BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/DS/2022-23/25159-25175]

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

In respect of

Noticee No	Name of entity	PAN
1	Manash Das (Director of Ekaparnik Vintrade Private Limited)	AYPPD6539A
2	Sudeb Ghosh (Director of Ekaparnik Vintrade Private Limited)	ATJPG2443H
3	Pintu Sardar (Director of Indrawati Commosales Private Limited)	FLDPS5738A
4	Bapi Naskar (Director of Indrawati Commosales Private Limited)	ATKPN8625R
5	Ashok Naskar (Director of Vinahast Dealcom Private Limited)	AQVPN6965E
6	Biswajit Ghosh (Director of Vinahast Dealcom Private Limited)	AWCPG4923C
7	High Speed Distance Movers Private Limited	AACCH9543C
8	Murlidhargiridhar Trading Private Limited	AAICM3230H
9	River High Right Share Brokers Private Limited	AAGCR2643P
10	Skyhigh Buildtech Private Limited	AAPCS4815D
11	Ahuja Metalloys Private Limited	AAICA0771D

12	Tanmoy Roy (Director of Vinahast Trading Private Limited)	BLJPR4160H
13	Pratap Chakraborty (Director of Vinahast Trading Private Limited)	AZLPC9917A
14	Bablu	BIDPB9135R
15	Anil Kumar Talwar	ANRPT9705F
16	Lalit Kumar	BLGPK8913G
17	Amit Kumar Saxena	DWOPS8186Q

In the matter of Angels Enterprises Limited
(Noticees 1 to 17 are individually known by their respective name or Noticee no. and collectively referred to as the "Noticees")

BACKGROUND

1) Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted investigation in respect of alleged manipulation in the scrip of Angels Enterprises Limited (hereinafter referred to as **"Company"** / **"AEL"**) during the period July 11, 2014 till June 15, 2015 (hereinafter referred to as "**IP**"). Pursuant to the investigation, it was alleged that aforementioned Noticees violated the provisions of Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**") read with Section 12A (a), (b) and (c) of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

2) In this regard, SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as Adjudicating Officer vide Order dated November 17, 2022 against Noticees 1 to 13 and vide Order dated February 02, 2023 against Noticees 14 to 17, under Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter

referred to as ***Adjudication Rules, 1995***) to inquire into and adjudge under Section 15HA of the SEBI Act, 1992, the alleged violations of provisions of Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) and (e) of PFUTP Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3) A common Show Cause Notice with reference no. SEBI/EAD/BM/DS/61814/2022 dated December 07, 2022 (hereinafter referred to as "**SCN**") was issued to Noticees 1 to 13 and similar show cause notice with reference no. SEBI/EAD/BM/DS/5381/2023 dated February 08, 2023 (hereinafter referred to as "**SCN**") was issued to Noticees 14 to 17 in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them and why penalty, if any, under Section 15HA of the SEBI Act, 1992 be not imposed on the Noticees.

4) The SCN was dispatched through Speed Post Acknowledgement Due (SPAD) and digitally signed emails. It was duly delivered to all Noticees through digitally signed emails, except Noticee 6. Thereafter, hand delivery/ affixture was attempted to deliver the SCN to Noticee 6.

5) During hand delivery of the SCN to Noticee 6, it was found that he had expired and his family member had shared a copy of death certicate for record. The death certificate shows that the Noticee passed away on November 18, 2020.

6) Noticees 1, 2, 3, 4, 5, 12 and 13 had sought inspection of documents through the authorized representative (hereinafter referred to as "**AR**"), vide letters dated December 26, 2022. Inspection was duly granted on January 12, 2023. The AR requested for rescheduling of the same due to personal reasons. Thereafter,

inspection of documents was conducted by the AR on January 30, 2023. The AR also requested for provision of copies of Annexure C and H to the Investigation Report along with MCA records related to connections between entities noted in Annexure C. The said documents were shared with the AR vide mail dated February 08, 2023. The Noticees 1, 2, 3, 4, 5, 12 and 13 were advised to submit reply by February 15, 2023. Vide mail dated February 17, 2023, Noticees 1, 2, 3, 4, 5, 12 and 13 were advised to appear for hearing on March 02, 2023. Vide mail dated February 28, 2023, the AR requested for extension of time to submit response to the SCN and adjournment of hearing citing personal reasons, which was considered by the undersigned. Vide mail dated March 09, 2023, the AR was advised to appear for hearing on March 14, 2023 and submit reply to the SCN at least 4 days before the date of hearing. Vide mail dated March 10, 2023, the AR submitted reply to the SCN on behalf of Noticees 1, 2, 3, 4, 5, 12 and 13. The AR appeared for the scheduled hearing and reiterated its submissions made vide letter dated March 10, 2023. The AR requested for provision of KYC documents of the Companies of which Noticees 1, 2, 3, 4, 5, 12 and 13 were appointed as directors, which was agreed to by the undersigned. The AR sought time till March 22, 2023 to make additional submissions, which was granted by the undersigned. Vide mail dated March 25, 2023, the AR made additional submissions on behalf of Noticees 1, 2, 3, 4, 5, 12 and 13.

<u>Noticees 8, 9 and 10</u>

7) No reply was received from Noticees 8, 9 and 10 till January 02, 2023. Vide mail dated January 02, 2023, they were advised to submit reply to the SCN by January 10, 2023. However no response was received. In the interest of natural justice, vide digitally signed mail dated February 17, 2023, they were advised to appear before the undersigned on March 03, 2023. However, the Noticees did not appear for the hearing. In the interest of natural justice, another opportunity of hearing was provided to Noticees 8, 9 and 10. Vide email dated March 08, 2023, they were advised to appear

before the undersigned on March 16, 2023. However, the Noticees did not appear for the hearing or submit any response.

<u>Noticees 7 and 11</u>

8) Meanwhile, it was observed from MCA records that the Company status of Noticees 7 and 11 was shown as "strike off". The applicable provision of the Companies Act, 2013 are reproduced for reference as follows:-

Effect of company notified as dissolved

250.Where a company stands dissolved undersection 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

9) In view of the fact that the Noticees 7 and 11 have been struck-off and liabilities in respect of the present proceedings had not accrued as on the date of dissolution of the Noticees, it would not be appropriate to determine liability against a company which no longer exists. I note that it is an established fact that when a company is struck-off, it is a non-existing company and the adjudication proceedings against the non-existing company is thus nullity. In this context, I would like to rely upon the judgment of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax (CIT) vs. Vived Marketing Services (P) Ltd., ITA NO. 273/2009 dated September 17, 2009 in which it was held that -"*When the Assessing Officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of companies under Section 560 of the Companies Act. In these circumstances, the Tribunal rightly held that there could not have been any assessment order passed against the company which was not in existence as on that*

date in the eyes of law it had already been dissolved. We are of the opinion that the view taken by the Tribunal is perfectly valid and in accordance with law." Strike off essentially means removing the name of the company from the Register maintained by the Registrar of Companies. It is like closure of the company and the company will not be in existence after being struck-off and cannot perform any operations. In view of the above, I discharge the Show Cause Notice dated December 07, 2022 qua the Noticees 7 and 11 without proceeding further.

<u>Noticees 14 to 17</u>

10) In view of the foregoing, adjudication proceedings were initiated against Noticees 14 to 17. SCN was issued to them via SPAD and also duly delivered vide digitally signed mail February 16, 2023. No reply was received from Noticees 14 to 17 till March 09, 2023.In the interest of natural justice, an opportunity of hearing was provided to them through hearing notice dated March 02, 2023 vide digitally signed email dated March 02, 2023, whereby they were advised to appear before the undersigned through video conferencing mode on March 09, 2023. However, Noticees 14 to 17 did not appear for the hearing. In the interest of natural justice, last and final opportunity of hearing was provided to Noticees 14 to 17 vide email dated March 09, 2023 and the Noticees were advised to appear before the undersigned on March 16, 2023. However, the Noticees did not appear for hearing or submit any response.

11) I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notices were duly served upon Noticees 8, 9, 10, 14, 15, 16 and 17 and sufficient opportunity was granted to them to reply to the SCN and appear for the personal hearing. Considering the fact that the Noticees 8, 9, 10, 14, 15, 16 and 17 have neither filed any reply nor have availed the opportunity of personal hearing despite service of notices upon them, I am of the view that they have nothing to submit in terms of Rule 4(7) of the Adjudication Rules and the matter is being proceeded ex-

parte in their regard on the basis of material available on record. As the Noticees 8, 9, 10, 14, 15, 16 and 17 did not file any reply to the SCN, it can be presumed that they have admitted the charges levelled against them.

12) In this regard, it is pertinent to note that the Hon'ble SAT in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed that, *"......the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".*

13) Further, the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: "........... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."

14) Additionally, the same position has been reiterated by the Hon'ble SAT in the matter of Dave Harihar Kirtibhai vs SEBI (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under*: "...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non- receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and*

should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."

15) In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against Noticees 8, 9, 10, 14, 15, 16 and 17 ex parte, based on the material available on record.

16) The allegations levelled against the Noticees in the SCN are mentioned hereunder:

a) It was observed that during the IP, price of the scrip of AEL has moved from Rs.5.00 on March 17, 2015, to Rs.10 (i.e. 100% rise) on June 02, 2015 after reaching Rs. 10.76 on May 28, 2015.

b) A group of 53 entities who traded across 6 scrips was identified. It was observed that out of 53 entities, 36 entities traded in the scrip of AEL. Out of these 36 entities, 9 entities were observed to have executed trades amongst themselves during the period beginning March 17, 2015 till June 02, 2015.

c) Seven connected entities, being Noticees 7, 8, 9, 10, Ekaparnik, Indrawati, VDPL and VTPL, bought shares during the period beginning March 17, 2015 till June 02, 2015. During investigation, it was observed that Ekaparnik, Indrawati, VTPL and VDPl had been struck off. As per provisions of section 248(7) of the Companies Act, 2013, the directors are held liable for the actions of the Company. Hence, actions were initiated against Noticees 1 and 2 being directors of Ekaparnik, Noticees 3 and 4 being directors of Indrawati, Noticees 5 and 6 being directors of VDPL and Noticees 12 and 13 being directors of VTPL, in line with provisions of Section 248(7) of Companies Act, 2013.

d) It was observed that Indrawati (directors Noticees 3 and 4), VDPL(directors Noticees 5 and 6), VTPL(directors Noticees 12 and 13), Ekaparnik (directors Noticees 1 and 2), and Noticees 7 and 10 have contributed, through 10 trades with connected counterparties, contributed ₹1.43 to Positive LTP (i.e. about 20% to total market Positive LTP). The summary of 10 trades is provided as under:

S.No.	Buyer Name	No. of trades	LTP contribution (in ₹)	% of Positive LTP to total market Positive LTP
1.	Ekaparnik Vintrade Private Limited	1	0.04	0.54
2.	Indrawati Commosales Pvt Ltd	4	0.65	8.71
3.	Skyhigh Buildtech Pvt Ltd	1	0.20	2.68
4.	Vinahast Dealcom Pvt Ltd	3	0.29	3.88
5.	Vinahast Trading Pvt Ltd	1	0.25	3.35
Total		**10**	**1.43**	**19.16**

e) Noticees 7, 8, 9 and 11 were counterparties to the aforementioned trades which resulted in contribution of Positive LTP to the total market Positive LTP.

<u>New High Price</u>

f) It was also observed that Ekaparnik, Indrawati, VDPL and VTPL and Noticees 8, 9, 10 and 11, through 9 trades with connected entities, contributed ₹1.18 to New High Price (20.45% of the total Market NHP contribution). The summary of their trades and NHP contribution is provided as under.

S.No.	Buyer Name	Sum of Positive LTP (in ₹)	NHP Qty	No. of trades	NHP (in ₹)	NHP contribution as % of Total market NHP
1.	Vinahast Dealcom Private Limited	0.20	4,300	3	0.25	4.33
2.	Indrawati Commosales Private Limited	0.45	4,500	3	0.44	7.63
3.	Skyhigh Buildtech Private Limited	0.20	2,000	1	0.20	3.47
4.	Vinahast Trading Private Limited	0.25	3,000	1	0.25	4.33
5.	Ekaparnik VIntrade Private Limited	0.04	2,200	1	0.04	0.69
Total		**1.23**	**16,000**	**9**	**1.18**	**20.45**

g) Noticees 7, 8, 9 and 11 were counterparties to the aforementioned trades which contributed to New High Price.

First Trades

h) It was observed that Ekaparnik, Indrawati and VDPL, through 6 first trades with connected entities, contributed ₹0.69 to Positive LTP (i.e. 9.65% to total market Positive LTP) and ₹0.68 to NHP (i.e. 11.78% to market total NHP). The summary of their trades is placed as under.

S.No.	**Buyer Name**	**Positive LTP Contribution (in ₹)**	**NHP of first trades (in ₹)**	**No. of first trades**	**Traded Qty**	**% of Positive LTP to Total Mkt Positive LTP**
1.	Indrawati Commosales Private Limite	**0.45**	**0.44**	**3**	**4,500**	**6.29**
2.	Vinahast Dealcom Private Limited	**0.20**	**0.20**	**2**	**3,300**	**2.79**
3.	Ekaparnik VIntrade Private Limited	**0.04**	**0.04**	**1**	**2,200**	**0.55**
Total		**0.69**	0.68	6	10000	9.65
Market Total		4.74	4.03	30	42828	66.29

i) Noticees 7, 8 and 9 were counterparties to the aforementioned first trades which contributed to positive LTP and NHP.

j) In view of the above, Noticees 1 and 2, being directors of Ekaparnik, Noticees 3 and 4, being directors of Indrawati, Noticees 5 and 6, being directors of VDPL, Noticees 12 and 13, being directors of VTPL, Noticees 14 and 15, being directors of Noticee 7, Noticees 16 and 17, being directors of Noticee 11 and Noticees 8, 9 and 10, were alleged to have engaged in an act amounting to manipulation of the price of the scrip of Angels through significant LTP contribution, thus violating the provisions of Regulation 3(a), (b), (c), (d), 4 (1), 4 (2) (a) & (e) of PFUTP Regulations 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992.

17) Main submissions made by Noticees 1, 2, 3, 4, 5, 12 and 13 vide separate letters dated December 26, 2022 and March 10, 2023 are summarized as under.

a) *Noticees 1, 2, 3, 4, 5, 12 and 13 denied the allegations and also denied being directors of 4 companies. They further submitted that their names, signatures and documents have been misused by some unknown persons / entities and that that they were not much educated and belong to very poor families and are living in remote villages of West Bengal.*

b) *Noticees 1, 2, 3, 4, 5, 12 and 13, upon receipt of the present SCN and Notice(s) in the other scrips came to know about misuse of their names, details and documents. They have never given their consent and approval to become the Directors of the 4 Companies.*

c) *Upon perusal of the Investigation Report and annexures thereto and website of the Ministry of Corporate Affairs that the 4 Companies since their incorporation have not filed Statutory Returns and therefore the names of the 4 Companies have been struck off by the Registrar of Companies, West Bengal.*

d) *Upon further perusal of documents from Ministry of Corporate Affairs website of the aforementioned 4 Companies, it is revealed that the subscribers to the Memorandum of Association of 4 Companies were the following persons:*

   i) *Mr. Avijit Saha*

   ii) *Mr. Chandan Pati*

   iii) *Mr. Barun Kumar Das*

   iv) *Mr. Gouri Shankar Mandal*

   v) *Mr. Pratap Chakraborty (Noticee No. 13)*

   vi) *Mr. Anup Kumar Deb*

   vii) *Mr. Tanmoy Roy (Noticee No. 12)*

e) *The names of these entities have been misused by Mr. Devesh Upadhyaya and he has admitted the same before the Income Tax Authorities. The Statement of Mr*

Devesh Upadhyaya taken by Income Tax Authorities was enclosed by Noticees 1, 2, 3, 4, 5, 12 and 13.

f) *It was also submitted that were various irregularities in the forms filed by Ekaparnik, Indrawati, VDPL and VTPL over the MCA website and various documents were unsigned, which further shows that Noticees 1, 2, 3, 4, 5, 12 and 13 were not involved in the affairs of the company, as their signatures are not available on the submitted document, and also that these companies were formed by some unknown parties only for non-genuine transactions. Instances provided in the reply are as under.*

   i) *Form DIR-12 of Ekaparnik provides for resignation of 4 directors including Noticees 1 and 2. The consent letters attached therein are unsigned documents. In the same document, the appointment letter, which is supposed to be issued by the Company to the directors, is addressed by Noticees 1 and 2 to Ekaparnik. Also, no board resolution for recommending or approving of resignation by Noticees 1 and 2 was attached in Form DIR-12. Copies of Form DIR-12 and 5 attachments were provided in this regard.*

   ii) *Similar submissions were made in respect of Noticees 3 and 4, who were directors of Indrawati, also in respect of Noticee 5 and late Noticee 6, who were directors of VDPL and copies of Form DIR-12 for both the companies and 5 attachments each were provided for in this regard.*

   iii) *Also, similar submissions were made in respect of Noticees 12 and 13, who were directors of VTPL and copies of Form DIR-12 and 5 attachments were provided in this regard.*

   iv) *It was submitted that names, details and documents of Noticees 1, 2, 3, 4, 5, 12 and 13 were misused to make them directors in companies without the consent, knowledge and approval of these Noticees.*

g) *Noticees 1, 2, 3, 4, 5, 12 and 13 further submitted that Mr Avijit Saha was also one of the subscribers of MoA of Ekaparnik. Reference was made to SEBI AO Order* *dated January 27, 2022 in respect of Mr Avijit Saha, wherein it was accepted that identity of Mr Avijit Saha was misused by Mr Devesh Upadhyaya.*

h) Income Tax Authorities, in reply to RTI filed by Mr Avijit Saha, has clarified that no actions have been taken against the persons whose identities were misused by Mr Devesh Upadhyaya. A copy of the RTI reply has been submitted in this regard.

i) Noticees 1, 2, 3, 4, 5, 12 and 13 have never signed any documents to become directors of these 4 companies, viz. Ekaparnik, Indrawati, VTPL and VDPL. They have never opened a demat account and have not received or made any payment to any person for selling/ purchasing shares of any company, including AEL. Hence, the question of Noticees 1, 2, 3, 4, 5, 12 and 13 being liable for the alleged trades executed by the 4 companies does not arise.

j) Noticees 1, 2, 3, 4, 5, 12 and 13 also denied opening bank/ demat accounts with HDFC Bank or Axis Bank, as alleged.

k) It was also submitted that the vicarious liability on the directors of a company cannot be imputed automatically in the absence of any statutory provision to that effect.

l) The investigation period ended on June 15, 2015. However, there is a delay of more than 7 years in issuance of the SCN. In this regard, the Orders passed by Hon'ble SAT in the matter of Mr. Ashok Shivpal Rupani & Ors, - Order dated 22-08-2019 and in the matter of Rajeev Bhanot & Ors - Order dated 09.07.2021 were quoted and relied upon.

m) Noticees 1, 2, 3, 4, 5, 12 and 13 requested the undersigned to summon the brokers and find the identity of the person who has mis-used the names, identity and documents of the Noticees.

18) Additional submissions made by Noticees 1, 2, 3, 4, 5, 12 and 13 vide letter dated March 25, 2023 are summarized as under:

a) Submisisons made vide letter dated March 10, 2023 were reiterated.

b) At various places in the KYC documents, phone numbers of Noticees 1 and 2 are same, but the two are not known to each other.

c) The signatures of the Noticees in KYC documents are totally different from their actual signatures and Noticees 1, 2, 3, 4, 5, 12 and 13 deny ever signing the documents.One of the KYC documents states annual income as ₹1 lakh, but the net worth is stated as ₹ 99,00,850, which is very improbable.

d) From the MCA Records, it can be seen that the address of Ekaparnik was changed with effect from January 20, 2015. However, the subsequent KYC document dated February 02, 2015 mentions the old address.

e) Similar discrepancies were pointed out in the additional submissions in respect of Indrawati and VDPL. It was finally submitted that this is a case of forgery in which the identities of Noticees 1, 2, 3, 4, 5, 12 and 13 have been misused, and the said Noticees are not , in any way, involved in the execution of alleged trades.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

19) Before proceeding further in the matter on merit, it would be in the fitness of things to first decide as to whether on the death of Noticee 6, the present adjudication proceedings against him would continue or abate. In this regard, it is worth mentioning that in *Girijanandini Vs Bijendra Narain (AIR 1967 SC 2110)*, the Hon'ble Supreme Court held that in case of personal actions, i.e., the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim actio personalis moritur cum persona (personal action dies with the death of the person) would apply. It is also relevant to refer to the decision of Hon'ble Securities Appellate Tribunal in *Chandravadan J. Dalal vs. SEBI (Appeal No. 35/2004 decided on June 15, 2005)* wherein it was held that: "*The appeal abates since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates.*"

20) In view of the foregoing, I am of the view that the instant adjudication proceedings against Noticee 6 are liable to be abated without going into the merits of the case qua him and the SCN dated December 07, 2022 issued against him is disposed of accordingly. Further, as stated at paragraph 9 above, Noticees 7 and 11 have been struck off, and adjudication proceedings are not being proceeded further against them.

21) Now, I will deal with the findings of Investigation, the allegations made out in the SCN and the submissions made by the Noticees, I find that following issues require consideration in the present case:

ISSUE I - Whether Noticees 1 to 5, 8, 9, 10 and Noticees 12 to 17 have violated the provisions of Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) and (e) of the PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of the SEBI Act, 1992?

ISSUE II - Do the violations, if any, attract penalty under Section 15HA of the SEBI Act, 1992?

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

22) The relevant extracts of the provisions of law, allegedly violated by the Noticees, are mentioned as under:

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

<u>SEBI Act, 1992</u>

***12A.** No person shall directly or indirectly—*

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

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

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

ISSUE I - Whether Noticees 1 to 5, 8, 9, 10 and Noticees 12 to 17 have violated the provisions of Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) and (e) of the PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of the SEBI Act, 1992?

23) The allegations which have been levelled against the Noticees are summarized as under-

a) 9 connected entities, viz Ekaparnik, Indrawati, VTPL, VDPL, Noticee 7, 8, 9, 10 and 11 indulged into manipulative trading in the scrip of AEL, through their trades including NHP trades and First Trades, have contributed to LTP contribution of ₹1.43, which is equivalent to 19.16% of market positive LTP contribution during the period beginning March 17, 2015 till June 02, 2015

b) As Ekaparnik, Indrawati, VTPL, VDPL, Noticee 7 and 11 are companies which have been struck off, their directors being Noticees 1 to 6 and 12 to 17 were held liable for the alleged actions of their respective companies.

c) In view of the above, it was alleged that Noticees 1 to 6, 8, 9, 10, 12 to 17 were alleged to have violated provisions of Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) and (e) of the PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of the SEBI Act, 1992.

24) Noticees 7 and 11 have been struck off and the SCN has been discharged without imposition of any penalty. Noticee 7 is hereinafter referred to as "**High Speed Distance Movers Private Limited**" / "**High Speed**" and Noticee 11 is hereinafter referred to as "**Ahuja Metalloys Private Limited**" / "**Ahuja**". Further, Noticee 6 has expired. Hence, adjudication procedings against him are liable to be abated without going into the merits of the case.

25) I would first like to ascertain whether the 9 entities which have traded, viz. Ekaparnik, Indrawati, VTPL, VDPL, Ahuja, High Speed, Noticees 8, 9 and 10 are connected to each other. The details of their connections are given in the table below.

Entities	**Connections with other trading entities**
Ekaparnik Vintrade Private Limited	1. Connected with Indrawati through common mobile no. 2. Connected with VDPL through common address
Indrawati Commosales Private Limited	1. Connected with Ekaparnik through common mobile no. 2. Connected with VDPL through common directors and common addresses
Vinahast Dealcom Private Limited	1. Connected with Ekaparnik through common address 2. Connected with Indrawati through common directors and common addresses
Vinahast Trading Private Limited	No direct connections with any other trading entity
Ahuja Metalloys Private Limited	1. Connected with Noticee 9 through common email address and mobile number 2. Connected with Noticee 10 through common director 3. Connected with Noticee 8 through common mobile no. 4. Connected with High Speed through common email ID and mobile no.
High Speed Distance Movers Private Limited	1. Connected with Ahuja and Noticee 9 through common email ID and mobile no. 2. Connected with Noticee 9 through common director 3. Connected with Noticee 8 through common mobile no.
River High Right Share Brokers Private Limited (Noticee 9)	1. Connected with Ahuja through common email address and mobile number 2. Connected with Noticee 8 through common address and common director

Entities	Connections with other trading entities
	3. Connected with High Speed through common email ID, mobile no. and director
Murlidhargiridhar Trading Private Limited (Noticee 8)	1. Connected with Ahuja through common mobile no. 2. Connected with Noticee 9 through common address and common director 3. Connected with High Speed through common mobile no.
Skyhigh Buildtech Private Limited (Noticee 10)	1. Connected with Ahuja through common director

26) To summarize the connections provided in the table above, Ekaparnik, Indrawati and VDPL are connected with each other. However, they are not connected with VTPL, Ahuja, High Speed, Noticees 8, 9 and 10. Noticee 10 is connected only with Ahuja. Ahuja, High Speed and Noticees 8 and 9 are connected with each other. Further, VTPL is not connected with any of the other trading entities. Hence, no clear connection is observed among the Noticees.

27) Noticees 1 to 5, 12 and 13 have submitted that they were not aware of being directors in Ekaparnik, Indrawati, VDPL and VTPL respectively. They have further submitted that their identities were misused by Mr Devesh Upadhyaya, who has admitted before the Deputy Commissioner of Income Tax that he had misused the names of various persons to form companies and execute manipulative trades. In this regard, the statement recording of Mr Devesh Upadhyaya before the Income tax authorities on September 22, 2017 was submitted by the Noticees.

28) It is observed from the copy of the statement placed before me of Mr. Devesh Upadhyay that his income consists of commission earned by providing accommodation entries to various beneficiaries in the form of bogus share capital including exorbitant premium, unsecured loans, pre-arranged accommodation entry

for bogus LTCG/ STCL or business loss etc. from various companies running directly under his control.

29) From the statement of Mr Devesh Upadhyaya, I note that he had provided list of companies which were managed and controlled by him. From the list, I find the names of Noticees 1, 2, 12 and 13 and VTPL, which were admittedly misused by Devesh Upadhyaya for providing accommodation entries. I also note from the copy of RTI response from income Tax Authorities, wherein it was clarified that no adverse actions have been taken against the persons and entities whose PAN was misused by Mr Devesh Upadhyaya.

30) In view of the facts placed in the current proceedings by Noticees 1 to 5, 12 and 13, it cannot be considered with certainty that orders placed by VTPL were placed by Noticees 12 and 13 and whether Noticees 1 and 2 had consented to become directors of Ekaparnik, and hence benefit of doubt is given to them.

<u>Trading Pattern</u>

31) It has been alleged that Ekaparnik, Indrawati, VTPL, VDPL, Ahuja, High Speed, Noticees 8, 9 and 10 have contributed to positive LTP contribution through 10 trades. A summary of their trades is given below.

S.No.	Buyer Name	No. of trades	LTP contribution (in ₹)	% of Positive LTP to total market Positive LTP
1.	Ekaparnik Vintrade Private Limited (struck off)	1	0.04	0.56
2.	Indrawati Commosales Pvt Ltd (struck off)	4	0.65	9.09
3.	Skyhigh Buildtech Pvt Ltd (Noticee 10)	1	0.20	2.80
4.	Vinahast Dealcom Pvt Ltd (struck off)	3	0.29	4.06

5.	Vinahast Trading Pvt Ltd (struck off)	1	0.25	3.50
Total		**10**	**1.43**	**20**
Market Total		**42**	**7.15**	**100**

32) Details of the LTP trades are provided below.

Trade Date	Buyer Name	Seller Name	Trade Price	LTP Difference	Trade Quantity
18.05.2015	Ekaparnik Vintrade Private Limited (struck off)	MURLIDHARGIRIDHAR TRADING PRIVATE LIMITED (Noticee 8)	8.55	0.04	2,200
29.04.2015	Indrawati Commosales Pvt Ltd (struck off)	MURLIDHARGIRIDHAR TRADING PRIVATE LIMITED (Noticee 8)	5.70	0.25	500
19.05.2015	Indrawati Commosales Pvt Ltd (struck off)	RIVER HIGH RIGHT SHARE BROKERS PRIVATE LIMITED (Noticee 9)	8.70	0.10	2,000
21.05.2015	Indrawati Commosales Pvt Ltd (struck off)	HIGH SPEED DISTANCE MOVERS PRIVATE LIMITED (struck off)	8.90	0.10	2,000
28.05.2015	Indrawati Commosales Pvt Ltd (struck off)	RIVER HIGH RIGHT SHARE BROKERS PRIVATE LIMITED (Noticee 9)	10.00	0.20	4,846
21.05.2015	Skyhigh buildtech pvt ltd (Noticee 10)	MURLIDHARGIRIDHAR TRADING PRIVATE LIMITED (Noticee 8)	9.10	0.20	2,000
18.05.2015	Vinahast Dealcom Pvt Ltd (struck off)	MURLIDHARGIRIDHAR TRADING PRIVATE LIMITED (Noticee 8)	8.60	0.09	1,000
22.05.2015	Vinahast Dealcom Pvt Ltd (struck off)	RIVER HIGH RIGHT SHARE BROKERS PRIVATE LIMITED (Noticee 9)	9.20	0.10	1,500
26.05.2015	Vinahast Dealcom Pvt Ltd (struck off)	HIGH SPEED DISTANCE MOVERS PRIVATE LIMITED (struck off)	9.90	0.10	1,800
22.05.2015	Vinahast Trading Pvt Ltd (struck off)	AHUJA METALLOYS PRIVATE LIMITED (struck off)	9.45	0.25	3,000

New High Price (NHP) Trades

33) Out of the 10 Positive LTP trades given above, it was alleged that 9 trades were executed as NHP trades. Their details are provided as under.

S.No.	Buyer Name	Sum of Positive LTP (in ₹)	NHP Qty	No. of trades	NHP (in ₹)	NHP contribution as % of Total market NHP
1.	Vinahast Dealcom Pvt Ltd (struck off)	0.20	4,300	3	0.25	4.33
2.	Indrawati Commosales Pvt Ltd (struck off)	0.45	4,500	3	0.44	7.63
3.	Skyhigh buildtech pvt ltd (Noticee 10)	0.20	2,000	1	0.20	3.47
4.	Vinahast Trading Pvt Ltd (struck off)	0.25	3,000	1	0.25	4.33
5.	Ekaparnik Vintrade Private Limited (struck off)	0.04	2,200	1	0.04	0.69
	Total	**1.23**	**16,000**	**9**	**1.18**	**20.45**
	Market Total	**6.24**	**86,987**	**34**	**5.77**	**100.00**

34) Details of NHP Trades are provided below.

Batch Date	Buyer Name	Seller Name	Trade Time	Trade Price	LTP Difference	NHP Contri	Trade Quantity
18.05.2015	Ekaparnik Vintrade Private Limited (struck off)	MURLIDHARGIRIDHAR TRADING PRIVATE LIMITED (Noticee 8)	10:22:56	8.55	0.04	0.04	2200
19.05.2015	Indrawati Commosales Pvt Ltd (struck off)	RIVER HIGH RIGHT SHARE BROKERS PRIVATE LIMITED (Noticee 9)	10:55:14	8.70	0.10	0.10	2000
21.05.2015	Indrawati Commosales Pvt Ltd (struck off)	HIGH SPEED DISTANCE MOVERS PRIVATE LIMITED (struck off)	11:39:22	8.90	0.10	0.10	2000
29.04.2015	Indrawati Commosales Pvt Ltd (struck off)	MURLIDHARGIRIDHAR TRADING PRIVATE LIMITED (Noticee 8)	15:05:28	5.70	0.25	0.24	500

Batch Date	Buyer Name	Seller Name	Trade Time	Trade Price	LTP Difference	NHP Contri	Trade Quantity
21.05.2015	Skyhigh buildtech pvt ltd (Noticee 10)	MURLIDHARGIRIDHAR TRADING PRIVATE LIMITED (Noticee 8)	15:24:19	9.10	0.20	0.20	2000
18.05.2015	Vinahast Dealcom Pvt Ltd (struck off)	MURLIDHARGIRIDHAR TRADING PRIVATE LIMITED (Noticee 8)	15:06:37	8.60	0.09	0.05	1000
22.05.2015	Vinahast Dealcom Pvt Ltd (struck off)	RIVER HIGH RIGHT SHARE BROKERS PRIVATE LIMITED (Noticee 9)	12:08:30	9.20	0.10	0.10	1500
26.05.2015	Vinahast Dealcom Pvt Ltd (struck off)	HIGH SPEED DISTANCE MOVERS PRIVATE LIMITED (struck off)	10:20:02	9.90	0.10	0.10	1800
22.05.2015	Vinahast Trading Pvt Ltd (struck off)	AHUJA METALLOYS PRIVATE LIMITED (struck off)	15:12:20	9.45	0.25	0.25	3000

35) From the details and summary of NHP trades, I observe the following:

a) Indrawati was the highest contributor to NHP, as out of the total NHP contribution of 20.45% by the above trading entities, Indrawati contributed 7.63% of the positive LTP by executing 3 NHP trades. However, Indrawati is not connected with the counterparties of these 3 trades. Also, the dates of three trades are not consecutive. In view of the above, I do not observe any manipulative intent in the trades.

b) If NHP trades of Ekaparnik, VDPL, VTPL and Noticee 10 are considered, they have contributed 12.82% of the NHP by executing 6 trades. However, Noticee 10 and VTPL are not connected with Ekaparnik and VDPL. Also, the Ekaparnik, VDPL, VTPL and Noticee 10 are not connected with their counterparties. If the entities' individual NHP contribution is considered, it is miniscule. Due to absence of connections and miniscule individual NHP contribution, no manipulative intent is emerging.

c) Hence, I find that the allegation against Ekaparnik, Indrawati, VDPL, VTPL, High Speed, Ahuja and Noticees contributing to positive LTP by executing NHP trades does not stand established. Consequently, Noticees 1 to 5 and Noticees 12 to 17, being directors of Ekaparnik, Indrawati, VDPL, VTPL, High Speed and Ahuja, cannot be held liable for any violation as alleged.

First Trades

36) Out of the 10 LTP trades, 6 trades were executed as First trades. Their details are provided as under.

S.No.	Buyer Name	Positive LTP Contribution (in ₹)	NHP of first trades (in ₹)	No. of first trades	Traded Qty	% of Positive LTP to Total Mkt Positive LTP
1.	Indrawati Commosales Private Limite	**0.45**	**0.44**	**3**	**4,500**	**6.29**
2.	Vinahast Dealcom Private Limited	**0.20**	**0.20**	**2**	**3,300**	**2.79**
3.	Ekaparnik VIntrade Private Limited	**0.04**	**0.04**	**1**	**2,200**	**0.55**
Total		**0.69**	0.68	6	10000	9.65
Market Total		4.74	4.03	30	42828	66.29

37) Details of First Trades are provided below.

Trade Date	Buyer Name	Seller Name	Trade Time	Trade Price	Trade Quantity
29.04.2015	Indrawati Commosales Pvt Ltd (struck off)	MURLIDHARGIRIDHAR TRADING PRIVATE LIMITED (Noticee 8)	15:05:28	5.70	500
18.05.2015	Ekaparnik Vintrade Private Limited (struck off)	MURLIDHARGIRIDHAR TRADING PRIVATE LIMITED (Noticee 8)	10:22:56	8.55	2,200
19.05.2015	Indrawati Commosales Pvt Ltd (struck off)	RIVER HIGH RIGHT SHARE BROKERS	10:55:14	8.70	2,000

Trade Date	Buyer Name	Seller Name	Trade Time	Trade Price	Trade Quantity
		PRIVATE LIMITED (Noticee 9)			
21.05.2015	Indrawati Commosales Pvt Ltd (struck off)	HIGH SPEED DISTANCE MOVERS PRIVATE LIMITED (struck off)	11:39:22	8.90	2,000
22.05.2015	Vinahast Dealcom Pvt Ltd (struck off)	RIVER HIGH RIGHT SHARE BROKERS PRIVATE LIMITED (Noticee 9)	12:08:30	9.20	1,500
26.05.2015	Vinahast Dealcom Pvt Ltd (struck off)	HIGH SPEED DISTANCE MOVERS PRIVATE LIMITED (struck off)	10:20:02	9.90	1,800

38) From the details and summary of First trades, I observe the following:

a) Indrawati was the highest contributor to First trades, as out of the total market positive contribution of 9.65% by the trading entities, Indrawati contributed 6.29% of the positive LTP by executing 3 first trades. However, Indrawati is not connected with the counterparties of these 3 trades. Also, the dates of three trades are scattered. Hence, the above trades does not demonstrate any manipulative pattern.

b) If NHP trades of Ekaparnik and VDPL are considered, they have contributed 3.36% of the NHP by executing 3 trades. However, Ekaparnik and VDPL are not connected with their counterparties, and their contribution to LTP through first trades is miniscule, vis-à-vis the group's contribution (including Indrawati).

c) Further, none of the first trades were executed just at the beginning of the trading hours of the day. As the scrip of AEL was not very liquid, even the earliest first trade was executed at 10.20 AM. One of the first trades was executed at 3:05 PM. This doesn't show the manipulative intent of the parties to execute first trades, to contribute to positive LTP. Also, due to absence of connections and miniscule individual first trade contribution, no manipulative intent is emerging.

d) Hence, I find that Ekaparnik, Indrawati, VDPL, High Speed, Ahuja and Noticees 8 and 9 have not contributed to LTP by executing First trades. Consequently, the allegation against Noticees 1 to 5 and Noticees 14 to 17, being directors of Ekaparnik, Indrawati, VDPL, High Speed and Ahuja, cannot be established.

39) In view of the above findings, the NHP and First trades were not found to be manipulative in nature and were not executed to contribute to positive LTP. I also do not find the 10 positive LTP trades to be executed in a coordinated manner, as the dates on which trades are executed are not consecutive, in fact, the dates of 10 trades are scattered between April 29, 2015 to May 28, 2015, and none of the entities have traded with the same counterparty more than once, except trades of Indrawati with Noticee 9 (two trades), and Indrawati and Noticee 9 are not connected with each other.

40) I also find that apart from the alleged positive LTP trades, Ekaparnik, Indrawati, VDPL, Noticees 8 and 9 have executed many other trades with other counterparties. Further, the number of trades on the days on which alleged positive LTP trades were carried out were very small, the number of traders would also be very small. When a small number of traders are trading in a scrip, it is possible that multiple trades would be executed between the same entities. However, only Indrawati and Noticee 9 (not connected to each other) have traded with each other twice, and no other entities have repeatedly traded with each other. When there are very small number of trades being executed in a day, it is possible to have executed first trades by the same entity. From the trade log, I observe that earliest of the first trades was executed at 10:20 AM. When prices are increasing and when sellers are scarce, a buyer has to place orders at higher prices to attract the sellers. In the absence of proper connections, and in absence of any nexus among the Noticees, the trades executed by traders in illiquid scrip, such as AEL, in cash market cannot be held to be manipulative in nature.

41) I find it relevant to make reference to Hon'ble SAT Order dated 10-10-2013 passed in the matter of *Kapil Chatrabhuj Bhuptani v/s SEBI* (Appeal No. 95/2013) wherein the Hon'ble SAT has held that, "*Therefore in our considered opinion simple trading by the appellant in a particular scrip without any proved nexus between trades with the other so called group of brokers and clients is not per se punishable. Undoubtedly, the appellant has traded in the scrip for about 64 days which is admittedly minor, comprising only 0.89 percent of the total trades in the scrip but in absence of some satisfactory evidence, the appellant cannot be held guilty of violation of Regulations 4(1) and 4(2)(a) and (g) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. Such an insignificant percentage of the total trading executed during the period of investigation in this case does not seem to indicate any prior meeting of minds as alleged by the respondent.*"

42) I also place reliance on the observations of Hon'ble Supreme Court of India in the matter of SEBI v. Kishore P. Ajmera (Order dated February 23, 2016), wherein it was observed that "*While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt. … The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors.*"

43) Thus, in the absence of any material on record to show connections among Ekaparnik, Indrawati, VTPL, VDPL, Ahuja, High Speed, Noticees 8, 9 and 10, absence of any nexus among the Noticees, any evidence to show meeting of minds, or any manipulative pattern of trades, I am inclined to give benefit of doubt to these entities. Hence, I find that the allegations against Noticees 1 and 2, being directors of Ekaparnik, Noticees 3 and 4 being directors of Indrawati, Noticee 5 being director of VDPL, Noticees 12 and 13 being directors of VTPL, Noticees 14 and 15 being directors of High Speed, Noticees 16 and 17 being directors of Ahuja, and Noticees 8, 9 and 10, of the violation of Regulation 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a), (e) of SEBI (PFUTP) Regulations, 2003 read with Section 12A(a), (b), (c) of SEBI Act, 1992 does not stand established.

44) In view of the above, I do not find it to be a fit case for imposition of penalty under section 15HA of SEBI Act, 1992. Hence, the SCN dated December 07, 2022 is disposed of, without imposition of penalty.

45) In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date: March 29, 2023 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**