

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SBM/JR/2021-22/12372-12375]

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

In respect of

Topwell Properties P Ltd. (PAN: AADCT8403C)
Shivkhori Construction P Ltd. (PAN: AAPCS7850L)
Limestone Properties P Ltd. (PAN: AACCL0133G)

Address

95A, C.R. Avenue, 1st Floor, Kolkata -700073

Comfort Dealcom P Ltd. (PAN: AADCC7549Q)
33, C.R. Avenue, 9th Floor, Kolkata- 700012

In the matter of

Mystic Electronics Ltd (earlier known as Pearl Electronics Ltd).

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated investigation into the trading/dealings in the scrip of Mystic Electronics Ltd (hereinafter referred to as '**Company**'/'**MEL**') regarding allegations of some entities indulging in an act of omission amounting to manipulation in the scrip price of MEL by repeatedly executing the trades in the scrip above the Last Traded Price (hereinafter referred to as "**LTP**") during the period March 19, 2013 to March 31, 2015 (hereinafter referred to as the "**investigation period**"). It is alleged that ten Kolkata based companies/entities, including Topwell Properties P Ltd. (hereinafter referred to as "**Noticee no. 1**"), Shivkhori

Construction P Ltd. (hereinafter referred to as “**Noticee no. 2**”), Limestone Properties P Ltd. (hereinafter referred to as “**Noticee no. 3**”) and Comfort Dealcom P Ltd. (hereinafter referred to as “**Noticee no. 4**”) have traded extensively in the scrip of MEL during the investigation period and for the purpose of the present proceeding, Noticee nos 1, 2, 3 & 4 are hereinafter also collectively referred to as ‘**Noticees**’. It is alleged that the Noticees have consistently placed the orders in the scrip of MEL at prices above the LTP, which also caused substantial increase in the scrip price of MEL during the investigation period.

2. It is alleged that the ten Kolkata based entities, including the Noticees were among the ‘connected entities’ who were observed to be linked to the two main ‘operators’ viz. Shri Devesh Upadhyay and Shri Praveen Agarwal who allegedly controlled the ten entities, including the Noticees. It is observed from the investigations that the above ‘Operators’ were also allegedly assisted by other persons namely, Shri Deepak Patwari and Shri Jagadish Purohit. Therefore, it is alleged that the trading/dealings in the scrip of MEL by the ‘connected entities’, including the Noticees have resulted in the violation of the provisions of Regulations 3(a) (b), (c), (d) and Regulations 4(1), 4(2)(a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”).
3. In view of the above reasons, adjudication proceedings have been initiated against the Noticees under the provisions of section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’).

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide Order dated July 4, 2016, the undersigned was appointed as the Adjudicating Officer in the matter under section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) to inquire into and adjudge under the provisions of section 15HA of the SEBI Act the aforementioned alleged violations leveled against the Noticees. Pursuant to the transfer of the undersigned to another department of SEBI, Dr. Anitha Anoop was appointed

as the Adjudicating Officer in the matter, vide an order dated March 18, 2019. Subsequently, in view of the transfer of Dr. Anitha Anoop, the undersigned was once again appointed as the Adjudicating Officer in the matter, vide communique dated November 3, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice dated December 20, 2016 (hereinafter referred to as '**SCN**') was issued to the Noticees under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticees and penalty be not imposed on them under the provisions of section 15HA of the SEBI Act for their alleged violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) and (e) of the PFUTP Regulations while trading/dealing in the scrip of MEL during the above mentioned investigation period.
6. MEL was incorporated on August 2011 under the Scheme of Demerger, which was sanctioned by the Hon'ble Bombay High Court. The Electronics Division of Nouveau Global Ventures Ltd (referred to as 'Nouveau') was demerged into Mystic Electronics Ltd (earlier known as Pearl Electronics Limited) and Mukta Agriculture Ltd. As per the scheme of arrangement, 56.79 fully paid up equity shares of Rs. 10/- each of MEL were issued and allotted to the shareholders of Nouveau for every 100 fully paid up equity shares of Rs. 10/- each held by them in Nouveau. Accordingly, 1,05,36,248 equity shares of MEL were allotted to the shareholders of Nouveau. Subsequently, the shares of MEL were listed on the Bombay Stock Exchange (BSE) on March 19, 2013. It was observed that a stock split was also announced by the company during August 2014 (in the ratio of 10:1). The entire investigation period is divided into three patches wherein during the first patch, which was the pre-split period, the scrip price of MEL witnessed an increase from Rs. 5.55 on March 19, 2013 to close at Rs. 495 on August 13, 2014. During the second patch, which was the post-split period, the scrip of MEL witnessed increase from Rs. 49.5 on August 14, 2014 to close at Rs. 64 on October 13, 2014. Thereafter, during the third patch period i.e. from October 29, 2014 to March 31, 2015, the scrip price

of MEL started declining and finally closed at Rs. 8.2 on March 31, 2015.

7. It is alleged that a scheme was devised by MEL and its promoters, the 'operators', and the 'connected entities', including the Noticees, by allotting the shares of MEL on preferential allotment basis to various entities. It is noted that MEL had made a preferential allotment of 92,30,000 shares of Rs. 10 each to 48 entities (who were not the promoters of MEL), on June 07, 2013, at a price of Rs 60.74/- per equity share and raised an amount of Rs. 56.06 crore. The shares issued through the above preferential allotment was under lock-in period till June 06, 2014 and post the lock-in period, some of the allottees in the preferential allotment sold the shares of the company and made profit. As per the findings of the investigation, preferential allotment proceeds to the tune of Rs. 23 crore was allegedly transferred by MEL to the account of the 'connected entities' who then traded in the scrip during the investigation period. Investigation has brought out that the 'connected entities', including the Noticees, who were based at Kolkata and who had traded in the scrip of MEL during the investigation period had increased the scrip price of MEL by consistently placing the buy orders in the scrip at a price higher than the last traded price i.e LTP and also by absorbing the sell orders that were available in the market/system, which were placed at a higher price than the LTP. Further, the investigation brought out that once the scrip price of MEL reached the desired level, some of the preferential allottees exited at a higher price and made substantial gain. From the investigation report, it is observed that 14 entities (who were some of the allottees in the preferential allotment of MEL) sold 86,71,828 shares of MEL during the investigation period and had allegedly made profit. Pursuant to the investigations, it is alleged that the 'connected entities', including the Noticees have increased the scrip price of MEL by repeatedly placing the buy orders in the scrip at a price higher than the last traded price and also by absorbing the sell orders in MEL that were available in the market.
8. It is alleged that the buy orders in the scrip of MEL were placed by the 'connected entities', including the Noticees with the support of the 'operators' viz. Shri Praveen Agarwal and Shri Devesh Upadhyay, which were placed at a higher price

than the Last Traded Price (LTP). It is alleged that once the scrip price of MEL reached the desired level, some of the preferential allottees (i.e the 14 allottees who were allotted shares in the preferential allotment) exited by selling the shares and these allottees allegedly made a profit of Rs. 33.9 crore. It is alleged that majority of the shares that were sold by the preferential allottees were purchased by the 'connected entities', including the Noticees. Thus, it is alleged that a scheme has been devised by the 'connected entities', including the Noticees and the 'operators', in order to book illegitimate profit/losses for the purpose of generation of bogus LTCG. In this regard, I observe that the concerned Department of SEBI i.e IVD had also referred the matter to the Income Tax Department for appropriate examination at their end, as deemed fit.

9. I find that the SCN issued to the Noticees had returned undelivered with the remark "not known/ not found". In the interest of natural justice, an opportunity of personal hearing was provided to the Noticees on July 2, 2019 (for Noticee no. 2) and July 3, 2019 (for Noticee no. 4), vide letter dated April 30, 2019. The letter was served on Noticee no. 1, 2, 3. However, no one appeared on behalf of the Noticees on the scheduled date of hearing. In terms of the adjudication rules, attempt was also made to affix a copy of the SCN and the hearing notice dated April 30, 2019 at the last known address of Noticee no. 4. However, the affixture of the notice/letters was not successful. The letters/notices returned with the remark "company not found". Thereafter, the email addresses of the Noticees were obtained from the website of the Ministry of Corporate Affairs and an opportunity of personal hearing was provided to the Noticees on August 19, 2020 (Noticee no. 4), vide email dated August 4, 2020. However, no one appeared on behalf of the Noticees on the stipulated date of hearing.
10. Another opportunity of personal hearing was provided to the Noticees on September 9, 2020 (for Noticee nos. 2 and 3) and September 10, 2020 (for Noticee nos. 1 and 4), vide email dated August 19, 2020. Once again, no one appeared on behalf of the Noticees on the stipulated date of hearing. Thereafter, pursuant to my appointment as the Adjudicating Officer in the matter, another opportunity of personal hearing was provided to the Noticees on January 20,

2021 (for Noticee no. 1) and January 21, 2021 (for Noticee nos. 2, 3, 4). However, the letter/notice could not be affixed at the last known address of the Noticees. Thereafter, in terms of the adjudication rules, a public notice was issued in the newspapers viz. the Times of India, Kolkata edition and Bartaman on April 9, 2021 wherein the Noticees were intimated about the fact that a copy of the SCN issued to them has been uploaded on the website of SEBI and they may also appear for a personal hearing before the Adjudicating Officer on April 30, 2021. However, it is on record that no one appeared on behalf of the Noticees on the stipulated date of hearing.

11. I note that sufficient opportunities have been provided to the Noticees to represent their case by way of reply to the SCN and also by way of personal hearing. However, it is a matter of record that Noticees failed to furnish their reply and also failed to appear for the personal hearing fixed on the stipulated dates despite the service of the SCN/letters through newspaper publication. Therefore, in the absence of reply from the Noticees and/or their failure to make personal appearance, I am inclined to presume that the Noticees have nothing to offer in their defense and therefore, they have admitted to the allegations levelled against them in the SCN. In this context, Hon'ble SAT in the matter of Sanjay Kumar Tayal vs SEBI, vide Order dated February 11, 2014 held 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 to the charges levelled against them in the show cause notice"*
12. Therefore, in view of the above observations and in line with Rule 4 of the adjudication rules, I am compelled to proceed further in the matter against the Noticees on the basis of the facts/ material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the charges levelled against the Noticees in the SCN and the material / documents made available during the proceeding, including the investigation report and annexures. As stated above, Noticees have neither

furnished their reply to the SCN nor appeared for the personal hearing during the course of the proceeding. It is alleged that Noticees have repeatedly placed orders in the scrip of MEL at price over and above the LTP in the scrip and thereby they were instrumental in significantly increasing the scrip price of MEL.

14. Before moving forward, it is pertinent to refer to the relevant provisions of the PFUTP Regulations allegedly violated by the Noticees, which are mentioned below:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
 - (a) indulging in an act which creates false or misleading appearance of trading in the securities market;*
 - (e) any act or omission amounting to manipulation of the price of a scrip*

15. From the material/documents made available, I find that the scrip of MEL witnessed unusual fluctuation in the price and volume during the investigation period. During the investigation, it was observed that during the Patch 1 period, 28,31,939 shares were traded in the scrip of MEL with an average daily volume of 8,504 shares. The price of the scrip moved from Rs 5.55 and it touched a high of Rs 610/- on June 6, 2014 i.e the scrip price of MEL increased by 110 times. It was observed that 10 Kolkata based companies i.e the 'connected entities'

in the context of the present proceeding, which also includes the Noticees have contributed to Rs 1383.15 of the Net LTP and Rs 2491.2 of the positive market LTP in the scrip of MEL during the investigation period (i.e patch 1), which is 88% & 89% of the 'connected entities' Net LTP and positive LTP contribution. The ten Kolkata based 'connected entities', including the Noticees who traded significantly in the scrip of MEL during the investigation period have allegedly placed repeated buy orders in the scrip of MEL at a price above the LTP and caused substantial increase in the scrip price of MEL during the investigation period. It is alleged that the ten 'connected entities' viz. Function Financial Consultants P Ltd, Helpful Investment Advisory P Ltd, Topwell Properties P Ltd i.e Noticee no. 1, Manifold Vinimay P Ltd, Shivkhori Construction P Ltd i.e Noticee no. 2, Amanat Suppliers P Ltd, Lagan Dealtrade P Ltd, Limestone Properties P Ltd i.e Noticee no. 3, Comfort Dealcom P Ltd i.e Noticee no. 4 and Mankind Vintrade P Ltd were operated by S/Shri Praveen Agarwal and Devesh Upadhyay (who, as already stated, were allegedly mentioned as the 'operators' in the investigation report). As already discussed above, the financials and fundamentals of MEL did not support the sudden increase in the scrip price of MEL. The financial results of MEL for the Financial Years ended 2013, 2014 and 2015 are as follows:

Description	Year Ended (Rs. In million)		
	31-March 2013	31-March 2014	31-March 2015
Revenue	689.19	238.99	16.94
Expenditure	-688.69	-235.83	-8.25
Net Profit	0.34	2.17	6.01
EPS (in Rs.)	0.11	0.12	0.03

16. From the above, it can be seen that the increase in the scrip price of MEL was not supported by the fundamentals as the company had registered negligible profits during the investigation period. There was also no major corporate

announcement/developments that were made by the company during the investigation period other than the announcements made on financial results, preferential allotment, and the stock split. Therefore, no major corporate announcements were observed which could support such price rise in the scrip of MEL during the investigation period.

17. Based on the price movement and the stock split of MEL (10:1 ratio w.e.f. August 14, 2014), the entire investigation period was divided into three patches, details of which are as under :--

Patch I	Pre-Stock Split Price Rise	March 19, 2013 to August 13, 2014
Patch II	Post Stock Split Price Rise	August 14, 2014 to October 28, 2014
Patch III	Price Fall	October 29, 2014 to March 31, 2015

18. The price volume data in the scrip of MEL on BSE during the investigation period is as under:-

Patches	Period of investigation		Open	High	Low	Close	Avg. Vol.
I – Price Rise Split	19/03/2013 – 13/08/2014	Price	5.55	610	5.55	495	8504
		Volume	1	121875	1	5138	
II – Price Rise- Post Split	14/08/2014 – 28/10/2014	Price	49.5	68.2	40.9	64	220448
		Volume	200	477250	20	31201	
III – Price Fall	29/10/2014 – 31/03/2015	Price	67.95	68	8.2	8.2	313355
		Volume	139806	4330100	1	43204	

19. As already mentioned in the preceding paras, MEL had made a preferential allotment of 92,30,000 shares of Rs.10 each to 48 entities (who were not

belonging to the promoter/promoter group of MEL), on June 07, 2013, at a price of Rs. 60.74/- per equity share and had raised an amount of Rs. 56.06 Crore. From the information provided by MEL during the course of investigation, it is observed that MEL transferred Rs. 23 crore received through the preferential allotment to various entities, details of which are mentioned as under:

Name of the entities to whom funds were transferred by MEL	Operator Name	Amount transferred (Rs. in crore)
Wonder Procon P Ltd.	Devesh Upadhyay	5
Visible Real Estate Ventures P. Ltd.	Devesh Upadhyay	5
Blossom Dealcom P Ltd.	Devesh Upadhyay	1.5
Hemlata Vinimay P Ltd.	Devesh Upadhyay	1.75
PS IT Infrastructure Services Limited	Sajjan Kedia	7.5
JMD Telefilms Industries	Jagadish Purohit	1.5
Nouveau Global Ventures	Promoter entity	0.21

20. From the records, it is observed that there were 12 promoters of MEL viz. 7 promoter entities, viz., Attribute Shares and Securities P Ltd., Forever Flourishing Finance and Investment, Golden Meadows Export Limited, Kashish Multitrade P Ltd., Kasturi Overseas P Ltd., Mumbadevi Finance Invest. Co. P Ltd and Navyug Telefilms P Ltd. and 5 individual promoters, viz., Kishan Khadaria, Asha Khadaria, Mohit Khadaria, Sushila Khadaria and Mohini Khadaria. Further, from the website of MCA, it is observed that the shares of the above promoter companies were held by some unlisted entities located at Kolkata. On perusal of the director details of these unlisted entities from the MCA website, it is observed that these entities were the outfits of the 'operators' namely, Shri Devesh Upadhyay and Shri Praveen Agarwal along with other persons viz. Shri Jagdish Purohit and Shri. Deepak Patwari .

21. I find from the investigation report that none of the entities mentioned in the Table at
In the matter of Mystic Electronics Ltd.

para 19 above (i.e entities who had allegedly received Rs 23 crores from MEL) had traded in the scrip of MEL during the investigation period. It is however alleged in the investigation report and in the SCN that the preferential allotment proceeds to the tune of Rs 23 crores have been transferred to the account of 'connected entities', including the Noticees, who in turn have traded in the scrip of MEL during the investigation period. In this regard, I have perused the investigation report and the annexures made available and I find that there is nothing on record, either in the investigation report or in the SCN, to corroborate the finding/observation that the above amount of Rs 23 crores which were transferred to the account of the 'connected entities', including the Noticees were in turn utilized by them to trade in the shares of MEL during the investigation period.

22. It is observed from the investigation report that Shri Devesh Upadhyay, Shri Praveen Agrawal (i.e the 'Operators') along with Shri Deepak Patwari have in their individual statement/submissions made to the Office of Income Tax, Kolkata mentioned that they were in the business of providing accommodation entries through different "Bogus Companies" under their control. It was further mentioned by the above persons in their statement made to the IT Authorities that during the investigation period, a total of 1629 entities have traded in the scrip, out of which 90 entities were observed to be connected to them i.e connected to the 'operators' and Shri Deepak Patwari.
23. It is also observed during the investigation that during the Patch I period, 28,31,939 shares of MEL were traded with an average daily volume of 8,500 shares. The scrip price of MEL moved from Rs. 5.55 and touched a high of Rs. 610 (06/06/2014) i.e. scrip price of MEL witnessed increase by 110 times. During the price rise patch, on the buy side, 60 connected entities had contributed to Rs. 2777.80 to the positive LTP as compared to the market positive LTP of Rs. 5,876. The contribution of these 60 connected entities is given below:

Particulars	Net LTP			Positive LTP			Negative LTP			Zero LTP		+ve LTP to Mkt +ve LTP (in %)
	Net LTP(in Rs.)	Total Traded Qty	No of trades	Positive LTP (in Rs.)	Total Traded Qty	No. of trades	Negative LTP (in Rs.)	Total Traded Qty	No. of trades	Total Traded Qty	No. of trades	
Connected entities	1550.1	1144294	2642	2777.8	183344	434	-1227.7	71672	315	889278	1893	47.20%
Market	489.45	2831939	9283	5876	581006	1124	-5386.5	279709	895	1970224	7263	100%

24. I find that the 10 Kolkata based 'connected entities', including the Noticees have contributed to Rs. 1,383.15 of the Net LTP and Rs. 2,491.2 of the Positive Market LTP, which is 88% and 89% of the 'connected entities' Net LTP and Positive LTP contribution in the scrip of MEL. Five out of the above mentioned ten 'connected entities' were the entities/companies/outfits which were allegedly controlled by the 'operator' i.e Shri Praveen Agarwal and the other five entities/companies were allegedly operated by Shri Devesh Upadhyaya. The details of the contribution of the Top 10 'connected entities', including the Noticees in the price movement of MEL are mentioned as under :-

Client name	Entities of Operator	Net LTP			Positive LTP			Negative LTP			Zero LTP		% of +ve LTP to Total Mkt +ve LTP
		Net LTP (in Rs.)	Trade d Qty	No of Trade s	Post. LTP (In Rs)	Trade d Qty +ve	No of Trade s	Negative LTP (in Rs.)	Trade d Qty - Ve	No of Trade s	Zero LTP Traded qty	No of trade s	
Function Financial Consultants Pvt Ltd	Praveen Agarwal	492.15	56248	301	803.55	17671	93	-311.4	6362	76	32215	132	13.68
Helpful Investment Advisory Pvt Ltd	Praveen Agarwal	333.75	37956	262	750.35	9557	89	-416.6	5194	71	23205	102	12.77
Topwell Properties Pvt Ltd	Praveen Agarwal	218.65	95261	437	449.5	7071	62	-230.85	9032	57	79158	318	7.65
Manifold Vinimay Pvt Ltd	Devesh Upadhyaya	81	29000	33	84.65	12316	23	-3.65	605	15	16079	373	1.44
Shivkhori Construction Pvt Ltd	Praveen Agarwal	77.9	57131	121	100.75	981	29	-24.85	1856	8	54294	84	1.75
Amanat Suppliers Pvt Ltd	Devesh Upadhyaya	48.3	17500	18	63.2	13575	11	-14.9	950	5	2975	17	1.08
Lagan Dealtrade Pvt Ltd	Devesh Upadhyaya	45.4	82175	77	52.5	24822	9	-7.1	4283	5	53070	4	0.89
Limestone Properties Pvt Ltd	Praveen Agarwal	31.15	122639	411	104	1524	18	-72.85	5735	12	115380	47	1.77
Comfort Dealcom Pvt Ltd	Devesh Upadhyaya	27.85	13600	28	46.7	3649	11	-18.85	1407	5	8544	12	0.8
Mankind Vintrade Pvt Ltd	Devesh Upadhyaya	27	5000	5	34	825	1	-7	350	2	3825	2	0.58
Total		1383.2	516510	1693	2491.2	91991	346	-1108.05	35774	256	388745	1091	42.41

25. I find that during the Patch 1 period, the scrip price of MEL witnessed substantial movement from Rs. 5.55 and it touched a high of Rs. 610 (06/06/2014) i.e. the scrip price of MEL increased by 110 times during this period. The top 10 'connected entities', including the Noticees have significantly contributed towards the positive LTP of Rs. 2,491.2 (positive LTP) out of the total positive market LTP of Rs. 5,875.95 during the patch I period, which is 42.41% of the total positive market LTP. I find that the Noticees were among the largest contributors to the positive LTP during the investigation period, which is also evident from the data mentioned in the above Table. For example, in 62 trades, Noticee no. 1 contributed to 7.65% of positive LTP to total market positive LTP; in 29 trades, Noticee no. 2 contributed to 1.75% of the positive LTP to total market positive LTP; in 18 trades, Noticee no. 3 contributed to positive LTP resulting in 1.77% of the positive LTP to total market positive LTP and in 11 trades Noticee no. 4 contributed to 10.8% of positive LTP to total market positive LTP. While it is noted that the 10

‘connected entities’ including the Noticees contributed to 42.41% of the total market positive LTP during the investigation period, it is observed that the contribution of the Noticees alone was 28.22% of the total positive contribution of the ten ‘connected entities’.

26. From the investigation report and the analysis carried out w.r.t LTP in the scrip of MEL, I find that the ‘connected entities’, including the Noticees contributed significantly to the price rise in the scrip during the Patch I period by repeatedly placing the buy orders in the scrip of MEL at a higher price than the last traded price. I observe that the top 10 ‘connected entities’, including the Noticees had carried out 346 trades during the patch 1 period out of which in 283 trades, the sell orders were placed first in the scrip. I find that the ‘connected entities’, including the Noticees then placed the buy orders and absorbed the existing sell orders and thereby increased the scrip price of MEL. It is observed during the price rise period (pre-split) that on 135 trading days (out of a total of 326 trading days), the daily average volume in the scrip was 750 shares and only 5 trades were carried out on an average per day in the scrip during this period. Therefore, during this period when the scrip witnessed low interest in terms of number of trades and volume traded, the ‘connected entities’, including the Noticees repeatedly placed orders in MEL at a price higher than the last traded price with a view to manipulate the price of the scrip. The above trading pattern of the ‘connected entities’, including the Noticees clearly shows the manipulative intent on the part of the Noticees.
27. From the trading pattern, I find that the buy orders were being placed by the connected entities significantly above the last traded price; the variance from the LTP was between Rs. 28.9 and Rs. 56.9, which was 7.28% and 10.3% higher than the LTP. Such trades were being executed by the ‘connected entities’ including the Noticees during the period when the average traded volume in the scrip was only 750 shares.
28. It is observed from the trading pattern that the sell orders in the scrip of MEL were coming at prices higher than the LTP first, and Noticees were placing the buy orders significantly above the LTP. As stated above, such trades were being executed by the ‘connected entities’, including the Noticees during the period when the average traded volume in the scrip of MEL was only 750 shares. Therefore, I conclude that the trading in the scrip of MEL by the Noticees during the investigation period had a large impact on the price

movement which was witnessed in the scrip during the patch I period. Further, the manner in which the Noticees consistently placed the orders in the scrip of MEL above the LTP clearly shows their malafide intentions and there were no justifications for continuously placing the orders above the LTP during the patch I period.

29. As already mentioned, the 'connected entities', including the Noticees were contributing to the price rise with their buy orders which were repeatedly placed above the LTP even though the fundamentals of the company did not justify such trades. Further, with the volumes being low in the scrip, the scrip was amenable to large directional moves on the strength of the orders placed by the 'connected entities', including the Noticees. In the instant matter, as already mentioned, the Noticees have not filed any reply and/or made personal appearance and therefore, I have to presume and conclude that they have nothing to offer in their defense. It is observed that the trading in the scrip of MEL by the 'connected entities' including the Noticees increased the scrip price substantially and once the scrip price of MEL reached the desired level, the preferential allottees exited and made substantial gains. Clearly, the above trading pattern in the scrip of MEL by the Noticees by repeatedly placing the buy trades substantially above the LTP cannot be considered as a normal rational behavior and such trades were executed by the Noticees only with the intention of manipulating the scrip price of MEL.
30. I find that the trading pattern in the scrip of MEL by the Noticees showed a concerted pattern of repeatedly placing the buy orders in the scrip at a price higher than the LTP with a view to manipulate the scrip price of MEL. Further, it cannot be ignored that the Noticees put together were among the largest contributors to the positive LTP in the scrip during the investigation period, details of which are already discussed in para 25. In this context, it is pertinent to mention that Hon'ble SAT, in the matter of Saumil Bhavnagari vs SEBI, in its order dated March 21, 2014, while discussing the trades done by the appellant at a rate higher than LTP held that *".....Such trades undoubtedly have a potential of raising the price of the scrip by sending a wrong signal to the gullible investors about the activity or price hike in the scrip of the company."*
31. I also observe that Noticee nos. 1, 2 and 3 shared common registered office address at 33, C.R. Avenue, 9th Floor, Kolkata 700012. The 3 entities were allegedly

connected/operated by the same person/operator i.e Praveen Agarwal and the email address of Noticee no. 1 and 2 were also the same i.e. sunnigh01@yahoo.co.in. From the website of Ministry of Corporate Affairs, it is observed that Shri Devi Prasad Pal is a common director on the Board of Noticee nos. 1, 2 and 3 and Shri Chiranjit Mahanta is a director on the Board of Noticee nos. 1 and 3. I observe that Noticee nos 1, 2 and 3 were incorporated in Kolkata and Noticee nos. 1 and 2 were in fact incorporated on the same date i.e August 10, 2010. Therefore, it is abundantly clear that the Noticee nos. 1, 2 and 3 were connected to each other and had acted in concert by repeatedly placing the buy orders in the scrip of MEL at a rate higher than the LTP. As regards Noticee no. 4, it is observed that the said entity was operated by Shri Devesh Upadhyay. From the trading pattern, it is observed that Noticee no 4 had also adopted the same modus operandi followed by other Noticees i.e Noticee nos. 1, 2 and 3 by placing buy orders at a rate higher than LTP and had contributed to the price rise in the scrip of MEL during the investigation period.

32. In the present matter, I also note that, in exercise of its powers conferred under sections 11(1), 11(4) & 11 B of the SEBI Act, an order dated June 26, 2020 was passed by the Whole Time Member, SEBI in the matter of MEL and 14 entities, including the Noticees, wherein, inter alia, the following observations were made:-

“In view of the above, I hold that the repeated buy trades substantially above the last traded price cannot be considered as a normal rational behavior and such trades were executed by the Noticees with the intention of manipulating the price of the Scrip.

I, therefore, hold that the trades of the Noticees 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 in the scrip of Mystic during patch 1 would attract Regulations 3 (a), (b), (c), (d), 4(1) and 4(2)(e) of FUTP 2003.”

33. I observe that the Noticees have also not furnished any reply to the SCN which was issued to them in terms of the above mentioned 11(1), 11(4) and 11 B proceeding initiated against them under the SEBI Act. The Noticees also did not appear for the personal hearing before the WTM, SEBI. I note that Noticee nos. 8, 10, 13 & 14 which have been mentioned in the aforementioned order of WTM - SEBI are also the Noticees in the context of the present adjudication proceeding. Therefore, on the basis of independent assessment of facts and circumstances of the case and the material made available on record and the allegations levelled against the Noticees in the SCN, I am

also in agreement with the conclusions drawn by the WTM, SEBI against the Noticees in the above mentioned Order. In view of the above observations, I hold that Noticees have violated the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2) (e) of the PFUTP Regulations.

34. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant....."*.

35. As the above violations of the provisions of law are established against the Noticees, they are liable for monetary penalty under section 15HA of the SEBI Act, which reads as under:

15HA Penalty for fraudulent and unfair trade practices.

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

36. While determining the quantum of penalty under section 15 HA of the SEBI Act, it is important to consider the factors mentioned in section 15J of the SEBI Act, which read as under:-

Section 15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) *the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) *the repetitive nature of the default.*

37. I find that the investigation report has not brought out any observations on the disproportionate gain or unfair advantage made by the Noticees as a result of their trading in the scrip of MEL. The investigation report has also not brought out any observations

w.r.t any loss caused to investors as a result of the trades carried out by the Noticees in the scrip of MEL. I note that the 'connected entities', including the Noticees have in an orchestrated and focused manner managed to increase the scrip price of MEL by repeatedly placing the buy orders above the LTP. Such trading by the Noticees in an unbridled manner could potentially cause damage to the investors and also to the market at large. From the records, I also observe that the default by the Noticees are repetitive as they were constantly placing the orders above the LTP on the trading days during the investigation period.

ORDER

38. After taking into consideration the facts and circumstances of the case, the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a total penalty of Rs 5,00,000/- (Rupees Five Lakh only) on the Noticees viz. Topwell Properties P Ltd., Shivkhori Construction P Ltd., Limestone Properties P Ltd. and Comfort Dealcom P Ltd. in terms of the provisions of section 15HA of the SEBI Act for their violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) and (e) of PFUTP Regulations. The Noticees are jointly and severally liable to pay the penalty.
39. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action - IV [**EFD 1-DRA-4**] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	

In which payment is made for	Penalty
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OR

40. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
41. In terms of Rule 6 of the Adjudication Rules, copies of the order are sent to the Noticees viz. Topwell Properties P Ltd., Shivkhori Construction P Ltd., Limestone Properties P Ltd. and Comfort Dealcom P Ltd. and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: June 29, 2021

SURESH B MENON
ADJUDICATING OFFICER