BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/AK/AS/2023-24/26595-26597

UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SCR(R) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 AND SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 IN RESPECT OF:

Name of Noticee (PAN)	Address
Alps Motor Finance Limited (AABCA1559L)	49, Gujranwala Town, Part II, New Delhi - 110009
Brij Kishore Sabharwal (AAXPS6830P)	
Himanshu Agarwal (AOAPA6806N)	633, Krishna Nagar, Bodam Mandir wali gali, Bulandshahar, Uttar Pradesh - 203001

In the matter of Alps Motor Finance Ltd

BACKGROUND OF THE CASE

1. Alps Motor Finance Ltd (hereinafter referred to as **"Noticee No. 1"**) had made six preferential allotments during the period June 2013 to August 2013. In this regard, SEBI carried out an investigation to ascertain possible misutilization of proceeds of the said preferential allotments by Noticee No. 1. The period of investigation was taken from June 01, 2013 to August 31, 2013 (hereinafter referred to as **"Investigation Period"**).

2. On the basis of findings of said investigation, it was alleged that Noticee No. 1 violated the provisions of Clause 43 of the erstwhile Listing Agreement (which is now Regulation 32 of the SEBI (Listing Obligations and Disclosure

Requirements) Regulations, 2015) (hereinafter referred to as **"LODR Regulations"**) r/w Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA"**), also that Noticee No. 1, Brij Kishore Sabharwal (hereinafter referred to as **"Noticee No. 2"**) and Himanshu Agarwal (hereinafter referred to as **"Noticee No. 3"**) allegedly violated the provisions of Regulations 3(a)(b)(c)(d),4(1),4(2)(f), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**) r/w Section 12A(a)(b)(c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**).

APPOINTMENT OF ADJUDICATING OFFICER

3. On being satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid alleged violations, SEBI in exercise of powers under Section 23-I of the SCRA and Rule 3 of the SCR(R) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as the **"Adjudication Rules, 2005"**), and Section 19 r/w Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **"Adjudication Rules, 1995"**), appointed the undersigned as the Adjudicating Officer, vide communication dated April 25, 2023 and December 28, 2022, to inquire into and adjudge under Section 23-I r/w Section 23A(a) of the SCRA, and under Section 15-I r/w Section 15HA of the SEBI Act, the alleged violations by the Noticees.

SHOW CAUSE NOTICE AND PERSONAL HEARING

4. A common Show Cause Notice dated January 05, 2023 (hereinafter referred to as **"SCN"**) was issued to the Noticees to show cause as to why an inquiry should not be initiated against them, and why penalty, if any, should not be imposed against them under Section 23A(a) of the SCRA for alleged violations by Noticee No. 1, and under Section 15HA of the SEBI Act for alleged violations by Noticees Nos. 1 to 3. The details of communication with the Noticees are provided below:

4.1. Notice Nos. 1 and 2

SCN was served on the Noticees vide SPAD and digitally signed email dated January 06, 2023. Thereafter, vide digitally signed email dated January 23, 2023, Noticees were granted opportunity of personal hearing on February 07, 2023. Vide letters dated January 30, 2023, Noticees No. 1 and 2, interalia, requested for opportunity of inspection of documents pertaining to the matter. Vide email dated February 07, 2023, Noticees were granted opportunity of inspection on February 14, 2023. Advocate Meit Shah availed the opportunity of inspection on behalf of the Noticees on February 14, 2023, as scheduled. During the course of inspection, all the documents relied upon and relevant in the matter were inspected. Further, the following documents were provided:

- Relevant portion of Investigation Report
- Email dated October 11, 2022 from Noticee No. 1
- Email dated October 31, 2022 from Bulwark Partners (hereinafter referred to as **"Bulwark"**)
- Confirmation of Accounts pertaining to Chander Bhushan (hereinafter referred to as **"Chander"**), Dream Procon Pvt Ltd (hereinafter referred to as **"Dream Procon"**), Pioneer Buildestate Pvt Ltd (hereinafter referred to as **"Pioneer"**), Bulwark and MLAP Commodities LLP (hereinafter referred to as **"MLAP"**)
- MoUs pertaining to Chander and Dream Procon.

Further, the Noticees requested for specific documents vide the aforesaid request for inspection received on January 30, 2023. The following comments were provided as requested:

S No	Details of documents sought	Comments
1	Copy of investigation report of SEBI	Copy of relevant portion of the Investigation Report provided.
2	Copy of report submitted by BSE to SEBI	Pursuant to preliminary examination conducted by BSE, detailed investigation was conducted by SEBI. Show Cause Notice in the matter has been issued based on the Investigation Report approved pursuant to the detailed Investigation conducted by SEBI. Further, redacted portion of the said Investigation Report provided.

3	Copy of all communications exchanged by and between SEBI, BSE, Chander Bhushan, Dream Procon Pvt Ltd, Pioneer Buildestate Pvt Ltd, Bulwark Partners, MLAP Commodities and Nanda Parbat Finlease Ltd	All the communications relied upon and relevant in the matter inspected by Authorized Representative.
4	Copy of statement of any person recorded by SEBI	No such statement recorded in the matter
5	Details of complaints received by SEBI and stock exchange	No such complaints relied upon and are relevant in the matter

The Noticees were provided digitally signed copy of record of proceedings of inspection dated February 14, 2023. Vide submissions dated February 15, 2023 and February 20, 2023, Noticees reiterated that they needed the documents, as provided in the table above, to submit reply to the SCN. Vide email dated February 20, 2023, Noticees were informed that requisite documents/ information/ clarifications have already been provided during the inspection of documents, and as mentioned in the table above. Noticees were advised to submit reply to the SCN based on the same. Vide emails dated February 23, 2023, Noticees submitted that they needed additional time for submitting reply to the SCN. Vide email dated February 23, 2023, an opportunity of personal hearing to Noticees was scheduled on March 02, 2023. Vide letters dated February 21, 2023 and February 27, 2023, Noticees No. 1 and 2 respectively, submitted replies to the SCN and availed the opportunity of personal hearing, as scheduled on March 02, 2023. During the course of hearing, Advocate Meit Shah appeared on behalf of the Noticees and made submissions relying upon the responses dated January 30, 2023 and February 21, 2023 for Noticee No. 1, and responses dated January 30, 2023 and February 27, 2023 for Noticee No. 2.

4.2. <u>Noticee No. 3</u>

SCN was served on the Noticee vide SPAD and digitally signed email dated January 06, 2023. On non-receipt of any reply in the stipulated period, vide digitally signed email dated January 23, 2023, Noticee was granted opportunity of personal hearing on February 07, 2023. Vide letter dated January 31, 2023, Noticee, interalia, requested for additional time for submitting reply to the SCN. Vide email dated February 16, 2023, Noticee was granted time till February 24, 2023 to submit reply to the SCN, if any. Vide email dated February 21, 2023, enclosing letter dated February 20, 2023, Noticee submitted reply to the SCN. Noticee availed of the opportunity of personal hearing, scheduled on February 24, 2023. During the course of hearing, Mr Sudhir Kumar Agarwal appeared on behalf of the Noticee and made submissions relying upon the responses dated January 31, 2023 and February 20, 2023.

5. A Supplementary SCN dated April 27, 2023 was served on the Noticees, vide digitally signed email. Vide the said Supplementary SCN, it was, interalia, stated that due to the alleged violation of provisions of Clause 43 of the erstwhile Listing Agreement (now Regulation 32 of LODR Regulations) r/w Section 21 of the SCRA, Noticee No. 1 would attract monetary penalty, if any, under Section 23A(a) of the SCRA, instead of Section 23E of the SCRA as stated in the SCN dated January 05, 2023. Noticees were given sufficient time to provide their submissions, if any, to the supplementary SCN. Noticee No. 1 made submissions as regards the Supplementary SCN vide email dated May 18, 2023. Noticee Nos. 2 and 3 did not make any submissions as regards the Supplementary SCN.

CONSIDERATION OF ISSUES AND FINDINGS

6. The issues that arise for consideration are as under:
   6.1 Whether Noticee No. 1 violated the provisions of Clause 43 of the erstwhile Listing Agreement (which is now Regulation 32 of the LODR Regulations) r/w Section 21 of the SCRA. Also, whether the three Noticees violated the provisions of Regulations 3(a)(b)(c)(d),4(1),4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations r/w Section 12A(a)(b)(c) of the SEBI Act?
   6.2 If yes, whether the violations, if any, attract monetary penalty under the provisions of Section 23A(a) of the SCRA and/or Section 15HA of the SEBI Act? If so, what quantum of monetary penalty should be imposed on the

Noticees after taking into consideration the factors mentioned in Section 23J of the SCRA and Section 15J of the SEBI Act?

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

SCRA

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

Clause 43 of the erstwhile Listing Agreement

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

SEBI Act, 1992

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

12A. No person shall directly or indirectly-

………

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

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

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

PFUTP Regulations

3. 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:-

……….

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

……….

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;

……..

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

Issue No. I: Whether Noticee No. 1 violated the provisions of Clause 43 of the erstwhile Listing Agreement (which is now Regulation 32 of the LODR Regulations) r/w Section 21 of the SCRA, and whether the three Noticees violated the provisions of Regulations 3(a)(b)(c)(d),4(1),4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations r/w Section 12A(a)(b)(c) of the SEBI Act?

8. The observation of the investigation and allegations against the Noticees in the SCN are summarized below:

8.1 The details of directors of Noticee No. 1 during the Investigation Period are provided below:

Sr. No.	Name of Director	Designation	DIN/DPIN	PAN	Date of appointment	Date of cessation
1	Harshwardhan Koshal	Independent Director	00984159	AAVPK1615L	25/02/2012	17/02/2015
2	Brij Kishore Sabharwal **(Noticee No. 2)**	Whole time director	01303907	AAXPS6830P	05/10/2012	31/12/2014
3	Himanshu Agarwal **(Noticee No. 3)**	Non-Executive and Non Independent Director	05192834	AOAPA6806N	14/02/2012	05/07/2014
4	Braj Mohan Singh	Independent Director	05229527	DLCPS1801R	17/03/2012	13/01/2015

8.2 Noticee No: 1 made six preferential allotments during June 2013 to August 2013, amounting to Rs. 7.01 Cr. The objects of the preferential issue, as presented to shareholders in the notice of Extra Ordinary General Meeting (EGM) held on 14th June 2013, 25th June 2013, 12th July 2013, 23rd July 2013, 1st August 2013 and 5th August 2013, were as follows:

i. To strengthen the equity base of the company
ii. To arrange the funds required for meeting the enhanced working capital requirements of the company
iii. To meet certain capital expenditure and
iv. To meet expenditure for general corporate purposes.

8.3 The details of utilization of proceeds of preferential issues as submitted during investigation by Noticee No. 1, vide email dated March 15, 2019 are as follows:

S No	Name of the Entities	Dates of Loans & Advances Given	Amount of Loan & Advances Given	Rate of interest Charged	Purpose of Loan
1	Chander Bhusan	10.05.2013	10,000,000.00	Without Interest (WI)	For the opening of showroom and vehicle finance
	Total (A)		**10,000,000.00**	WI	
2	Dream Procon	08.07.2013	10,000,000.00	WI	For the opening of showroom and vehicle finance
		11.07.2013	5,000,000.00	WI	
		26.07.2013	10,000,000.00	WI	
		26.07.2013	10,000,000.00	WI	
		05.09.2013	5,000,000.00	WI	
	Total (B)		**40,000,000.00**	WI	
3	Bulwark Partner	04.10.2013	7,500,000.00	10%	Interest
		07.10.2013	7,500,000.00	10%	Interest
	Total (C)		**15,000,000.00**		
4	Pioneer Buildestates Pvt Ltd	18.03.2014	3,600,000.00	WI	To improve business relation
	Total (D)		**3,600,000.00**		
5	MLAP Commodities	20.09.2013	1,800,000.00	10%	Interest
	Total (E)		**1,800,000.00**		
6	Nanda Parbat Finlease Ltd	03.07.2014	4,600,000.00	10%	Interest
	Total (E)		**4,600,000.00**		

8.4 Further, the status of loan repayment of the aforesaid loans, as submitted by Noticee No. 1 vide email dated September 01, 2022, was as follows:

Sr.no	Name	Date	Loan Amount	With/without interest	Repaid/outstanding
1.	Chander Bhusan	09.05.2013	10,000,000.00	With Interest	Outstanding

2.	Dream Procon Pvt Limited	08.07.2013	40,000,000.00	With Interest	Outstanding
3	Pioneer Buildestate Pvt Ltd	17.03.2014	36,00,000	With Interest	Repaid
4	Bulwark partners	04.10.2013	1,50,00,000	Interest	Repaid
5	Nanda Parbat	03.07.2014	4,600,000.00	Interest	Outstanding
6.	MLAP Commodities	19.09.2013	18,00,000.00	Interest	Outstanding

8.5 Noticee No. 1 had transferred the proceeds of the preferential issue, from its account viz. Kotak Mahindra Bank A/c no 634011028898, to the 6 entities as given below:

Sr. No.	Name of Entity	Date of Transfer	Amount Transferred (Rs.)
1	Chander Bhusan	10.05.2013	10,000,000
2	Dream Procon Pvt limited	08.07.2013	10,000,000
		11.07.2013	5,000,000
		26.07.2013	10,000,000
		26.07.2013	10,000,000
		05.09.2013	5,000,000
3	Bulwark Partners	04.10.2013	7,500,000
		07.10.2013	7,500,000
4	Pioneer Buildestate Pvt Ltd	18.03.2014	3,600,000
5	MLAP Commodities	20.09.2013	1,800,000
6	Nanda Parbat Finelease Ltd	03.07.2014	4,600,000
	Total		**75,000,000.00**

8.6 Noticee No. 1 had utilized almost 76% of funds raised through preferential issue for giving interest free loans to 3 entities i.e. Rs 1 Crore to Chander, Rs 4 Crores to Dream Procon and Rs 0.36 Crore to Pioneer. Further, as per the email dated September 01, 2022 received from Noticee No. 1, loans given to Chander, Dream Procon, Nanda Parbat and MLAP were not recovered.

8.7 Borrower wise loans analysis:

8.7.1 <u>Chander Bhusan</u> – Noticee No. 1 transferred Rs 1 Crore on May 10, 2013 to Chander as "Loan" for opening of showroom and vehicle finance. On perusal of the Loan agreement, it was observed that the loan was given as interest free loan, it was not executed on stamp paper, repayment period was not mentioned and the loan agreement was casually prepared hampering the legal validity and scope of enforcement of the agreement. No due diligence was carried out to ascertain the financial credibility of the borrower. Further, it was observed that Chander had transferred Rs 1 Crore to Shivam International in 2 tranches of Rs 50 Lakhs each, and further, Shivam International had transferred Rs 1.1 Crore to four different entities viz. Naaz Trading Company, Horizon Overseas, Horizon Adhesives and ABC Tanners. Thus, it was alleged that the loan amount was not utilized for opening of showroom or for vehicle finance. Further, as per the MoU between Noticee No. 1 and Chander dated May 18, 2013, it was agreed that profit sharing ratio from the business between Noticee No. 1 and Chander will be 40:60. However, Noticee No. 1, vide its letter to BSE dated November 14, 2016, stated that business for which the loan was granted to Chander could not be materialized. Thus, no profit could be accrued from proposed business. Further, Noticee No: 1, vide its email dated September 01, 2022, confirmed that the loan was "still continuing". On analysis of bank statements, it was found that the funds were not transferred back from Chander to Noticee No: 1.

8.7.2 Dream Procon Pvt Ltd – Noticee No. 1 transferred Rs 4 crore in 4 tranches to Dream Procon as loan for opening of showroom and vehicular finance. On perusal of the Loan agreement, it was observed that the loan was given as interest free loan, it was not executed on stamp paper, repayment period was not mentioned and the loan agreement was casually prepared hampering the legal validity and scope of enforcement of the agreement. Noticee No. 1 had, interalia, submitted that it had given the loan to Dream Procon considering its financial parameters, and that it was group company of Indirapuram Habitat Center Pvt Ltd, a successful company. However, it was observed that the loan amount of Rs. 4 crore given to Dream Procon was disproportionately large against its net profit. It was also observed that Dream Procon transferred Rs. 4 Crore to 3 entities viz. Indirapuram Habitat, Logix City Developer and Coastal Projects Ltd. From the MoU between Noticee No. 1 and Dream Procon Pvt. Ltd., it was observed that profit sharing ratio from the business between Noticee No: 1 and Dream Procon was agreed to be 50:50. However, Noticee No. 1 had submitted that the business for which the loan was granted to Dream Procon could not be materialized. Finally, as submitted by Noticee No. 1, the loan was *"still continuing"*

8.7.3 Pioneer Buildestate Pvt Ltd - It was observed that the loan given by Noticee No. 1 to Pioneer Buildestate was repaid on July 02, 2014. However, the Loan agreement was executed on Noticee No. 1's letter head and was not notarized or registered. It was further observed that the agreement was casually prepared made without mentioning the specific tenure, business details, collateral security etc, hampering the legal validity and scope of enforcing the agreement. No due diligence was carried out to ascertain the financial credibility of the borrower.

8.7.4 MLAP Commodities LLP - It was observed Noticee No. 1 had transferred Rs 18 Lakh to MLAP as "Loan" for 5 years, however, the terms of interest rate were not mentioned in the relevant loan agreement. On perusal of the Loan agreement, it was observed that the loan was given as interest free loan, it was not executed on stamp paper, repayment period was not mentioned and the loan agreement was casually prepared hampering the legal validity and scope of enforcement of the agreement. No due diligence was carried out to ascertain the financial credibility of the borrower. Further, MLAP transferred Rs 18 Lakhs to Edynamics Solution on September 21, 2013. However, MLAP did not submit any reason for transferring of the said amount to Edynamics Solutions.

8.7.5 Nanda Parbat Finlease Ltd - It was observed Noticee No. 1 had transferred Rs 46 Lakh to Nanda Parbat as "Loan" for 3 years, however, the terms of interest rate were not mentioned in the relevant loan agreement. No due diligence was carried out to ascertain the financial credibility of the borrower. Further, it was observed that Nanda Parbat transferred Rs. 7 Lakh to GSS Procon Private Limited and Rs. 5 lakh to Dream Procon. Also, Indira Puram Habit Centre Pvt Ltd credited Rs. 27.5 Lakh to Nanda Parbat on July 04, 2014.

8.7.6 Bulwark Partners - It was observed that Noticee No. 1 transferred Rs 1.5 crore to Bulwark as "Loan" for 3 years, however, the terms of interest rate were not mentioned in the relevant loan agreement. On perusal of the Loan agreement, it was observed that the loan was given as interest free loan, it was not executed on stamp paper, repayment period was not mentioned and the loan agreement was casually prepared hampering the legal validity and scope of enforcement of the agreement.

8.8 It was observed that in terms of Clause 43 of the listing agreement, (now Regulation 32 of LODR Regulation, every listed company is mandated to place the statement of deviation before its audit committee for the review and after such review, the statement along with the comments of the Audit committee if any should be disclosed or submitted to the stock exchange in the prescribed format. Further an explanation of such variation should be given in the Directors report section in Annual Report. However, BSE submitted that Noticee No. 1 did not make any such disclosures with respect to aforesaid provisions. Also, no such explanation of variation was found in Annual Report of Noticee No. 1.

8.9 It was further observed that Noticee No: 1 ratified utilization of funds equal to Rs 7,01,33,500 raised through preferential issue by way of special resolution in its 31st Annual general Meeting (AGM). Therefore, it was observed that Noticee No. 1 undertook the ratification after 4 years from the occurrence of alleged deviation i.e. in 2018, after receiving explicit directions from BSE, vide notice dated June 13, 2018.

8.10 Based on the above, the following was alleged against Noticees:

8.10.1 Noticee No. 1 utilized entire amount of preferential allotment proceed for providing loans to 6 entities which was not in lines with the object or purpose of the preferential issue, as approved in the EGM, and the same were mis-utilised by Noticee No. 1. Further, the aforementioned misutilization was done with the knowledge of its directors namely Noticee No. 2 and Noticee No. 3, as they were the authorized signatory of Noticee No. 1's Bank Account in which proceed of the preferential allotment was collected and from which loans were disbursed. Further, the said Noticees were also present in 16 and 15 Board Meetings respectively out of 16 Board meetings and the annual report for FY 2013-14 presented to shareholder was signed by Noticee Nos. 2 and 3. Therefore, it was alleged that Noticees violated the provisions of Regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f), 4(2)k and 4(2)(r) of PFUTP) Regulations r/w Section 12A (a) (b) (c) of the SEBI Act, 1992, thereby attracted penalty under Section 15 HA of SEBI Act.

8.10.2 Further, Noticee No. 1 allegedly did not comply with the disclosure requirements under Clause 43 of the erstwhile Listing Agreement (which is now Regulation 32 of LODR Regulations) r/w Section 21 of the SCRA, in respect of variation/ deviation in the utilization of preferential allotment proceeds by not furnishing the statement to the exchange indicating the variations between projected and actual utilization of funds and no explanation for the variation was disclosed in the Annual report, and thereby, attracted penalty under Section 23A(a) of the SCRA.

9. The submissions made by the Noticees as regards allegations levelled against them are summarized below. Further, the submissions made by Noticees which are common, have not been repeated for the sake of brevity.

9.1 <u>Noticee No. 1:</u>

9.1.1 There is an inordinate delay in the issuance of instant SCN, and the proceedings should be disposed of on this ground alone. In this regard, reliance was placed on the order of the Hon’ble SAT in the matters of Shriram Insight Share Brokers Ltd vs SEBI, Yatin Pandya HUF vs SEBI, SIC Stock & Services Pvt Ltd vs SEBI and Man Industries Ltd & Ors vs SEBI. Management of the Company has completely changed, and it is not possible for the current management to know the strategy that the erstwhile management had relied upon.

9.1.2 Explanation pertaining to loan given to Chander Bhusan – The loan was granted with proper due diligence, in the interest of shareholders with a profit sharing ratio. Further, Noticee No. 1 was not aware as to why Chander had transferred the loan to other entities. Currently, the loan is still continuing and Chander is not traceable.

9.1.3 Explanation pertaining to loan given to Dream Procon Pvt Ltd– The loan was granted with proper due diligence, considering the annual turnover of the company, and its association with an established company, viz. Indirapuram Habitat Center Pvt Ltd. Loan was given in the interest of shareholders, with the arrangement of profit sharing as well. Further, Noticee No. 1 was not aware as to why Dream Procon transferred the said loan to other entities. Currently, the loan is still continuing, and Dream Procon has filed for insolvency proceedings. Therefore, Noticee No. 1 has submitted its claim duly with the Resolutions Professional.

9.1.4 Explanation pertaining to loan given to Pioneer Buildestate Pvt Ltd – The loan was granted for short term to enhance reputation of Noticee No. 1 and build long term relation with Pioneer. Therefore, proper due diligence was done before giving the loan. The loan had been repaid within 3.5 years of grant of loan.

9.1.5 Explanation pertaining to loan given to MLAP Commodities LLP – The loan was given after due diligence, considering that MLAP was member of National Spot Exchange Ltd (NSEL). Further, Noticee No. 1 was not aware as to why MLAP transferred the said loan to other entities. As regards the status of repayment of loan, MLAP had paid interest till March 31, 2016. However, after the collapse of NSEL, MLAP could not honour its obligation, so that the loan is still continuing.

9.1.6 Explanation pertaining to loan given to Nanda Parbat Finlease Ltd – The loan was given in the interest of shareholders. Further, due diligence was carried out as Nanda Parbat was a NBFC having good business and revenue during the period when the loan was granted. Further, Noticee No. 1 was not aware as to why Nanda Parbat transferred the said loan to other entities. Nanda Parbat paid the interest due on the loan till 01/04/2018. Currently the status of Nanda Parbat is “Under Process of Striking Off”.

9.1.7 Explanation pertaining to loan given to Bulwark Partners – The loan had been given while exercising due diligence, and the same has been repaid.

9.1.8 Loans given by Noticee No. 1 were in normal course. Noticee No. 1 had given loans to other entities as well, apart from the aforesaid 6 entities. Non repayment of loans should be treated in extra ordinary manner, and the same is part of any business dealing in loans. There had been no misutilization of proceeds of preferential issue.

9.1.9 As the funds had been utilized as per the object of the issue, alleged violation of Clause 43 of Listing Agreement is not sustainable. Further, Noticee No. 1 undertook the ratification on the basis of directions of BSE. In this regard, Noticee No. 1 has relied upon the judgement of the Hon'ble Supreme Court in the matter of NIT and Anr vs Pannalal Choudhary.

9.1.10 Further, the alleged violation of provisions of PFUTP Regulations, on account of alleged violation of provisions of Clause 43 of the erstwhile Listing Agreement is not sustainable. In this regard, Noticee No. 1 placed reliance on the order dated May 28, 2021 passed by WTM, SEBI in the matter of Tatia Global.

9.2 Noticee No. 2:

9.2.1 The Investigation Period is more than 9 years old, and the Noticee does not have access to required material pertaining to the allegations levelled. In this regard, Noticee No. 2 has relied upon the judgement of the Hon'ble SAT in the matters of Ashok Shivlal Rupani & Anr vs SEBI, Mr Rakesh Kathotia vs SEBI, Mr Yatin Pandya HUF vs SEBI, HB Stock holdings vs SEBI, Man Industries Ltd & Ors vs SEBI and Veerendra Kumar Singh vs SEBI.

9.2.2 Noticee No. 2 was a director of Noticee No. 1 from October 05, 2012 to December 31, 2014. During the aforesaid period, Noticee No. 2 had ensured that Noticee No. 1 was law abiding.

9.2.3 Strict proof is required for the charge of fraud, which is not being done in the instant matter.

9.3 Noticee No. 3:

9.3.1 Noticee No. 3 was appointed director of Noticee No. 1 on February 14, 2012. He resigned in April, 2013. After his resignation, he did not have any connections with Noticee No. 1 in any manner.

9.3.2 After his resignation, Noticee No. 3 was not connected to the promoters or directors of Noticee No. 1 in any manner, and had not participated in any board meeting/ shareholder meeting of Noticee No. 1.

10. Before dealing with issue on merits, I note that the Noticees have raised the ground of delay, and contended that due to the delay of more than 9 years since the preferential issue, their capability to respond to the instant SCN has been compromised, and the SCN should be set aside on this ground alone. In this regard, I find it pertinent to narrate the timeline of events culminating in the instant proceedings. I note that the BSE findings indicating possibility of misutilization of proceeds of preferential issue by companies, interalia, including Noticee No. 1 was received by SEBI in 2016. Thereafter, preliminary findings against Noticee No. 1 had been arrived at by SEBI in 2018. However, in order to carry out detailed investigation, Investigating Authority was appointed in the matter by the Competent Authority on May 30, 2019. Based on the findings of investigation, Adjudication Proceedings in the matter were approved on November 24, 2022. Thereafter, the undersigned was appointed as the Adjudicating Officer, vide communication dated December 28, 2022. Thereafter, inquiry in the matter was carried out against the three Noticees, involving inspection of documents relevant in the matter and conduct of personal hearings for the Noticees. I also note that the documents on the basis of which the instant charges have been framed, had been provided as Annexures to the SCN, and that inspection of all the relevant documents had also been provided to Noticees Nos. 1 and 2, as requested. In conclusion, I note that although there is no substantial delay in the matter, the time gap in the matter serves as a factor which can be considered while deciding quantum of monetary penalty, if any. However, the same cannot be a ground to vitiate the instant proceedings.

11. I now proceed to consider the issue on merits. I note that Noticee No. 1 had made six preferential allotments for Rs 7.01 Crore, that the proceeds were received in bank account of Noticee No. 1 (Account no – 634011028898, Kotak Mahindra Bank) and the details of the allotment are as follows:

Sr. No	Date of allotment	No. of allottees	No of shares	Issue Price (in Rs)	Issue Proceeds (in Rs)
1	June 24, 2013	49	16,00,000	10	1,60,00,000
2	July 03, 2013	49	9,87,900	10	98,79,000
3	July 13, 2013	49	14,02,900	10	1,40,29,000
4	July 23, 2013	49	15,34,300	10	1,53,43,000
5	August 01, 2013	49	8,79,500	10	87,95,000
6	August 05, 2013	20	6,08,750	10	60,87,500
	Total				**7,01,33,500**

12. I note from the notices of EGM on record, that the objects of the preferential issue were as follows:
- To strengthen the equity base of the company
- To arrange the funds required for meeting the enhanced working capital requirements of the company
- To meet certain capital expenditure and
- To meet expenditure for general corporate purposes.

13. Further, Noticee No. 1 submitted the details of utilization of proceeds of preferential issue vide email dated March 15, 2019, in which details of loans amounting to Rs 7.5 Crore to 6 entities was provided. The details of the said loans, which were also verified from Noticee No. 1's bank statement, are as follows:

S No	Name of the Entities	Dates of Loans & Advances Given	Amount of Loan & Advances Given	Rate of interest Charged	Purpose of Loan
1	Chander Bhusan	10.05.2013	10,000,000.00	Without Interest (WI)	For the opening of showroom and vehicle finance
	Total (A)		**10,000,000.00**	WI	
2	Dream Procon	08.07.2013	10,000,000.00	WI	For the opening of showroom and vehicle finance
		11.07.2013	5,000,000.00	WI	
		26.07.2013	10,000,000.00	WI	

		26.07.2013	10,000,000.00	WI	
		05.09.2013	5,000,000.00	WI	
	Total (B)		**40,000,000.00**	WI	
3	Bulwark Partner	04.10.2013	7,500,000.00	10%	Interest
		07.10.2013	7,500,000.00	10%	Interest
	Total (C)		**15,000,000.00**		
4	Pioneer Buildestates Pvt Ltd	18.03.2014	3,600,000.00	WI	To improve business relation
	Total (D)		**3,600,000.00**		
5	MLAP Commodities	20.09.2013	1,800,000.00	10%	Interest
	Total (E)		**1,800,000.00**		
6	Nanda Parbat Finlease Limited	03.07.2014	4,600,000.00	10%	Interest
	Total (E)		**4,600,000.00**		

14. Further, the current status of loans, as submitted by Noticee No. 1 vide email dated September 01, 2022 is as follows:

Sr.no	Name	Date	Loan Amount	Repaid/outstanding
1.	Chander Bhusan	09.05.2013	10,000,000.00	Outstanding
2.	Dream Procon Pvt Limited	08.07.2013	40,000,000.00	Outstanding
3	Pioneer Buildestate Pvt Ltd	17.03.2014	36,00,000	Repaid
4	Bulwark partners	04.10.2013	1,50,00,000.	Repaid
5	Nanda Parbat	03.07.2014	4,600,000.00	Outstanding
6.	MLAP Commodities	19.09.2013	18,00,000.00	Outstanding

15. I note the following w.r.t. the loans given to each of the six entities as below:

15.1 Chander Bhusan

15.1.1 I note that the loan was given to Chander without any interest. The loan agreement was made on Noticee No. 1’s letter head, and did not have important details like tenure, collateral security etc. Noticees have submitted that proper due diligence had been undertaken in granting the loan, however, they have not brought out the facts considered for gauging credit worthiness of Chander. Therefore, from the documents available on record, it is evident that proper due diligence was not conducted by Noticee No. 1. I also note that the loan given to Chander was eventually transferred to Shivam International, and Shivam International further transferred amount of Rs 1.1 Crore to 4 other entities. Noticee Nos. 1 and 2 have submitted that they had entered into a profit sharing agreement with Chander in the interest of investors. However, the proposed business of Chander could not earn profits. Further, the loan was not repaid by Chander.

15.2 Dream Procon Pvt Ltd

15.2.1 I note that, akin to Chander, the loan granted to Dream Procon was without interest, and executed on letter head of Noticee No. 1 without necessary details. Further, Noticees have submitted that they had given the loan as Dream Procon had a substantial turnover and was associated with a successful company. However, I note that Dream Procon had made profits of Rs 38.2 Lakh during FY 2013-2014 and Rs 2.39 Lakhs during FY 2012-2013, so that the loan of Rs 4 Crore given to Dream Procon was disproportionately high, and devoid of business logic.

15.2.2 I also note that Dream Procon Pvt Ltd had transferred the amount of Rs 4 Crore to 3 other entities in 5 tranches. Further, even though Noticee No. 1 and Dream Procon Pvt Ltd had entered into a profit sharing agreement, no profit could be generated from the proposed business of Dream Procon Pvt Ltd. Also, the loan given to Dream Procon could not be recovered.

15.2.3 Noticees have also submitted that Dream Procon has already filed for insolvency, which again supplements the finding that Noticee No. 1 did not consider the capability of Dream Procon to repay the loans.

15.3 Pioneer Buildestate Pvt Ltd

15.3.1 I note that the loan entered with Pioneer was also without any interest, and executed on Noticee No. 1's letterhead. Even though, the loan was repaid by Pioneer, the loan agreement was not legally enforceable, and had been given without interest going against interest of the investors.

15.4 MLAP Commodities LLP

15.4.1 I note that the loan given to MLAP was without interest payable, and executed on Noticee No. 1's letterhead. Further, Noticee No. 1 had submitted that while giving loan to MLAP, they had relied on the fact the MLAP was a member of NSEL, and given the loan on this ground alone. I note that the membership of MLAP in NSEL does not amount to the requisite due diligence required for lending the money, and does not satisfy business acumen. I also note that MLAP transferred the amount received as loan, i.e. Rs 18 Lakhs, to another entity viz. Edynamics Solution.

15.5 Nanda Parbat Finlease Ltd

15.5.1 I note that the loan was granted without interest, and the agreement was executed on Noticee No. 1's letter head without mentioning details like tenure, terms of loan etc. Noticees have submitted that as Nanda Parbat was a NBFC, its credentials were guaranteed. I note that the said response is nowhere satisfactory as regards establishing credit worthiness of Nanda Parabat. The fact that Nanda Parbat is under the process of striking off currently, supplements the finding that Noticee No. 1 had not undertaken necessary due diligence. Further, Nanda Parbat had also transferred Rs 12 Lakh to two entities upon receipt of the allotment money.

15.6 Bulwark Partners

15.6.1 I note that the loan was granted to Bulwark without interest, the loan agreement was executed on Noticee no' 1's letterhead, without stating necessary details as to the terms and tenure of loan. I also note that the loan was eventually repaid by Bulwark. However, notwithstanding the fact that the loan granted was not in terms of objects of preferential issue, the terms of interest rate were not mentioned in the relevant agreement, which itself was drafted casually.

16. From above, I note that out of the loans granted to aforesaid 6 entities, loans granted to 3 entities were without interest payable, amounting to 76% of the total proceeds of preferential issue. Further, even to the other 3 entities to whom loans were granted with interest, the terms of interest rate were not mentioned in the loan agreement. The loan agreements for all the 6 entities were not executed on stamp paper, and were not notarized/ registered either, which severely restricts

the legal enforceability of the said agreements. Further, even though the loans were given out of investor's money, and the said objective was not mentioned in the objects of the preferential issue, Noticee No. 1 did not carry out the required due diligence to ensure that the loans would be recovered. Eventually, 4 out of the 6 entities have not repaid the loans for various reasons. Noticees have contended that they had carried due diligence in granting the loans, without presenting the facts on which they had relied clearly. In fact, non-repayment of loans by 4 of the 6 entities indicates lack of necessary due diligence and prudence by Noticee No. 1 in granting loans. Further, 4 of the 6 entities had transferred a part or whole of the proceeds of preferential issue received to other entities, and reason for transferring such amounts have not been brought out by Noticee No. 1 or the transferor entities, in their response to SCN/ during investigation. Thus, there is a clear pattern in which it is seen that majority of the loans granted have not been repaid, given without due diligence, were not aligned with objects of issue and were granted in a lackadaisical manner, without taking necessary steps to ensure that the investor's money, already at deviation from the objects of the issue, was invested prudently.

17. Noticees have, interalia, submitted that Noticee No. 1 had given loans to other entities as well, and non-repayment of loans was in normal course of business. In this regard, I note that proceeds of the issue had been fully utilized by Noticee No. 1 for giving loans to the aforesaid 6 entities only, as per its own submissions. The very act of giving loans out of proceeds of the issue amounts to deviation from the stated objectives of the issue as mentioned in paragraph 12. Further, upon analysis of the loans to the 6 entities, it is amply clear that the said loans were given in a suspicious manner, and the scope of enforcement of the loan agreements in case of non-repayment of the said loans was severely limited. Evidently, 4 of the 6 entities failed to repay the loans, amounting to Rs 5.64 Crores.

18. I also note that as per Clause 43 of the erstwhile Listing Agreement, Noticee No. 1 was obligated to place the statement of deviation of proceeds of preferential

issue before its Audit Committee, and the statement along with the comments of Audit Committee should have been disclosed to the stock exchange. However, as per email dated November 10, 2022 received from BSE, Noticee No. 1 had not made the aforesaid disclosures. Further, an explanation of such variation should have been given in the Directors report section in Annual Report. I note from the Annual Report of Noticee No. 1, that such an explanation had not been provided.

19. I note that BSE had issue Notice dated June 13, 2018, ref no. 20180613-29 with the Subject: *'Update on Companies which have undergone action as a surveillance measure'*, wherein it was, interalia, stated that,

> 3. *In this regard, as per the process duly approved by SEBI for dealing with these cases, it has been decided as under:*
>
> *a. Companies in which preferential issue proceeds were not utilized as per the object of the issue*
>
> *i. Names of concerned companies to be published on the Exchange website under the url – "https://www.bseindia.com/markets /equity/EQReports/ sur_Investigation.aspx?expandable=6"*
>
> *ii. Mandatory disclosures to be made by the companies w.r.t. mis – utilization of preferential proceeds along with ensuing quarterly unaudited / audited financial results and same to be ratified by the shareholders of the company within 3 months from intimation.*
>
> ……….

20. I note that Noticee No. 1 was one of the Companies, which was obligated to carry out mandatory disclosure with respect to 'mis-utilization of preferential proceeds' and get ratification of the same from its shareholders as per the aforesaid BSE Notice. I note that Noticee no. 1 accepted in its letter dated November 13, 2018 to BSE that the money (raised via preferential allotment) has been utilized for the purpose other than those mentioned in the notice of Extra Ordinary General Meetings (for preferential allotment). I note that, vide Notice dated August 21, 2018, Noticee No. 1 placed the said deviation before its shareholders for

ratification of the deviation of utilization of funds from the objects of the preferential issue. The same was approved by the shareholders in the 31st Annual General Meeting held on September 20, 2018, and was disclosed by Noticee to the exchange i.e. BSE.

21. I note the following from the Notice of 31st Annual General Meeting of Noticee No. 1:

……..

SPECIAL BUSINESS:

4. Ratification of Utilization of Funds Raised Through Preferential Issue To consider and, if thought fit, to pass with or without modification(s), the following resolution as SPECIAL RESOLUTION:

"RESOLVED THAT pursuant to the BSE Notice No. 20180613-29 dated 13th June, 2018, consent of the members of the company be and is hereby accorded by way of special resolution to ratify the utilization of funds aggregated to Rs. 7,01,33,500/- (Rupees Seven Crore One Lakh Thirty Three Thousand Five Hundred Only) raised from the preferential Issue during the financial year 2013-2014 for the objects mentioned in offer letter i.e.

1. to strengthen the equity base of the company
2. to arrange funds required for meeting enhanced working capital requirements of the company
3. to meet Capital Expenditure
4. to meet expenditure for general corporate purpose

"RESOLVED FURTHER THAT Company has utilized those funds for the purposes of providing advances for business purpose, loans & advances, Repayment of Loan, General Corporate Purpose and working capital requirement to expand the business of the company.

"RESOLVED FURTHER THAT status as on 31st March, 2018 of the amount raised through preferential issue are as follow:

Particulars	***Amount utilized as on 31st March, 2018***
Advances for the Business purpose – deal did not mature	*Rs 50,000,000/-*
Repayment of Loan	*Rs 13,000,000/-*
General Corporate Purpose	*Rs 10,00,000/-*
Working Capital Requirement	*Rs 61,00,000/-*
Total	*Rs 7,01,00,000/-*

22. I note from the above that even though the proceeds of issue had been utilized only for advancing loan to the 6 entities viz. Chander, Dream Procon, Bulwark, Nanda Parbat, Pioneer and MLAP, Noticee No. 1 has shown utilization for other purposes as well viz. Repayment of Loan, General Corporate Purpose and Working Capital Requirement. Also, Loans amounting to Rs 5.64 Crore could not be recovered, but the same is not evident from the utilization of amounts shown above. Incidentally, I also note from the Disclosure of Voting Results of the AGM on the website of BSE, that even though there were 26,632 shareholders of Noticee No. 1 as on date of the AGM, only 33 shareholders were present in the meeting where the aforementioned deviation was approved.

23. Noticees have contended that as they had undertaken ratification for the utilization of proceeds of the issue, the same had retrospectively validated the acts of Noticees in respect of disbursal of loans from the proceeds of the issue. I note that Hon'ble SAT, in its order dated June 02, 2022, in the matter of Terrascope Ventures Ltd Vs SEBI (Appeal No. 116 of 2021) has quoted, relying upon the judgement of the Hon'ble Supreme Court in the matter of NIT and Anr vs Pannalal Choudhary, as under;

"10. In National Institute of Technology and Another vs Pannalal Choudhury and Another (2015) 11 SCC 669, the Supreme Court has explained the expression "ratification" as under:-

> "29. The expression "ratification" means "the making valid of an act already done". This principle is derived from the Latin maxim "ratihabitio mandato aequiparatur" meaning thereby "a subsequent ratification of an act is equivalent to a prior authority to perform such act". It is for this reason, the ratification assumes an invalid act which is retrospectively validated.
>
> 30. The expression "ratification" was succinctly defined by the English Court in one old case, Hartman v. Hornsby as under: "
>
>> "Ratification" is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance."

> 11. From the aforesaid, it is clear that ratifies / ratification means making valid of an act already done. Thus, even though the Company utilized the proceeds of the preferential issue for a different purpose in variance with the objects specified in the notice of the EOGM dated October 1, 2012 such variance in the utilization of the proceeds stood ratified and became authorized and valid pursuant to the Special Resolution dated September 29, 2017."

24. I note that while it may appear to the Noticees that ratification takes care of all the wrongdoings of the past, I am of the considered view that at best shareholders can ratify deviation from the objects of the issue. I note that the facts of the case need to be considered in entirety before arriving at a finding in this regard. Firstly, as stated in paragraph 22, the objects for which the ratification had been undertaken do not cogently state that the main object of the issue was advancing of loans. Even if the same is considered as ratified by the shareholders, I am of the considered view that the illegal manner in which the proceeds of the preferential issues were disbursed and the manner in which

ratification has been obtained from the shareholders, cannot be accepted. The clandestine manner in which loans were advanced by Noticee No. 1 do not inspire confidence in its assertion that it had genuinely advanced the said loans in the interest of shareholders. The loan agreements for all the 6 entities were not executed on stamp paper, and not notarized/ registered either, which severely restricts the legal enforceability of the said agreements. Also, out of the 6 entities to whom loans were advanced, in case of 4 entities, loans were granted without interest. I also note that in case of 4 entities, the loans received by debtors had been forwarded to certain other entities without any explanation as to their utilization for the stated objective. Further, even in the 2 instances in which loans were granted with interest, the terms of interest had not been mentioned in the loan agreement. I note that the aforesaid facts do not indicate bonafide conduct on part of Noticee No. 1, as a company for which one of the Main objectives is supposed to be *'financing, loan advancing, advancing on any kind of security etc.'*, as submitted in its Information Memorandum dated May 30, 2014, and on part of its directors i.e. Noticee No. 2 and Noticee No. 3. In summary, I note that the lackadaisical and illegal manner in which in the loans had been disbursed to the 6 entities cannot be considered as ratified. Thus, considering the above facts in totality, I note that the ratification undertaken by Noticee No.1 does not absolve Noticees of the illegal manner in which the proceeds of the preferential issues were disbursed.

25. Noticees have also submitted that the alleged violation of provisions of PFUTP Regulations, on account of alleged violation of provisions of Clause 43 of the erstwhile Listing Agreement is not sustainable. In this regard, Noticees have placed reliance on the order dated May 28, 2021 passed by WTM, SEBI in the matter of Tatia Global. I note that the case facts of the aforesaid Order were different from the instant matter, such that in the referred matter, violations, interalia, pertaining to misrepresentation of financial statements/ business and that of provisions of LODR Regulations had been brought out. However, in the instant matter, the misutilization of proceeds of preferential issue by, interalia, Noticee No. 1 has been brought out.

26. Noticees have also contended that for establishing 'fraud', evidence of higher degree must be brought out. In this regard, I would place reliance on the judgement of the Hon'ble Supreme Court in the matter of N Narayanan vs SEBI (2013) 12 SCC 152, wherein it was held that

"Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality".

27. When seen in context of prohibitions under section 12A and Regulations 3 and 4 r/w definition of the term 'fraud' under Regulation 2(c) of the PFUTP Regulations, it is deducible that it depends on 'dealing in securities' or employing any device, scheme or artifice to defraud 'in connection with dealing in or issue of securities' or engaging 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.' The definition of 'dealing in securities' under Regulation 2 (b) of the PFUTP Regulations is inclusive in nature and includes "Transacting in any way in any security by any person as principal, agent" Regulation 4 (1), prohibits indulgence in "fraudulent and unfair trade practices"

in securities. In SEBI v. Kishore R. Ajmera, (2016) 6 SCC 368, the Hon'ble Supreme Court has held that *"the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conductive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light."* Therefore, I note that Noticee No. 1, issuing securities in the preferential allotment and by disbursing the proceeds of issue in a clandestine manner, which resulted in substantial loss to Noticee No. 1 leading to impact on the market price of the securities of Noticee No. 1, has satisfied the ingredient of fraud as per the provisions of the PFUTP Regulations.

28. Noticee No. 3 has, interalia, submitted that it had resigned from the directorship of Noticee No. 1 in April, 2013. However, I note from the perusal of the outcome of Board Meeting dated July 07, 2014 from the website of BSE under the heading '*Corporate Announcements*', that the Board of Noticee No. 1 had approved resignation of Noticee No. 3 only on July 05, 2014, so that the contention of Noticee No. 3 in this regard is false and not acceptable.

29. I also note that Noticee No. 2 and 3 were directors of Noticee No. 1 as per the following details:

Sr. No.	Name of Director	Designation	DIN/DPIN	PAN	Date of appointment	Date of cessation
2	Brij Kishore Sabharwal **(Noticee No: 2)**	Whole time director	01303907	AAXPS6830P	05/10/2012	31/12/2014
3	Himanshu Agarwal **(Noticee No: 3)**	Non-Executive and Non Independent Director	05192834	AOAPA6806N	14/02/2012	05/07/2014

30. Noticees Nos. 2 and 3 were signatories of the bank account of Noticee No. 1 in which proceeds of the issue were collected and the loans were disbursed. The annual report for FY 2013-2014 was signed by Noticee Nos. 2 and 3, and the aforesaid Noticees were also present in 16 and 15 Board meetings of Noticee No.1, out of the 16 meetings which took place. Noticees Nos. 2 and 3 have, interalia, submitted that they had ensured compliance with law by Noticee No. 1 during their tenure, and that after their resignation, they had no connection with Noticee No. 1 or its management. However, I note that the preferential allotment and disbursal of loans out of the proceeds of preferential issue took place during the tenure of the aforesaid Noticees as directors, and that they were signatory of the bank account in which allotment proceeds were received and from which disbursal of loans was done. Hence, Noticee Nos. 2 and 3 were vicariously responsible for the act of Noticee No. 1.

31. In this regard, I also place reliance on the judgement of the Hon'ble Supreme Court in the matter of Official Liquidator vs P.A. Tendolkar dated January 19, 1973, wherein it was held that,

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

32. From the above, it is established that Noticee No. 1, Noticee No. 2 and Noticee No. 3, violated the provisions of Regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f), 4(2)k and 4(2)(r) of the PFUTP Regulations r/w Section 12A (a) (b) (c) of the SEBI Act.

33. Also, since Noticee No. 1 failed to furnish on a quarterly basis a statement to the Exchange indicating the losses it was suffering due to the manner in which the proceeds of the preferential issues were disbursed, which prevented the

shareholders from the getting the vital information about the profitability of the Noticee No. 1, it is established that Noticee No. 1 failed to comply with the provisions of Clause 43 of the erstwhile Listing agreement r/w Section 21 of the SCRA.

Issue No. II: If yes, whether the violations, if any, attract monetary penalty under the provisions of Section 23A(a) of the SCRA and/ or Section 15HA of the SEBI Act? If so, what quantum of monetary penalty should be imposed on the Noticees after taking into consideration the factors mentioned in Section 23J of the SCRA and/ or Section 15J of the SEBI Act?

34. It has been established in the foregoing paragraphs that Noticees Nos. 1 to 3 have violated the provisions of Regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f), 4(2)k and 4(2)(r) of PFUTP Regulations r/w Section 12A (a) (b) (c) of the SEBI Act. Further, Noticee No. 1 has also violated the provisions of Clause 43 of the erstwhile Listing Agreement (which is now Regulation 32 of the LODR Regulations) r/w Section 21 of the SCRA. Therefore, the aforesaid violations committed by the Noticees attract monetary penalty under Section 15HA of the SEBI Act and Section 23A(a) of the SCRA, which reads as under:

SEBI Act

Penalty for fraudulent and unfair trade practices.

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

SCRA

Penalty for failure to furnish information, return, etc.

23A. Any person, who is required under this Act or any rules made thereunder,—

(a)to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or who

furnishes, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

35. While determining the quantum of penalty under Section 15HA of the SEBI Act and Section 23A(a) of the SCRA, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act and Section 23J of the SCRA, which read as under: -

SEBI Act

Factors to be taken into account by the adjudicating officer.

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

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

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

c) the repetitive nature of the default.

SCRA

Factors to be taken into account by the adjudicating officer.

23J. While adjudging quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely: -

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

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

c) the repetitive nature of the default.

36. I note that the amount of disproportionate gain or unfair advantage made by Noticees is not available. However, from the material on record I note that huge loss, of more than 5 crores has been caused to investors as a result of the aforesaid violations. With respect to the repetitive nature of the default, I find that Noticee No. 1 has been penalized in two matters Noticee No. 2 has been penalized in four times earlier by SEBI in different matters. Further, directions

under Section 11(1), 11(4) and 11B of the SEBI Act have been passed against Noticee No. 2 twice earlier by SEBI. However, there is nothing on record to indicate any past violations committed by the Noticee No. 3.

ORDER

37. After taking into consideration the facts of the matter, violations established against Noticees and various factors such as the time gap between the preferential issue and initiation of Adjudication Proceedings against the Noticees, and others mentioned in Section 15J of the SEBI Act and Section 23J of the SCRA, I impose the following penalty on them:

Noticees (PAN)	**Violation of provisions**	**Penalty u/s**	**Penalty in Rs.**
Alps Motor Finance Limited (AABCA1559L)	Clause 43 of the erstwhile Listing Agreement (which is now Regulation 32 of the LODR Regulations) r/w Section 21 of the SCRA	Section 23A(a) of the SCRA	Rs 1,00,000 (Rupees ne Lakh)
	Regulations 3(a)(b)(c)(d),4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations r/w Section 12A(a)(b)(c) of the SEBI Act	Section 15HA of the SEBI Act	Rs 5,00,000 (Rupees Five Lakhs)
Brij Kishore Sabharwal (AAXPS6830P)	Regulations 3(a)(b)(c)(d),4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations r/w Section 12A(a)(b)(c) of the SEBI Act	Section 15HA of the SEBI Act	Rs 20,00,000 (Rupees Twenty Lakhs)
Himanshu Agarwal (AOAPA6806N)	Regulations 3(a)(b)(c)(d),4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations r/w Section 12A(a)(b)(c) of the SEBI Act	Section 15HA of the SEBI Act	Rs 15,00,000 (Rupees Fifteen Lakhs)

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

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

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

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

40. In terms of Rule 6 of the Adjudication Rules, 2005 and Rule 6 of the Adjudication Rules, 1995, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai **AMIT KAPOOR**

Date: May 23, 2023 **ADJUDICATING OFFICER**