of the shareholders was taken. Further, such variance from the purposes for which the approval was obtained, was not intimated to the Exchange where the shares of MEL was listed. The funds were instead used for providing loans, investments in shares and partnership firms etc. This conduct of Noticee 1 amounts to siphoning of funds of the shareholders. Activities of this nature are severely detrimental to the integrity of the securities market and prejudicial to the interest of the investors and cannot be viewed lightly. Further, I note that Noticee 1 failed to brought into effect the change in shareholding of public shareholders pertaining to June 2013 till December 2013. Therefore, I am of the view that such conduct of a listed entity as displayed by Noticee 1 deserves an appropriate penalty which is commensurate with the severity of its violation and would act as a deterrent.

ORDER

96. Accordingly, taking into account the aforesaid findings and in exercise of power conferred upon me under Section15-I of the SEBI Act and under Section 23-I of the SCRA read with Rule 5 of the Adjudication Rules, I hereby impose the following penalties on Noticee 1: –

Sr. No.	Noticee	Penal Provisions	Penalty (Rs.)
1	**Mystic Electronic Limited**	Section 15HA of SEBI Act	10,00,000
		Section 23E of SCRA***	5,00,000
		Section 23A of SCRA	2,00,000

***** As noted above, in light of the fact that an appeal has been before the Hon'ble Supreme Court in the Suzlon Energy (supra) matter, the monetary penalty imposed on Noticee 1 under section 23E of the SCRA shall be payable depending upon the outcome of the aforesaid appeal before the Hon'ble Supreme Court of India.

97. Noticee 1 shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.inon the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW

98. Noticee 1 shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department -DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C-4 A, "G" Block, Bandra Kurla Complex, Bandra (E) Mumbai -400 051." Noticee 1 shall also provide the following details while forwarding DD / payment information:
    a) Name and PAN of the Noticee
    b) Name of the case / matter
    c) Purpose of Payment-Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

99. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties of Noticee 1.

100. In terms of Rule 6 of Adjudication Rules, copy of this order is sent to the Noticees viz. Mystic Electronic Limited, Krishna Khadaria, Asha Khadaria and Madhumati Gawade and also to Securities and Exchange Board of India.

Date: November 30, 2022 **SOMA MAJUMDER**
Place: Mumbai **Adjudicating Officer**