BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SD/KS/2022-23/18018-18021]

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

In respect of:

1) **Giriraj Kishore Agarwal (PAN- AABPA4928N)** having address at 305 Krishna 'A' Vishal Nagar , Marve Road Mith Chowky , Malad (W) Mumbai MH - 400 064 IN
2) **Tanu Agarwal (PAN- AADPA7003J)** having address at 3A 1601, Green Acres Lokhandwala Complex, Near AXIS Bank, Azad Nagar, Andheri (W) Mumbai, MH – 400 053 IN
3) **Saloni Agarwal (PAN- ANUPA1692D)** having address at 3A 1601, Green Acres Lokhandwala Complex, Near AXIS Bank, Azad Nagar, Andheri (W) Mumbai, MH – 400 053 IN
4) **Tilak Finance Limited. (PAN- AAACT4928N)** having address at E-109 Crystal Plaza, New Link Road Andheri (West), Mumbai – 400 053 IN

In the matter of
M/s Esaar India Limited

Facts of the Case in Brief

1. Securities and Exchange Board of India (hereinafter be referred to as, "**SEBI**") initiated adjudication proceedings under Section 15HA of SEBI Act, 1992 (hereinafter be referred to as, the **"SEBI Act)** against **Giriraj Kishore Agarwal** (PAN- AABPA4928N), **Tanu Agarwal** (PAN- AADPA7003J), **Saloni Agarwal** (PAN- ANUPA1692D) **Tilak Finance Limited. (**PAN- AAACT4928N) (hereinafter be referred to as, **"Noticee No. 1** to **Noticee No. 4** respectively or Collectively as **the Noticees")** for the alleged

violation of Section 12A (a), (b), (c) of the Securities and Exchange Board of India Act, 1992(SEBI Act) r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as '**PFUTP Regulations**')

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer, vide communique dated August 23, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticees.

SHOW CAUSE NOTICE, HEARING AND REPLY

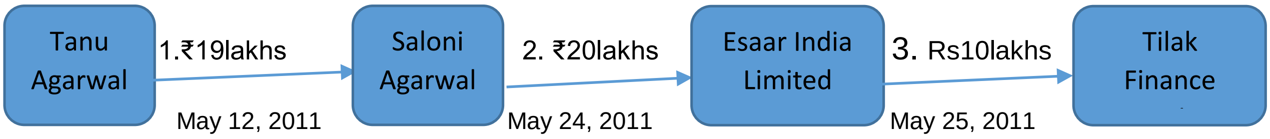
3. Show Cause Notices ref. SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/11/2021, SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/1/2021, SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/3/2021 and SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/4/2021 dated October 20, 2021 (hereinafter referred to as '**SCN'**) were issued to the Noticee No.1 to Noticee No.4 respectively in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against her and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act, 1992

4. The allegations levelled against the Noticees in the SCNs, *inter alia*, mentioned as below-:

   i. It is observed that Saloni Agarwal (ANUPA1692D) was allotted 40,000 shares in the preferential allotment for which she had transferred ₹20,00,000 to the company on May 24, 2011 from her account number 653010100015002 maintained with Axis Bank. On perusal of her bank account statement, it was observed that she had received ₹19,00,000 on May 12,2011, from Tanu Agarwal having account number 653010100015002 maintained with Yes Bank.

   ii. From the perusal of Ministry of Corporate Affairs database it is observed that Mrs. Tanu Agarwal and Mr. Giriraj Kishore Agarwal were director in Esaar India Ltd (EIL) till March 2011 and are also directors in Tilak Finance Ltd,. Further, it is observed that Saloni Agarwal is the daughter of Tanu Giriraj Agarwal and Giriraj Kishore Agarwal. From the replies of Axis Bank it is also *observed that Giriraj Kishore Agarwal was authorized signatory for Account number 910020036881554 from September 28, 2010 to May 09, 2014 and the said Bank account pertains to Esaar India Limited in which the proceeds of EIL's preferential allotment dated May 25, 2011 were parked.*

iii. Further, it is observed that Tanu Agarwal Ex-director of Esaar India Limited routed ₹19,00,000 through the account of Allottee (Saloni Agarwal) to enable payment of subscription amount to EIL. Pursuant thereof the entity Tilak Finance Ltd wherein Tanu Agarwal is one of the directors, received ₹10,00,000 on May 25,2011 from the proceeds of the preferential allotment thereby partially funding the EIL's Preferential allotment dated May 25, 2011 to the extent of amount financed towards payment of subscription money by the said allottee (₹19,00,000). The flow of fund in the above matter is depicted below:



iv. The bank statement indicating fund transfers between Tanu Agarwal, Saloni Agarwal, Essar India Ltd and Tilak Finance Ltd is annexed as Annexure 5.

v. In this regard, SEBI vide email dated June 18, 2021 sought information from Saloni Agarwal about the reasons for receipt of ₹19,00,000 on May 12, 2011 from Tanu Agarwal and her relationship/association (past/present) with the company EIL and Tanu Agarwal.

vi. It was observed that further to that the following additional details were sought:

vii. Reasons for inward credit of ₹10,00,000 received by Tilak Finance Ltd. from the Company EIL and Nature of Relationship / Association (Professional or Personal, Past / Present) between Tilak Finance Ltd and EIL, Surface Finance Ltd and Giriraj Agarwal and also about reason for Mr. Giriraj Agarwal being the authorized signatory for the account of Esaar India Limited even after his resignation as the director of the company after March 2011. However, it was observed that no reply has been received in this regard.

viii. Thus, by for financing the subscription amount paid by the allottee Saloni Agarwal and subsequently transferring ₹10,00,000 to entity Tilak Finance Ltd, wherein Tanu Agarwal & Giriraj Kishore Agarwal are directors, out of Issue Proceeds amount thereby funding the preferential allotment dated May 25,2011 to the extent of amount financed i.e. ₹ 10,00,000/-, it is alleged that the entities Noticee No.1, Notice No.2, Noticee No.3, Noticee No.4 and company Esaar India

Limited(EIL), have violated the Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003

5. The SCN with reference number SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/11/2021, SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/1/2021, SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/3/2021 and SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/4/2021 dated October 20, 2021 were issued to the Noticees via Speed Post Acknowledgement Due (SPAD), which were duly served on the Noticees as per the Tracking details obtained from the India Post website.

6. In response to the said SCN, vide email dated November 13, 2021 Giriraj Kishore Agarwal and Saloni Agarwal requested the AO to provide the documentary proof of the email/notice/letter sent as mentioned in the SCN. In response, vide email dated November 30, 2021 the said scanned documents were provided to the Noticees.

7. Thereafter, vide letter dated December 08, 2021 and December 09, 2021, Noticees have submitted replies, wherein they inter-alia submitted the following common submissions:

   i. *At the outset and without prejudice to anything stated herein, I deny all the alleged observation, allegations findings and charges made against us in the said SCN, save and except those which are specifically admitted in this reply. Further, nothing contained in the said SCN shall be deemed to have be admitted by us merely on account of non-traverse or otherwise, unless the same is specifically admitted by us herein.*

   ii. *I specifically deny that I have violated the provisions of Regulations 3 or 4 of the FUTP Regulations or provisions of Section 12 A(a), (b) and (c) of SEBI Act as alleged. I submit that I have not indulged in any fraudulent and unfair trade practices relating to the securities so as to warrant any kind of monetary penalty under section 15HA of SEBI Act.*

   iii. *The observations and findings in the SCN proceeds on specious and extraneous grounds disregarding the material circumstances. All the findings are unsubstantiated, unjustified, unwarranted and contrary to factual position. The findings smack of predetermined mind to penalize me under some pretext or other, overlooking the obvious that defines the case.*

   iv. *Noticee submitted that inordinate delay of more than 10 years after the impugned transaction happened in issuance of SCN and the delay has not been explained by SEBI. On this ground alone the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped. Noticee also submitted the various case laws viz., Order passed on March 31, 2008 by the Hon'ble Securities Appellate Tribunal in the matter of Libord Finance Ltd. Vs SEBI, Order passed on November 5, 2008 by the Hon'ble Securities Appellate Tribunal in the matter* *of Shri. Ashok K Chaudhary Vs SEBI, SAT in the matter of Ashok Shivlal Rupani and anr. Vs SEBI (SAT Appeal no 417 of 2018), Ashlesh Gunvantbhai Shah vs Sebi in Appeal No.169 of 2019*

v. *Noticee submitted that copy of Investigation report was not made available to him and Same is in gross violation of principles of natural justice.*

vi. *Noticee submitted that , it is stated that the investigation period is from June 30, 2011 to February 28, 2015 but the transaction mentioned in the SCN does not belong to the investigation period. Hence the Show cause notice is defective and proceeding against me be dropped.*

vii. *Details of preferential allotment and shares sold by allottees are set out which are matter of record and hence I have no comments to offer.*

viii. *With reference to Para 8, I am shocked that my personal email id is mentioned as the registered email id in the Bank Account Surface Finance Pvt. Limited. I am not aware of this fact and deny having any connection with the Company. Also note that the registered email id of Surface Finance Pvt. Ltd on Ministry of Corporate Affairs website is surfacefin@gmail.com as enclosed - ANNEXURE A. I was never associated with Surface Finance Pvt Ltd in any capacity at all. You may also confirm with the Bank the Authorised Signatory of Surface Finance Private Limited. I have no connection with any of the Noticee from 6 to 11 at all.*

ix. *With reference to Para 20 to 25, I submit that;*

   a. *I state that I did not operate bank accounts of Esaar India Limited after I was not the director of the company during the investigation period and the allegation leveled are without any substantial evidence in that regard. In this regard I submit letter dated March 18, 2011 with the Esaar India Limited requesting to remove my name as authorized signatory from its banks accounts. A copy of the said letter dated March 18, 2011 is enclosed herewith as ANNEXURE-B. Further, it must be the negligence on the part of officials of Esaar India Limited who might have utilized old forms/slips/cheques of banks which may have been already signed and kept by me in company during my tenure, after I resigned, and therefore it appears failure on the part of the new management/directors of Esaar India Limited who did not updated their signatory details after March 18, 2011 and therefore I cannot be blamed for it.*

   b. *It appears from the SCN that Saloni Agarwal has taken a loan of Rs. 19,00,000 from Tanu Agarwal on May 12, 2011. The loan amount is from the own funds of Tanu Agarwal and has not taken any funds from Tilak Finance Limited or Esaar (India) Limited. There is no restriction in giving loan to family members. The funds of Rs. 10,00,000/- transferred from Esaar India Limited to Tilak Finance Limited is post the preferential issue and is part of the loan transaction. It is totally legitimate and same is not violative of any of the provisions of law. Therefore, no fault can be found in that transaction. Also, there is no embargo on taking/giving funds for the purpose of payment of subscription amount provided if it is not* *taken from the issuer company directly or indirectly. It is totally legitimate and same is not violative of any of the provisions of law.*

c. *I hereby state that I did not receive any email sent by SEBI dated seeking information about reasons for being the authorised signatory for the account of Esaar (India) Limited even after my resignation from the company after March 2011. Hence I wrote to SEBI asking for the details of email sent to me. I received a reply from SEBI on November 30, 2021 sharing the details of email. I would like to state that email id to which the email was sent asking the information was gkagarwal1@gmail.com and my correct email id is gkagrawal1@gmail.com. Hence it was sent to wrong email id and cannot be held against me for non reply.*

d. *Therefore, I deny that I have violated Section 12A(a),(b),(c) of SEBI Act, 1992 read with Regulations 3(b),(c),(d) & 4(1) of the PFUTP Regulations, 2003.*

x. *I submit that the allegations and findings in the said SCN do not show, even prima facie, that I had any role or there was any alleged funding to allottees and/or I indulged in fraudulent or unfair trade practices relating to securities so as to warrant any kind of monetary penalty under section 15HA of SEBI Act.*

8. Thereafter, In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide email dated December 30, 2021, the Noticee was granted an opportunity of personal hearing in the matter on January 18, 2022. The Noticees vide email dated January 17, 2022 sought adjournment of 3-4 weeks for attending personal hearing. In this regard, vide email dated January 27, 2022 another opportunity of Personal Hearing was granted to Noticees on February 10, 2022 through the online Cisco webex platform. However, the Noticees were failed to avail the said opportunity and vide email dated February 09, 2022 requested the Adjudicating Officer to consider the submissions made in their additional reply dated February 09, 2022 along with submissions made in their earlier replies dated December 08, 2021 and December 09, 2021.

9. In the instant matter, vide letter dated February 09, 2022 Giriraj Kishore Agarwal on behalf of Mrs. Tanu Agarwal, Saloni Agarwal and Tilak Ventures Limited inter-alia submitted the following :-

i. *In continuous to our earlier reply dated December 8, 2022 and December 9, 2022, additionally we would like to bring to your attention that in a similar matter of Tilak Ventures Limited, an order by an adjudicating officer (Order No. Order/MC/HP/2021-22/12813-12829) dated July 30, 2021 wherein it is clearly mentioned in Para 71 that "there is no prohibition on a promoter* *to make loans towards purchase of shares in a preferential issue provided it is not done to disguise promoter's shareholding or to circumvent creeping acquisition limits on promoter shareholding or to avoid lock in requirements or avoid making required disclosures or avoiding any other obligations placed on promoters" and Para 78 "there is no prohibition on a director or a relative of a director to make loans for purchase of shares of the company provided it is not done to disguise director's shareholding or avoid making required disclosures or avoiding any other obligations placed on director."*

ii. *Also in Para 63, It is clearly stated that section 77(2) of Companies Act 1956 specifically prohibits funding of purchase of its own shares by a company by means of loan.*

iii. *Hence even though the funds were provided by promoter/director for subscribing the shares to Noticees 11, 12, 7, 8 and 9 it was not constituted as fraud. Hence the violation was not established and proceedings against the Noticees 11, 12, 7, 8 and 9 were dropped.*

iv. *There is no embargo on taking/giving funds for the purpose of payment of subscription amount provided if it is not taken from the issuer company directly or indirectly.*

v. *In the show cause noticed it can clearly be seen that the funds utilized by Mrs. Saloni Agarwal for the subscribing the shares of Esaar (India) Limited was from the loan taken from Mrs. Tanu Agarwal who was not the director of Esaar (India) Limited during this period.*

vi. *Mrs. Saloni Agarwal has not received any funds from Esaar (India) Limited. Hence the allegations are baseless and there is no violation of Section 12A(a),(b),(c) of SEBI Act read with Regulations 3(b),(c),(d) & 4(1) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003.*

vii. *In view of the above, I state that all allegations /charges in the said SCN leveled against us does not hold good and therefore we request that the same may be dropped against us and all of us may be discharged from the present proceedings.*

viii. *We would request you to consider our additional submissions made vide this letter along with our replies dated December 8, 2021 and December 9, 2021and same may be taken on record. Hence we may be exempted from the personal/virtual hearing in the said matter.*

CONSIDERATION OF ISSUES AND FINDINGS:

10. I have taken into consideration the facts and circumstances of the case, the material available on record.

11. The issues that arise for consideration in the instant matter are:

Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of SEBI Act, 1992? And

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules? Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

12. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are reproduced below:--

Relevant Provisions of Securities and Exchange Board of India Act, 1992

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;

Relevant provisions of PFUTP Regulations:

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

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

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any

manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made 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;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security

13. Before proceeding with the matter on merits, I first deal with the preliminary submission of the Noticees that there has been an unexplained inordinate delay in issuance of SCN, proceedings did not initiate within reasonable time, and this delay has made it difficult for Noticees to retrieve data and offer submissions effectively. In this regard, I note that the investigation in the matter for period April 01, 2011 to February 28, 2015. The aforesaid investigation was concluded in July 2021, and in August, 2021 competent authority approved adjudication proceedings in respect of Noticees. The undersigned was appointed Adjudicating Officer in the matter in August, 2021 and the SCN was issued in October, 2021. Considering the time taken to complete the investigation, I do not find that there is inordinate delay in initiation of the proceedings. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act or Regulations which may have the effect of

prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case.

14. In this regard, I am inclined to rely upon the decision of Hon'ble SAT in the matter of Bipin R Vora vs SEBI held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market'.*

15. Further, I note that in Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 08, 2013, Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI(Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)reported in2003 (158) ELT 129 (S.C.),held as under:

"....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...."

16. The decision of Hon'ble SAT in the aforesaid case, were reiterated by it, in a subsequent order in the matter of Kunal Pradip Savla & Ors. v. SEBI (Appeal no. 231 of 2017) decided on April 13, 2018.

17. Further, I note that in Rajendra Aggarwal. v. SEBI(Appeal No. 552/ 2019) decided on September 17, 2021, Hon'ble SAT held that

"*On issue of delay, we find that the show cause notice was issued in the year 2013 and the trades were executed in 2009. The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay in the delivery of the impugned order after the last date of hearing by the AO. We are of the opinion that after the conclusion of the arguments the data of 35 entities was required to be analysed and collated which took time and, therefore, we do not see any reason to vitiate the judgment only on the ground of delay in delivering the order. In any case, such delay in the delivery of the judgment does not cause any prejudice to the appellants"*

18. The Hon'ble SAT in the matter of M/s Adamina Traders P. Ltd (Appeal No. 331/2020) decided on December 15, 2021 held that

"We find that the trades in question are of the year 2013. The show cause notice was issued on September 28, 2017 by the WTM and January 18, 2018 by the AO. We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected."

19. In view of aforesaid Judgments, I conclude that there is no merit in the preliminary objections made by Noticee, regarding the delay in issuance of SCN in the instant proceedings.

20. I note that Noticees have contended that Investigation Report was not provided to them during the instant proceedings. In this regard, I note that in Shruti Vora matter, the Hon'ble SAT has clearly mentioned that "the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence". Thus, I note that all documents relied upon for the present proceedings have been shared with the Noticees along with SCN as per the ratio mentioned in the Shruti Vora matter in the backlight of principles of natural justice.

21. Further, the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that "the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".

22. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticees along with SCN as annexures, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticees. Having decided the preliminary objections raised by the Noticees, now I proceed to deal with the merits of the matter.

23. I note from the SCN that Saloni Agarwal (ANUPA1692D) was allotted 40,000 shares in the preferential allotment for which she had transferred ₹20,00,000 to the company on May 24, 2011 from her account number 653010100015002 maintained with Axis Bank. On perusal of her bank account statement, it was observed that she had received ₹19,00,000 on May 12,2011, from Tanu Agarwal having account number 653010100015002 maintained with Yes Bank.

24. From the perusal of Ministry of Corporate Affairs database it is observed that Mrs. Tanu Agarwal and Mr. Giriraj Kishore Agarwal were director in Esaar India Ltd (EIL) and are also directors in Tilak Finance Ltd,. Further, I note from the SCN that Saloni Agarwal is the daughter of Tanu Giriraj Agarwal and Giriraj Kishore Agarwal. Upon perusal of the replies of Axis Bank available on records, I observed that Giriraj Kishore Agarwal was authorized signatory for Account number 910020036881554 from September 28, 2010 to May 09, 2014 and the said Bank account pertains to Esaar India Limited in which the proceeds of EIL's preferential allotment dated May 25, 2011 were parked.

25. It alleged in the SCN that Tanu Agarwal Ex-director of Esaar India Limited routed ₹19,00,000 through the account of Allottee (Saloni Agarwal) to enable payment of subscription amount to EIL. Pursuant thereof the entity Tilak Finance Ltd wherein Tanu Agarwal is one of the directors, received ₹10,00,000 on May 25,2011 from the proceeds of the preferential allotment thereby partially funding the EIL's Preferential

allotment dated May 25, 2011 to the extent of amount financed towards payment of subscription money by the said allottee (₹19,00,000). The flow of fund in the above matter is depicted below:

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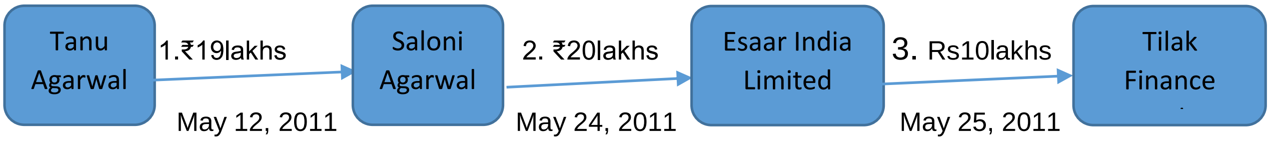

26. I also note from the SCN that the registered e-mail address mapped to the account of Surface Finance Pvt Ltd is **gkagrawal1@gmail.com**. As per Form 32 data this email account belongs to Giriraj Kishore Agarwal. It was also observed that Giriraj Kishore Agarwal was one of the directors of Esaar India Limited for the period of July 2010-March 2011.

27. I note that funding of preferential allotment by the company would mean flow of money for buying preferentially allotted shares from the Company to the allottee (noticee 3) through its conduits (Noticee 2 and 4), which is then used by allottee for payment to the company towards purchase of preferentially allotted shares. This would result in flow of money back to the Company, while giving an impression of capital infusion through preferential allotment. In the instant case, in respect of fund transfers post to preferential allotment, I note that, there is transfer of funds from Esaar India Limited to Noticee 4, wherein Noticee No.1 and Noticee No.2 were directors.

28. I note that Noticees in their reply contended that the said transfer of Rs. 10 lakhs from Esaar India Limited to Noticee No. 4 was a part of loan transaction. However, it is neither supported by any document nor supported by copy of Loan Agreement between Esaar India Limited and Noticee No.4. Further, no transaction record was observed to prove the repayment of loan between Esaar India Limited and Noticee No.4. It is observed that Noticee No. 2 transferred Rs. 19 lakhs to Noticee No. 3, which was used by her for the preferential allotment and by considering of preponderance of probability it is noted that Rs. 10,00,000/- out of that Rs. 19 lakhs was routed by Esaar India Limited to Noticee No.4.

29. Further, Noticee has contended that the amount of Rs. 19,00,000/- taken by Saloni Agarwal from Tanu Agarwal on May 12, 2011, was a loan and same was from the own funds of Tanu Agarwal and has not taken any funds from Tilak Finance Limited or Esaar (India) Limited. Noticee also submitted that there is no restriction in giving loan to family members. Noticee further stated that it is totally legitimate and same is not violative of any of the provisions of law.

30. As far as transfer of Rs. 19 lakhs from Noticee No.2 to Noticee No.3 is concerned, although Noticee No.3 was provided the Loan Agreement between her and Noticee No.2, it is prima facie suspicious because the Loan Agreement provided by her neither bear any stamp duty nor have signature of witnesses. Therefore, I do not agree with the contention of the Noticees.

31. I also note that Noticee No.1 was director of Esaar India Limited, just before the period of preferential allotment and he and his wife i.e. Noticee No. 2 were directors of the Noticee No.4. Therefore, it may not be wrong to infer that the funds of Rs. 10,00,000/- transferred from Esaar India Limited to Tilak Finance Limited is post preferential issue and is not part of the loan transaction.

32. Further, I note that Noticee No.1 had contended that he had sent an email to Esaar India Limited to remove his name and email id from authorized signatory of account from which preferential allotment proceeds were carried out. However, the fact that Noticee No.1 was authorized signatory of Esaar India Limited till May, 2014 i.e. during and post the preferential allotment by the company. Further, the request of removal as authorised signatory cannot be considered as completed unless and until EIL removes Noticee No.1 as authorised signatory. However, it is admitted fact and a matter of record that till May, 2014 Noticee No.1 was an authorised signatory. Thus, I do not agree with the submission of the Noticee that he was not aware about the transactions.

33. I have perused the documents available on record, Investigation Report and the submission of the Noticees, and I note that material on record establish based on preponderance of probability that the aforesaid transactions of Noticees were indirectly used from the company i.e. Esaar India Private Limited for preferential allotment.

34. An allegation of Noticees engaging in fraudulent scheme by giving an impression of capital infusion through preferential allotment, while in reality company's own funds were used by allottees is a serious allegation and upon perusal of material on records and replies of the Noticee, I observe that the payments made by Noticee 3 to Esaar India Private Limited towards preferential allotment were actually the funds of Esaar India and routed through Noticee 4 to 3 indirectly. I also note that Noticee No.2 was director of Noticee No.4, it is observed based on preponderance of probability that the transaction of the amount of Rs. 10 lakhs to Noticee No.4 was part of earlier transfer of Rs. 19 lakhs from Noticee no 2 to Noticee 3 is fraudulent in nature.

35. Therefore, in view of the above, I find that from material on record that the involvement of Noticee No.1 to 4 in the preferential allotment of Esaar India Limited by funding to a extent of Rs. 10,00,000/- to Noticee 3 through Noticee 2 and 4 conduits in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as 'PFUTP Regulations').

Issue No. II *If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of SEBI Act, 1992?*

36. I am of the view that the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, which reads as under :

> ***SEBI Act***
>
> ***Penalty for fraudulent and unfair trade practices.***
>
> ***15HA.*** *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty 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.*

37. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, **SEBI Vs Shriram Mutual Fund** { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India held that

"*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…………...*"

Issue No. III *If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules? Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?*

38. The provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

39. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, and suffered by the investors as a result of the Noticee's failure. I also note that there was prior default of the Noticee No.1 is available on record. Thus, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. In this case, I find that the act of Noticees to involve in false representation through preferential allotment has the potential to mislead and induce genuine investors to trade in the scrip and harm them and, thus, violate the fundamental tenets of market integrity. Such acts of Noticees, If dealt with lightly, could seriously undermine investors' confidence in the securities market and therefore, deserve suitable penalty commensurate with such serious violations

ORDER

40. Having considered the facts and circumstances of the case, the material available on record, and the factors mentioned in the preceding paragraphs and in Section 15J of the SEBI Act, the purpose of SEBI PFUTP Regulations 2003, taking note of Section 15HA of the SEBI Act, and also taking into account judgement of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticees:

Name of the Noticee	Provisions Violated	Penalty
Giriraj Kishore Agarwal (PAN- AABPA4928N)	*Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003*	Rs. 5,00,000 (Rupees Five Lakhs only)
Tanu Agarwal (PAN- AADPA7003J)	*Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003*	Rs. 5,00,000 (Rupees Five Lakhs only)
Saloni Agarwal (PAN- ANUPA1692D)	*Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003*	Rs. 5,00,000 (Rupees Five Lakhs only)
Tilak Finance Limited (PAN- AAACT4928N)	*Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003*	Rs. 5,00,000 (Rupees Five Lakhs only)

41. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

42. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department - I (EFD), Division

of Regulatory Action - I [EFD1-DRA-2] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

OR

Payment can also be made online by following the below path at SEBI website www.sebi.gov.in **ENFORCEMENT → Orders → Orders of AO →** Click on **PAY NOW** or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

43. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

44. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticees viz. Giriraj Kishore Agarwal, Tanu Agarwal, Saloni Agarwal, Tilak Finance Limited and also to Securities and Exchange Board of India.

Place: Mumbai
Date: July 27, 2022

SANDEEP P DEORE
ADJUDICATING OFFICER