BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/PM/GD/2022-23/16219-16230)

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

In respect of

Noticee No.	Name of the Noticee	PAN/CIN
1.	Esteem Bio Organic Food Processing Ltd.	L74899DL1995PLC071220
2.	Brij Kishore Sabharwal	AAXPS6830P
3.	Goldline International Finvest Ltd.	AAACB1655R
4.	Satendra Kumar & its Proprietorship firm viz. Nisha Traders, Bright Securities	AWWPK8525E
5.	Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, A One Furniture	AIJPD7329J
6.	Ram Prakash & its Proprietorship firm viz. Khan Enterprise	AXFPR4439L
7.	Avisha Credit capital Pvt. Ltd.	U74899DL1992PLC050492
8.	Neel Kanth Trading Co.	-
9.	Amsons Apparels Pvt. Ltd.	U74899DL2003PLC122266
10.	Gracious Software Pvt. Ltd.	L72300DL2007PLC168989
11.	Neeraj Mittal	AAFPM8349F
12	Vinod Kumar Garg	AAAPG4116B

In the matter of Esteem Bio Food processing Ltd.

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*(Noticee 1 to 12 are individually known by their respective name or Noticee no. and collectively referred to as the "**Noticees**")*

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an investigation in the matter relating to the IPO of Esteem Bio Organic Food Processing Limited (herein after referred to as **Esteem** or **Company**). It was observed that Esteem came out with an Initial Public Offering (IPO) to raise Rs. 1125 Lakh from issue of 45,00,000 equity shares of Rs. 10/- each at an issue price of Rs. 25/- each. The shares were listed on BSE - SME segment on January 07, 2013. The price of the scrip opened at Rs 25.25/- and increased to an intraday high of Rs 26.50/- and closed at Rs 26.50/- on the listing day. The issue size constituted, 30.20% of post issue shares, of Rs.10/- each. Bidding Period of Issue opened on January 18, 2013 and closed on January 22, 2013. During Investigation it was observed that certain entities were connected with Esteem directly/ indirectly and these connected entities had provided funds to the IPO applicants for applying for shares in the IPO of the company.
2. Based on preliminary findings, the whole time member of Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), *vide* an interim order dated June 29, 2015, restrained 254 entities from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner, till further directions were passed in the matter of IPO of certain companies including Esteem (hereinafter referred to as the “**June Interim Order**”). After the June Interim Order, corrigendum to the June Interim Order passed on January 04, 2016, wherein name of 16 entities was also included. Confirmatory orders were passed with respect to the said matter on February 17, 2016, June 14, 2016, August 25, 2016, October 27, 2016 and June 15, 2017, except for certain specific reliefs provided to certain entities it was *prima facie* found that the preferential allottees, pre IPO transferees along with the funding group entities and trading group entities have used the stock exchange system to artificially increase volume and price of the Esteem scrip for making illegal gains and to convert ill-gotten gains into genuine one (hereinafter referred to as the “**Confirmatory Orders”**).

3. Subsequently, *vide* order dated September 06, 2017, the Confirmatory Orders were revoked with respect to 216 entities out of the total 254 entities (hereinafter referred to as the "**Revocation Order**"). After the Revocation Order, the whole time member passed directions *vide* order dated December 22, 2020 against Noticee nos. 1 to 10 (hereinafter referred to as the "**December 2020 Order**".

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Pursuant to the investigation, SEBI initiated adjudication proceedings against the Noticees and appointed the undersigned as the adjudicating officer *vide* order dated July 17, 2017 under section 19 of the SEBI Act read with sub-section (1) and (2) of 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 **"SEBI Adjudication Rules**") and section 23-I of SCRA read with rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as the "**SCRA Adjudication Rules**") to inquire into and adjudge under sections 15A(a), 15HA and 15HB of the SEBI Act and section 23E of the SCRA for the alleged violation of the provisions of the aforesaid acts, regulations and listing agreement by the Noticees.

C. SHOW CAUSE NOTICE, HEARING AND REPLY

5. The allegations levelled against the Noticees in the SCN are as follows:

   a) *As per the prospectus, the proposed utilisation of the IPO proceeds was as under;*

Proposed Utilisation:

Sl.No.	*Particulars*	*Amount (Rs. in lacs)*
1	*Setting up of Shade Net Cultivation facility*	*380.00*
2	*Development of Farm land for transition to Organic Farming*	*565.00*
3	*Procurement of farm tools and equipments*	*30.00*
4	*Brand Building and General Corporate purposes*	*80.00*
5	*Issue Expenses*	*70.00*
	Total	***1125.00***

Means of Finance:

Particulars	***Amount (Rs. in lacs)***
Initial Public Offering	*1125.00*
Internal Accruals	*-*
Total	***1125.00***

b) *Esteem, vide its letter dated 25/12/2015, received by SEBI on 29/01/2015 informed that the utilization of the IPO proceeds as on 31/03/2015 (Rs. in lacs) was as under;*

Particulars	***Utilized as on 31/03/2015 (Rs in lacs)***
Setting up of shade Net cultivation facility	*375.00*
Development of farm land for transition to organic farming	*564.49*
Procurement of farm tools and equipments	*29.06*
Brand Build and General Corporate Purpose	*30.00*
Issue Expenses	*31.28*
Investment in short term, advances	*99.67*
Total	*1129.50*

c) *During investigation it was observed that certain entities were connected with Esteem directly/ indirectly and that these entities had funded the IPO applicants. The details of these entities and basis of their connection is brought out in table below :*

SN	*Particulars*	*Connection - Fund Movement*
1	*Goldline International Finvest Ltd. (Goldline)*	• *Goldline received IPO proceeds of Rs. 239.60 lacs from ESTEEM.* • *ESTEEM given Rs. 245 lacs to ECO, the same was transferred by ECO to Goldline.* • *Goldline had fund movement with Mayfair Infosolution Pvt. Ltd., Guiness Securities Ltd and Sanjeev Agarwal.* • *Goldline had also fund movement with the entities who had funded to IPO allottees viz. AMS Powertronic Pvt Ltd, Bright Securities, Columbia Sales.*
2	*Satendra Kumar (PAN: AWWPK8525E)* ***<u>Proprietorship Firm</u>*** • *Bright Securities* • *A R Enterprise* • *Nisha Traders*	• *Nisha Traders received funds from Magnum Industrial and Bright Securities.* • *Bright Securities had fund movement with Nisha Traders, Magnum Industrial , N V Sales Corporation, A One Furniture , Goldline and AMS powertronic Pvt. Ltd.* • ***Address****: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092.* • *Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address.*
3	*Madhukar Dubey* *(PAN: AIJPD7329J)* ***<u>Proprietorship Firm</u>*** • *Alliance Traders*	• *N V Sales Corporation had fund movement with Khan Enterprises, AMS Powertronic Pvt. Ltd.* • *A One Furniture received funds from Magnum Industrial.* • *Alliance Traders received funds from AMS Powertronic Pvt. ltd., Mayfair Infosolution Pvt. Ltd., A One Furniture, N V Sales Corporation, Nisha Traders.* • *Magnum Industrial received funds from Eco and A One Furniture.*

SN	Particulars	Connection - Fund Movement
	• *N V Sales Corporation* • *A One Furniture* • *Magnum Industrial*	• *Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092.* • *Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address.*
4	*Ram Prakash* *(PAN: AXFPR4439L)* ***Proprietorship Firm*** • *Khan Enterprises* • *Aggrawal Traders*	• *Khan Enterprise had fund movement with Shiv Traders and Garg Traders & Suppliers.* • *Aggrawal Traders received funds from the Goldline.* • *Ram Prakash is the director in following companies (MCA Database);* *i. Aavia Buildtech Pvt. Ltd.* *ii. Aavia Softech Pvt. ltd.*
5	*Aavia Softech Pvt. Ltd.*	• *It had fund movement with Mayfair Infosolution Pvt. Ltd., Eco, Goldline and Esteem Bio.* • *Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common address : 1/2486, Gali No. 26, Ramnagar, Modern Shahdra, East Delhi - 110032. (MCA Website)* • *Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common Director: 1) Kamal Singhal 2) Ramprakash* • *Mr. Ramprakash is the proprietor of M/s. Khan Enterprise and Ms/. Aggrawal Traders.*
6	*Aavia Buildtech Pvt. Ltd.*	• *It had received IPO proceeds of Rs. 40 lacs from the company.* • *Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common address : 1/2486, Gali No. 26, Ramnagar, Modern Shahdra, East Delhi - 110032.* • *Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common Director: 1) Kamal Singhal 2) Ramprakash.* • *Mr. Ramprakash is the proprietor of M/s. Khan Enterprise and Ms/. Aggrawal Traders.*
7	*Mayfair Infosolution Pvt. Ltd.*	• *It had received IPO proceeds of Rs. 81 lacs from the company.* • *It had fund movement with Aavia Softech Pvt. Ltd, Goldline, Esteem, AMS Powertronic Pvt. Ltd and Gracious Software Pvt Ltd.* • ***Director Name** :1)Sumit Kumar 2) Vinay Kumar* • *Mayfair is connected with AMS Powertronic Pvt. Ltd.,Nikky Printing Press pvt. Ltd., through common directors.*
8	*Avisha Credit Capital Ltd*	• *It had received IPO proceeds of Rs. 15.50 lacs from the company.* • *Further, it had fund movement with Eco, Goldline , ISF Securities Ltd., and Mayfair Infosolution.*
9	*Nikky Printing Press Pvt. Ltd.*	• *It had fund movement with Goldline, Mayfair Infosolution, AMS Powertronic and Madhukar Dubey.* • ***Director Name** : 1)Sumit Kumar 2) Vinay Kumar* • *Nikky Printing press Pvt. Ltd. is connected with Mayfair Infosolution Pvt. Ltd, AMS Powertronic Pvt. Ltd., through common directors.*

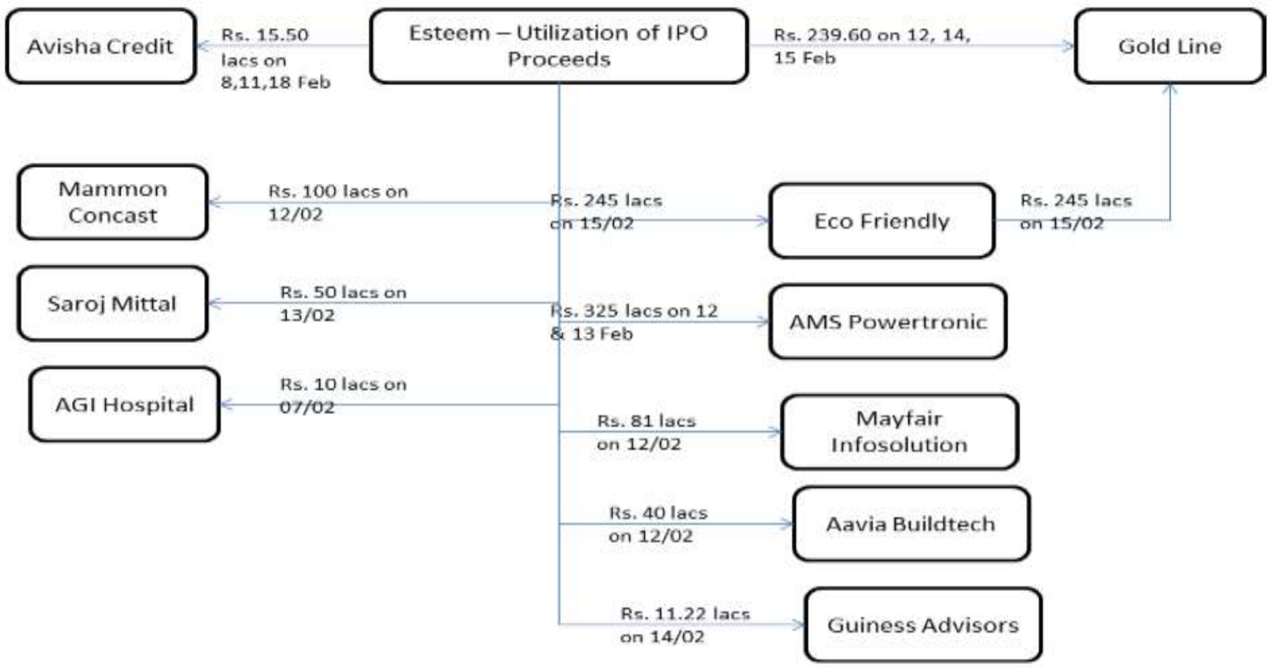
SN	Particulars	Connection - Fund Movement
10	*Neel Kanth Trading Co.*	• *It had fund movement with AMS Powertronic Pvt. Ltd.*
11	*Amsons Apparels Pvt Ltd*	• *It had fund movement with AMS Powertronic Pvt. Ltd., Goldline, Madhukar Dubey and Mayfair Infosolution Pvt. Ltd.*
12	*Gracious Software Pvt Ltd*	• *It had fund movement with Goldline and Mayfair Infosolution Pvt. Ltd.*
13	*Ace Consultant*	• *It had fund movement with the ISF Securities Ltd and Goldline.* • *Common Address with ISF Securities Ltd.* • *Till March 2014, Brij Kishore Sabharwal (Director of Eco & Esteem) was the director in ISF Securities Ltd.*
14	*Shiv Traders*	• *Shiv Traders had fund movement with Mayfair Infosolution Pvt. Ltd., Khan Enterprise, Neelkanth Trading, AMS Powertronic Pvt. Ltd., Aavia Buildtech Pvt. Ltd., Esteem.*
15	*AMS Powertronic Pvt. Ltd.*	• *It had received Rs. 325 lacs from the IPO proceeds of the ESTEEM.* • *It had fund movement with Mayfair Infosolution Pvt. Ltd., Goldline, Amsons Apparels pvt. Ltd., N V Sales Corporation, Aavia Softech pvt. Ltd., Nisha Traders, Shiv Traders, ECO, Aggarwal Traders, Madhukar Dubey, ESTEEM.* • ***Director Name** : 1)Sumit Kumar 2) Vinay Kumar* • *Sumit Kumar is the common director in AMS Powertronic Pvt. Ltd., Nikky Printing Press Pvt. Ltd. & Mayfair Infosolution Pvt. Ltd.*

Entities at Sr. No. 1 to 15 above shall hereinafter be referred to as the funding group entities and/or funding group.

d) *Investigation further observed that Esteem had raised Rs. 1129.50 lacs through the IPO out of which Rs. 1106.10 lacs were transferred to various entities. Further, out of the aforesaid Rs. 1106.10 Lacs, Rs. 946.10 lacs were transferred to certain entities who were allegedly found to have funded the IPO and who also received funds from the IPO proceeds directly/indirectly. The details of the distribution of Rs. 946.10 Lacs amongst the funding group entities is as per the table below:*

Sl.No	Entity Name	Amount received from IPO proceeds (Rs in lacs)
1	Goldline International Finvest Ltd	484.60
2	Mayfair Infosolution Pvt. Ltd	81.00
3	Aavisha Credit Capital Pvt. Ltd	15.50
4	AMS Powertronic Pvt. Ltd.	325.00
5	Aavia Buildtech Pvt. Ltd.	40.00
	Total	**946.10**

e) *A diagrammatic representation of the funds movement from the bank account statement of Esteem (HDFC Bank - 00032560005478) is shown below:*



f) *In view of the above it was alleged that the IPO of Esteem was funded by certain connected entities and on receipt of the IPO proceeds, the same were transferred back to those entities.*

g) *Investigation further observed from the analysis of bidding data that 512 application for 4788000 shares were received in the IPO of which 29 application for 174000 shares were rejected due to various reasons. Post rejection, there were 483 valid application for 46,14,000 shares, which was 1.03 times of offer size. The table below brings out the category wise allotment details in the IPO of Esteem.*

Category of Bids	***No. of shares applied***	***No. of shares allotted***	***No. of Allottees whom shares allotted***	***No. of shares Application rejected***
Market Maker	*7,50,000*	*7,50,000*	*1*	*0*
HNI	*11,64,000*	*11,46,000*	*32*	*0*
RII	*28,74,000*	*26,22,000*	*437*	*1,74,000*
Total	***47,88,000***	***45,18,000***	***470***	***1,74,000***

h) *Investigation observed from perusal of bank accounts of the retail investors that out of 450 retail applicants, applications of 270 applicants were funded by the funding group entities who received the funds back from the IPO proceeds and of the 270 such applicants, 238 applicants got allotment of 14,28,000 shares which constituted approximately 31.60% of the allotted shares in the IPO. Further, in the market maker category the application for 7,50,000 shares was also allegedly funded by the funding group which constituted approximately 16.60% of the allotted shares in the IPO. Further, it was observed that 32 applicants had applied* *for 11,64,000 shares in the HNI category, of which 11,46,000 shares were allotted to those 32 applicants on proportionate basis and of the 11,46,000 shares allotted to HNI, 60,000 shares (1.30% of the allotted shares in the IPO) were alleged to have been funded by the funding group entities. In view of the above, it was alleged that approximately 50% of the shares allotted in the IPO were indirectly funded by the company.*

i) *Investigation alleged that the application money for the IPO was funded by the funding group entities who were connected to the company as shown in the preceding paragraphs. The funding group entities received funds from company directly / indirectly towards the allotted 23,34,000 shares (1524000 (RII) + 750000 (Market Maker) + 60,000(HNI).*

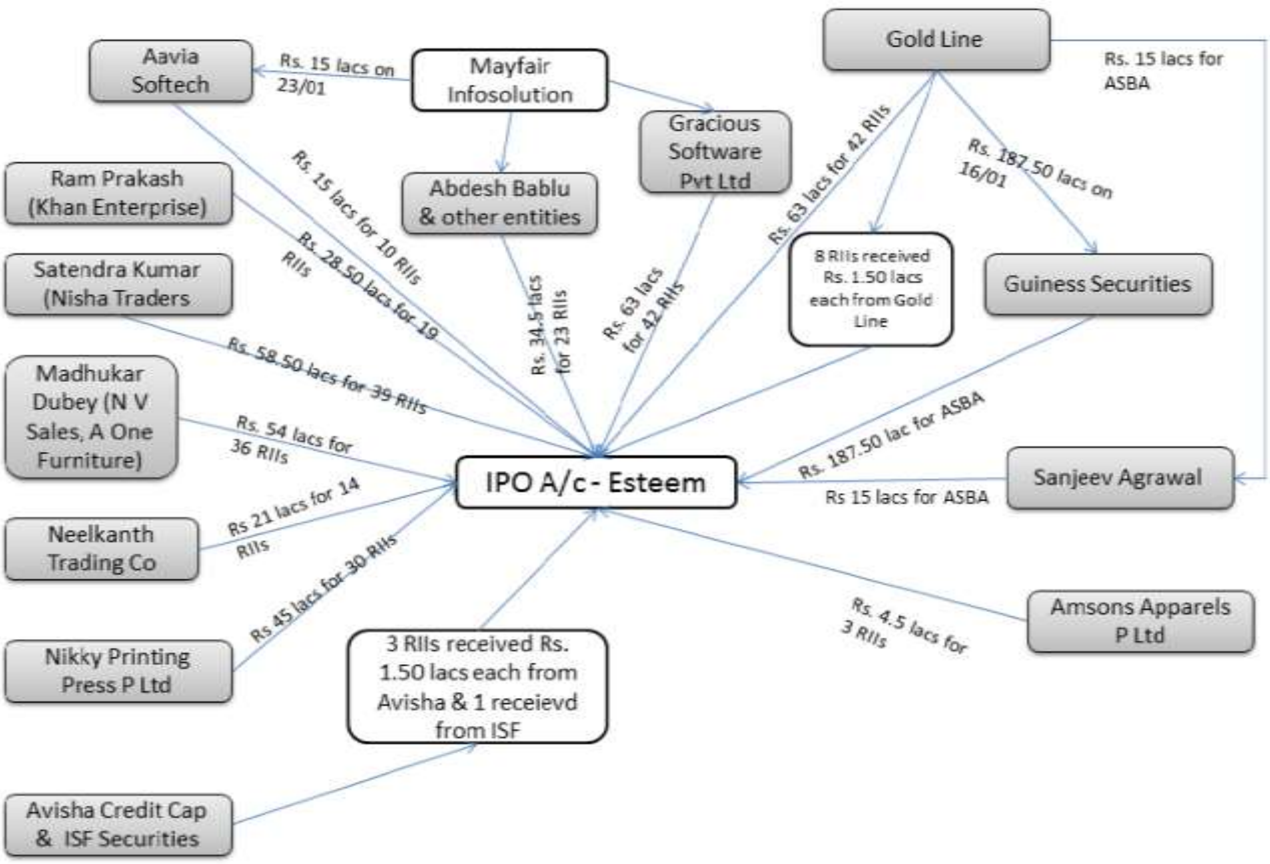
j) *In view of the above, it was alleged that the allotment of shares in the IPO was not genuine. The below table summarizes the fund movement between the company, funding group entities and IPO allottees.*

SN	Name	Bank A/c no.	Observations
1	Satendra Kumar ***Proprietorship Firm*** • Nisha Traders • Bright Securities	Yes Bank - 013683900002254	• ***Nisha Traders*** *had issued 39 cheques of Rs. 1.50 lacs each on behalf of 39 Non ASBA retail investors.(38 allottees got allotment).* • *It had received Rs. 37 lacs from Bright Securities, & Rs. 13.50 lacs from Magnum Industrial Corporation.*
		Yes Bank - 013683900002195	• *Bright Securities had fund movement with Nisha Traders, Magnum Industrial, N V Sales Corporation, A One Furniture , Goldline and AMS powertronic Pvt. Ltd.*
2	Madhukar Dubey ***Proprietorship Firm*** • N V Sales Corporation • A One Furniture	Dhanlakshmi Bank - 019106700001580	• ***N.V. Sales Corporation*** *had issued 16 cheques of Rs. 1.50 lacs each on behalf of 16 Non ASBA retail investors. (9 allottees got allotment)* • *It had received Rs. 10.60 lacs from Khan Enterprise.*
		Yes Bank - 013683900002266	• ***A One Furniture*** *had issued 20 cheques of Rs. 1.50 lacs each on behalf of 20 Non ASBA retail investors. (20 allottees got allotment)* • *It had received Rs. 16.50 lacs from magnum Industrial corporation and Rs. 15 lacs received from Sumit Kumar.*
3	Ram Prakash ***Proprietorship Firm*** • Khan Enterprise	Tamilnad Mercantile Bank - 211150050800272	• ***Khan Enterprise*** *had issued 19 cheques of Rs. 1.50 lacs each on behalf of 19 Non ASBA retail investors. (18 allottees got allotment)* • *It had received Rs. 22.40 lacs from Shiv Traders & Rs. 5 lacs from Garg Traders & Suppliers.* • *Shiv traders (TMB - 211150050800237) had received Rs. 81.50 lacs from ECO, Rs. 67 lacs from Esteem, in October and December, 2012.*

SN	Name	Bank A/c no.	Observations
4	Aavia Softech Pvt. Ltd.	Axis Bank - **:912020024045250**	• Aavia Softech Pvt Ltd had issued 10 cheques of Rs. 1.50 lacs each on behalf of 10 Non ASBA retail investors. (9 allottees got allotment) • It had received Rs. 15 lacs from Mayfair Infosolution Pvt. Ltd. and Rs. 80 lacs from Eco Friendly Food Processing Park Ltd and also had fund movement with Gold Line, Esteem and other connected entities.
5	Goldline International Finvest Ltd.	ICICI Bank - 663005120449	• Gold Line had issued 42 cheques of Rs. 1.50 lacs each on behalf of 42 non ASBA allottees and 8 non ASBA received Rs. 1.50 lacs each from Gold Line to make application in the IPO. (37 allottees got allotment) • It had also funded Rs. 187.50 lacs to Guiness Securities Ltd and Rs. 15 lacs to Mr. Sanjeev Agarwal to make ASBA application. • It had received Rs. 239.60 lacs from Esteem from IPO proceeds, Rs. 245 lacs from Eco which was received from Esteem. • It had received Rs. 206 lacs from Mayfair Infosolution Pvt Ltd. on various dates.
6	Mayfair Infosolution Pvt. Ltd.	Axis Bank - **912020004121565**	• It had given Rs. 1.50 lacs to 23 Non Asba applicants each who had made application in the IPO of Esteem. (20 allottees got allotment) • Further, Aavia Softech received Rs. 15 lacs & Graciouse Software Pvt Ltd received Rs. 63 lacs from Mayfair Infosolution.
7	Avisha Credit Capital Ltd	HDFC Bank - 05982740000567	• It had given Rs. 1.50 lacs to 3 Non Asba applicants each who had made application in the IPO of Esteem.(3 allottees got allotment) • It had received Rs. 15.50 lacs from IPO proceeds of Esteem. • Further, it had fund movement with Eco, Goldline, Mayfair Infosolution.
8	Nikky Printing Press P Ltd	Axis Bank - **911020034143910**	• It had issued 30 cheques of Rs. 1.50 lacs each on behalf of 30 non ASBA allottees. (25 allottees got allotment) • It had received Rs. 45 lacs from Mayfair Infosolution and also had fund movement with Godline , AMS Powertronic, Madhukar Dubey.
9	Neel Kanth Trading Co.	Dhanlakshmi Bank - 019106700000717	• It had issued 14 cheques of Rs. 1.50 lacs each on behalf of 14 non ASBA allottees. (14 allottees got allotment) • It had fund movement with AMS Powertronic Pvt Ltd,
10	Amsons Apparels Pvt Ltd	Axis Bank - **912020014964077**	• It had issued 3 cheques of Rs. 1.50 lacs each on behalf of 3 non ASBA allottees. (2 allottees got allotment) • It had received Rs. 5 lacs from Core Capital Services Pvt Ltd. Further, it had fund movement with AMS Powertronic Pvt. Ltd., Gold Line, Madhukar Dubey.
11	Gracious Software Pvt Ltd	Axis Bank - **912020015006932**	• It had issued 42 cheques of Rs. 1.50 lacs each on behalf of 42 non ASBA allottees. (42 allottees got allotment)

SN	Name	Bank A/c no.	Observations
			• *It had received Rs. 63 lacs from Mayfair Infosolution Pvt Ltd. Further, it had fund movement with Goldline.*
12	*Ace Consultant*	*HDFC Bank - 03142000000740*	• *Ace Consultant had funded Rs. 1.5 lacs to 1 Non ASBA entities. (1 allottees got allotment)* • *Ace Consultant & ISF Securities having same address.* • *Mr. B K Sabharwal (Director of Esteem & Eco) is the director in ISF Securities Ltd.(prospectus)*

k) Diagrammatic presentation of funding by the funding group entities to the IPO applicants is shown as under:



l) Following table shows the summary of the amount funded by the 12 funding group entities and number of shares allotted:

SN	Funding Entity	Amount funded (Rs. in lacs)	No. of allottees got allotment	Received back from IPO proceeds of Esteem (Rs. in lacs)	No. of shares allotted
1	*Goldline International Finvest Ltd.*	*277.50*	*39(2 ASBA)*	*484.60*	*10,32,000*
2	*Satendra Kumar & Proprietorship firm*	*58.50*	*38*	*-*	*2,28,000*

SN	Funding Entity	Amount funded (Rs. in lacs)	No. of allottees got allotment	Received back from IPO proceeds of Esteem (Rs. in lacs)	No. of shares allotted
3	Madhukar Dubey & Proprietorship firm	54.00	29	-	1,74,000
4	Ram Prakash & Proprietorship firm	28.50	18	-	1,08,000
5	Aavia Softech Pvt. Ltd.	15.00	9	40.00	54,000
6	Mayfair Infosolution Pvt. Ltd.	34.50	20	81.00	1,20,000
7	Avisha Credit capital Pvt. Ltd	4.50	3	15.50	18,000
8	Nikky Printing Press Pvt. Ltd	45.00	25	-	1,50,000
9	M/S. Neel Kanth Trading Co	21.00	14	-	84,000
10	ISF Securities Ltd. (Ace Consultant)	1.50	1	-	6,000
11	Amsons Apparels Pvt. Ltd.	4.50	2	-	12,000
12	Gracious Software Pvt Ltd	63.00	42	-	2,52,000
13	Indirect Funding				96000
	Total	607.50	240		23,34,000

m) *From the above, it is observed that of the 45,18,000 shares allotted, 23,34,000 shares (i.e. 51.66% shares) were allotted to the entities who had received funds from the company directly/ indirectly, for application in the IPO of the company.*

n) *Investigation alleged that Esteem transferred major portion of the IPO proceeds to the funding group entities on the same day on which it received IPO funds from the escrow account.*

o) *In view of the above, investigation alleged that the IPO of Esteem would have failed due to lack of minimum subscription, had the funding group entities not funded the applicants. Further, it is alleged that Esteem and its Directors in connivance with the funding group entities employed a fraudulent scheme to get the IPO subscribed in a fraudulent manner by directly/ indirectly funding the IPO applicants. Thus, it is alleged that the funding group entities played a pivotal role in the scheme devised by Esteem and its directors to get sufficient IPO application to get listing on the SME- exchange platform.*

p) *The directors of Esteem viz. 1) Mr. Jai Kumar, 2) Mr. Brij Kishore Sabharwal, 3) Mr. Vinod Kumar Garg , 4) Mr. Neeraj Mittal who had signed the prospectus had deliberately mislead the investors by giving false and misleading information with* *respect to the objects of the IPO in the prospectus and non-disclosure of loan taken by the company.*

q) *In light of the preceding paragraphs, adjudication proceedings were initiated against the Noticees under sections 15A(a), 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") and under section 23E of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**") for the alleged violations of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as the **"PFUTP Regulations**"), SEBI Act, ICDR Regulations and listing agreement for SMEs read with SCRA as tabulated below:*

S.No	***Noticee***	***Violations***	***Penal provisions***
1.	*Esteem Bio Organic Food Processing Ltd.*	*Regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
		Regulation 14(1) and 57(1) of ICDR Regulations.	*Section 15HB of the SEBI Act.*
		Section 11(3) and 11C(3) of the SEBI Act.	*Section 15A(a) of the SEBI Act.*
		Clause 45 and 46 of the listing agreement for SMEs read with section 21 of the SCRA Act.	*Section 23E of SCRA.*
2.	*Mr. Brij Kishore Sabharwal*	*Regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
		Regulation 57(1) of ICDR Regulations.	*Section 15HB of the SEBI Act.*
		Section 11(3) and 11C(3) of the SEBI Act.	*Section 15A(a) of the SEBI Act.*
3.	*Goldline International Finvest Ltd.*	*Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
		Section 11(3) and 11C(3) of the SEBI Act.	*Section 15A(a) of the SEBI Act.*
4.	*Satendra Kumar and his proprietorship firm viz. Nisha Traders*	*Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*

S.No	Noticee	Violations	Penal provisions
5.	*Madhukar Dubey and his proprietorship firms viz. N V Sales Corporation, Magnum Industrial and Alliance Traders*	*Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
6.	*Ram Prakash & its Proprietorship firm viz. Khan Enterprise*	*Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
7.	*Avisha Credit Capital Pvt. Ltd.*	*Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
8.	*Neel Kanth Trading Co.*	*Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
9.	*Amsons Apparels Pvt. Ltd.*	*Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
10.	*Gracious Software Pvt Ltd.*	*Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
11.	*Vinod Kumar Garg*	*Regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
		Regulation 57(1) of ICDR Regulations.	*Section 15HB of the SEBI Act.*
12.	*Neeraj Mittal*	*Regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.*	*Section 15HA of the SEBI Act.*
		Regulation 57(1) of ICDR Regulations.	*Section 15HB of the SEBI Act.*

6. Show Cause Notice dated November 29, 2017 (hereinafter referred to as **SCN**) was issued to the Noticees in terms of the provisions of rule 4 of the

Adjudication Rules, 1995 requiring the Noticees to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed for the violations alleged to have been committed by them as tabulated in para 5 (q) above.

7. I note that the SCN was sent to the Noticees *vide* speed post at the registered address of the Noticees. As per the records, the SCNs sent was delivered at the registered address of the Noticees, except Noticee no. 4, Noticee no. 5, Noticee no. 6 and Noticee no. 8. Subsequently, in terms of rule 7(b) of the SEBI Adjudication Rules and SCRA Adjudication Rules, Newspaper publication of Notice was made with the following details:

Noticee No.	Name of the Noticee	Newspaper Publication	Date and Time of personal hearing
4	Satendra Kumar & its Proprietorship firm viz. Nisha Traders, Bright Securities	The Times Of India- Delhi edition and Dainik Jagran dated January 05, 2022	February 02, 2022 at 10:00 AM
5	Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, A One Furniture	-do-	February 02, 2022 at 10:30 AM
6	Ram Prakash & its Proprietorship firm viz.Khan Enterprise	-do-	February 02, 2022 at 11:00 AM
8	Neel Kanth Trading Co.	-do-	February 02, 2022 at 11:30 AM

8. It is noted that the *Noticee nos. 1, 2, 3, 7, 9 and 10* had replied to the show cause notice by submitting identical replies. *Vide* Hearing Notice dated February 11, 2022 hearing was scheduled to the Noticees except Noticee no. 4, Noticee no. 5, Noticee no. 6 and Noticee no. 8 on March 04, 2022. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through videoconferencing on Webex platform.
9. I note Noticee No. 12 appeared on the scheduled date and was heard. *Vide* email sent on March 04, 2021, Noticee no. 1 and Noticee no. 2 requested for the physical hearing and also requested to postpone the hearing scheduled on March 04, 2022. *Vide* letter dated March 03, 2022 Noticee No.7 and Noticee No.9 also requested for the physical hearing and to postpone the

hearing scheduled on March 04, 2022. *Vide* letter dated March 02, 2022 Noticee No.10 requested for the physical hearing and also requested to postpone the hearing scheduled on March 04, 2022. In the interest of natural justice, another opportunity of hearing was granted to the Noticee No.1, 2, 7, 9, 10 & 11 on April 07, 2022. On the scheduled date, Noticee No.1 appeared on behalf of Noticee No.1 and Noticee No. 2. The authorized representatives of Noticee No.7 & Noticee No.11 appeared on behalf of Noticee No.7 & Noticee No.11 respectively and were heard. I also note that vide email dated April 04, 2022, Hearing was granted to Noticee no. 3 on April 13, 2022. I note that Noticee No. 3, 9 and 10 have not availed the hearing opportunities provided to them.

10. I Note that adequate opportunities of personal hearing have been provided to all the Noticees. However Noticee Nos. 3, 4, 5 ,6 and 8 have neither filed any reply to the charges made in the SCN nor have availed the opportunities of personal hearing granted to them. I am of the opinion that principles of natural justice have been complied with in the present case. As the said Noticees have chosen not to respond to the SCN, it would be appropriate to proceed in the matter, based on materials available on record. In this regard, it is pertinent to mention that the Hon'ble Securities Appellate Tribunal ('SAT') in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter-alia, observed that, "............ *the appellants did not file any reply to the second show cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".* It is also pertinent to mention that the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs. SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: "........... *appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*. In ***Dave Harihar Kirtibhai vs. SEBI*** (Appeal No. 93, 104, 180 and 181 of 2014) dated December 19, 2014, the Hon'ble SAT has held the following: *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not*

appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal....".

11. The key submissions of Noticee nos. 1 and 2, *vide* email dated March 03, 2022 (hereinafter referred to as "Esteem reply) to the SCN are reproduced hereunder:
    a. *At the outset, we in totality disagree with aforesaid allegations made against us among others. In accordance with regulation 106P of the ICDR Regulations, the Company had appointed Guiness Merchant Bankers Pvt. Ltd (Lead Manager and Underwriter) and Guiness Securities Ltd (Underwriter and Market Maker) which had underwritten 100% of the IPO. Therefore, it is incomprehensible to make any allegation against us for getting ourselves involved in any undesirable manner for indulging into bringing any subscription for the IPO of our company.*
    b. *The Financial dealings with M/S. Goldline International Finvest Ltd. (Goldline) and varioüs persons / entities is the basis for making allegations against us. We state and declare that our financial dealings with Goldline and with all other persons/ entities are purely commercial in nature and we have no control on their business activity independently carried by them. Therefore, no adverse inferences are drawn against us for their inter se financial dealing between them.*
    c. *We further state that, Goldline was incorporated in 1992, as an Investment Company. It is BSE listed company and scrip code -is 538180. On perusal of their information filed by Goldline with MCA, we understand that main Business of Goldline is basically Investments i.e. Selling, Buying, Acquiring and holding of shares, debentures, bonds,*

stock, units etc., providing various Services i.e. Advancing loan against Listed shares, securities and properties, margin funding, Corporate Loans, Personal Loans, Trading in shares & Securities, Trade Financing & Bills Discounting. Besides, it also undertakes money market operations and treasury management and they are acting as administrators of various investment trust. Therefore, It is totally incompressible to make us accountable and responsible for their financial dealing with other entities, as listed in the table enumerated under Para 4 of SCN.

d. *Further, we state that, in due compliance of statutory provision of law, we had come out with an IPO to raise Rs. 1129.50 Lakh by way of public issue of 45, 18,000 equity shares of Rs.10 each at an issue price of Rs. 25 which got listed at BSE-SME segment on 07.02.2013. At the relevant time, we had appointed Guiness Merchant Bankers Pvt. Ltd. as a "Lead Managers" (BRLM) and M/S. Cameo Corporate Services Ltd as "Registrar to the Issue" to carry out all legal procedure and compliances for purpose of IPO.*

e. *In our humble submission, we state that both aforesaid entities are responsible SEBI registered intermediaries and both have acted and ensured that the underline process of IPO is properly followed. Besides aforesaid, BRLM and RTA, even stock exchange (BSE) has also ensured that proper compliances are carried out before granting permission for listing. Therefore, issuance of SCN by SEBI after a gap of more than 4 years from the closure of the issue is really disheartening and shocking to us. In view of aforesaid, in our humble submission on this ground alone, SCN deserves to be withdrawn at the threshold itself.*

f. *Further, with regard to findings that we did not provide supporting documents on utilization of the IPO proceeds, apparently on perusal of the detailed SCN, we state that there is no findings in SCN, which shows that investigation was in any way hampered due to lack of information. In fact, in course of investigation, relevant and material information was provided to SEBI such as Bank Statement etc. Therefore, in our view,* *SEBI could conclude investigation in proper and discreet manner as can be seen from the contents of the SCN.*

g. *We would like to place on record, Order dated 06.09.2017 passed by Ld. Whole time Member, SEBI disposing of the proceedings initiated against 216 entities, who had been prima facie alleged to be involved in price manipulation and IPO manipulation in four scrips including ours. Thus, we submit that SEBI has not found any irregularity on price and IPO in our case.*

h. *With regard to alleged violation of provision of 3(a), 3(b), 3(c) and 3(d) and 4(1), of SEBI (Prohibition of Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations), at the outset, we state that, we have not carried out any activity on secondary market segment of capital market at all since inception and therefore provision of regulation 3 and 4 of PFUTP are not applicable to us. Therefore, we state that in the present peculiar facts and circumstances of the case, same has been misdirected and erroneously made applicable to us.*

i. *Further, we state that, Sec. 12A(a), (b) and (c) of SEBI Act, 1992 are with regard to indulgence in manipulation and deceptive device, insider trading and Substantial Acquisition of Securities and control. As stated herein above, we have not carried out any activity in secondary market segment of capital market. Therefore, we strongly deny indulgence into any of such activity. Since most of the adverse findings are broadly made on assumption and presumption only without having any correlation to facts and finding as elaborated in SCN hence SCN deserves to be withdrawn at the threshold itself.*

j. *Without prejudice to aforesaid submission, we state that as a law abiding citizen, we are complying with all securities market related laws and other vital provisions of Income Tax, Corporate laws Companies Act, 1956 and Companies Act, 2013 as applicable to us from time to time and there is no default in this regard.*

k. *Further, with regard to rendering utmost services to shareholders and stakeholders, we respectfully submit that, since inception we have taken adequate care to ensure that shareholders and stakeholders remain fully* *satisfied. Further, we respectfully submit that, there has not been any complaint against us of any nature whatsoever.*

l. *Thus, we respectfully submit that, none of the shareholders and the stakeholders have raised any grievance against us in any manner, whatsoever.*

m. *Further, we submit that, our company is listed on SME segment only wherein as policy of government, there is leniency in comparison to company listed on main board of Stock Exchange. We being a Small and Medium Scale Enterprise, face large constrains of finance etc.*

n. *On totality basis, we respectfully submit that, true, clear and correct appreciation of our financial dealings are not completely appreciated by SEBI and only selected financial dealings of company are taken into consideration. Further, we state that, financial dealings of another company is largely considered for making allegation against us, without appreciation of business model of our company as well as of others including Goldline. In view thereof, we respectfully pray that, if disposal of SCN is not accepted then complete picture of financial dealing may please be bought on record before passing any adverse order against us by carrying out fresh investigation in the matter.*

o. *With regard to allegation that there was an active and deliberate attempt by the Notice to hamper and mislead the course of investigation by providing false and misleading information with respect to the applications and allotment of shares in the IPO and objects and utilization of the proceeds from the IPO, thereby violating the provisions of section II (3) and II C (3) of the SEBI Act, 1992 at the outset, we hereby provide the details utilization of IPO proceeds by our Company along with documentary proof.*

12. The key submissions of Noticee no.7 *vide* email dated March 03, 2022 (hereinafter referred to as "Avisha reply") to the SCN are reproduced hereunder:

a. *We vehemently deny all the statements, submissions, contentions, allegations and averments contained in the SCN that are contrary to and /*

or inconsistent with what is stated herein-below and state that we have always been Rule/ Law compliant.

b. *The present SCN is issued after a gap of more than 4 and half years from the date of IPO of Esteem. However, no reasons have been mentioned in the SCN for belatedly initiating present proceedings after an unexplained delay of more than 4 and half years. Hence, great prejudice is caused to us to defend our case at this stage and on this ground only SCN deserves to be dismissed at the threshold itself.*

c. *Submission on receipt of Rs 15.50 Lakhs from the Company /ESTEEM, It is humbly submitted that in total Rs. 15.50 Lakhs was received by us from Esteem on 08.02.2013, 11.02.2013 and 18.02.2013. The aforesaid fact has also been confirmed vide the Interim Order dated 29.06.2015 issued by the lad. Whole Time Member, SEBI ("Interim Order"). In the said Interim Order the details of alleged transfer of IPO proceeds is mentioned under Table 8, Para 19 in Page No. 9 and 10.(Annexure — 2 of the SCN). Therein at Sr. No. 37 of the said Table it is mentioned that we have received Rs 15.50 Lakhs from Esteem. Further, we humbly submit that in the Interim Order the Funding and Subscription of IPOs by Funding Group is mentioned under Table 6, Para 15 on Page No. 7 and 8 of Interim Order.*

d. *The funds from Esteem were received in the following manner:*

Sr. No.	*Date*	*Amount*
1.	*08.02.2013*	*1 Lakh*
2.	*11.02.2013*	*1 Lakh*
3.	*18.02.2013*	*13.50 Lakhs*
Total		*15.50 Lakhs*

e. *Pertinently, the amount of Rs 15.50 Lakhs as received from Esteem was the Loan granted by us to them and even pursuant to the receipt of the aforesaid amount of Rs 15.50 Lakhs and other Funds there was an outstanding Balance of Rs 2.75 Lakhs as on 31.03.2013.*

f. *Hence, it is humbly submitted that SCN is issued without proper consideration and cognizance of the facts of the case. Further, the* *aforesaid also clarifies the fact that we had no direct linkage/ connection/ fund transfer with Esteem in any manner whatsoever.*

g. *Fund Transfer with Mayfair: On perusal of Basis of connection of Mayfair (Ref. Table under Para 7 of the SCN, Sr. No. 8 at Page No. 6 of the SCN), it is humbly submitted that there are references of fund transfer of Mayfair with other persons/entities and there are also various basis on which connection are alleged of Mayfair with other persons/entities. Further, it is submitted that the Financial transactions with Mayfair are in our normal and ordinary course of business's. Hence, it is humbly submitted that the alleged connection of Mayfair with us is not sustainable in fact and in law*

h. *Fund Transfer with Eco Goldline and ISF Securities: We humbly reiterate that we are a NBFC registered with RBI and engaged in the business of lending fund to persons/corporate entities based on their fund requirements and it in turn we borrow funds from other entities whenever we require liquidity in our operations.*

i. *In view thereof, we humbly submit that the fund transfer/ financial transaction with Eco and Goldline are on regular basis and in normal course of our business activities. On perusal of the same it can be seen that there are regular fund transaction between us and these entities and no adverse inference be drawn against us in this regard.*

j. *We also humbly submit that the fund transfer/ financial transaction with ISF Securities Limited is for the purpose of purchase of shares and receipt of money is for sale of shares by Avisha. Further, we would also like to inform you that ISF Securities Limited is a Share Broker company and Avisha having a share trading account with ISF Securities Limited. So the financial transactions with ISF is for the purpose of trading.*

k. *Relationship with Other Co- Noticees: It is humbly submitted that the apart from our alleged fund transfer with Eco and Goldline, we are not alleged to be connected to any of the other Co- Noticees to the SCN. Importantly, the SCN is completely silent on the fact that we are not even directly linked/ connected to Esteem.It is humbly submitted that the fund transfer with Eco and Goldline have no bearing in the present case. Pertinently, the fund transfers with them were in the normal and ordinary course of our business activities. Further, it is submitted that the allegation that we are connected* *with Eco because of the inter se fund transfer between Eco and Goldline and the fact that we had transaction with Eco and Goldline is too far- fetched and not sustainable in fact and in law. It is pertinent to mention that the aforesaid fact is itself vague as we cannot know the transactions executed by Goldline with any other persons /entities.*

l. *Fund Transfer of Rs. 1.50 Lakh to 3 Non ASBA Applicants. In this regard, we would like to submit that we have checked our records and came to the conclusion that we had not issued any cheque of Rs 1.50 Lakh to any allottee of Esteem IPO. There is might be some typographical error in the SCN issued by SEBI.*

m. *We humbly submit that we have not applied for shares in the IPO of Esteem, hence we have not been in receipt of any gains/ profits. We are therefore at great loss since unwarranted prejudice is caused to us by issuance of a common SCN since our role, involvement and participation in IPO of Esteem is totally different, distinct and separate in comparison to other entity/ person to whom common SCN is issued along with us.*

n. *Based on our aforesaid submissions, it is apparent that we are not involved in any 'modus operandi' or a part of alleged scheme, if any w.r.t the IPO of Esteem. There is enough material on record to suggest that no further enquiry is required in the matter. It is, therefore, humbly requested that the Show Cause Notice dated 29.11.2017 be dropped without imposing any monetary penalty on us.*

o. *Noticee no. 7 has placed reliance on Hon 'ble Securities Appellate Tribunal order in the matter of R. K. Global v/s SEBI (Appeal no. 158/2008 decided on 16.09.2010), Narendra Ganatra v/s SEBI (Appeal No 47 of 2011 decided on 29.07.2011), Videocon International v/s SEBI (2002) 4 CLJ 402, Parsoli Corporation v/s SEBI (Appeal No 146/2011 decided on 12.08.2011).*

13. The key submissions of Noticee no.9 (hereinafter referred to as “Amsons reply”) *vide* letter dated March 03, 2022 to the SCN are reproduced hereunder:

a. *The present SCN is issued after a gap of more than 4 and half years from the date of IPO of Esteem. However, no reasons have been* *mentioned in the SCN for belatedly initiating present proceedings after an unexplained delay of more than 4 and half years. Hence, great prejudice is caused to us to defend our case at this stage and on this ground only SCN deserves to be dismissed at the threshold itself*

b. *Submission on funds provided for alleged Application in IPO: Issued 30 Cheques of Rs. 1.50 Lakh to 3 Non ASBA Applicants. We had granted short term loan of Rs. 1.50 Lakhs each of the 3 allottees of Esteem IPO. It is humbly submitted that it is not possible for us to know as to why they used the said funds. Further, we would also like to clarify that Cheques of Rs. 1.50 Lakh issued on behalf of each 3 allottees are still outstanding in the book of Amsons Apparels Limited and they have not repaid the short term loan given to them.*

c. *Submissions of alleged Fund movement with AMS Powertronic Private Limited, Goldline, Madhukar Dubey and Mayfair Infosolution Private Limited It is humbly submitted that AMS Powertronic Private Limited and Mayfair Infosolution Private Limited both the companies has been promoted by Mr. Vinay Kumar and Mr. Sumit Kumar. Mr. Vinay Kumar (Promoter of AMS Powertronic Private Limited and Mayfair Infosolution Private Limited) are well known to the Mr. Vinay Kumar (Promoter of Amsons Apparels Limited).*

d. *During the period 01-01-2012 to 31.03.2013, Amsons Apparels Limited was engaged in regular financial transactions with the both AMS Powertronic and Mayfair Infosolution according to the need of financial support to the Business.Further, Mayfair Infosolution had also made investment of Rs5, 10,000/- (Rupees Five Lakh Ten Thousand Only) in the Amsons Apparels Limited. Similarly, Mr. Madhukar Dubey was also well known to the Mr. Vinay Kumar (Promoter of Amsons Apparels Limited). During the period 01.01.2012 to 31.03.2013, Amsons Apparels Limited was engaged in financial transactions with the Mr. Madhukar Dubey depending upon the need of finance either one and Further Mr. Madhukar Dubey had also made investment of Rs. 9,50,000(Rupees Nine Lakh Fifty Thousand Only) in the Amsons Apparels Limited. Hence, it is humbly submitted that SCN is issued without proper consideration and cognizance of the facts of the case. Further, the aforesaid also* *clarifies the fact that we had no direct linkage/connection/fund transfer with Esteem in any manner whatsoever.*

e. *Fund Transaction with Goldline: on perusal of Basis of connection of Goldline (Ref. Para No. 7 at Sr. No. II on Page No. 6 of the SCN), it is humbly submitted that that our financial dealings with Goldline and with all other persons/ entities are purely commercial in nature and we have no control on their business activity independently carried by them. Therefore, no adverse inferences are drawn against us for their inter se financial dealing between them. Further, Goldline had also made a investment of Rs. 2,45,00,000(Rupees Two Crore Forty Five Lakh Only) in the Amsons Apparels Limited.Hence, it is humbly submitted that the alleged connection of Goldline with us is not sustainable in fact and in law.*

f. *Relationship with Other Co- Noticees: It is humbly submitted that the apart from our alleged fund transfer with Mayfair, AMS Powertronic, Madhukar Dubey and Goldline, we are not alleged to be connected to any of the other Co- Noticees to the BCN. Importantly, the SCN is completely silent on the fact that we are not even directly linked/ connected to Esteem.It is humbly submitted that the fund transfer with Mayfair, AMS Powertronic, Madhukar Dubey and Goldline have no bearing in the present case. Pertinently, the fund transfers with them were in the normal and ordinary course of our business activities.*

g. *We humbly submit that we have not applied for shares in the IPO of Esteem, hence we have not been in receipt of any gains/profits. We are therefore at great loss since unwarranted prejudice is caused to us by issuance of-a common SCN since our role, involvement and participation in IPO of Esteem is totally different, distinct and separate in comparison to other entity/person to whom common SCN is issued along with us.*

h. *Based on our aforesaid submissions, it is apparent that we are not involved in any 'modus operandi' or a part of alleged scheme, if any w.r.t the IPO of Esteem. There is enough material on record to suggest that no further enquiry is required in the matter. It is, therefore, humbly requested that the Show Cause Notice dated 29.11.2017 be dropped without imposing any monetary penalty on us.*

i. *Noticee no. 9 has placed reliance on Hon 'ble Securities Appellate Tribunal order in the matter of R. K. Global v/s SEBI (Appeal no. 158/2008 decided on 16.09.2010), Narendra Ganatra v/s SEBI (Appeal No 47 of 2011 decided on 29.07.2011), Videocon International v/s SEBI (2002) 4 CLJ 402, Parsoli Corporation v/s SEBI (Appeal No 146/2011 decided on 12.08.2011).*

14. The key submissions of Noticee no.10 *vide* letter dated March 03, 2022 (hereinafter referred to as "Gracious reply") to the SCN are reproduced hereunder:

   a. *The present SCN is issued after a gap of more than 4 year and Nine months from the date of IPO of Esteem. However, no reasons have been mentioned in the SCN for belatedly initiating present proceedings after an unexplained delay of more than 4 year and Nine months. Hence, great prejudice is caused to us to defend our case at this stage and on this ground only SCN deserves to be dismissed at the threshold itself.*
   b. *It is humbly submitted that with an object of earning some additional income in the form of interest, the company grants short term advance or provide financial assistance to the entities who approach to the company.*
   c. *Submission on funds provided for alleged Application in IPO: Issued 42 Cheques of Rs. 1.50 Lakh to 42 Non ASBA Applicants: We had granted short term loan of Rs. 1.50 Lakhs each of the 42 allottees of Esteem IPO. It is humbly submitted that it is not possible for us to know as to why they used the said funds. Further we would also like to clarify that Cheques of Rs. 1.50 Lakh issued on behalf of each 42 allottees are still outstanding in the book of Gracious Software Limited and they have not repaid the short term loan given to them.*
   d. *Submissions of alleged Fund movement with Mayfair and Goldline: Submission on receipt of Rs. 63.00 Lakhs from Mayfair: It is humbly submitted that Rs. 63.00 Lakhs was received by us from Mayfair on 23.01.2013. The aforesaid fact has also been confirmed vide Order dated 22.12.2020 issued by the Ld. Whole Time Member, SEBI. In the*

said Order the details of fund transactions is mentioned under Table 4, Para ix in Page No. 6. (Annexure — 2 of the SCN). Therein at Sr. No. 12 of the said Table it is mentioned that we have received Rs 63.00 Lakhs from Mayfair. (b) Mayfair Infosolution Private Limited is also a IT Sector company and in the same line of business as Gracious software Limited. Pertinently, the amount of Rs 63.00 Lakhs received from Mayfair was advance against the supply of Computers software and hardwares. As the company is engaged in the business of manufacturing and otherwise dealing in computers, software including developments of softwares, hardwares, networking of computers so the amount of Rs. 63.00 Lakhs received from the Mayfair was in the ordinary course of business. (c) Hence, it is humbly submitted that SCN is issued without proper consideration and cognizance of the facts of the case. Further, the aforesaid also clarifies the fact that we had no direct linkage/connection/fund transfer with Esteem in any manner whatsoever.

e. *Fund Transfer with Gold-line: On perusal of Basis of connection of Goldline (Ref. Table 4,Para ix in Page No. 6 of the SCN, Sr. No. 12 at Page No. 6 of the SCN), it is humbly submitted that Gracious Software Limited is the Promoter company of Goldline International Finvest Limited. Gracious holds 5.57% shareholding the Goldline. So Goldline and Gracious are under same group company. When any of the company is in need of the fund, will ask the other company to provide the same.Further, there is only a transaction of Rs. 25.00 la.kh between the Gracious and Goldline during the period of 1 year i.e 01-04-2012 to 31-03-2013. Goldline had asked for the amount of Rs. 25.00 Lakh on 21.12.2013 and same has been returned by Goldline on 20.02.2013 within 2 Months. As the amount of Rs 25.00 Lakh has been retumed by Goldine such a short time within a period of 2 months, interest had been waived off by the management of the company. Hence, it is humbly submitted that the alleged connection of Mayfair and Goldine with us is not sustainable in fact and in law.*

f. *Relationship with Other Co- Noticees: It is humbly submitted that the apart from our alleged fund transfer with Mayfair and Goldline, we are* *not alleged to be connected to any of the other Co- Noticees to the SCN. Importantly, the SCN is completely silent on the fact that we are not even directly linked/ connected to Esteem. It is humbly submitted that the fund transfer with Mayfair have no bearing in the present case. Pertinently, the fund fransfers with them were in the normal and ordinary course of our business activities. It is humbly submitted that the fund transaction with Goldline have no bearing in the present case as the both of the company belongs to the same group. Pertinently, the Gracious is the Promoter company of Goldline with stake of 5.57%.*

g. *We humbly submit that we have not applied for shares in the IPO of Esteem, hence we have not been in receipt of any gains/ profits. We are therefore at great loss since unwarranted prejudice is caused to us by issuance of a common SCN since our role, involvement and participation in IPO of Esteem is totally different, distinct and separate in comparison to other entity/ person to whom common SCN is issued along with us. 14. Based on our aforesaid submissions, it is apparent that we are not involved in any 'modus operandi' or a part of alleged scheme, if any w.r.t the IPO of Esteem. There is enough material on record to suggest that no further enquiry is required in the matter. It is, therefore, humbly requested that the Show Cause Notice dated 29.11.2017 be dropped without imposing any monetary penalty on us.*

h. *Noticee no. 10 has placed reliance on Hon'ble Securities Appellate Tribunal order in the matter of R. K. Global v/s SEBI (Appeal no. 158/2008 decided on 16.09.2010), Narendra Ganatra v/s SEBI (Appeal No 47 of 2011 decided on 29.07.2011), Videocon International v/s SEBI (2002) 4 CLJ 402, Parsoli Corporation v/s SEBI (Appeal No 146/2011 decided on 12.08.2011).*

15. The key submissions of Noticee no.11 *vide* letter dated January 22, 2018 and email dated April 18, 2022 to the SCN are reproduced hereunder:

a. *At the outset the Noticee denies all the allegations and contentions raised against the Noticee in the SCN. The Noticee submits that the SCN, the allegations made therein and the proceeding initiated* *against the Noticee are untenable, misplaced, misconceived and totally misdirected and is therefore liable to be withdrawn/dropped. It is pertinent to note that the Noticee was appointed as an Independent Director on the Board of Directors of the Company for a short period of time and has since resigned from the Company. The Noticee was not in-charge of or looking after the day to day management to the Company nor was he in-charge of or looking after the financial transactions/financial matters of the Company. As an Independent director the Noticee was diligently and honestly carry on his duties to best of his ability and capacity and in the interest of the Company and its shareholders. The Noticee carefully perused the documents placed before him, made enquires and raised questions/objections when required.*

b. *At the further outset, the Noticee states that the present proceedings have been initiated after a gross delay and ought to be dropped. It is submitted that the initiation of the present proceedings by way of issuing the Notice under Reply is a gross abuse of the process as the transactions/actions sought to be impugned by way of the present Notice relate back as far as January 2013.The present Notice having been issued in November 2017 after a lapse/delay of nearly 5 years from the transactions/actions sought to be impugned is therefore completely vitiated under law and the notice accordingly deserves to be quashed at the outset for .the same. It is settled law that such gross delay in the initiation of proceedings has been considered to be a violation of the principles of natural justice and has also been considered to defeat the very purpose of the proceedings. It is therefore submitted that the present proceedings ought to be dropped on account of the gross delay on the part of the Hon'ble Board in initiating the proceedings.*

c. *The Noticee is a qualified Company Secretary and is an Associate Member of "The Institute of Company Secretaries of India" ("ICSI"). The Noticee was a Corporate Member of Northern Region Council of India of ICSI (NIRC).*

d. *In year 2012 during a professional development programme, the Noticee was introduced to Promoter/Directors of ESTEEM namely Mr. Vijay Jhindal, Chartered Accountant and also Mr. Brij Kishore Sabharwal, by one of his professional colleagues namely Mr Vinod Kumar Garg. Mr Vinod Kumar Garg was known to the Noticee for long time (i.e. since he was a student of ICSI). Mr Vinod Kumar Garg being aware of the fact that the Noticee was member of ICSI and being aware of the educational qualifications, experience and knowledge of the Noticee, approached and offered the position of independent director to the Noticee in ESTEEM. The request was made at the behest of the promoters with a view to strengthen corporate governance in ESTEEM. The Noticee states that the Noticee is neither a relative nor is in any way is connected directly or indirectly to Mr. Vijay Jhindal or Mr. Brij Kishore Sabharwal or any other promoter or director of ESTEEM.*
e. *The Noticee due to his personal commitments and work pressure initially declined the request/proposal, but after continuous persuasion by promoter/directors, Mr. Vinod Kumar Garg and being informed that the promoters want to enhance the standards of corporate governance agreed to accept the position of the Independent Director. The Noticee being assured by Mr. Vinod Kumar Garg and on being informed by the promoters about the growth plans of ESTEEM, relied on their proposal and accepted the offer. The Noticee enquiries revealed that ESTEEM had, by and large, filed its returns under the Companies Act, 1956 and there was no adverse news or information against ESTEEM in the public domain and corporate space. The Noticee then agreed to be an Independent Director on the Board of ESTEEM. The Noticee has at the relevant time checked and cross verified from the industry and know persons the credentials of the ESTEEM. The Noticee had not received any adverse feedback or reports of irregularities etc in respect of the ESTEEM or its promoters etc.*
f. *As regards the IPO of the ESTEEM, the Noticee being the Independent Director verified and checked the requisite compliances, documents*

and information provided by ESTEEM in respect of its IPO. Further the Noticee also relied on the advice and. reports of the experts appointed in respect of the IPO i.e the Merchant Banker, Advocates, the Company Secretary and other statutory appointed entities. The Noticee did not find any irregularity or illegality in the IPO process or in the prospectus of the IPO. The Noticee believed to the best of his knowledge that the documents and information related to the IPO were true, correct and fair. Furthermore, the IPO was in compliance with the requirements of the Companies Act, 1956 and SEBI (ICDR) Regulations. SEBI I Registrar of Companies, New Delhi had also vetted the documents and provided the necessary approvals to ESTEEM for its IPO.

g. *The Noticee, being an independent director was never involved in the day to day affairs, operations and management of ESTEEM and only participated in some of the Board Meetings as an Independent Director. The Noticee was not in-charge of the financial matters of the Company. The financial matters/financial transactions of the Company were undertaken by the promoters and Executive Directors as named in the prospectus namely Mr. Brij Kishore Sabharwal, Mr. Amar Singh Bisht and Mr. Jai Kumar. The Noticee was not involved in the same in any manner whatsoever. The Noticee was not the authorized signatory in the banking operations of the ESTEEM. The Noticee in his capacity as an Independent Director has at all times acted diligently, honestly in a responsible manner and in the larger interest of the Company .*

h. *The Noticee at no point had any knowledge whatsoever of the alleged funding group entities and/or funding group or alleged arrangement or scheme of funding by such funding group entities or of any matter related to them. All the documents presented before the Board clearly mentioned that the IPO was well received, the ineligible applications were weeded out and rejected. There was absolutely no reason to suspect any illegality or even any irregularity in the IPO process.*

i. *The Noticee at all times in matters which were within his knowledge and/or brought to his attention or when his opinion/guidance was sought acted with due care, diligence and in the best interest of ESTEEM and its shareholders. The Noticee cross verified and questioned the issues and matters in which he had any doubts and objected when he was of the opinion that the said issue or matter was not in the interest or against the interest of the Company.*

j. *The Noticee or his relatives, neither dealt in any shares or other securities nor obtained any pecuniary benefits in relation to ESTEEM or from any other related promoter/director/entity directly or indirectly*.

k. *The Noticee submits that no audit committee meeting took place during his tenure and further that the Noticee did not attend the number of board meetings as stated in the Annual Report for the financial year ending on March 2013;therefore, the Noticee submits that that the Minutes of the Meetings of the Board and those of the Audit Committee are crucial in determining the alleged role of the Noticee, without which the Noticee is prejudiced and is severally curtailed to provide comprehensive submissions with regards to the allegations in the present proceedings.*

l. *The Noticee submits that the IPO of the Company took place in the years 2012-13 and the Noticee resigned from the Company on April 22, 2013. Thereafter, the Noticee has not been associated with the Company nor is in contact with any of the past or present directors and therefore, the Noticee has no access to the Company records including minutes of the meetings of the board as well as the other committees.*

m. *The Noticee's limited role was to check compliances of the IPO and the processes relating to the same as a member of the Board of Directors; in doing so, the Noticee relied upon various reports submitted by the Company, it's merchant banker, advocates, statutory and other auditors and company secretary as to whether the requisite compliances and documentation with respect to the IPO process were in order and that they did not suffer from any irregularity. The Noticee was not expected or required to separately conduct a due diligence or audit of the company or its activities.*

n. *Noticee No. 11 has placed reliance on Hon'ble Securities Appellate Tribunal ("SAT") order in the matter of Sayanti Sen v. Securities and Exchange Board of India, Hon’ble Supreme Court in Municipal Corporation of Delhi v. Ram Kishan Rohtagi, Hon’ble SAT in judgment of Rahul H. Shah vs. Securities and Exchange Board of India, Hon'ble Securities Appellate Tribunal in the matter of P.G. Electroplast Ltd. and in the Judgment of Hon'ble Madras High Court in Agritech Hatcheries & Food Ltd. vs. Valuable Steels India Ltd.*

16. The key submissions of Noticee no.12 *vide* letter dated December 16, 2017 to the SCN are reproduced hereunder:
    a. *Vinod Kumar Garg is a Company Secretary by qualification and the company had approached me, for the post of Independent Director in the company and that they are planning to get themselves listed on the newly launched SME segment of the BSE exchange. Hence after looking the profile of the company and its present activities I had acceded to their request and in turn I was appointed as a Independent director of the company.*
    b. *While going through the other contents of the SCN, I observed that SEBI had brought the irregularities in the funding of the aforesaid IPO.As per investigation done by SEBI said IPO was directly or indirectly funded by several connected entities name of which was mentioned in your SCN.*
    c. *While going through the SCN and name of the entities mentioned by you which was alleged to have been funded directly/Indirectly in the IPO of the Esteem, I was not connected with any of these companies, persons and entities mentioned by you.*
    d. *Further I would like to mention that in the company Esteem also, I was only an Independent director with no day to day overseeing of the operations and never ever the signatory of the banking of the company.· Hence in this situation where I was never indulge in the operations of the company and also not in any way connected with the funding entities, as mentioned by you. In the company Esteem, I was only an Independent director. While going through SCN there is*

no material, that had been brought on record by you, wherein my indulgence was any way discussed/ proved.

e. Hence, in view of the said facts mentioned above, the inquiry initiated by you in terms of Rule 4 (1) of SEBI (Procedure of Holding Inquiry and imposing penalties by Adjudication Officer) Rules, 1995 read with Section 151 of the SEBI act 1956, should be dropped against me.

D. ISSUES

17. I have taken into consideration the material available on record. The issues that arise for consideration in the present case are as follows:

I. Whether Noticee nos. 1 to 10 have violated regulations 3(a),(b),(c),(d) and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act?

II. Whether Noticee nos. 1,2 ,11 & 12 sections 12A(a), (b) and (c) of the SEBI Act, regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations and regulation 57(1) of the ICDR Regulations?

III. Whether Noticee no. 1 has violated clause 45 and 46 of the listing agreement for SMEs read with section 21 of the SCRA?

IV. Whether Noticee no. 1, Noticee no. 2 and Noticee no. 3 have violated section 11(3) and 11C(3) of the SEBI Act?

V. If the answer to issues provided in (I) to (IV) above are in affirmative, whether the Noticees are liable for monetary penalty under sections 15A(a), 15HA, 15HB of the SEBI Act and section 23E of the SCRA? If so, what quantum of monetary penalty should be imposed on the Noticees?

E. FINDINGS

18. At the outset, before dealing with the merits of the case, I find it relevant to look over at the sequence of events that has led to the passing of the current

adjudication order. As noted earlier, a preliminary inquiry was undertaken as huge rise was observed in the traded volume and price of scrip of the Company and three other companies during the period from January 01, 2013 to December 31, 2014. *Vide* the June Interim Order passed on June 29, 2015, it was *prima facie* observed that certain entities have deployed a scheme to generate fictitious long term capital gains to convert unaccounted income into accounted one and at the same time obtain tax exemption, and therefore, 254 entities were restrained from accessing the securities market and prohibited from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, till further directions. The detailed investigation in the matter commenced after passing of the June Interim Order. The June Interim Order was confirmed with respect to certain entities *vide* the Confirmatory Orders passed between the period February, 2016 to June, 2017.

19. I note that some Noticees have raised the preliminary issue with regard to delay in issue of show cause notice, that SCN is issued after a gap of more than 4 years from the date of IPO of Esteem.In this regard I note that the investigation was initiated against a large number of entities which apparently took time and ultimately notices were issued to 19 entities in the present matter. Here I find it pertinent to note that during the investigation, information was requisitioned from various entities including but not limited to the stock exchanges, the Company, the directors of the Company, banks, brokers, merchant bankers, registrar and transfer agent and allottees in the Esteem IPO. Thereafter, the investigation *inter alia* entailed examination of bank statements, know your information (KYC) details, transaction details, ledger accounts, replies of the entities to summons, movement of funds and listing day trade details. The investigation also required coordination with various regional offices of SEBI in order to send summons. The investigation report was approved by the competent authority on June 06, 2017 wherein inter alia proceedings under sections 11(1), 11(4) and 11(B) of the SEBI Act were approved along with adjudication proceedings under sections 15A(a), 15HA and 15HB of the SEBI Act and section 23E of the SCRA Act. The undersigned was appointed as the adjudicating officer, and this was

communicated vide communiqué dated July 17, 2017. The SCN dated November 29, 2017 was issued by the undersigned informing the Noticees, the charges levelled against them. Taking the aforesaid into account, I find that investigation is an exhaustive and time consuming process, which requires detailed analysis of facts and law especially considering that there are multiple stakeholders involved in the present matter apart from the Noticees. I Note that post Inspection, Notices were sent at the registered address of Noticees, however the Notices were returned undelivered in case of some Noticees. Subsequently notices were serviced through Newspaper publication. Thereafter Inspection of Documents were sought by some entities.

20. I find it relevant to rely on Hon'ble SAT order passed in ***Hemant Sheth and Ors. vs. SEBI***, Appeal No. 521 of 2021, decided on January 07, 2022, it was argued by the appellants that the adjudicating officer was appointed on July 04, 2013 but the show cause notice was issued in 2016 and therefore there was an inordinate delay of 30 months for which no plausible explanation was given. The Hon'ble SAT while dismissing the aforesaid contention of the appellants held that:

> *"9. Insofar as the delay is concerned we find that after the observation made by the WTM in its order of May 10, 2013 SEBI took action and appointed the AO dated July 4, 2013. No doubt the show cause notice was issued in January 2016 but the delay in the issuance of the show cause notice in the instant case will not vitiate the proceedings initiated against the appellants in the peculiar facts and circumstances of the case. Consequently, we are not inclined to quash the proceedings only on the ground of inordinate delay as asserted by the learned counsel for the appellant."*

21. In **Rajendra Aggarwal vs. SEBI** (Misc. Application No. 426 of 2020 and Appeal No. 552 of 2019), dated September 17, 2021, an appeal was filed against an order of the adjudicating officer imposing penalties against the appellants for violation of regulation 3 and 4 of the PFUTP Regulations. The appellants contended that due to the inordinate delay, the aforesaid order

should be quashed since the trades took place in the year 2009, the notice was issued in 2013, the hearing took place in 2018, and 18 months after the hearing, an adjudication order was passed. In this regard, the Hon'ble SAT held:

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

22. I further note that some Noticee has raised the issue regarding non supply of documents / information such as copy of investigation report etc. In this respect, it is noted that documents which have been relied upon in the SCN to make allegations against the Noticees, have been provided to the Noticees in the SCN. It is noted that the law on the issue of not giving the copy of the investigation report etc. are well settled to the effect that providing of documents which have been relied upon in the SCN to frame allegations/charges are treated as sufficient compliance of the principles governing the Natural Justice. In this connection, your attention is drawn to the observations of the Hon'ble SAT in the matter of **Mayrose Capfin Private Limited Vs. SEBI** (decided on 30.03.2012), wherein SAT held that*:"..the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the*

delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."

23. Further, the Hon'ble SAT, in its order dated February 12, 2020, in the matter of **Shruti Vora vs. SEBI** held that:

"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents, which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty

cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

Issue I*:* Whether Noticee nos. 1 to 10 have violated regulations 3(a),(b),(c),(d) and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act?

24. Before moving forward, it is pertinent to refer to the text of regulations 3(a),(b),(c),(d) and 4(1) of the PFUTP Regulations and section 12A(a), (b) and (c) of the SEBI Act, which reads as under:

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a ***[1]****[manipulative], fraudulent or an unfair trade practice in securities* ***[2]****[markets].*

[2] *[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]*

[1] *Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019* ***(“PFUTP 2018 Amendment Regulations****”).*

[2] *Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.*

1.1 **SEBI Act**

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.*

25. I note that in the Esteem Reply, it is contended that the Company had appointed Guiness Merchant Bankers Pvt. Ltd (Lead Manager and Underwriter), Guiness Securities Ltd (Underwriter and Market Maker) which had underwritten 100% of the IPO and M/S. Cameo Corporate Services Ltd as "Registrar to the Issue" to carry out all legal procedure and compliances for purpose of IPO. BSE had granted permission for listing. In this regard, I note that the contentions of the Noticees merely evade the allegations pertaining to employment of scheme with the help of funding group entities to get listing of the securities on exchange platform. Secondly, I note that the charges made in the SCN do not depend on the proceedings initiated against other entities or market intermediaries.

26. I note that there are three important things to be established for attracting the provisions stated in Issue I in the present matter: (i) direct/indirect connection between Esteem and the entities including the Funding Group Entities; (ii) contribution by Funding Group Entities to the IPO; and (iii) deployment of IPO proceeds by Esteem to the connected entities including the Funding Group Entities.

<u>Connection between Esteem and the entities including the Funding Group Entities and contribution by Funding Group Entities to the IPO</u>

27. It is observed that the Noticees in the matter have been alleged to be connected with the Company and fund transfer from the Company to the funding entities, both directly and indirectly, forms the primary basis for establishing connection amongst majority of the entities (Noticees) apart from other attending factors such as common addresses, common directorship in companies etc., to corroborate such connections amongst the Noticees. The said details of connections amongst various Noticees as have been narrated in the SCN, are highlighted herein below:

SN	Particulars	Connection - Fund Movement
1	Goldline International Finvest Ltd. (Goldline)	• Goldline received IPO proceeds of Rs. 239.60 lacs from ESTEEM. • ESTEEM given Rs. 245 lacs to ECO, the same was transferred by ECO to Goldline. • Goldline had fund movement with Mayfair Infosolution Private Limited, Guiness Securities Limited and Sanjeev Agarwal. • Goldline had also fund movement with the entities who had funded to IPO Allottees viz. AMS Powertronic Private Limited, Bright Securities, Columbia Sales.
2	Satendra Kumar (PAN: AWWPK8525E) <u>Proprietorship Firm</u> • Bright Securities • A R Enterprise • Nisha Traders	• Nisha Traders received funds from Magnum Industrial and Bright Securities. • Bright Securities had fund movement with Nisha Traders, Magnum Industrial, N V Sales Corporation, A One Furniture, Goldline International Private Limited and AMS powertronic Private Limited. • **Address**: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. • Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address.
3	Madhukar Dubey (PAN: AIJPD7329J) **<u>Proprietorship Firm</u>** • Alliance Traders • N V Sales Corporation	• N V Sales Corporation had fund movement with Khan Enterprises, AMS Powertronic Private Limited. • A One Furniture received funds from Magnum Industrial. • Alliance Traders received funds from AMS Powertronic Private Limited, Mayfair Infosolution Private Limited., A One Furniture, N V Sales Corporation, Nisha Traders. • Magnum Industrial received funds from Eco and A One Furniture.

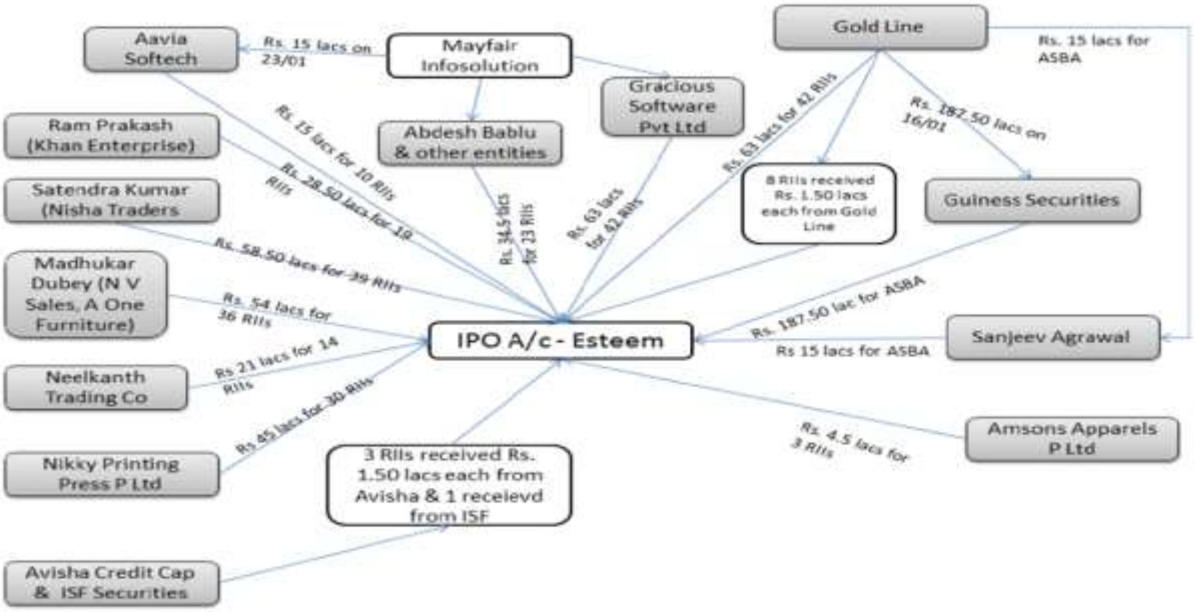
SN	Particulars	Connection - Fund Movement
	• A One Furniture • Magnum Industrial	• Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. • Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address.
4	Ram Prakash (PAN: AXFPR4439L) Proprietorship Firm • Khan Enterprises • Aggrawal Traders	• Khan Enterprise had fund movement with Shiv Traders and Garg Traders & Suppliers. • Aggrawal Traders received funds from the Goldline International Private Limited. • Ram Prakash is the director in following companies (MCA Database); iii. Aavia Buildtech Private Limited iv. Aavia Softech Private Limited.
5	Aavia Softech Pvt. Ltd.	• It had fund movement with Mayfair Infosolution Private Limited, Eco, Goldline and Esteem Bio. • Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common address : 1/2486, Gali No. 26, Ramnagar, Modern Shahdra, East Delhi - 110032. (MCA Website) • Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common Director: 1) Kamal Singhal 2) Ramprakash • Mr. Ramprakash is the proprietor of M/s. Khan Enterprise and Ms/. Aggrawal Traders.
6	Aavia Buildtech Pvt. Ltd.	• It had received IPO proceeds of Rs. 40 lacs from the company. • Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common address : 1/2486, Gali No. 26, Ramnagar, Modern Shahdra, East Delhi - 110032. • Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. having common Director: 1) Kamal Singhal 2) Ramprakash. • Mr. Ramprakash is the proprietor of M/s. Khan Enterprise and Ms/. Aggrawal Traders.
7	Mayfair Infosolution Pvt. Ltd.	• It had received IPO proceeds of Rs. 81 lacs from the company. • It had fund movement with Aavia Softech Pvt. Ltd, Goldline, Esteem, AMS Powertronic Pvt. Ltd and Gracious Software Pvt Ltd. • Director Name :1)Sumit Kumar 2) Vinay Kumar • Mayfair is connected with AMS Powertronic Pvt. Ltd.,Nikky Printing Press pvt. Ltd., through common directors.
8	Avisha Credit Capital Ltd	• It had received IPO proceeds of Rs. 15.50 lacs from the company.

SN	Particulars	Connection - Fund Movement
		• Further, it had fund movement with Eco, Goldline , ISF Securities Ltd., and Mayfair Infosolution.
9	Nikky Printing Press Pvt. Ltd.	• It had fund movement with Goldline, Mayfair Infosolution, AMS Powertronic and Madhukar Dubey. • Director Name : 1)Sumit Kumar 2) Vinay Kumar • Nikky Printing press Pvt. Ltd. is connected with Mayfair Infosolution Pvt. Ltd, AMS Powertronic Pvt. Ltd., through common directors.
10	Neel Kanth Trading Co.	• It had fund movement with AMS Powertronic Pvt. Ltd.
11	Amsons Apparels Pvt Ltd	• It had fund movement with AMS Powertronic Pvt. Ltd., Goldline, Madhukar Dubey and Mayfair Infosolution Pvt. Ltd.
12	Gracious Software Pvt Ltd	• It had fund movement with Goldline and Mayfair Infosolution Pvt. Ltd.
13	Ace Consultant	• It had fund movement with the ISF Securities Ltd and Goldline. • Common Address with ISF Securities Ltd. • Till March 2014, Brij Kishore Sabharwal (Director of Eco & Esteem) was the director in ISF Securities Ltd.
14	Shiv Traders	• Shiv Traders had fund movement with Mayfair Infosolution Pvt. Ltd., Khan Enterprise, Neelkanth Trading, AMS Powertronic Pvt. Ltd., Aavia Buildtech Pvt. Ltd., Esteem.
15	AMS Powertronic Pvt. Ltd.	• It had received Rs. 325 lacs from the IPO proceeds of the ESTEEM. • It had fund movement with Mayfair Infosolution Pvt. Ltd., Goldline, Amsons Apparels pvt. Ltd., N V Sales Corporation, Aavia Softech pvt. Ltd., Nisha Traders, Shiv Traders, ECO, Aggarwal Traders, Madhukar Dubey, ESTEEM. • Director Name : 1)Sumit Kumar 2) Vinay Kumar • Sumit Kumar is the common director in AMS Powertronic Pvt. Ltd., Nikky Printing Press Pvt. Ltd. & Mayfair Infosolution Pvt. Ltd.

Contribution by Funding Group Entities to the IPO

28. I note that from the graphical representation provided below clearly establishes that the Funding Group Entities have either contributed to the IPO by issuing cheques on behalf of investors or have transferred funds to some other entity which has in turn contributed to the Esteem IPO. I note that in

Esteem Reply, company has neither explained the reasons for accepting the cheques issued by Funding Group Entities nor why allotment to the extent of 23,34,000 shares (i.e. 51.66% shares) out of 45,18,000 were allotted to the entities who had received funds from the company directly/ indirectly, for application in the IPO. I find the acceptance and allotment of shares by Esteem to the Funding Group Entities unusual since it is in clear violation of the IPO norms which require an applicant to pay money from his own account. I note that none of the Funding Group Entities in their reply *viz.* (Avisha Reply, Amsons Reply, Gracious Reply) who are also Noticees in the current adjudication proceedings have advanced any explanation as to why it had subscribed to the Esteem IPO through other applicants.When the SCN has made such strong accusations, I find that in Esteem Reply ought to have offered an explanation for such a misconduct so as to justify the *bonafides* of such transactions, but clearly, they have failed to furnish any explanation regarding the nature of such transactions.



29. It is pertinent to mention here that the *Company* has allotted shares to those applicants whose applications were supported by cheques issued by various third- party funding group entities (and not by the applicants themselves) which was a serious violation of IPO norms. I note that Company hasn't provided any justification whatsoever for its decision to accept cheques from third parties on behalf of a large number of retail applicants, who appeared to have no relationship with the third-party. The

company has avoided this issue by arguing that third-party transactions should not be used to attribute wrongdoing to the company since it has no control over them funding entities. This explanation seems casual, vague, and irresponsible, since the third party funding transactions that were imputed have in fact resulted in the allocation of large numbers of shares under the company's IPO. The onus to prove transactions were genuine commercial transaction was with both the transferor and transferee of funds. In my view, the Company has failed to justify why it received payments directly from third party funding group entities (rather than from the applicants).

30. It is further submitted that that company's financial dealings with Goldline and with all other persons/ entities are purely commercial in nature and have no control on their business activity independently carried by them. The Noticees have made bald assertions and explicitly denied any connection with the Company or with other entities, without showing any credible support for their denial. It is noted that company has simply attempted to dismiss the allegations of connections with other entities by arguing that the fund transfers allegedly taken place in the SCN were commercial dealings, yet no verifiable documents such as balance sheets, invoices have been submitted before me to support the claim of having transferred huge sums of money. In the absence of any plausible explanation offered by these persons/ Noticees. I am bound to conclude that the allegations that these entities were enjoying close connections amongst themselves stand vindicated based on the common factors such as common directorships, common addresses and fund movements etc., observed amongst these Noticees.

31. As per regulation 14(1) of the ICDR Regulations provides that the minimum subscription that needs to be received in an IPO shall be at least 90% of the size of offer of shares being made in such issue. Company has contended that the issue was 100% underwritten and also furnished underwriting agreement. I have carefully perused the contents of the said underwriting agreement dated November 01, 2012 executed between Esteem and Guiness Securities Limited and Guiness Merchant Bankers Pvt Ltd. I find that

Liability of the underwriter is restricted when the applicant would default in the payment or withdraws his application. Further, the agreement was silent for any omnibus provision that provides underwriter was under contractual obligation to subscribe to the entire unsubscribed portion of the IPO, so as to cross the minimum threshold of 90% of the offer size of the IPO. The said clause 2 of the aforesaid underwriting agreement is reproduced hereunder:

"2. Underwriting

On the basis of representations and warranties contained in this Agreement and subject to its terms and conditions, the Underwriter hereby agrees to underwrite and/or procure subscription for the Equity Shares in the manner and on the terms and conditions contained in Section 5 of this Agreement.

……

5. Issue

5.1 Notwithstanding anything contained elsewhere or otherwise in this Agreement, the Company agrees that the maximum number of Equity Shares in the Issue that the Underwriter have to underwrite is 45,00,000 Equity Shares, which is allocated as under:

Name of the Underwriter	*No. of Shares Underwritten*
GMBPL	*37,50,000*
GSL	*7,50,000*

5.2 In the issue, Underwriter shall only be responsible for ensuring completion of the subscription in respect of such applicants, including ensuring full payment of the issue Price in respect of the Equity Shares for which such applications are made, in the manner set forth in this Section.

5.2.1 The default in full and timely payment of the Issue Price in respect of the Equity Shares for which the applicant has placed a application and received allocation in respect of such application; or

5.2.2 The withdrawal of a applicant, in respect of which an allocation of Equity Shares has been made, by the applicant prior to allotment of the Equity Shares subscribed by such applicant;

5.3 The Underwriter shall be liable to discharge its underwriting obligations as follow: The Underwriter will be required for themselves, <u>to the extent of applications procured by them,</u> to make good any default by such applicants." ***(underlines supplied)***

32. In view of the finding in preceding para, it can be clearly seen that the Company has not been able to show how the Underwriting Agreement can

be interpreted as a prima facie presumption that it did not intend to create any plan or scheme to arrange funds for its initial public offering applicants as alleged in the SCN, thus clearing it from the charges of arranging funds with the connivance of connected funded group entities. even though it is assumed that underwriter helped the company in the matter of subscribing against the defaults in making payment by some of the applicants, as an undeniable fact, the Company and its connected entities were involved in providing funding to 51.66% of the total shares allotted. Without such organized efforts by the Company and its connected entities, the IPO of the Company was doomed to fail.

33. I note from comprehensive analysis of the financial transactions that have taken place between the Company and various funding group entities that have neither been disputed nor could be substantiated with any tangible justifiable reasons by the Noticees and additionally looking at the non-response of large number of Noticees to the SCN. There is an overwhelming incidence of probability in support of the allegation of the SCN that the Company and its connected entities engaged in a premediated scheme to fund large numbers of IPO applicants in order to make the IPO successful.

34. I note from Esteem reply that Noticee No. 1 & 2 have not violated provisions of regulations 3 (a), (b), (c), (d), 4(1),4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations and section 12A (a), (b) and (c) of the SEBI Act as they have not carried out any activity on secondary market segment of capital market and therefore the aforesaid provisions are not applicable to them. I find this contention to be vague, evasive and completely baseless as the fact that Esteem did not engage in secondary market segment bears no relevance with respect to the alleged violation by Esteem of the aforesaid provisions. Further the Noticees in their replies viz. Avisha Reply, Amsons Reply and Gracious Reply have placed reliance Hon 'ble Securities Appellate Tribunal order in the matter of R. K. Global v/s SEBI (Appeal no. 158/2008 decided on 16.09.2010), Narendra Ganatra v/s SEBI (Appeal No 47 of 2011 decided on 29.07.2011), Videocon International v/s SEBI (2002) 4 CLJ 402, Parsoli Corporation v/s SEBI (Appeal No 146/2011 decided on 12.08.2011.

In this regard, I find it relevant to refer to the case of ***SEBI vs. Kanaiyalal Baldev Bhai Patel*** (Civil Appeal No. 2595 of 2013), dated September 20, 2017, in which the Apex Court dealt with the definition of "fraud" as given under regulation 2(1) (c) of the PFUTP Regulations. The court *inter alia* held that:

> *"The definition of 'fraud' under clause (c) of regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of the term "fraud"*
>
> *If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities*
>
> *The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".*

i. Regulation 4(1) of the PFUTP Regulations refers to unfair trade practices in securities. I find it appropriate again to rely on the aforesaid judgment, wherein the court held that:

"……Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. <u>In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'.</u> " (emphasis supplied)

ii. Thus, in line with the definition of "fraud" and the ratio of the aforesaid judgement, it is clear that examination of the definition of "fraud" covers under its ambit amongst other things "an act" which would have an "effect of inducement" on another person dealing in securities. Further, regulation 3(c) of the PFUTP Regulations provides that employment of any device, scheme or artifice for fraud is prohibited. In the instant case, Esteem and its Directors in connivance with the funding group entities employed a fraudulent scheme to get the IPO subscribed in a fraudulent manner by directly/ indirectly funding the IPO applicants. The company also diverted the IPO proceeds for objects other than stated in prospectus. Based on the aforesaid discussion, I find that the aforesaid contention is devoid of merit.

35. At this juncture, it is relevant to refer to the case **of *SEBI vs. Kishore Ajmera*** (Civil Appeal No. 2818 of 2008), dated February 23, 2016, wherein the Hon'ble Supreme Court held that:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable / prudent man would adopt to arrive at a conclusion".

Applying the ratio of the aforesaid case to the present facts, I find that strong preponderance of probabilities have emerged to suggest that the Company along with other Funding Group Entities have acted on a pre-conceived scheme with the motive of achieving the requisite minimum number of applications so as to secure listing of equity shares of the Company. I find that in absence of such funding, with or without the underwriting commitment, it would have been difficult for the Company to reach the 90% threshold required in ICDR Regulations as the allotment to the Funding Group Entities itself amounted to 51.66% of the total number of shares allotted.

Deployment of IPO proceeds by Esteem to the connected entities including the Funding Group Entities

36. Moving on to the deployment of IPO proceeds, I note that the prospectus provides that the IPO proceeds would be utilized for the objects stated below as per company letter dated December 25, 2015.

Sr. No.	Particulars	Utilized as on 31/03/2015 (INR in Lakh)
1.	Setting up of shade Net cultivation facility	375.00
2.	Development of farm land for transition to organic farming	564.49
3.	Procurement of farm tools and equipments	29.06
4.	Brand Build and General Corporate Purpose	30.00

5.	Issue Expenses	31.28
6.	Investment in short term, advances	99.67
	Total	1129.50

However in contrast to the aforesaid claims made during the investigation, as stated in the SCN, the Company was found to have transferred almost everything so raised in the IPO into different entities within a few weeks after the IPO was completed. Additionally, as much as INR 5.80 Crore was transferred to a few group entities. During the investigation process, the Company has not responded with an explanation or subsequently no reasoning to explain as to why its submissions are later found to be unsupported by any verifiable evidence and instead found to be a false claim as per the actual funds transfer that has taken place in its accounts post IPO.

37. I Note that from the reply submitted by the company that it had utilized Proceeds towards Development of farm land for transition to organic farming. The Company has claimed to have paid INR 5.60 Crore. In this regard, Company has furnished agreements with four different firms for the purpose of development of portions, by executing exactly identical agreements with each of such four entities, the Company has also filed copies of bank account statements, invoices, ledger to justify the above noted payment of INR 5.60 crore etc. The details of said agreements with respective funds transfer with the 4 entities are tabulated as under:

Details of land development agreements

Sr. no.	Name of the entity	Amount (in INR)	Supporting documents	Dates of transactions
1.	Raj Marketing India	1,84,41,000	Copy of agreement; Copy of invoices; Ledger of the said company in the books of accounts of the *Company*, bank account statement	50 Lakh on 12.10.2012 15 Lakh on 20.10.2012 60 Lakh on January 15, 2013
2.	Garg Traders and Supplies	60.00 Lakh	-do-	60 Lakh on 15.01.2013

3.	S.P. Enterprises	1.00 Crore	-do-	40 Lakh on 19.12.2012 60 Lakh on 15.01.2013
4.	Shiv Traders	2.16 Crore	-do-	17 Lakh on 05.10.2012 50 Lakh on 08.10.2012 50 Lakh on 12.10.2012 39 Lakh on 15.10.2012 60 Lakh on 15.01.2013
Total		**5.60Crore (approx.)**		

38. I note that it is It is evident from a very quick perusal of the aforesaid agreements that they are all un-notarized and were actually signed on the letter head of the Company and not even on stamp paper; moreover, the Company accepted more than 50% of the money raised through certain agreements recorded on a plain, un-stamped, and un-notarized piece of paper, rendering their documents ab initio unenforceable in law. It is also apparent that all four agreements are identically worded. The Company did not take the necessary steps to have these agreements notarized or registered, so that their interests could be protected in case of a disagreement or default from the counter party. Also, it is not clear who is the executant on behalf of the other two parties (Raj Marketing, S P Enterprises). Also, the agreement is executed in the absence of any witness. Therefore these agreements does not have any attribute to be called as valid and lawfully enforceable documents.

39. Further it is also noted from the careful reading of aforesaid agreements that there is contradiction with respect to dates mentioned in agreement. For instance, the agreement with Raj Marketing India Limited, proprietorship firm based in Ghaziabad carries date of execution as April 02, 2012, the *Company* came out with its IPO only in January, 2013. I observe that the said agreement, if was really executed prior to the IPO, should have been mentioned in the disclosures made by the Company in its IPO prospectus. However, the Prospectus filed by the Company does not contain any detail of such an agreement having been executed by the Company, it further stated as "*The*

Company has so far not entered into any technical or financial collaboration agreement". It is essential to note that the aforementioned observation is crucial to calling the Company's bluff as the purpose behind executing the said invalid agreements, i.e. The claim of company to meet the object of land development for organic farming, which is the principal object disclosed in the Prospectus through those invalid unenforceable agreements with the 4 entities, is clearly found to be untrue and flawed.

40. Further, in spite of the Company's claims of having executed agreements of large values, there is no evidence of Board of Directors approval, Board resolutions, or documents granting authorization for the executant of the agreement to act, or an attempt to disclose them to the stock exchange. Additionally, the execution of these agreements is also not supported by any statutory documents nor the Company has demonstrated crucial compliances like approval of layout/Land development plan from local authorities, incorporating such amounts of transfers in the balance sheets, profits/losses arising out of such agreements as required to be mentioned in Company's book of accounts, deduction of tax at source from the payments made to those vendors etc, Moreover, the Company has also failed to produce even the simplest evidence, like a photograph of the land, etc., to show the development undertaken or being undertaken on that land by the developer since the agreements were executed. The key information such as survey numbers etc are clearly missing in aforesaid agreements.

41. I also find that in in prospectus, a reference to the quotation given by Raj Marketing for Land Development at the rate of INR 127 per Sq. Meter, but in the agreement that has been executed for Land development with the same counterparty (total consideration of INR 1,84,18000 for 97.34 Acres/393920 Sq. Meters) at the rate of INR 46.75 per Sq. Meter, it is surprising that price for land development has been shown to have increased multi fold in the IPO documents in a short span of time.

42. The company has obtained substantial financial proceeds from developing farm land for organic production. The transactions account for almost half of the IPO proceeds, which the company has tried to justify by producing

unverifiable documents such as unregistered/unnotarized contracts signed on its letterheads, self-generated invoices and so on. Such documents have no legal validity and cannot be enforced in a court of law. Furthermore, the Company has not been able to produce any documents supporting its claim that the transfers of big sums of money were actually for land development of farm land for transition to organic farming, such as approved development plans, land revenue/property tax payments, audited financial statements showing these transactions. Despite 7 years of the execution of those so-called agreements, the Company has been unable to provide a record of the corresponding revenue earned out of those agreements and payments to various parties or any update on the development of the said land. Even worse, the Company has been unable to identify the respective areas that are actually subject to those fabrication agreements with those 4 entities. The claim of the company that it has spent INR 5.60 Crore on the development of organic farming land stated in its IPO is grossly misleading and lacking any authenticity, as the Company has not been able to furnish even elementary evidentiary material and basic documentary support which could have substantiated the reasoning behind the transfer of such large sums of proceeds.It is evident from the contradictions present in the explanations offered by the Company why these funds have been transferred to those entities cannot be considered legitimate.

43. In my opinion, the aforesaid invalid agreements cannot provide any redress to the Company in responding to such a serious charges made in the SCN about non-utilization - or more appropriately, wrongful utilization - of IPO proceeds. Thus I find it appropriate to conclude that the Company has with respect to the utilization of one of its major objects of the prospectus as otherwise there is no justifiable explanation as to why the Company would present such invalid agreements if not to disguise its pre IPO transactions as post IPO transactions. The attempt to conceal pre IPO transactions as post IPO transactions establishes that in reality the Company has not honestly utilized the IPO proceeds for the object of development of farm land for transition to organic farming.

44. In my view, after thorough examination of the material on record, I am convinced that the Company in collusion with the connected entities devised a scheme to, *firstly,* mobilize the minimum required applications as mandated under the ICDR Regulations, and then *ultimately* disperse IPO proceeds for purposes other than the stated objects in the IPO prospectus to such entities. Noticee nos. 1 to 10 have acted hand in hand to fraudulently list the scrip of the Company and subsequently divert the IPO proceeds raised. Therefore, I hold that Noticee nos. 1 to 10 have violated regulations 3(a),(b),(c),(d) and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.

45. Moving on to the other objects stated in Prospectus, I note that there was no mention about spending of any amount on the stated IPO objects like 'Setting up of Shade Net Cultivation facility', 'Procurement of farm tools and equipment's' and 'brand building', on the contrary, Company in its Prospectus, had claimed that it had a plan to spend INR 3.80 Crore, INR 30.00 Lakh and 80.00 Lakh, respectively, for the aforesaid objects. Also, communication addressed to SEBI during the investigation, the Company had asserted to have already spent INR 3.75 Crore, INR 29.06 Lakh and 30.00 Lakh respectively on the above said three objects. However, from the material available on record, the company has not been able to furnish any evidence of any such expenditure having been incurred under the aforesaid three objects. Hence the claim of the company with respect to the utilization of IPO proceeds on the above stated objects also is found to be untrue and fictitious.

46. I note that in Esteem reply it is contended that the financial dealings of the Company have not been correctly considered and only selected financial dealings of the Company have been considered and therefore, a fresh investigation should be carried out in the present matter. I also note that to support the aforesaid contention, the following orders of whole time members have been referred to by Noticee no. 1 & 2: (i) WTM/PS/14/CFD/DCR-1/JUNE/2014 dated June 12, 2014; (ii) WTM/PS/6/EFD-DRA-1/JUNE/2015 dated June 12, 2015; (iii) WTM/SR/SEBI/EFD/26/05/2016 dated May 12, 2016; and (iv) WTM/SR/SEBI/ISD/18/03/2017 dated March 10, 2017. I have

perused the aforesaid orders. I find that the said orders do not lay down any ratio with respect to fresh investigation or reinvestigation and the same has been ordered on case to case basis. Hence, I find that the aforesaid orders are all distinguishable on facts and are not applicable in the present matter. I also find that the present proceedings have been initiated on strong tangible evidence and no facts have been brought to my consideration which would indicate that during the investigation financial dealings of the Company have not been correctly considered or that only selected financial dealings have been considered. I find that in absence of any specific information or document which would indicate the need of fresh investigation, the said contention is liable to be dismissed.

47. It is submitted in Esteem reply that companies listed on SME segment only wherein as policy of government, there is leniency in comparison to company listed on main board of Stock Exchange. In this regard, it is noted that even though the company is listed on SME segment, it is bound to comply with all listing conditions and applicable rules and regulations under SEBI act and other statues. Thus, the Contention being devoid of any merit, liable to be dismissed.

48. After taking into consideration all facts and evidences of the material available on record, I hold that company has devised a scheme in collusion with funding group entities to achieve minimum subscription and then deployed the proceeds for purposes other than the stated objects in the IPO prospectus to such entities. I conclude that Noticee nos. 1 to 10 have acted collusively to fraudulently list the scrip of the Company and subsequently divert the IPO proceeds raised. Therefore, I hold that Noticee nos. 1 to 10 have violated regulations 3(a),(b),(c),(d) and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.

Issue II: Whether Noticee nos. 1,2 ,11 & 12 sections 12A(a), (b) and (c) of the SEBI Act, regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations and regulation 57(1) of the ICDR Regulations?

49. Before beginning with this issue, it is important to note that violation of sections 12A(a), (b) and (c) of the SEBI Act and regulations 3(a),(b),(c),(d),

and 4(1) of the PFUTP Regulations has already been established against Noticee nos. 1 and 2 in Issue No. 1 above. However, it is pertinent to refer to the provisions of additional violations that are attracted to Noticee nos. 1,2 ,11 & 12 *i.e.,* regulations 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations and regulation 57(1) of the ICDR Regulations. The same are provided below:

i. **PFUTP Regulations**

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a [3][manipulative] fraudulent or an unfair trade practice if it involves [4][any of the following]:—

[5] *(c) inducing any person to subscribe to an issue of the securities for fraudulently securing the minimum subscription to such issue of securities, by advancing or agreeing to advance any money to any other person or through any other means;*

(f) [6][knowingly] publishing or causing to publish or reporting or causing to report by a person dealing in securities any information [6] [relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals,] which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) [7] [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) [6] [knowingly] planting false or misleading news which may induce sale or purchase of securities.

[3] Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.

[4] Substituted vide PFUTP 2018 Amendment Regulations. Before the substitution the words read as: "fraud and may include all or any of the following, namely".

[5] Substituted vide PFUTP 2018 Amendment Regulations. Before the substitution the words read as: "(c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;"

[6] Inserted vide PFUTP 2018 Amendment Regulations

[7] Substituted vide PFUTP 2018 Amendment Regulations. Before the substitution the words read as "an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors"

ii. <u>ICDR Regulations</u>

Manner of disclosures in the offer document.

57. (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

50. I note that that during investigation Esteem had submitted information regarding utilization of IPO proceeds. The details of the proposed utilization provided in the IPO prospectus compared with the IPO proceeds utilization as declared by Esteem as per letter dated December 25, 2015 during investigation is tabulated below:

S.No	Particulars	Proposed (INR in Lakh)	Utilized as on 31/03/2015 (INR in Lakh)
1	Setting up of Shade Net Cultivation facility	380.00	375.00
2	Development of Farm land for transition to Organic Farming	565.00	564.49
3	Procurement of farm tools and equipments	30.00	29.06
4	Brand Building and General Corporate purposes	80.00	30.00
5	Issue Expenses	70.00	31.28
6	Investment in short term, advances	-	99.67
	Total	**1125.00**	**1129.50**

I note that there is glaring discrepancy/contradiction regarding utilization of IPO proceeds, the Company was found to have actually transferred almost the entire proceeds so raised in the IPO to different entities soon after the completion of the IPO, out of which INR 5.80 Crore has also been transferred to a few of the funding group entities, the Company has not provided any explanation or reasoning as to why its submissions made during the investigation were subsequently found to be unsubstantiated by any verifiable evidence, and to be a false claim when compared to actual funds transfers taken place in its accounts post IPO exercise. It is suspicious that all fund transactions were executed by the Company in the period leading up to the IPO. As an example, the Company had projected to have paid Shiv Traders INR 2.16 Crore from the IPO proceeds for land development, however, except for one transaction of INR 60 Lakh, all were executed during October, 2012.

51. I find it suspicious that during investigation despite repeated requests by the investigating authority, Esteem did not submit any evidence to support the utilization of IPO proceeds declared in the table above. As per the company an amount of INR 5.60 Crore has been utilized towards land development agreements, other than advancing short term loans of INR 4.40 Crore. Thus, aggregating to INR 10 Crore. However, As per the records, it is found that the Company has not provided any details with

respect to the transfer of INR 4.84 Crore made to the Goldline and also to various other transactions made after receiving the IPO proceeds. Even if assuming that the submissions of company is true, the amounts of funds transfers as per the claim of the Company in the submissions at the stage of investigation and as per the explanation offered by the Company during the present proceedings do not match at all. Till now the company is unable to furnish any evidence with respect to the expenses incurred towards setting up of net cultivation facility, purchase of tools, brand building etc., towards which the Company had claimed to have spent INR 4.34 Crore, as on March 31, 2015 during the investigation proceedings. I note that on perusal of the bank account statements of Esteem, It was found that it has transferred funds involving large sums of money out of the IPO proceeds in the range in the range of INR 15.50 Lakh to INR 4.84 Crore. The Company had transferred INR 4.84 Crore to the Goldline. However, the company in its reply has merely termed the said transaction as being a commercial transaction while not even declaring if the above amounts transferred to Goldline were in compliance with any of the stated objectives of the IPO. The transaction of INR 4.84 Crore constituted around 43% of the total amount raised by the Company but the irony is Company has not been able to provide any justification for transferring such huge amount. Moreover, the Company has also not been able to produce any supporting documents of other fund transfers like transfer of INR 3.25 Crore to an entity called AMS Powertronics; INR 40 Lakh to another entity viz., Aviva Buildtech; INR 81 Lakh to Mayfair and transfer of INR 15.50 Lakh to Avisha etc. It is relevant to mention here that all these transactions took place immediately within 11 days after the IPO exercise was over. Hence, The failure on part of the Company to provide any supporting documentation to support the transfer of funds to various entities along with the evasive and misleading explanations put forth speaks volumes about its unscrupulous misconduct. Thus, I find it appropriate to hold that the unexplained transfers of IPO proceeds coupled with the fact that no satisfactory explanation is forthcoming from any of the notices in support of these transfers further supports that the Noticees devised & successfully implemented a scheme to fund, both directly and indirectly, almost half of IPO subscriptions by a large number of IPO applicants with the collusion of other funding Noticees.

52. I note that regulation 57(1) of the ICDR Regulations clearly provides that the offer document is required to contain all material disclosures to enable the applicant to take an informed decision. The term “material” has not been defined in the aforesaid regulation, however, in general parlance, it can be mean anything which is likely to have an impact on the investors’ investment decision. I find that if it was clearly stated in the IPO prospectus, that the Company had taken certain loans and the proceeds of the IPO would be utilized for repaying the same or for providing loans or providing advance against objects of the issue, it would have enabled the investors to take an informed decision. I find that non-disclosure of the aforesaid purposes in objects of the issue shows that the disclosures made in the prospectus lacked in material particulars and did not amount to true, fair and adequate disclosures by the Company thereby attracting regulations 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations and resulting in violation of regulation 57(1) of the ICDR Regulations. Further, I find that the transfers to the Funding Group Entities under the garb of loans and advances further strengthens the allegation that the Funding Group Entities had funded the IPO, as it seems logical that after the IPO process was complete, the Company returned the money received by it for the IPO to the Funding Group Entities.

53. Coming to the directors of the Company, I note from the Esteem prospectus that Noticee nos. 2, 11 and 12 were the directors of Esteem who had signed the prospectus. Noticee no. 1 was the promoter and executive director of the Company. I note that as per the information available on the ministry of corporate affairs website, Noticee no. 2 is still the director of the Company. Further, Noticees nos. 11 and 12 were non-executive and independent directors of esteem. The role of the aforesaid directors has been discussed in detail in the following paragraphs.

(i) **<u>Noticee No. 2</u>**: I Note that Noticee no. 2 has not disputed his directorship with the Company nor has claimed to be ignorant of the charges made against the Company. It is also important to mention that in the present proceeding, it is Noticee no. 2 who has represented the Company before me. With respect to Noticee No. 2, Prospectus states that *"Mr. Brij Kishore Sabharwal, aged 59 years, is the Promoter and Director of our Company. He holds bachelor degree in law and possess post graduate diploma. He has 41 years of experience in various field of finance and commodities market. He was the Chairman and Director of ANMI (Association of National Exchanges Members of India). He is a national president of CPAI (Commodities Participants' Association of India). He has also participated in various conferences & seminars, as a speaker, on securities market all over the country. He is responsible for overall planning & management of our Company. He has been on the Board of Directors of our Company since March, 2011."* I note that is obvious that Noticee no.2 was in control of the Company as well as were responsible for the day to day affairs of the Company. Further, the fact that Noticee no.2 has been on the board of directors of the Company since 2011 indicates that they have associated with the Company for a substantial time to know of any loans taken by the Company and the use of IPO proceeds by the Company.

(ii) **<u>Noticee no. 11</u>**: I find that the Noticee no. 11 in its reply has denied all the allegations levelled in the SCN against him. He inter alia contended that he was not involved in the day to day affairs and management of company. He was not involved in the financial matters or financial transactions of Esteem. With respect to Noticee No. 11, Prospectus states that *"Mr. Neeraj Mittal, aged 43 years is an Independent Director of our Company. He is a law graduate and also an associate member of Institute of Companies Secretary of India. He has 20 years of experience in the field of general law, corporate law, securities market and finance. He has been on the Board of our Company since March, 2012."* The data of annual report available in the public domain for the FYs 2012-2013 and 2013-2014 is tabulated below:

FY	Number of board meetings held by the Company	Number of board meetings attended by Noticee no.11	Attendance at annual general meeting of the Company by Noticee no. 11	Other positions held by Noticee no. 11 in the Company
2012-2013	18	10	Absent	Chairman of audit committee. Member of Remuneration Committee Member of shareholder/ Investors grievance committee.
2013-2014	*NA	NA	NA	NA

**Mr. Neeraj Mittal resigned w.e.f. 22nd April, 2013*

a. I Note from the Annual Report of year 2012-13 which shows (ii) Noticee no. 11 present in 10 out of 18 Board Meetings of the Company in the year 2012-13. However, Noticee No. 11 has disputed aforesaid fact and denies having attended all meetings of the Board of Directors or Committees of the Board including the Audit Committee. It is pertinent to note that Noticee No. 11 (Neeraj Mittal) was made Chairman of Audit committee, Member of Remuneration Committee and Member of shareholder/ Investors grievance committee on Board Meeting held on October 16, 2012. However, it was found in Board Minutes that Mr. Neeraj Mittal did not attended said Board Meeting. I find that the data regarding attendance of board meetings in annual report is false and erroneous. In this regard, I note from the Board Meeting Minutes provided by the company for the relevant year 2012-13. I find that Noticee No. 11 was not present in any of the Board Meetings and leave of absence was granted to him for the Board Meetings wherein resolutions related to IPO of esteem was taken up. The company could not provide Minutes of Audit Committee and Extra ordinary general Meeting. In the absence of any evidence to the contrary, I am inclined to give benefit of doubt to Noticee 11 regarding the above.

b. Here I would like to refer section 27 of the Securities and Exchange Board of India Act, 1992 which provides for the offences by companies and reads in relevant part as under:
Offences by companies.
   (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence

c. Noticee has placed reliance on *Hon'ble Securities Appellate Tribunal ("SAT") order in the matter of Sayanti Sen v. Securities and Exchange Board of India, Hon'ble Supreme Court in Municipal Corporation of Delhi v. Ram Kishan Rohtagi, Hon'ble SAT in judgment of Rahul H. Shah vs. Securities and Exchange Board of India, Hon'ble Securities Appellate Tribunal in the matter of P.G. Electroplast Ltd. and in the Judgment of Hon'ble Madras High Court in Agritech Hatcheries & Food Ltd. vs. Valuable Steels India Ltd.* I have carefully perused the aforesaid orders. I agree with the reasoning given by the Noticee No. 11. I find it relevant to refer judgment of Hon'ble SAT in **Rahul H. Shah and Nimisha H. Shah vs Securities And Exchange Board Of India** on 15 September, 2004

"*13. Section 27 of the Act states that a person is deemed to be guilty of an offence on the condition that he was in charge and responsible to the Company. The proviso to Section 27 states that "Provided that nothing contained in this sub section shall render such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence "*

22.Therefore having held that the Appellants have not had anything to do with the day-to-day affairs of the Company, as admitted by SEBI, in its Impugned Order, we do not think that the Appellant can be fastened with any liability"

d. Furthermore, I take recourse to the Order of **Hon'ble SAT in Sayanti Sen v SEBI on August 09, 2019 (Appeal 163 of 2018),** wherein it was held that where the Company is the offender, vicarious liability of the Directors cannot be imputed automatically.

e. In view of the above, since Noticee No.11 was not involved in the day to day affairs of the Company and did not possess any decision making authority . The Noticee cannot be held responsible for any of the acts of the company, as he was neither in management nor was in charge of the affairs of the Company. From the records it can be seen Noticee No.11 has not attended any board Meeting. Moreover, there is nothing on record to indicate that he had attended Meeting of Audit committee and Extra ordinary general meeting. Hence, I find that there is no evidence to establish that Noticee No. 11 contravened the provisions related to PFUTP and ICDR.

(iii) **<u>Noticee no. 12:</u>** I find that the Noticee no. 12 in its reply has denied all the allegations levelled in the SCN against him. He inter alia contended that he was not involved in the overseeing day to day affairs and management of company, banking operations and financial matters of the company. The Noticee no. 12 also submits that he was not in any way connected with the funding entities. In this regard, my observations are recorded herein. With respect to Noticee No. 12, Prospectus states that*" Mr. Vinod Kumar Garg, aged 47 years, is an Independent Director of our Company. He is a commerce graduate and also member of Institute of Companies Secretary of India. He has 25 years of experience in the field of corporate laws and finance. As an Independent Director of our Company with corporate acumen he brings value addition to our Company. He has been on the Board of our Company since March, 2011."* The data of annual report available in the public domain for the FYs 2012-2013 and 2013-2014 is tabulated below:

FY	**Number of board meetings held by the Company**	**Number of board meetings attended by Noticee no. 12**	**Attendance at annual general meeting of the Company by Noticee no. 12**	**Other positions held by Noticee no. 12 in the Company**
2012-2013	18	9	Present	Chairman of Remuneration Committee Chairman of Shareholders / Investors Grievance Committee Member of Audit committee.
2013-2014	8	6	Present	Chairman of audit committee. Member of Shareholders / Investors Grievance Committee Member of Nomination and Remuneration Committee

a. I Note from the Minutes of Board Meetings 2012-13 which shows active involvement of Noticee no. 12 in the affairs of the company. The Noticee No.12 has attended all the Board Meeting in the year 2012-13. It is pertinent to note that Noticee No. 12 (Vinod Kumar Garg) was made Chairman of Remuneration Committee, Chairman of Shareholders / Investors Grievance Committee and Member of Audit Committee on board Meeting held on October 16, 2012. Noticee no. 12 has also attended Board Meeting held on October 16, 2012 where the resolution relating to issue of equity shares by way of IPO was passed. It indicates that Noticee no. 12 had deemed knowledge of the contents of the prospectus and the manner in which the IPO proceeds were being utilized he occupied most important positions in Board and committees of the Company during his entire tenure. Noticee No. 12 has signed prospectus of the company. I find that after being associated with the Company in the capacity of an independent director before and during the IPO of the company, the Noticee no. 12 cannot plead ignorance regarding the affairs of the Company. Thus, I find it unlikely that the Noticee no. 12 was unaware about regarding material events happening in the Company.

b. I find that the "Risk Factors" section on page 9 of the prospectus *inter alia* states that the deployment of funds is at the discretion of the board of directors and it shall be monitored by the audit committee. It is important to highlight that Noticee no. 12 was member of the audit committee during his entire tenure with the Company *i.e*, for FY 2012-2013. Clause 49 of the Listing Agreement provides that the role of audit committee *inter alia* includes *"5A. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public* *or rights issue, and making appropriate recommendations to the Board to take up steps in this matter."* Clause 49 also provides that the audit committee has the power to *"investigate any activity within its terms of reference"* and *"to seek information from any employee".*

c. As noted from the Minutes of Board meeting placed on record of Year 2012-13. Noticee No.12 had attended all the Board Meetings of FY 2012-13. As an active Member of the Board, Noticee no. 12 had powers to investigate and/or seek information from employees regarding the loans and the utilization of the IPO proceeds, however, the Noticee no. 12 has not shown any steps taken by him to discharge the duties for example, the Noticee no. 12 could have made inquiries regarding loan taken from the Funding Group Entities, its repayment from the IPO proceeds. I find that if the Noticee no. 12 had performed his duties with skill, diligence and care, he would have known that the IPO proceeds were not being utilized in the manner provided in the prospectus.

54. In view of the above, I do not find any merit in the contentions raised by Noticee no. 12. I find that Noticee no. 12 has failed to carry out his responsibility as an independent director. I find the omission to exercise due diligence on the part of Noticee no. 12 itself falls into the definition of "fraud" as regulation 2(1)(c)(5) of the PFUTP Regulations provides that "fraud" includes *"a representation made in a reckless and careless manner whether it be true or false".* Noticee no. 12 by virtue of occupying positions in the Board and various committees of Board of directors was required to take steps to ensure that the Company utilized the IPO proceeds as per objects stated in the prospectus. However, as per record, no inquiries were made or objections were raised by Noticee no. 12 with respect to using the IPO proceeds for repayment of loans or giving loans, which reflects their recklessness and negligence in performing their duties.

55. I find it relevant to refer to the case of ***Official Liquidator, Supreme Bank Ltd. vs. P.A. Tendolkar (Dead) by Lrs. and Ors.*** (Civil Appeal Nos. 195-197, 234 and 300 of 1967), dated January 19, 1973, wherein the Apex Court 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. If he does so he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company."*

56. I find that even though a company is a legal entity, it cannot act by itself, it can only act through its directors. Therefore, the board of directors are individually and collectively responsible for the conduct of the business of a company and any non-compliance resulting thereto. As brought out in the preceding paragraphs, the Company has not stated in the prospectus that it has taken certain loans which it would pay out of the IPO proceeds or that it would be giving loans or advances against the objects of the issue. Thus, it is my conclusion that Noticee no. 2 being the promoter and executive director of the Company who were responsible for the day to day functioning of the Company was fully aware that the disclosures made by them in the prospectus do not represent the true and fair view of the affairs of the Company.

57. Considering the above, I have no hesitation in arriving at the conclusion that Noticee nos. 2 & 12 being the directors of the Company were not only signatories to the prospectus which contained untrue statements and/or

failed to make material disclosures but were also an active participant in the Board Meetings where resolutions relating to IPO and utilization of IPO proceeds was taken up and hence are liable for fraud.

58. In conclusion, I find that Esteem along with its connected entities devised a scheme to achieve minimum subscription of IPO of Esteem, and funds were transferred back to the entities which funded the IPO. In light of the inconsistent responses of the Company coupled with the deceiving nature of the explanation furnished *vide* the Esteem reply and Noticee no. 12 reply, I find that the Company and its directors has been unsuccessful in justifying the reasons for transferring IPO proceeds to the connected entities which funded the IPO. In light of the aforesaid paragraphs, I find that Noticee Nos. 1,2 and 12 have violated sections 12A(a),(b) and (c) of the SEBI Act, regulations 3(a),(b),(c),(d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations and regulation 57(1) of the ICDR Regulations.

Issue III: Whether Noticee no. 1 has violated clause 45 and 46 of the listing agreement for SMEs read with section 21 of the SCRA?

59. Before proceeding further it is relevant to note that clause 45 and 46 of the listing agreement for SME provides that the issuer has to furnish on a half yearly basis, a statement to the stock exchange, indicating the variation between the projected utilization of funds made by it in its prospectus and the actual utilization of funds. Further, it is also relevant to refer to the provisions of section 21 of SCRA, which has been provided below:

Conditions for listing.

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

60. The aforesaid violations make the Company liable for penalty under section 23E of SCRA. In this regard, the Hon'ble SAT in the matter of ***Suzlon***

Energy Ltd. and Anr. vs. SEBI (Appeal No. 201 of 2018) dated May 03, 2021 has held the following:

"Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E….." (emphasis supplied)

I note that a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 17 and 18 of the aforesaid order. Further, I note that an appeal has been filed before the Hon'ble Supreme Court against the aforesaid order *vide* civil appeal no. 4741 of 2021. I note that the aforesaid stay application and the appeal is pending. It is important to highlight that *vide* orders in the matter of ***M/s NDTV vs. SEBI*** (Appeal no. 358 of 2015) dated August 07, 2019, and ***Oasis Securities Ltd. & Ors. Vs. SEBI*** (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement. The limited purpose of going into the issue of violation of listing agreement by the Company is to determine if the Company has violated the provisions of the listing agreement, and if yes, to impose penalty, however, the enforcement of penalty with respect to the violation under section 23E of SCRA shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court.

61. Coming to merits of case, it is alleged in the SCN that BSE vide e-mail dated September 27, 2016, informed SEBI that Esteem has made disclosure of IPO proceeds utilization as on March 31, 2013 wherein it has claimed that it had utilized Rs. 515.59 lacs for development of farm land for transition of organic farming, Rs. 31.28 lacs for issue expenses, Rs. 5.06 lacs Procurement of farm tools and equipment and remaining Rs. 577.57 lacs have been given for short term advances. As observed in the preceding paragraphs (Issue I), the Company has given inconsistent responses with respect to the funds it claims it has spent on development of farm land for transition to organic farming. As previously noted, the Company did not utilize the IPO proceeds as per the objects stated in prospectus and also made wrong disclosure with respect to the utilization of the IPO proceeds to the stock exchange with intention to mislead the stock exchange

62. It is also alleged in the SCN that the half yearly result disclosure required to be made disclosing utilization of IPO proceeds was only submitted once by the Company and no statement was submitted to the stock exchange with respect to the remaining unused IPO proceeds. I find that the aforesaid allegation has not been addressed in the Esteem Reply and therefore, placing reliance on the ratio of decision of Hon'ble SAT in ***Classic Credit Ltd.*** *(supra),* I conclude that the aforesaid allegation has been accepted by the Company.

63. In view of the above, I have no doubt in concluding that not only Esteem did not utilize the IPO proceeds as per the objects stated in prospectus and gave incorrect disclosures with respect to the IPO proceeds utilization it has also not provided the requisite half yearly disclosure with respect to the unused IPO proceeds to the stock exchange, thereby violating clause 45 and 46 of the listing agreement for SMEs read with section 21 of SCRA.

Issue IV: Whether Noticee nos. 1, 2 and 3 have violated section 11(3) and 11C(3) of the SEBI Act?

64. Before dealing with this issue, I find it is important to refer to the provisions relevant to this issue:

Section 11(3) of the SEBI Act

Notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub- section (2A), the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely: —

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;

(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);

(v) issuing commissions for the examination of witnesses or documents.

Section 11(C)(3) of SEBI Act

The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

65. With respect to Noticee No. 1, I note from summons dated December 15, 2015, Noticee No. 1 was required to furnish the data relating to IPO proceeds by December 25, 2015. *Vide* the aforementioned summons, Noticee No. 1 was also informed that if they fail to furnish the documents as required, they would be held liable for monetary penalty under section 15A(a) of the SEBI Act and also that criminal prosecution may be initiated against them under section 11C(6) of the SEBI Act. *vide* letter dated December 28, 2015, a reminder to reply to summons by January 07, 2016 was also sent. Esteem replied without supporting documents on 29.01.2016 in hard copy and email on 16.01.2016.

66. With respect to Noticee No. 2, *vide* summons dated May 17, 2015, Noticee No. 2 was required to appear in person before the Investigating Authority on May 30, 2015.However Noticee No. 2 did not appear on the scheduled date. Subsequently, reminders of summons were also sent dated 31.05.2016 and 15.06.2016. It is noted from records, Noticee No. 2 failed to appear before Investigating Authority despite giving sufficient opportunities.

67. With respect to Noticee No. 3, *vide* summons dated March 11, 2016, Noticee No. 3 was required to furnish details of receipt of Rs. 239.60 lacs from IPO proceeds of Esteem by March 18, 2016. *vide* letter dated March 18, 2016, Noticee No. 3 filed for extension for production of documents upto 25.4.2016. However, it is noted from records no reply to summons has been filed by Noticee No. 3.

<u>Summons issued to Noticee no. 1 & 2</u>

(i) Esteem Bio Food Processing Limited came out with an IPO and raised Rs. 1125 lacs by way of issue of 45,00,000equity shares.

(ii) Following table shows the proposed utilization of IPO proceeds as mentioned in prospectus.

Sr. no.	*Particulars*	*Amount (INR in Lakh)*
1	*Setting up of Shade Net Cultivation facility*	*380.00*
2	*Development of Farm land for transition to Organic Farming*	*565.00*
3	*Procurement of farm tools and equipments*	*30.00*
4	*Brand Building and General Corporate purposes*	*80.00*
5	*Issue Expenses*	*70.00*
	Total	*1125.00*

(iii) In this regard, Provide the actual utilization of IPO proceeds with all supporting documents such as receipts, agreements and bank statements etc.

(iv) Name, designation, address and PAN numbers of all the directors/partners/proprietors of the company as on the date of submission of the above information to SEBI.

Summons issued to Noticee no. 3

(i) It has been observed from the bank account of Esteem that it had transferred Rs. 20 lacs on 08/02/2013, Rs. 25 lacs on 12/02/2013 , Rs.36.6 lacs on 14/02/2013, Rs. 158 lacs on 15/02/2013 from the IPO proceeds. In this regard, provide the following information with supporting documents:

(a) Purpose for which the amount was transferred by Esteem

(b) End use of the money received by you from Esteem.

(ii) Name, designation, address and PAN numbers of all the directors/partners/proprietors of the company as on the date of submission of the above information to SEBI.

68. In the present context, I find it is necessary to refer to the order of Hon'ble SAT in the matter of ***Rich Capital & Financial Services Limited and Mr. Shashwat Agarwal vs. SEBI*** (Appeal No. 51 of 2013) dated October 22, 2013, wherein it held that:

"We note that requisite information and relevant records are pre-requites for a meaningful investigation. In the absence of cooperation by the concerned company, the SEBI cannot move an inch. Therefore, every

company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If companies are allowed to take the statutory summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins."

69. I would like to also refer to the order of Hon'ble SAT in the matter of ***Asian Films Production and Distribution Ltd. vs. SEBI (earlier known as K.C. Bokadia Films)*** (Appeal No.203 of 2010) dated January 19, 2011, wherein it has held that:

"Non-compliance with the summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market."

70. Since Noticee No. 3 have not furnished any reply to the SCN or availed any hearing opportunity, I find that there is no justification on record explaining the reasons for failure of Noticee No.3 to furnish the requisite data to the investigating authority. Hence, I hold that Noticee no.3 have violated the provisions of section 11(3) and 11(C)(3) of the SEBI Act.

71. With respect to Noticee nos. 1 and 2, I note from records that during the course of investigation, Esteem was issued summons dated December 15, 2015 to furnish information with respect to the utilization of the IPO proceeds as per the objects stated in the prospectus along with supporting

documents such as receipts, agreements, bank statements *etc*, by December 25, 2015. Pursuant to the aforesaid summons, a reminder letter was also sent dated December 28, 2015. I further note from the records that:

(a) Esteem *vide* letter dated December 25, 2016, provided information with respect to the utilization of IPO proceeds as on March 31, 2015, however, it did not provide any supporting documents with respect to the same which prevented the investigating authority from testing the veracity of the information provided.

(b) *Vide* emails sent on January 18, 2016 and January 29, 2016, SEBI again sought supporting documents with respect to the IPO proceeds utilization. In the aforesaid emails, it was specifically mentioned that if the Company fails to produce the supporting documents then it will be treated as non-compliance of summons and action may be initiated for the same under the SEBI Act.

(c) *Vide* letter dated January 23, 2016, Esteem sought extension of time to reply, however no documents were submitted regarding the IPO proceeds utilization.

(d) *Vide* email sent on February 23, 2016, clarification was sought with respect to the diversion of the IPO proceeds., however Esteem, *vide* email sent on March 04, 2016 sought extension to reply citing the following reason *"team is deeply involved in the ongoing cultivation and harvesting season lasting till second week of april…permit us to provide our comments by 20 april 2016".* The said request was acceded to and extension was granted till April 20, 2016.

(e) *Vide* email sent on May 05, 2016, Esteem responded with respect to the fund movements out of IPO proceeds, however, again no supporting documents were provided.

72. I find that it is evident from the various correspondences noted above that the Company and Noticee No. 2, who was the director of the Company

during the investigation period have delayed the investigation process as much as they can. Even after seeking multiple extension for furnishing documents, they are not able to provide complete supporting documents. If the Company would have submitted the required information and documents it would have enabled the investigating authority to draw precise conclusions in the matter. Therefore, I conclude that the contention in the Esteem Reply that the investigation was not hampered is wholly flawed. Further, I find that it is apparent from the records that due to the non-cooperation and non-compliance by the Company, the investigation was stalled as the first summons was issued on December 15, 2015. I find that timely submission of information is important for the purpose of effective investigation proceedings and non-cooperation by an entity can be detrimental to the interest of investors and the securities market on account of hindrance or delay in the investigation.

73. In view of the above, I conclude that Noticee nos. 1,2 and 3, have failed to comply to the summons issued to it and have therefore fallen foul of sections 11(3) and 11(C)(3) of the SEBI Act.

Issue V: If the answer to issues provided in (I) to (IV) above are in affirmative, whether the Noticees are liable for monetary penalty under sections 15A(a), 15HA, 15HB of the SEBI Act and section 23E of the SCRA? If so, what quantum of monetary penalty should be imposed on the Noticees?

74. I find that the connection between the entities and the fund flows from the Funding Group Entities leaves no room to conclude that the Funding Group Entities have indirectly subscribed to the Esteem IPO to achieve minimum subscription. The aforesaid conclusion is further strengthened by the fact that Esteem has used its IPO proceeds for fulfilling its payment obligation to the Funding Group Entities and not towards utilizing the IPO proceeds towards the objects stated in prospectus.

75. In the present issue, it is relevant to refer to the decision of the Apex Court in the matter of ***SEBI vs Shri Ram Mutual Fund*** (Appeal Civil 9523-9524

of 2003) dated May 23, 2006, wherein it held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established*". Thus, it is clear in view of my findings recorded above that the Company was able to achieve the threshold of minimum subscriptions in its IPO only through the fraudulent scheme deployed in connivance with the other Noticees. I am of the view that the aforesaid scheming by the Noticees needs to be dealt in a strict manner and warrants imposition of monetary penalty under sections 15A(a), 15HA, 15HB of the SEBI Act and section 23E of the SCRA, the text of which is provided below:

i. <u>SEBI Act</u>

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a) to furnish any document, return or report to the Board, fails to furnish the same [8][or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to a penalty [9][which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees];

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

*[9]Substituted for the words "of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014 ("**Securities 2014 Amendment 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 [10][which shall not* *be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher].*

[10]Substituted for the words "twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher" by the Securities 2014 Amendment Act.

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be [11][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

[11]Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws Amendment Act.

ii. SCRA

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund [12][or real estate investment trust or infrastructure investment trust or alternative investment fund], fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be [13][liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.]

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

[13]Substituted for the words "liable to a penalty not exceeding twenty-five crore rupees" by the Securities 2014 Amendment Act.

76. While determining the quantum of monetary penalty under the aforesaid sections of the SEBI Act and SCRA, I have considered the factors stipulated in section 15J of the SEBI Act and section 23J of SCRA, which provides that while adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors:

(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.

77. I find that it is not possible from the material available on record to quantify the amount of disproportionate gain or unfair advantage resulting from the conduct of the Noticees or the consequent loss caused to investors as a result of the default of the Noticees. Further, with respect to the repetitive nature of the default, the orders that have been passed against few of the Noticees has been tabulated below:

Noticee	**Order details**	**Violation**
Goldline International Finvest Ltd. (Noticee no.3)	Order in the matter of IPO of Channel Nine Entertainment Limited dated December 22, 2020.	Section 12A (a), (b) and (c) of SEBI Act read with regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations.
	Order in the matter of Eco Friendly Food Processing Limited dated December 22, 2020.	
	Order in the matter of Esteem Bio Organic Food Processing Limited dated December 22, 2020.	
	Adjudication Order in respect of Goldline International Finvest Limited in the matter of Channel Nine Entertainment Ltd dated May 22, 2019.	Sections 11(3) and 11C(3) of the SEBI Act.
Madhukar Dubey and his proprietorship firms *viz.* N V Sales Corporation, Magnum	Order in the matter of IPO of Channel Nine Entertainment Limited dated December 22, 2020.	Section 12A (a), (b) and (c) of SEBI Act read with regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations.
	Order in the matter of Eco Friendly Food Processing Limited dated December 22, 2020.	

Noticee	Order details	Violation
Industrial and Alliance Traders (Noticee no.5)	Order in the matter of Esteem Bio Organic Food Processing Limited dated December 22, 2020.	
Satendra Kumar and his proprietorship firm *viz.* Nisha Traders (Noticee no.4)	Order in the matter of IPO of Channel Nine Entertainment Limited dated December 22, 2020.	Section 12A (a), (b) and (c) of SEBI Act read with regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations.
	Order in the matter of Eco Friendly Food Processing Limited dated December 22, 2020.	
	Order in the matter of Esteem Bio Organic Food Processing Limited dated December 22, 2020.	
Avisha Credit Capital Pvt. Ltd. (Noticee no.7)	Order in the matter of IPO of Channel Nine Entertainment Limited dated December 22, 2020.	Section 12A (a), (b) and (c) of SEBI Act read with regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations.
	Order in the matter of Eco Friendly Food Processing Limited dated December 22, 2020.	
	Order in the matter of Esteem Bio Organic Food Processing Limited dated December 22, 2020.	

78. I am aware of the fact that the default in question pertains to the year 2012-13, and since then considerable amount of time has passed. Further, the Hon'ble SAT in ***P.G Electroplast Ltd. vs. SEBI*** (Appeal No. 281 of 2017), dated August 02, 2019, has held that an order passed in corresponding proceedings before the whole time member should be factored in while fixing the quantum of penalty. In this regard, I note that, a separate and parallel proceeding was initiated against the Noticees under the provisions of sections 11(1), 11(4) and 11B (1) of the SEBI Act under the same facts pursuant to which the December 2020 Order was passed. *Vide* the December 2020 Order, the whole time member has *inter alia* passed the following directions with respect to the Noticees in the present matter:

(i) The Company is restrained from accessing the securities market by issuing prospectus, offer document or advertisement soliciting money from the public in any manner for 8 years.

(ii) Notice no. 2 being promoter of the Company are directed to make an open offer to acquire the shares of the Company from public shareholders.

(iii) Noticee no. 2 is restrained from holding post of director, any managerial position or associating themselves with any listed company and any public company which intends to raise money from the market for 3 years.

(iv) The Noticees, as mentioned below are hereby restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever manner, for the period specified in their respective columns:

Sr. No.	Name of Entity	Debarred vide interim order	Period of debarment
1	Esteem Bio Organic Food Processing Ltd.	Yes	Till date of this order
3	Brij Kishore Sabharwal	Yes	Till date of this order
4	Goldline International Finvest Ltd.	Yes	Till date of this order
5	Satendra Kumar & its Proprietorship firm viz. Nisha Traders, Bright Securities	Yes	Till date of this order
6	Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, A One Furniture	Yes	Till date of this order
7	Ram Prakash & its Proprietorship firm viz. Khan Enterprise	Yes	Till date of this order
8	Aavia Softech Pvt. Ltd.	No	1 Year
9	Mayfair Infosolution Pvt. Ltd.	Yes	Till date of this order
10	Avisha Credit capital Pvt. Ltd.	Yes	Till date of this order
11	Nikky Printing Press Pvt. Ltd.	No	1 Year
12	Neel Kanth Trading Co.	No	1 Year
14	Amsons Apparels Pvt. Ltd.	No	1 Year
15	Gracious Software Pvt. Ltd.	No	1 Year

F. ORDER

79. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act and section 23-I of SCRA read with rule 5 of the SEBI Adjudication Rules and SCRA Adjudication Rules, I hereby impose penalty on the Noticees as follows:

S. No	Noticee	Violation	Penal provisions	Penalty (in Rs.)
1.	Esteem Bio Organic Food Processing Ltd.	Regulations 3(a), (b), (c), (d), and 4(1), 4(2) (c), 4(2) (f), 4 (2) (k) and 4 (2) (r) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.	Section 15HA of the SEBI Act.	5,00,000
		Section 11 (3) and 11 C(3) of the SEBI Act.	Section 15A(a) of the SEBI Act.	2,00,000
		Regulation 14(1) and Regulation 57(1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009	Section 15HB of the SEBI Act	5,00,000
		Clause 45 and 46 of the Listing agreement for SMEs read with section 21 of the SCRA, 1956	Section 23E of the SCRA, 1956*	5,00,000
2.	Brij Kishore Sabharwal	Regulations 3(a), (b), (c), (d), and 4(1), 4(2) (c), 4(2) (f), 4 (2) (k) and 4 (2) (r) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.	Section 15HA of the SEBI Act.	5,00,000
		Section 11 (3) and 11 C(3) of the SEBI Act.	Section 15A(a) of the SEBI Act.	2,00,000
		Regulation 57(1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009	Section 15HB of the SEBI Act	1,00,000
3.	Goldline International Finvest Ltd.	Regulations 3(a), (b), (c), (d), and 4(1), of the PFUTP Regulations read with section	Section 15HA of the SEBI Act.	5,00,000

S. No	Noticee	Violation	Penal provisions	Penalty (in Rs.)
		12A(a), (b) and (c) of the SEBI Act.		
		Section 11 (3) and 11 C(3) of the SEBI Act.	Section 15A(a) of the SEBI Act.	2,00,000
4.	Satendra Kumar & its Proprietorship firm viz. Nisha Traders, Bright Securities	Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.	Section 15HA of the SEBI Act.	5,00,000
5.	Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, A One Furniture	Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.	Section 15HA of the SEBI Act.	5,00,000
6.	Ram Prakash & its Proprietorship firm viz. Khan Enterprise	Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.	Section 15HA of the SEBI Act.	5,00,000
7.	Avisha Credit capital Pvt. Ltd.	Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.	Section 15HA of the SEBI Act.	5,00,000
8.	Neel Kanth Trading Co.	Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.	Section 15HA of the SEBI Act.	5,00,000
9.	Amsons Apparels Pvt. Ltd.	Regulations 3(a), (b), (c), (d), 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.	Section 15HA of the SEBI Act.	5,00,000
10.	Gracious Software Pvt. Ltd.	Regulations 3(a), (b), (c), (d), 4(1) of the PFUTP Regulations read with section	Section 15HA of the SEBI Act.	5,00,000

S. No	Noticee	Violation	Penal provisions	Penalty (in Rs.)
		12A(a), (b) and (c) of the SEBI Act.		
11.	Vinod Kumar Garg	Regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.	Section 15HA of the SEBI Act.	5,00,000
		Regulation 57(1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009	Section 15HB of the SEBI Act	1,00,000

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

80. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

81. The Noticees shall forward the said demand draft or the details/ confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, , SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

82. In terms of rule 6 of the SEBI Adjudication Rules and SCRA Adjudication Rules, copies of this order are sent to the Noticees and SEBI.

Date: April 28, 2022	**PRASANTA MAHAPATRA**
Place: Mumbai	**ADJUDICATING OFFICER**