BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/NH/KL/2022-23/23249-23251]

UNDER SECTION 23I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of
1. Mrs. Renu Bhushan
(PAN: AGFPB9783J)

2. Mr. Brij Bhushan
(PAN: AGTPB6963C)

3. Mr. L Bharat Bhushan
(PAN: AAAPB8365K)

In the matter of **Srestha Finvest Limited**

FACTS OF THE CASE

1. Securities and Exchange Board of India ('**SEBI'**) conducted an investigation in the trading activities of the scrip of Srestha Finvest Limited (hereinafter referred to as **'SFL'/'Company'**) for possible violation of the provisions of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') during the period from March 2017 to February 2018 (hereinafter referred to as **'investigation period'/'relevant period'**) by certain entities, if any.

2. The findings of the investigation alleged that one Mrs. Renu Bhushan (hereinafter referred to as **'Noticee no.1'/'Mrs. Renu'**) transferred 10,00,000 shares of SFL to one Mr. Bharath Bhushan (hereinafter referred to as **'Noticee no.2'/'Mr. Bharath'**) through

off-market on March 29, 2017 without making payment of consideration. It is further alleged that Mr. Bharath Bhushan transferred 10,00,000 shares of SFL to one Mr. Brij Bhushan (hereinafter referred to as **'Noticee no.3'/'Mr. Brij'**) through off-market on February 22, 2018 without making payment of consideration. In view of the above, it is alleged that the Noticee nos. 1 to 3 had executed off market transactions without making payment of consideration/fund settlement and thereby violated the provisions of Section 2 (i) (a) read with Sections 13, 16, 18 of the SCRA and SEBI notification dated October 03, 2013 issued under the Sections 16 and 28 of the SCRA. Noticee nos. 1 to 3 are hereinafter collectively referred to as '**the Noticees'**.

3. Therefore, SEBI initiated adjudication proceedings against the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Suresh B Menon was appointed as the Adjudicating Officer ('**AO**') in the matter vide communique dated September 07, 2021 under Section 19 of the SEBI Act read with Section 23I of the SCRA and Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties), 2005 (hereinafter referred to as '**SCR Rules'**), to inquire into and adjudge the aforementioned alleged violations of the provisions of law by the Noticees, under the provisions of Section 23H of the SCRA. Pursuant to the superannuation of Shri Suresh B Menon, the undersigned was appointed as AO in the instant matter vide communique dated June 07, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice bearing reference no. SEBI/EAD-1/SBM/KL/19308//2022 dated May 04, 2022 ('**SCN**') was issued to the Noticees in terms of Rule 4(1) of the SCR Rules read with Section 23I of the SCRA, by the erstwhile AO, to show cause as to why an inquiry should not be held against the Noticees and why penalty be not imposed on them in terms of the provisions of Section 23H of the SCRA for the violations alleged to have been committed by the Noticees. The relevant extract of the SCN is reproduced *in verbatim* below:

a. *Based on the findings of the investigation, it is observed that there is an off-market transfer of 10,00,000 shares of SFL between Mr. Brij and Mr. Bharat Bhushan on February 22, 2018. In this regard, upon perusal of the Delivery Instruction Slip (DIS) slip in respect of the aforesaid off market transaction, it is observed that it contained a remark 'collateral returned'. On further analysis, it was observed that Mr. L Bharat Bhushan received 10,00,000 shares of the scrip of SFL from Ms. Renu Bhushan (Connected entity to Mr. Brij Bhushan as both Brij Bhushan and Ms. Renu Bhushan have same email id and phone number for placing orders) on March 29, 2017.*
b. *In this context, details/comments were sought from Mr. Brij Bhushan and Ms Renu Bhushan regarding the aforesaid transaction, however, no response was received. Further, comments were also sought from Mr. Bharat Bhushan. In response, vide reply dated June 18, 2021, Mr. Bharat Bhushan submitted "shares were returned to Brij Bhushan account which were earlier taken for collateral purpose for business. As business deal did not go thru these were returned. I have not carried*

out any financial or money transaction with him whatsoever this you may note please."

c. *From the above, it observed that though there is a change of ownership of the shares in this context, however, no fund settlement was done by Mr. Bharat Bhushan with Mr. Brij Bhushan or Ms. Renu Bhushan for the aforementioned off market transactions. Further, details regarding off market transfer were sought from the depository participant CDSL in this regard. CDSL, in its response submitted to SEBI that no pledge was initiated by Mr. Bharat Bhushan or Mr. Brij Bhushan for the aforesaid off market transaction dated February 22, 2018. In view of the above, it is alleged that the aforementioned off market transaction cannot be treated as collateral. Further, it is alleged that while there was a change in the ownership of the shares of SFL in this context and as there was no fund transaction/settlement done, Mr. Brij Bhushan, Ms. Renu Bhushan and Mr. L Bharat Bhushan in this regard, violated the provisions of Section 2 (i) (a) read with Section 13, 16, 18 of the SCRA and SEBI notification dated October 03, 2013 issued under the sections 16 and 28 of the SCRA.*

i. *Service of SCN and subsequent communication with Noticee nos. 1 and 3*

6. Based on the material available on record, it is noted that Mrs. Renu/Noticee no.1 is wife of Mr. Brij/Noticee no.3.

7. The details as regards service of SCN and subsequent communication are given in the table below:

Sl. No.	SCN service particulars	Ms. Renu Bhushan/Noticee no.1	Mr. Brij Bhushan/Noticee no.3	Remarks
1	**SCN served through Email dated May 09, 2022**	Delivered through emails bhus.......@gmail.com ; renu............@gmail.com	Delivered through email bhus......@gmail.com	SCN delivered through both email and hard copy mode. However, no response received from Noticee nos. 1 and 3 within the stipulated time. In the interest of natural justice, reminder email dated July 08, 2022 and reminder letters dated July 13, 2022 were sent to Noticee nos.1 and 3 and another opportunity was granted to make their submissions in reply to the SCN.
2	**SCN hard copy served through letter dated May 09, 2022**	Delivered through India Post (SPAD) at Address *……..* *……….* *…. New Delhi 1100..* *India*	Delivered through India Post (SPAD) at Address *……..* *……….* *…. New Delhi 1100..* *India*	
3	**Reminder email dated July 08, 2022**	Delivered through emails bhus..........@gmail.com ; renu..........@gmail.com	Delivered through email bhus.....@gmail.com	SCN delivered through both email and hard copy mode. However, no response received from Noticee nos. 1 and 3 within the stipulated time. In the interest of natural justice, reminder email and letter dated December 09, 2022 were sent to Noticee nos.1 and 3 and another opportunity was granted to make their submissions in reply to the SCN.
4	**Reminder letter dated July 13, 2022**	Delivered through India Post (SPAD) at Address *……..* *……….* *…. New Delhi 1100..* *India*	Delivered through India Post (SPAD) at Address *……..* *……….* *…. New Delhi 1100..* *India* Delivered through India Post (SPAD) at Address *……..* *……….* *…. New Delhi 1100..* *India*	
5.	**Hearing Notice served through email dated**	Delivered through emails bhus..........@gmail.com ; renu..........@gmail.com	Delivered through email bhus.....@gmail.com	Vide letter and email dated December 09, 2022 the Noticees

	December 09, 2022			no.1 and 3 were granted *two weeks' time i.e. until December 21, 2022* to make submissions in reply to the SCN. Further, the Noticees nos. 1 and 3 were also granted an opportunity of hearing before the undersigned which was scheduled on December 23, 2022 at 04:00 PM. It was also stated in the aforesaid notice that if the entities failed to submit reply to the SCN and/or fail to avail opportunity of hearing, within the granted time, then the matter would be proceeded with in term of terms of sub-rule (7) of Rule (4) of the SCR Rules.
6.	**Hearing Notice dated December 09, 2022**	Delivered through India Post (SPAD) at Address *……..* *……….* *…. New Delhi 1100..* *India* Delivered through Professional Courier at Address *……..* *……….* *…. New Delhi 1100..* *India*	Delivered through India Post (SPAD) at Address *……..* *……….* *…. New Delhi 1100..* *India* Delivered through Professional Courier at Address *……..* *……….* *…. New Delhi 1100..* *India*	

8. As discussed in the table above, I note that multiple opportunities were provided to the Noticees nos.1 and 3 to make their submissions in reply to the SCN. However, the Noticee nos. 1 and 3 responded for the first time to the SCN through email on December 23, 2022 i.e. on the scheduled date of hearing, at time of hearing granted i.e. at 04:00 PM. Vide the said email, the Noticee nos. 1 and 3 denied allegations made against them in the SCN and requested for inspection of the documents with a list mentioned therein.

   a. In this context, I note that the email ids through which Noticee nos. 1 and 3 responded on December 23, 2022 were the same email ids at which SCN and reminder emails were served upon initially (through SEBI emails dated May 09, 2022, July 08, 2022 and December 09, 2022).

b. Despite receiving the SEBI emails dated May 09, 2022, July 08, 2022, the Noticee nos. 1 and 3 did not respond within the time stipulated therein.

c. Further, despite giving two weeks' time to make submissions in reply to the SCN vide SEBI email dated December 09, 2022, the Noticee nos. 1 and 3 only chose to respond after two weeks' and requested for inspection of documents in the matter without actually making submissions in reply to the allegations made in the SCN.

d. I also note that the Noticee nos. 1 and 3 failed to submit reasons in their emails dated December 23, 2022 for not responding in reply to the SCN till the said date and for failing to avail the opportunity of hearing on the scheduled date.

ii. *Request for inspection of documents by the Noticee nos. 1 and 3*

9. In view of the request made by the Noticee nos.1 and 3 vide their email dated December 23, 2022 and in the greater interest of natural justice,

a. an opportunity of inspection of documents in the present matter was granted to the Noticee nos. 1 and 3 and the same was communicated to them vide email dated December 23, 2022.

b. Further, the list of the documents in respect of which the inspection was granted (given in paragraph below) was also mentioned in the aforesaid email dated December 23, 2022.

c. it was informed to the Noticees nos. 1 and 3 that the opportunity of inspection was granted in respect of the documents available on record and the documents which have been relied upon in framing of charges/allegations of violations in the SCN.

d. Thereafter, Noticee nos. 1 and 3 responded vide email dated December 28, 2022 and again sought for an adjournment and requested to grant the inspection on January 03, 2023.

e. The Noticee no.3 cited the reason of '*suddenly falling sick*' for being unable to avail the inspection of documents on the scheduled date. Though, no supporting documents were submitted for the same.

10. Noting that already multiple opportunities were provided to the Noticee nos. 1 and 3, the opportunity of inspection of documents was again granted to the Noticee nos. 1 and 2 on January 03, 2023, in the interest of natural justice. Noticee no. 3 (husband of Noticee no.1) appeared on the scheduled date i.e. on January 03, 2023, on behalf of both the Noticee nos. 1 & 3 and physically inspected the documents in the subject matter. The opportunity of inspection was provided in respect of the following relied upon documents, based on which the allegations were made against the Noticee nos. 1 and 3 in the SCN:

a. Communique dated September 07, 2021 appointing the erstwhile AO and Communique dated June 07, 2022 appointing the undersigned as the AO in the instant matter.

b. the relevant extracts of Investigation Report i.e. Annexure 4 and 5 to the SCN, pertaining to the Investigation period from February 05, 2018 to February 27, 2018 as mentioned in the SCN.

c. BSE examination report dated April 17, 2018 in the subject matter.

d. Documents pertaining to off market transfers between the Noticees nos. 1, 2 and 3 (transaction statements obtained from depository participant).

e. the soft copies of trade log and order log pertaining to the trades executed by the Noticee nos. 1 and 3 on BSE in the scrip of SFL during the relevant period were already provided to them vide email dated December 23, 2022.

11. After inspecting the documents physically on the said date i.e. on January 03, 2023 the Noticee no.3 affixed his signature on the copies of the documents inspected by him and a set of the said copies were also provided to him. The inspection of documents was concluded and the Noticee no.3 was provided with a copy of the minutes of inspection duly signed by the Noticee no.3.

12. Pursuant to the conclusion of the inspection, the Noticee nos. 1 and 3 were given time until January 09, 2023 to make submissions in reply to the SCN. However, vide email dated January 11, 2023 the Noticee nos. 1 and 3 again sought additional time of 10 days to make submissions. Accordingly, the request was acceded to and vide emails dated January 23, 2023, the Noticee nos. 1 and 3 made submissions in respect of the allegations made in the SCN.

13. As discussed in detail in the previous paragraphs and for the reasons mentioned therein, it is pertinent to mention that the Noticees nos.1 and 3 have consistently delayed submitting their response to SEBI emails, not adhered to timelines stipulated for making submissions and further sought adjournments without submitting valid reasons or

documents supporting the same. However, in the interest of natural justice, sufficient opportunities were given to the Noticee nos. 1 and 3. I note that through such acts, the Noticee nos.1 and 3 acted in an imprudent manner during the course of the instant proceedings. Therefore, the aforesaid conduct of the Noticee nos.1 and 3 can only be concluded as an act of non-cooperation.

iii. <u>*Replies of Noticee nos. 1 and 3 to the SCN and Hearing*</u>

14. Noticee nos. 1 and 3 vide emails dated January 23, 2023, *inter-alia*, made the following submissions in respect of the allegations made in the SCN:

<u>*Reply of Noticee no. 1*</u>

i. *I am not related to Mr L Bharat Bhushan*

ii. *Mr. Brij Bushan, my husband was in the process of a business deal with Mr Bharat Bhushan in March 2017 and to support the same a Collateral Security of Srestha Shares was provided by Mrs Renu Bhushan, by me as a wife on 29-03-2017. There was no financial or money transaction with him or by my husband. Since the business deal did not fructify my husband have requested Mr Bharat Bhushan to return the collateral provided as above.*

iii. *Under bonafide belief he inadvertently provided him with the details of his own Demat account and the collateral was returned to his account on 22-02-18.*

iv. *Off market transaction represent the return of the Collateral provided on 29-03-2017 and it is not a off market transaction wherein Mr Bharat Bhushan has provided these Srestha Shares to my husband.*

v. *This collateral was provided and received back bonafide believing that the transaction is in compliance of the applicable provisions and not intended to compliance of any provisions of the Act, Rules and Regulations etc.*

Reply of Noticee no. 3

i. *I am not related to Mr L Bharat Bhushan*

ii. *I was in the process of a business deal with Mr Bharat Bhushan in March 2017 and to support the same a Collateral Security of Srestha Shares was provided by Mrs Renu Bhushan, my wife on 29-03-2017. There was no financial or money transaction with him or by my wife. Since the business deal did not fructify I have requested Mr Bharat Bhushan to return the collateral provided as above.*

iii. *Under bonafide belief I inadvertently provided him with the details of my demat account and the collateral was returned to my account on 22-02-18.*

iv. *During the Investigation Period I have not sold any shares out of the Collateral returned to me. Off market transaction represent the return of the Collateral provided on 29-03-2017 and it is not a off market transaction wherein Mr Bharat Bhushan has provided these Srestha Shares to me.*

v. *This collateral was provided and received back bonafide believing that the transaction is in compliance of the applicable provisions and not intended to compliance of any provisions of the Act, Rules and Regulations etc.*

15. In the interest of natural justice, the Noticee nos. 1 and 3 were provided with an opportunity of personal hearing before the undersigned on January 25, 2023. Noticee No. 3 (also on behalf of Noticee No.1) appeared on the stipulated date of hearing. During

the course of hearing, the Noticee no. 3 reiterated the submissions made in their earlier reply to the SCN vide email dated January 21, 2023.

16. The hearing was concluded and the principles of natural justice were adhered to.

iv. *Service of SCN and inspection of documents by the Noticee no. 2/Mr. Bharath*

17. SCN was served on the Noticee no.2 vide letter and email dated May 09, 2022. In response to the SCN, the Noticee no.2 sought for inspection of documents (a list mentioned therein) vide letter dated June 11, 2022. Accordingly, the opportunity of inspection of documents was granted to the Noticee no. 2. Mr. Meit Shah (Senior Associate of Prakash Shah & Associates) appeared for inspection of the documents on behalf of Noticee no. 2 as the authorised representative (AR) on the scheduled date i.e. on November 03, 2022, and inspected the documents in the subject matter. The opportunity of inspection was provided in respect of the following which were relied upon in the present proceedings against the Noticee no. 2:

   a. Communique dated September 07, 2021 appointing the erstwhile AO and Communique dated June 07, 2022 appointing the undersigned as the AO in the instant matter.

   b. the relevant extracts of Investigation Report i.e. Annexure 4 and 5 to the SCN, pertaining to the Investigation period from February 05, 2018 to February 27, 2018 as mentioned in the SCN.

   c. BSE examination report dated April 17, 2018 in the subject matter.

   d. Documents pertaining to off market transfers between the Noticees nos. 1, 2 and 3 (transaction statements obtained from depository participant).

18. Pursuant to the inspection, the AR of the Noticee no.2 affixed his signature on the copies of the documents inspected by him and a set of the said copies were also provided to him. The inspection of documents was concluded and the Noticee no. 2 was provided with a copy of the minutes of inspection duly signed by the AR.

v. *<u>Reply of Noticee no. 2 to the SCN and Hearing</u>*

19. Pursuant to the conclusion of the inspection of documents, the Noticee no. 2 vide letter dated November 24, 2022, *inter-alia*, submitted the following, in reply to the SCN:

   i. The said shares were transferred in off market by Ms. Renu Bhushan to me to provide for certain security w.r.t. certain business proposal.

   ii. It is pertinent to mention that the said off market shares were transferred only for the purpose of collateral for the business proposal. However, due to certain disputes between me and Mr. Brij Bhushan w.r.t. the said business proposal, for which off market shares were transferred to me as collateral, could not materialise.

   iii. As the business proposal could not materialise, Mr. Brij Bhushan requested me to return the said shares of SFL, which were transferred by Ms. Renu Bhushan. Mr. Brij Bhushan then requested me to transfer shares in his demat account. As Mr. Brij Bhushan and Ms. Renu Bhushan are husband and wife, I agreed to transfer the said shares of SFL to Mr. Brij Bhushan's demat account.

   iv. As requested, the said shares of SFL were then transferred in off market to Mr. Brij Bhushan's demat account

v. *Further, as there was no fund transaction, no lien was created on the said shares of SFL. It was transferred just for collateral purpose, which was later returned. Hence, no adverse inferences be drawn against me in this regard.*

vi. *In addition to the aforesaid, I would like to state that there was no purchase or sale transaction w.r.t. the said shares of SFL as it was for collateral purpose, which is also mentioned on DIS. Shares transferred for collateral purpose and returned thereafter, cannot be alleged to be shares purchased and sold.*

vii. *Additionally, I would like to state that I am an ordinary person. I don't understand nitty gritty of the capital market. I am not aware about technicalities which govern the securities market*

20. In view of the request made by the Noticee no.2 and in the interest of natural justice, the Noticee no. 2 was provided with an opportunity of personal hearing before the undersigned on December 23, 2023. Mr. Meit Shah and M. Keyur Shah (Senior Associates of Prakash Shah & Associates) appeared as the authorised representatives (ARs) on behalf of Noticee no. 2 on the scheduled date of hearing. During the course of hearing, the ARs of the Noticee no.2 reiterated the earlier submissions made by the Noticee no.2 in reply to the SCN vide letter dated November 24, 2022.

21. The hearing was concluded and the principles of natural justice were adhered to.

CONSIDERATION OF ISSUES AND FINDINGS

22. I have carefully perused the allegations leveled against the Noticees in the SCN, the replies of the Noticees and also the documents/evidence available on record. The issues that arise for consideration in the present case are:

I. Whether the Noticees entered into off market transactions without making payment of consideration/fund settlement during the investigation period and hence, violated the provisions of Section 2 (i) (a) read with Section 13, 16, 18 of the SCRA and SEBI notification dated October 03, 2013 issued under the Sections 16 and 28 of the SCRA?

II. If yes, whether the violations would attract monetary penalty on the Noticees under the provisions of the Section 23H of SCRA?

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

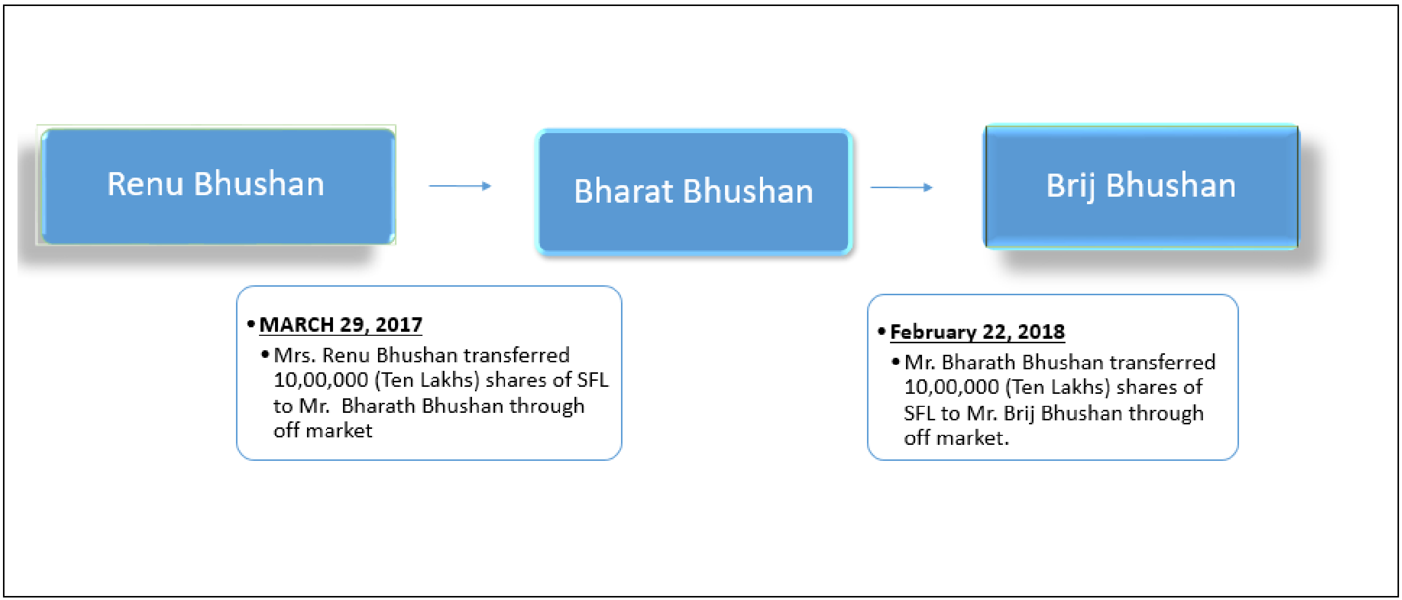
ISSUE I:- Whether the Noticees entered into off market transactions without making payment of consideration/fund settlement during the investigation period and hence, violated the provisions of Section 2 (i) (a) read with Section 13, 16, 18 of the SCRA and SEBI notification dated October 03, 2013 issued under the Sections 16 and 28 of the SCRA?

23. The details of the off market transactions entered into by the Noticees in the scrip of SFL along with pictorial representation are given below at the cost of repetition:

    a. Mrs. Renu transferred 10,00,000 shares of the scrip SFL to Mr. Bharat on March 29, 2017 (Transaction ref no. OF-CR TD:755426).

    b. Mr. Bharat transferred 10,00,000 shares of the scrip SFL to Mr. Brij Bhushan on February 22, 2018 (Transaction ref no. OF-CR TD:967020).

Pictorial representation



24. In this context, I note that the off market transactions entered into by the Noticees, are governed by the provisions of SCRA. The reference is given to the applicable provisions of SCRA i.e. Section 2 (i) (a) read with Section 13, 16, 18 of the SCRA and SEBI notification dated October 03, 2013 issued under the sections 16 and 28 of the SCRA, which provide for the following:

SCRA

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

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

Contracts in notified areas illegal in certain circumstances.

13. If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area] or through or with such member shall be illegal : Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall— (i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India; (ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.

Power to prohibit contracts in certain cases.

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

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

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

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

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

Notification under section 16 and 28 of Securities Contracts (Regulation) Act, 1956 dated October 03, 2013

No. LAD-NRO/GN/2013-14/26/6667.- In exercise of the powers conferred by subsection (2) of section 28 and sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India notification number S.O. 573(E), dated the 30th July, 1992 issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as 'the Board') hereby rescinds the notification number S.O.184(E), dated the 1st March, 2000, except as respects things done or omitted to be done before such *and declares that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than a contract falling under any one or more of the following, namely:-*

(a) spot delivery contract;

(b) contracts for sale or purchase of securities or contracts in derivatives, as are permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognised stock exchange;

(c) contracts for pre-emption including right of first refusal, or tag-along or dragalong rights contained in shareholders agreements or articles of association of companies or other body corporate;

(d) contracts in shareholders agreements or articles of association of companies or other body corporate, for purchase or sale of securities pursuant to exercise of an option contained therein to buy or sell the securities, where-

(i) the title and ownership of the underlying securities is held continuously by the selling party to such contract for a minimum period of one year from the date of entering into the contract;

(ii) the price or consideration payable for the sale or purchase of the underlying securities pursuant to exercise of any option contained therein, is in compliance with all the laws for the time being in force as applicable; and

(iii) the contract is settled by way of actual delivery of the underlying securities:

Provided that the contracts specified in clauses (a) to (d) above, shall be in accordance with the provisions of the Foreign Exchange Management Act, 1999 and rules or regulations made thereunder:

Provided further that nothing contained in this notification shall affect or validate any contract which has been entered into prior to the date of this notification.

25. As per the aforementioned provisions of SCRA, I note that in respect of receipt of 10,00,000 shares from Mrs. Renu Bhushan on March 29, 2017, Mr. Bharath Bhushan was mandated to make payment to Mrs. Renu Bhushan either on the same day i.e. on March 29, 2017 or on the next day i.e. on March 30, 2017. I further note that in respect of receipt of 10,00,000 shares from Mr. Bharath Bhushan on February 22, 2018, Mr. Brij Bhushan was mandated to make payment to Mr. Brij Bhushan either on the same day i.e. on February 22, 2018 or on the next day i.e. on February 23, 2018. However, in both scenarios, the Noticees have not made payment of consideration/fund settlement with each other. This fact was accepted by the Noticees that no fund settlement took place for the said transactions.

26. The submissions of the Noticees were perused. Mr Bharat Bhushan, inter-alia, submitted that 10,00,000 shares of SFL were provided to him by Mrs. Renu (wife of Mr. Brij Bhushan) on March 29, 2017 as '*collateral*' or '*for certain security*' in respect of a business proposal made by Mr. Brij. However, Mr. Bharath added that since the business proposal could not materialise, he returned the said 10,00,000 shares of SFL by transferring to Mr. Brij (husband of Mrs. Renu Bhushan) on February 22, 2018 on the latter's instructions. The said submissions were also reiterated by Mrs. Renu and Mr.

Brij in their submissions. In this context, I note that the Noticees viz. Mrs. Renu, Mr. Brij and Mr. Bharath have not provided any supporting document/valid business agreements to substantiate the submissions made by them as regards the ‘business proposal’ entered into by them. In the absence of any legitimate agreements for using the shares as ‘collateral’ for business purposes, the aforesaid submissions of the Noticee nos. 1 and 3 cannot be accepted.

27. The findings of the investigation on further perusal of the aforesaid transactions with the depository participant (DP) of the Noticees viz. Globe Capital Market Limited, *inter-alia*, brought out the flowing:

    a. The delivery instruction slip (DIS) was obtained from the DP in respect of the off market transaction dated February 22, 2018 entered into by the Mr. Bharath Bhushan and Mr. Brij Bhushan.

    b. Upon perusal of the said DIS slip it was noted that the remarks column on DIS stated as ‘collateral returned’.

    c. DP in its reply to SEBI during the investigation further mentioned that no pledge was initiated by Mr. Bharat Bhushan or Mr. Brij Bhushan for the off market transaction dated February 22, 2018.

28. Further, from the aforesaid findings of investigation, I note that no pledge was initiated by either of the Noticees for the said transactions. As already discussed, in the absence of valid business agreements the off market transactions of the Noticees cannot be considered as ‘collateral’ even though the term ‘collateral’ was mentioned on the DIS slip. Admittedly the Noticees also failed to make the payment of consideration in respect

of the off market transactions entered into by them, within the stipulated time, the details of which were already discussed in the previous paragraphs.

29. I note that the transfer of shares to the demat account imply transfer of beneficial ownership of the shares. The transfer of beneficial ownership comes along with the rights and liabilities attached to the ownership of shares. The conduct of the parties and nature of the transactions establishes that the Noticees entered into a transaction in off-market without receipt / payment of consideration, which is in fact a contravention of the provisions of SCRA as mentioned in earlier paras. I find it pertinent to refer to the following judgements of the Hon'ble Supreme Court and the Hon'ble Securities and Appellate Tribunal (SAT):

a. The Hon'ble Supreme Court in the matter of SEBI vs. M/s Opee Stock Link Ltd (civil appeal nos.2285, 2286, 2294 & 2303 of 2010) vide order dated July 11, 2016, *inter-alia*, held the following:

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

through registered members of a recognised stock exchange (i.e. stock brokers) and the only exception to this is a Spot Delivery Contract.

22. 'Spot Delivery Contract' is defined in Section 2(i) of the SCRA as a contract, which – "

(a) provides for actual delivery of securities and the payment of a price thereof either on the date of the contract or on the next day, excluding the time involved in dispatch of shares and remittance of money where parties do not reside in the same town/locality;

(b) transfer of securities by depository from the account of one beneficial owner (demat account) to the account of other beneficial owner (demat account) were securities involved are in demat form."

Section 2(i)(b) of the SCRA was introduced in the statute book with effect from September 20, 1995. It is clear from the aforestated definition of 'Spot Delivery Contract' that to enter into such a contract, the seller has to effect actual delivery of securities and the buyer has to pay the price therefor either on the same day or on the next day and further*, the said transfer should be coupled with transfer of the Securities from one Beneficial Owner (BO) to another.*

Considering the scope of Spot Delivery Contract as defined in Section 2(i) of the SCRA in Bhagwati Developers Pvt. Ltd. v. Peerless General Finance and Investment Company Ltd. & Anr. (2013) 9 SCC 584, this Court has held as under :-

“...... a contract providing for actual delivery of securities and the payment of price thereof either on the same day as the date of contract or on the next day means a spot delivery contract.”

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

b. The Hon’ble SAT in the matter of Mr. Bharath Shantilal Thakkar vs SEBI (Appeal number 112 of 2012) vide order dated November 08, 2012, *inter-alia*, held the following:

18….

As observed by the adjudicating officer off market transfers in the present case are covered under section 2(i)(b) of the SCRA. There has been off market deals between the appellant and other entities of the group by way of transfer of beneficial ownership through the depository.

The charge levelled against the appellant by the adjudicating officer is that the impugned off market transfer, not having been substantiated as a loan transaction by the appellant, should be considered to be a normal sale/purchase and the restrictions contained in section 2(i)(a) should be harmoniously applied to the present situation as well. The issue under consideration has got two limbs - (1) the real nature of the transaction and (2) the harmonious construction of sections 2(i)(a) *and 2(i)(b) of the SCRA. With regard to the first limb, the case of the appellant is that the impugned transfer is in the nature of loan/loan repayment. Admittedly, it is for the appellant to advance evidence in support of his claim. The adjudicating officer provided the appellant with sufficient opportunities to furnish documentary proof in support of the claim. The appellant sought extension of time to locate and furnish the relevant documents. There was no refusal of this prayer from the investigating officer.* ***The appellant did not furnish the required documentary evidence in spite of getting a long interval between the summons issued by the investigating officer and the show cause notice issued by the adjudicating officer.*** *So the theory of loan transaction could not be accepted by the adjudicating officer. He, then, proceeded to deal with the transaction as one in the nature of sale/purchase which is reasonable and logical. Thus, the facts on record show that the adjudicating officer has characterised the transactions based upon the fact situation and the failure on the part of the appellant to prove his claim. Once the transaction is regarded as sale/purchase, it has to be examined whether the* ***provisions of sections 2, 13 and 18 of the SCRA are complied with****.*

19. The second limb of the argument, as aforementioned, deals with the harmonious construction of the provisions of section 2(i)(a) and 2(i)(b) of the SCRA. We find that this issue has been decided by this Tribunal in the case of Mrs. Bhanuben Jaisukhlal Shah mentioned supra. The adjudicating officer has considered this issue in detail in the light of the decision of this Tribunal cited above. The observations of this Tribunal, though relied on by the adjudicating officer, require reiteration to reinforce *the stand taken by the adjudicating officer. The relevant portions are extracted below for the sake of convenience.*

"According to clause (b), when securities are transferred from one beneficial account to another, it would be treated as "actual delivery" of securities within the meaning of clause (a). It is, thus, clear that clause (b) is not an independent clause but only an explanation to the words "actual delivery" as used in clause (a). We cannot, therefore, accept the argument of the appellant that clause (b) is an independent clause and that the spot delivery contract is complete with the mere transfer of securities from the account of one beneficial owner to that of another without reference to the payment of consideration. This could never be. If that were so, the contract itself would become void being without consideration. Clause (b) cannot be picked up and interpreted in a manner which defeats the very purpose for which it was enacted. While interpreting the provisions of Section 2(i) of the Act, we have to keep in mind the consequences which are likely to flow from the intended interpretation. We cannot but hold that clause (b) in Section 2(i) was not meant to stand on its own and it has to be read in conjunction with clause (a)."

20. The fact situation in the present case and the legal position as enunciated in the decision of the Tribunal mentioned above make it clear that the ***transactions entered into by the appellant are not in compliance with the requirements laid down for spot delivery contracts under section 2(i) of the SCRA and from this it flows that they are in violation of the provisions of sections 13 and 18 of the SCRA****.*

28.. It is contended by the appellant that off market transfers entered into by the appellant have not in any way affected the securities market and there has been no attempt at manipulation and so there is no case for any penalty. We have considered this issue in the background of the objects contained in the provisions of SCRA. It is to be noted that SCRA is intended primarily to prevent "undesirable transactions in the securities". In the present case, the appellant was found to have entered into certain transactions which were prima facie undesirable and for which no proper explanation was offered by him. No fault, therefore, can be found with the findings arrived at by the adjudicating officer

(emphasis supplied)

c. The Hon'ble SAT in the matter of Pankaj J Shah & ors. vs. SEBI (Appeal number. 436 of 2020) vide order dated July 19, 2021, *inter-alia*, held the following:

4. It was also alleged that noticee nos.1 to 35 had transferred shares of L & T Finance Holdings Ltd. to noticee no.36 in off-market transactions. ***But noticee nos.1 to 35 did not receive any payment within the specified period for "spot delivery contracts" under Section 2(i)(a) and, therefore, the same was violative of the said provisions read with Sections 13, 16 and 18 of the SCRA Act****.*

…

16. Admittedly, noticee no.36 had taken shares of L & T Finance Holdings Ltd. from noticee nos.3 to 35 but no consideration was paid within the stipulated period. The Adjudicating Officer found that there was violation of spot delivery contracts as *defined under Section 2(i) of the SCRA Act. In our opinion, the findings given by the Adjudicating Officer on this aspect needs no interference.*

(emphasis supplied)

d. The Hon'ble SAT in the matter of Mr. Nimish Pankajkumar Shah vs. SEBI (Appeal numbers 553 and 212 of 2022) vide order dated January 03, 2023, *inter-alia*, held the following:

2. Aggrieved by the order dated July 6, 2021 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) directing the appellant to pay a penalty of Rs. 1,80,000/- for violation of Section 2(i) of Securities Contracts (Regulation) Act, 1956 ('SCRA' for short) read with Section 16, Section 13, Section 18 of SCRA read with SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013 the present appeal is filed.

3. The respondent SEBI conducted an investigation for a period between April 01, 2014 to may 30, 2015 for the trading in the scrip of Timbor Home Ltd. (hereinafter referred to as the 'Company') and found that the transfer of shares made off market violated the above provisions.

..

7.. Upon hearing both the sides, in our view, the appellant was the responsible director of the Company. The alleged loan agreement was never produced on record to show as a part of that agreement the shares were transferred. On the other hand, the decision of this Tribunal in the appeals as stated hereinabove would show *that the intention was to defraud the gullible investors. In that view of the matter no case is made out for interference in the impugned order.*

30. In view of the observations made above, I find that the Noticees executed off market transactions in the scrip of SFL during the investigation period there was a transfer of beneficial ownership. However, the Noticees have executed the said transactions without making the payment of consideration which is in violation of the provisions of Section 2 (i) (a) read with Sections 13, 16, 18 of the SCRA and SEBI notification dated October 03, 2013 issued under the Sections 16 and 28 of the SCRA.
31. Therefore, I hold that the allegation of violation of Sections 13, 16, 18 of SCRA and SEBI notification dated October 03, 2013 read with Section 2 (i) (a) of SCRA against the Noticees stands established.

ISSUE II. If yes, whether the violations would attract monetary penalty on the Noticees under the provisions of the Section 23H of SCRA?

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

32. As it has been established that the Noticees violated the provisions of Section 2 (i) (a) read with Sections 13, 16, 18 of the SCRA and SEBI notification dated October 03, 2013 issued under the Sections 16 and 28 of the SCRA, the Noticees are liable for imposition of monetary penalty under Section 23H of SCRA. Reference is given to the order dated March 29, 2012, wherein the Hon'ble SAT in the matter of Eaugu Udyog Limited vs SEBI (Appeal no. 210 of 2011), *inter alia*, held as follows:

"In the circumstances of the case, there is a spot delivery contract as envisaged in section 2(i) of the SCRA Act. Since the payment of consideration is not in conformity with the above provision of SCRA penalty under section 23H is called for."

33. The text of the said provision is reproduced below:

SCRA

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

34. While determining the quantum of penalty under Section 23Hof SCRA, the following factors stipulated in Section 23J of SCRA have to be given due regard:

SCRA

Factors to be taken into account by adjudicating officer.

23J.While adjudging the quantum of penalty under Section 23I, 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

35. I note that the material on record does not reveal any disproportionate gains made or unfair advantage taken by the Noticees or loss caused to the investors as a result of the failure in fund settlement of the said off market transactions by the Noticees. I also note that the material on record does not bring whether other investors were adversely affected by such off-market transfers. However, I cannot ignore the fact that there is a clear violation of the law relating to the provisions of Section 2 (i) (a) of SCRA. I also note that the delayed acts of Noticee nos. 1 and 3 in responding to the SCN hampered the process of the present proceedings, which have been already discussed in previous paragraphs. It is also noted that Noticee no.2 viz. Mr. Bharath Bhushan is involved in both the transactions.

ORDER

36. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 23 I of the SCRA read with Rule 5 of the SCR Rules, I hereby impose the monetary penalty on the Noticees as given in the table below:

<table>
<tr><th>Noticee</th><th>Penalty</th><th>Violations established</th><th>Penal Provisions</th></tr>
<tr><td>Noticee no.1/
Mrs. Renu Bhushan</td><td>Rs. 1,00,000/- (Rupees One Lakh only)</td><td rowspan="3">Section 2 (i) (a) read with Sections 13, 16, 18 of the SCRA and SEBI notification dated October 03, 2013 issued under the Sections 16 and 28 of the SCRA.</td><td rowspan="3">Section 23H of SCRA</td></tr>
<tr><td>Noticee no.2/
Mr. Bharath Bhushan</td><td>Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only)</td></tr>
<tr><td>Noticee no.3/
Mr. Brij Bhushan</td><td>Rs. 1,00,000/- (Rupees One Lakh only)</td></tr>
</table>

I am of the view that the penalty imposed on the Noticees as mentioned above will be commensurate with the violations committed by the Noticees.

37. Noticees shall remit / pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of “SEBI- *Penalties Remittable to Government of India*”, payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

38. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051” and also to e-mail id:- tad@sebi.gov.in

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)	

39. In terms of the provisions of Rule 6 of the SCR Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: January 30, 2023	**N HARIHARAN**
Place: Mumbai	**ADJUDICATING OFFICER**