BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/KS/VC/2019-20/5692-5696)

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

In respect of:

1. **Aplaya Creations Ltd.**
   (PAN: AAACG1479J)
2. **Shri Ramawtar Gupta**
   (PAN: AGEPG2765Q)
3. **Shri Pramod Kumar Gupta**
   (PAN: ABRPG4589Q)
4. **Maheswari Financial Services Pvt. Ltd.**
   (PAN: AAACM9185B)
5. **Vemuri Finvest Pvt. Ltd.**
   (PAN: AAACV3615M)

In the matter of

Aplaya Creations Ltd.

FACTS OF THE CASE

1. Based on a reference received from the Principal Director of Income Tax (Investigation), Kolkata, Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of Aplaya Creations Ltd. (hereinafter referred to as '**ACL**'/ '**Noticee 1**'/'**Company**'). The focus of the investigation was to ascertain whether there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter

referred to as “**SEBI Act**”) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) by certain entities in the scrip of ACL during the period April 17, 2014 to July 31, 2015 (hereinafter referred to as “**Investigation Period**”).

2. ACL provides consultancy services in the educational and training sectors in India and internationally. The company offers its services through online and instruction-led, web based, and computer based training for and on behalf of schools, universities, individuals and libraries, as well as corporations. The company was formerly known as Eins Edutech Limited and had changed its name to ACL in April, 2015. The company was incorporated in 1983. The scrip was listed at Bombay Stock Exchange (**BSE**) w.e.f January 14, 1985.

3. Further, as per the disclosures available on BSE website, on March 20, 2013, Westfield Apparels Pvt. Ltd. (hereinafter referred to as ‘**Westfield**’) became a Promoter on acquisition of 1,76,450 shares (65.35% of share capital) from Shri Sanjay Salunkhe (ex-promoter of the company) vide share purchase agreement dated December 29, 2012.

4. On the basis of investigation conducted by SEBI for the transactions in the scrip of ACL, it is alleged that ACL along with Mr. Ramawtar Gupta, Managing Director of ACL (hereinafter referred to as ‘**Noticee 2**’), Mr. Pramod Kumar Gupta, Director and Chief Financial Officer of ACL (hereinafter referred to as ‘**Noticee 3**’), Maheswari Financial Services Pvt. Ltd. (hereinafter referred to as ‘**Noticee 4**’) and Vemuri Finvest Pvt. Ltd. (hereinafter referred to as ‘**Noticee 5**’ and hereinafter collectively referred to as ‘**Noticees**’) had violated the provisions of Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a) & (e) of PFUTP Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer, vide Order dated May 31, 2017 under Section 19 read with Section 15-I(1) 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 alleged violations of the relevant provisions of PFUTP Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

6. A Show Cause Notice ref. SEBI/EAD-12/KS/MKG/25487/2017 dated October 17, 2017 (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 held against them and why penalty, if any, should not be imposed on them under Section 15HA of the SEBI Act for alleged violation of the relevant provisions of law.

7. The details in respect of alleged violation by the Noticees are as given below:

    a. *Investigation Authority SEBI observed that during the investigation period, the shares of ACL were traded for an average volume of 70,123 shares per trading day and a total volume of 2,17,38,040 shares in 23,088 trades for a total of 310 days. Prior to the Investigation Period, the scrip had traded only on three days during September 19, 2005 to April 16, 2014. During the Investigation period, price of the scrip increased from Rs. 18/- (opening price) to Rs. 490/- (high price).*

    b. *From the shareholding pattern available on the BSE website for quarter ending March 2013, prior to the first preferential allotment, shareholding of the company was observed to be 2,70,000 shares. On May 02, 2013, ACL made preferential allotment of 67,30,000 shares at Rs. 15/- to 47 entities other than Promoters thereby increasing the shareholding of the company to 70,00,000 shares. These shares were under lock-in up to May 01, 2014.*

    c. *On September 13, 2013, ACL made preferential allotment of 73,80,000 shares at Rs. 15/- to one Promoter (Westfield Apparels Private Limited – 12,00,000 shares) and 46 entities other than Promoters (61,80,000 shares) thereby increasing the shareholding of the company to 1,43,80,000 shares. The shares allotted to Promoter group were under lock-in up to October 14, 2016. The shares allotted to other entities were under lock-in till October 14, 2014.*

    d. *On an analysis of the KYC, off-market transfers and details on MCA website a Group of 18 buyers and 2 sellers (total 20 entities –herein after referred as "Group-1") was identified which was also identified to be connected to company.*

e. *Following inter-se relationship is alleged among the Group 1 entities as well as company promoters, directors-*

Table - 1

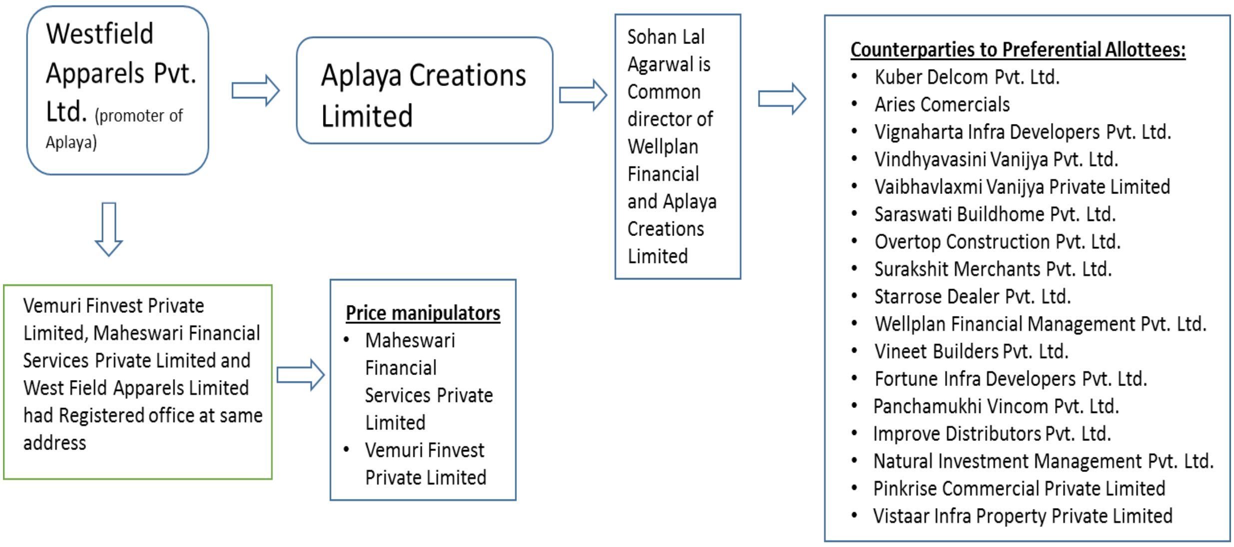
S. No.	***Name of the Entity***	***Basis of Connection***
1	*Kuber Dealcom Private Limited (AAECK5111B)*	*1. Surendra Sharma (DIN: 3127194) is common director in Kuber Dealcom Private Limited and Vighnaharta Infra Developers Private Limited* *2. Common Phone Number (Ph: **9331110151**) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited.*
2	*Aries Commercials (AAVFA6230F)*	*1. Common Phone Number (Ph: 9330234518) with Aries Commercials, Overtop Construction Private Limited and Starrose Dealer Private Limited.*
3	*Vighnaharta Infra Developers Private Limited (AADCV4831G)*	*1. Surendra Sharma (DIN: 3127194) is commom director in Kuber Dealcom Private Limited and Vighnaharta Infra Developers Private Limited* *2. Common Phone Number (Ph: **9331110151**) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited*
4	*Vindyavasini Agency Private Limited (AADCV6070D)*	*1. Common Phone Number (Ph: **9331110151**) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited.* *2. Vivek Gupta (DIN: 5305054) and Somya Bansal (DIN: 6379237) are common directors in Vineet Builders Private Limited and Star Rose Dealer Private Limited and Vindyavasini Agency Private Limited*
5	*Saraswati Buildhome Private Limited (AAOCS4115M)*	*1. Common Phone Number (Ph: **9331110151**) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited*
6	*Vaibhavlaxmi Vanijya Private Limited (AACCV7461K)*	*1. Common Phone Number (Ph: **9331110151**) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited.*

		2. Ranjit Srivastva (DIN: 3127153) is common director in Surakshit Merchants Private Limited (till 12/08/2014) and Vaibhavlaxmi vanijya Private Limited and Wellplan Financial Management Private Limited *3. Pravin Kumar Agarwal (DIN: 02556093) was the common director in Vaibhavlaxmi Vanijya Private Limited, Wellplan Financial Management Private Limited and Maheshwari Financial Services Private Limited*
7	*Samrat Trading Co. (ACDFS3494F)*	*1. Common Phone Number (Ph: **9331110151**) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited 16), Saraswathi Buildhome Private Limited, Samrat Trading Co. , Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited*
8	*Overtop Construction Private Limited (AABCO7071M)*	*1. Common Phone Number (Ph: 9330234518) with Aries Commercials, Overtop Construction Private Limited and Starrose Dealer Private Limited*
9	*Surakshit Merchants Private Limited (AANCS7666N)*	*1. Ranjit Srivastva (DIN: 3127153) is common director in Surakshit Merchants Private Limited (till 12/08/2014) and Vaibhavlaxmi vanijya Private Limited, Surakshit Merchants Private Limited* *2. Purushotam Agrawal (DIN: 854523) is common director of Surakshit Merchants Private Limited and Fortune Infra Developers Private Limited*
10	*Starrose Dealer Private Limited (AAQCS1902G)*	*1. Vivek Gupta (DIN: 5305054) and Somya Bansal (DIN: 6379237) are common directors in Vineet Builders Private Limited and Star Rose Dealer Private Limited and Vindyavasini Agency Private Limited.* *2. Common Phone Number (Ph: 9330234518) with Aries Commercials, Overtop Construction Private Limited and Starrose Dealer Private Limited*
11	***Wellplan Financial Management Private Limited (AAACW7964Q)***	*1. Ranjit Srivastva (DIN: 03127153) is common director in Wellplan Financial Management Private Limited, Surakshit Merchants Private Limited and Vaibhavlaxmi Vanijya Private Limited.* *2. Sohan Lal Agarwal (DIN: 06636039) is a common director **in Wellpaln Financial Management Private Limited and ACL** (12/02/2014 to 14/08/2014)* *3. Pravin Kumar Agarwal (DIN: 02556093) was the common director in Vaibhavlaxmi Vanijya Private Limited, Wellplan Financial Management Private Limited and Maheshwari Financial Services Private Limited*
12	***Panchmukhi Vincom Private Limited (AAECP7116K)***	*1. Manoj Kumar Sharma (DIN: 2701338) and Sima Singh (2701363) are common directors in Panchmukhi Vincom Private Limited and Improve Distributors Private Limited and Natural Investment Management Private Limited. Further, Manoj Kumar Sharma is also a director of **Westfield Apparels Pvt.***

		Ltd. (promoter of ACL) *from 30/10/2009 to 06/08/2012.* *2. Panchamukhi Vincom Private Limited, Improve Distributors Private Limited and Natural Investment Management Private Limited share common email (simasingh445@gmail.com)*
13	***Improve Distributors Private Limited (AABCI8972K)***	*1. Sima Singh (DIN: 2701363) and Manoj Kumar Sharma (DIN: 2701338) are common directors of Panchamukhi Vincom Private Limited, and Natural Investment Management Private Limited and Improve Distributors Private Limited* *2. Panchamukhi Vincom Private Limited, Improve Distributors Private Limited and Natural Investment Management Private Limited 24) share common email (simasingh445@gmail.com)*
14	*Veenit Builders Private Limited (AADCV8452B)*	*1. Vivek Gupta (DIN: 5305054) and Somya Bansal (DIN: 6379237) are common directors in Vineet Builders Private Limited and Star Rose Dealer Private Limited and Vindyavasini Agency Private Limited*
15	***Natural Investment Management Pvt Ltd. (AACCN7952M)***	*1. Panchamukhi Vincom Private Limited, Improve Distributors Private Limited and Natural Investment Management Private Limited share common email (simasingh445@gmail.com).* *2. Sima Singh (DIN: 02701363) and Manoj Kumar Sharma (DIN: 02701338) are common director in Panchmukhi Vincom Private Limited And Natural Investment Management Private Limited and Improve Distributors Private Limited. Further, Manoj Sharma is a director* ***Westfield Apparels Pvt. Ltd. (Promoter of the ACL)*** *from 30/10/09 to 06/08/2012.* *3. Manoj Kumar Sharma (DIN: 02701338) is common director in Panchmukhi Vincom Private Limited, Improve Distributors Private Limited and Natural Investment Management Private Limited. Further, he is a director* ***Westfield Apparels Pvt. Ltd. (Promoter of the ACL)*** *from 30/10/2009 to 06/08/2012.*
16	*Fortunate Infra Developers Private Limited (AABCF4418M)*	*1. Purushotam Agrawal (DIN: 854523) is common director of Surakshit Merchants Private Limited and Fortune Infra Developers Private Limited*
17	*Pinkrise Commercial Private Limtied (AAGCP1418E)*	*1. Common Phone Number (Ph:* ***9331110151****) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited*
18	*Vistaar Infra Property Private Limited (AADCV4835C)*	*1. Common Phone Number (Ph:* ***9331110151****) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Private Limited, Saraswathi Buildhome Private Limited, Samrat*

		Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited
19	***Maheswari Financial Services Private Limited (AAACM9185B)***	*1.Pravin Kumar Agarwal (DIN: 02556093) was the common director in Vaibhavlaxmi Vanijya Private Limited, Wellplan Financial Management Private Limited and Maheshwari Financial Services Private Limited* *2.* ***Westfield Apparels Limited (promoter of ACL)****, Maheswari Financial Services Private Limited and Vemuri Finvest Private Limited had Registred Offices at the same address (Flat No. 66, G – 10, Ground Floor, Sector 15, Rohini, Delhi – 110085).*
20	***Vemuri Finvest Private Limited (AAACV3615M)***	*1.****Westfield Apparels Limited (promoter of ACL)****, Maheswari Financial Services Private Limited and Vemuri Finvest Private Limited had Registred Offices at the same address (Flat No. 66, G – 10, Ground Floor, Sector 15, Rohini, Delhi – 110085).*

f. Diagrammatic presentation of connection of Company, its directors and Group-1



g. Group-1 entities viz. Maheswari Financial Services Private Limited, Vemuri Finvest Private Limited and Westfield Apparels Limited (promoter of ACL) have same registered office address Flat No. 66, G – 10, Ground Floor, Sector 15, Rohini, Delhi – 110085.

h. It was observed that Shri Manoj Kumar Sharma was a common director in Group-1 entities viz. Panchamukhi Vincom Private Limited (Period: 22/10/2009 to till date), Natural Investment Management Pvt. Ltd. (Period: 22/10/2009 to till date), Improve Distributors Private Limited (Period: 22/10/2009 to till date) and Westfield Apparels Limited (promoter of ACL) (Period: 2/09/2010 to 06/08/2012).

i. *It was also observed that Shri Sohan Lal Agarwal was a director in one Group-1 entity viz Wellplan Financial Management Private Limited and ACL during the period 12/02/2014 to 14/08/2014.*

j. *Further, it was observed that Shri Ramawtar Gupta, director of the ACL, shared common phone number (9331110151) with Group-1 entities viz Kuber Dealcom Private Limited, Vindhya Vasini Agency Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited. Thus, it is alleged that Group-1 is connected to ACL.*

Contribution in Price Rise

k. *It is alleged that during the period (April 17, 2014 to October 13, 2014), Noticee No. 4 and 5 had contributed in price rise in the scrip ACL.*

l. *The trades of top 10 net Positive LTP contributors who contributed more than 5% of market positive LTP (on buy side) was analyzed and it was observed that Noticee No. 4 and 5 appeared as major counterparties (sellers) to the top 6 net buy LTP contributors. The details are given in Table – 2.*

Table - 2

Buyer	% of +ve LTP to Market	Major Counterparties: Maheswari Financial Services Limited – Pos. LTP (in Rs.)	Maheswari Financial Services Limited – % of Market +ve LTP	Vemuri Finvest Private Limited – Pos. LTP (in Rs.)	Vemuri Finvest Private Limited – % of Market +ve LTP	Total +ve LTP with major Counterparties
Vipul Rajendrabhai Gandhi	14.93	13.05	6.34	15.8	7.68	14.02
Bharti Goyal	11.86	9.9	4.81	14.5	7.05	11.86
Nirav Rajababu Gandhi	10.28	11.7	5.69	9.45	4.59	10.28
Ankit Mahendra Kachhara	9.14	9.2	4.47	9.6	4.66	9.13
Shyam Kanheyalal Vyas	7.10	7.85	3.82	6.75	3.28	7.10
Manbar Singh Negi	6.22	8.45	4.11	4.35	2.11	6.22
Total	**59.53**	**60.15**	**29.24**	**60.45**	**29.37**	**58.61**

m. *From the Table - 2, it can be observed that top 6 net buy LTP contributors had contributed 59.53% of the market positive LTP. Of these, Noticee No. 4 and 5 were the counterparties to the trades contributing 58.61% of the market positive LTP.*

n. *Noticee No. 4 and 5 have traded only during the period (April 17, 2014 to October 13, 2014) as sellers. From the details provided in Table - 3, it can be observed that Noticee No. 4 and 5 had contributed to 99.10% of the positive LTP in 112* *trades during the period (April 17, 2014 to October 13, 2014). All the 112 Positive LTP trades were first trades.*

<u>*Table - 3*</u>

		Net LTP			Pos. LTP			Negative LTP			Zero LTP		% of +ve LTP to Mkt	No. of Trading Days
PAN	Name	Net LTP	Trade Qty	No.of Trades	Pos. LTP	Trade Qty	No.of Trades	Neg. LTP	Trade Qty	No.of Trades	Trade Qty	No.of Trades		
AAACV3615M	Vemuri Finvest Private Limited	115.00	110	75	115.00	97	62	0.00	0	0	13	13	55.91	72
AAACM9185B	Maheshwari Financial Services Private Limited	88.85	94	70	88.85	74	50	0.00	0	0	20	20	43.19	66
Total		**203.85**	**204**	**145**	**203.85**	**171**	**112**	**0.00**	**0**	**0**	**33**	**33**	**99.10**	**138**
Market		**205.7**	**277**	**151**	**205.7**	**185**	**113**	**0**	**0**	**0**	**92**	**38**	**100**	**-**

o. *From the details available in Table - 4, it can be observed that Noticee No. 4 and 5 had contributed positive LTP of Rs. 203.85/- by placing sell orders in small quantity ranging from 1 to 5 shares through multiple trades in multiple days. Further, during the period (April 17, 2014 to October 13, 2014), 73.65% of total sell volume was contributed by Noticee No. 4 and 5.*

<u>*Table - 4*</u>

Sell Order Quantity	No. of trades	No. of Pos. LTP Trades	Positive LTP (in Rs.)	No. of Trading Days
1	94	61	153.40	61
2	45	45	44.40	45
3	5	5	5.20	5
5	1	1	0.85	1
Total	**145**	**112**	**203.85**	**112**

p. *Further, from order log analysis of top 5 positive LTP contributing trades of Noticee No. 4 and 5 during the period (April 17, 2014 to October 13, 2014) it was observed that that there were buy order of 20 to 100 shares were available however, Noticee No. 4 and 5 had placed sell order to sell 1 to 2 shares only thus contributed to positive LTP. Therefore, it is alleged that on sell side, Noticee No. 4 and 5 placed orders repeatedly to sell only a few shares ranging from 1 to 5 at prices higher than LTP and contributed to the price rise even when there is buy demand for more shares.*

<u>*Table - 5*</u>

	Order Type	Order No	Order Time	Order Qty	Order Price	Counterparty Pending Order Qty Range (total)	Counterparty Pending order Price range	Trade No.	Trade time	Traded Qty	Trade Price	Diff in LTP (in Rs.)
	Buyer:Manbar Singh Negi Seller:Vemuri Finvest Private Limited Date:13/10/2014											
	Buy	1413171000001250000	09:23:10	50	222.85	0	0					
1	Sell	1413171000001250001	09:32:00	1	222.85	50 (50)	222.85	1	09:32:00	1	222.85	4.35
	Buyer:Manbar Singh Negi Seller:Maheshwari Financial Services Private Limited Date:10/10/2014											
	Buy	1412911800004220000	09:17:11	50	218.5	0	0					
2	Sell	1412911800004220005	10:25:07	1	218.5	1 - 49 (58)	210.05 - 218.50	1	10:25:07	1	218.5	4.25
	Buyer:Manbar Singh Negi Seller:Maheshwari Financial Services Private Limited Date:09/10/2014											
	Buy	1412825400001252000	09:19:14	100	214.25	0	0					
3	Sell	1412825400001252001	09:50:45	1	214.25	99(99)	214.25	1	09:50:45	1	214.25	4.2
	Buyer:Kinshul Sanjaykumar Jain Seller:Vemuri Finvest Private Limited Date:08/10/2014											
	Buy	1412739000001039000	09:00:00	20	210.05	0	0					
4	Sell	1412739000001039001	09:23:56	1	210.05	20(20)	210.05	1	09:23:56	1	210.05	4.1
	Buyer:Maheshwari Negi Seller:Vemuri Finvest Private Limited Date:07/10/2014											
	Sell	1412652600002237201	10:19:38	1	205.95	50(50)	201.95					
5	Buy	1412652600002237203	10:30:39	2	205.95	1(2)	205.95	1	10:30:39	1	205.95	4

q. *As on March 31, 2014, ACL had issued 1,43,80,000 shares. Of these, 58,050 shares were held by shareholders in physical form and 1,43,21,950 were held in demat form. Of the shares held in demat form, 1,41,10,000 shares were issued in preferential allotments dated May 02, 2013 (67,30,000 shares) and September 13, 2013 (73,80,000 shares). Accordingly, these shares were under lock-in till May 01, 2014 and October 14, 2014 (October 14, 2016 for promoter group entity) respectively.*

r. *The Shares in physical form can be sold only in additional trading window on BSE in "C" group. The shares available for sale in demat form were held by Promoter and its connected entities.*

s. *Remaining 2,11,950 shares were held by Promoter – West Field Apparels Private Limited (1,76,450 shares) and other 4 entities viz Maheshwari Financial Services Private Limited (3,500 shares), Vemuri Finvest Private Limited (3,500 shares), Ravioday Realtors Private Limited (24,500 shares) and Paksh Marketing Private Limited (4,000 shares). As brought out in Para No. 5, Maheshwari Financial Services Private Limited and Vemuri Finvest Private Limited were connected to Group-1 entities and Promoter of ACL.*

t. *Other 2 abovementioned shareholders viz. Ravioday Realtors Private Limited and Paksh Marketing Private Limited have a common director Mr. Surendra Sharma who is also director in few Group-1 entities viz Vighnaharta Infra Developers Private Limited, Kuber Dealcom Private Limited. Therefore it is alleged that all the four entities mentioned in para 6.7 were connected Group-1* *entities which in turn are connected directly or indirectly to ACL and its Promoter. Thus it is alleged that 100% of shares in demat form were held by Promoter or its connected entities. This had facilitated Noticee No. 4 and 5 to sell few shares and contribute to price rise. Summary of shareholding is as given in Table - 5:*

<u>*Table - 6*</u>

Physical / Demat	Particulars	Number of Shares	% of total shareholding
Physical	Shares held in physical form	58,050	0.40%
Demat	Preferential allottees (under lock-in)	1,41,10,000	98.12%
	Promoter (Westfield Apparels Private Limited)	1,76,450	1.23%
	Company/Promoter Connected entities (4 entities)	35,500	0.25%
Total paid up share capital of ACL		**1,43,80,000**	**100%**

u. *Therefore it is alleged that the primary objective of Noticee No. 4 and 5 was to inflate the price. It has been observed that in spite of holding more shares (3,500 shares each), Noticee No. 4 and 5 only sold few shares ranging from 1 to 5 shares in the market at the prices higher than LTP during the period (April 17, 2014 to October 13, 2014).*

v. *Thus it is alleged that during (April 17, 2014 to October 13, 2014), Noticee No. 4 and 5 created an artificial price rise by repeatedly selling few shares at prices higher than LTP though there was demand of more shares in the market and thus manipulated the price of the scrip. Hence it is alleged that Noticee No. 4 and 5 have violated Regulation 3(a), (b), (c), (d) and Regulation 4(1), 4(2) (a), (e) of PFUTP Regulations.*

w. *During the Investigation Period, it was observed that the 72 preferential allottees had sold 1,70,41,854 shares. It was observed that company connected Group-1 entities traded with preferential allottees and purchased total shares of ACL for value of Rs. 52.70 Cr. This accounts 26.35% of the sell value received by the preferential allottees. It is observed that preferential allottees had total sold shares for a value of Rs. 200.02 Cr. Details of the preferential allottees and exit provided by the Group-1 entities are given in the Table-7.*

<u>*Table – 7*</u>

PAN	***Name***	***Trade Value (Rs.)***
Group-1 Entities (Connected to Company)		
AADCV6070D	*Vindyavasini Agency Pvt Ltd*	*8,37,96,943*
AAECK5111B	*Kuber Dealcom Private Limited*	*7,78,85,975*
AAVFA6230F	*Aries Commercials*	*6,27,20,938*
AADCV8452B	*Veenit Builders Private Limited*	*4,97,40,967*
AADCV4831G	*Vighnaharta Infra Developers Private Limited*	*4,32,60,069*

AABCF4418M	*Fortunate Infra Developers Private Limited*	*2,53,40,655*
AACCN7952M	*Natural Investment Management Pvt Ltd*	*2,44,97,352*
AANCS7666N	*Surakshit Merchants Private Limited*	*2,33,64,353*
AAECP7116K	*Panchmukhi Vincom Private Limited*	*2,32,77,485*
AAACW7964Q	*Wellplan Financial Management Private Limited*	*2,23,74,877*
AADCV4835C	*Vistaar Infra Property Private Limited*	*2,06,17,654*
AABCO7071M	*Overtop Construction Private Limited*	*1,97,44,784*
AACCV7461K	*Vaibhavlaxmi Vanijya Private Limited*	*1,24,19,225*
AAQCS1902G	*Starrose Dealer Private Limited*	*1,00,47,395*
AAOCS4115M	*Saraswati Buildhome Private Limited*	*1,00,44,786*
AAGCP1418E	*Pinkrise Commercial Private Limited*	*94,36,507*
AABCI8972K	*Improve Distributors Private Limited*	*85,16,268*
Group-1 Total (26.35% of Pref. Allot. Sell Value)		*52,70,86,234*
Total Exit to Preferential Allottees		***2,00,02,34,067***

x. *The company had made two preferential allotments at Rs. 15/-. Subsequently, it is alleged that price was manipulated by entities connected to the company and some of the preferential allottees sold their shares at manipulated high price. Of the shares sold by preferential allottees, company connected entities had purchased 26.35% value of shares.*

y. *Therefore, it is alleged that the company was part of scheme to manipulate the price of the scrip to benefit the preferential allottees. Further, it is alleged that the directors of the company at the time of preferential allotment (other than Independent and non-executive directors), Shri Ramawtar Gupta (Managing Director) and Shri Promod Kumar Gupta (CFO & Director) were part of this scheme. Hence the company and its aforesaid 2 directors have alleged to have violated Regulation 3 (a), (b), (c) and (d) and Regulation 4(1), 4(2) (a) and (e) of PFUTP Regulations.*

z. *Noticee No. 1 to 5 are, therefore, called upon to show cause as to why an inquiry should not be held against them in terms of Rule 4 of SEBI Adjudication Rules read with Section 15 I (1) and (2) of SEBI Act, and penalty be not imposed under Section 15HA for alleged violation of provisions of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of PFUTP Regulations.*

8. I note that the Noticee 1 in its reply dated November 04, 2017 made the following submissions:

   i. *Initiation of present Adjudication Proceedings on same subject matter when a separate proceedings initiated vide SCN dated 14.06.2017 is already under* *progress in front of Hon'ble Whole Time Member amounts to "double jeopardy" and is in violation of Article 20(2) of Constitution of India.*

ii. *Without prejudice to same, on subject matter of present proceedings we submit that the gravamen of charge against us as mentioned under Para 10 of SCN dated 17.10.2017 is that we are alleged to be part of* 'scheme' *to manipulate price of our securities for benefit of preferential allottees. In this regard, we submit as under:*

iii. *In order to raise resource to fund the growth plans of the Company, organically and inorganically, to meet working capital requirement and general corporate purposes; our Company decided to infuse fresh capital by way of preferential allotment of shares. In pursuance thereto, our Company came out with preference allotment of shares in 2 tranches as under:*

Tranche - 1		*Tranche - 2*	
Date of allotment	*02.05.2013*	*Date of allotment*	*13.09.2013*
No of Shares	*67,30,000*	*No of Shares*	*73,80,000*
Price per share	*15/-*	*Price per share*	*15/-*

iv. *The aforesaid preferential allotment was completed in compliance with Chapter VII of SEBI (Issue of Capital and Disclosure Requirement) Regulation, 2009, Companies Act, 1956 and all other Act, Rules/Regulations as applicable at relevant point of time.*

v. *Subsequently, the Company received approval from BSE for listing of aforesaid equity shares allotted in preferential allotment. Therefore, we became optimistic that since the shares of our Company were listed on BSE; it came under the purview and jurisdiction of robust surveillance system of stock exchange.*

vi. *We have no role, involvement and participation on the price movement of its shares listed on the exchange. As a matter of fact, we understand that large number of entities were dealing in scrip of our Company during relevant point of time. Thus, to hold Company responsible for any price movement is unwarranted and unjustified.*

vii. *The 2 Companies viz. Vemuri Finvest Pvt. Ltd (Vemuri) and Maheshwari Financial Services Pvt. Ltd (Maheshwari) were looked after by separate management. There is a proper Chinese wall between the said Companies and ACL. The decision of trading in stock market is taken independently and autonomously by management of said Companies and ACL has no role/participation in management of daily affairs of said Companies. Therefore,* *the dealings of Vemuri Finvest Pvt. Ltd and Maheshwari Financial Services Pvt. Ltd in stock market cannot and ought not be saddled on us.*

viii. *With respect to the aforesaid preferential issue; the shareholders of the Company accorded their approval for the same and the issue was in compliance with the all the provisions of law applicable to us at relevant point of time.*

ix. *We strongly deny alleged violation of provisions of Regulation 3 (a), (b), (c), (d), Regulations 4(1), 4(2) (a) & (e) of PFUTP Regulations and submit as under:*

- *We have not bought, sold or otherwise acted in fraudulent manner in respect of shares of ACL*.
- *We have not used or employed any manipulative or deceptive device or acted in contravention of the provisions of SEBI Act and Rules/Regulations made thereunder*;
- *We have not employed any device, scheme or artifice to defraud anyone in respect of shares of ACL*;
- *We have not engaged in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in respect of shares of ACL*;
- *We have not indulged in fraudulent and unfair trade practice in securities market*;
- *We have not indulged in an act which created false and misleading appearance of trading in shares of ACL*.
- *We have not indulged in an act or omission which amounted to manipulation in price of shares of ACL*.

9. I note from the reply of the Noticees that, parallel to the present adjudication proceedings, SEBI had also initiated proceedings under Section 11(1), 11(4) and 11B of SEBI Act before Hon'ble Whole Time Member of SEBI (**WTM**). The said proceedings were concluded vide order dated March 27, 2019.

10. Thereafter, In the interest of natural justice, two separate opportunities of personal hearing were provided to Noticee 1 on July 12, 2019 and August 07, 2019 vide hearing notices dated July 01, 2019 and July 24, 2019 respectively. I note that both the hearing notices were delivered to Noticee 1. However, Noticee 1 failed to appear for personal hearings on both occassions.

11. Further, Noticee 1 made certain additional submissions in its reply dated August 05, 2019. However, it failed to appear for personal hearing on both the occasions. In its reply, Noticee 1 made the following additional submissions:

i. *We would like to inform you there is no violation of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 and there is no irregularities in the scrip of Aplaya Creations Limited between April 17, 2014-July 31, 2015.*

ii. *As per point 3 SEBI observed that prior to the investigation Period, the scrip had traded only on three days during September 19, 2005 to April 16, 2014 the reason for the same is between that period Company Suspended for a longer period for trading.*

iii. *As per point 6, SEBI observed on an Analysis of the KYC, off market transfers and details on MCA website a Group of 18 buyers and 2 sellers was identified which was also identified to be connected to Company. In this regard we would like to inform you there is no connection between the Companies each of them have their separate business no interest/link between them as alleged by SEBI after their investigation. Our Company is not a beneficial of any single rupee of any transaction.*

iv. *In point 9, SEBI impose allegation that price was manipulated by entities connected to the Company and some of the preferential allottees sold their shares at manipulated high price. Of the shares sold by preferential allottees, Company connected entities had purchased 26.35% value of shares.*

v. *In this regard, as mentioned earlier there is no connection between the parties. They have their own separate business and no connection of entities with the Company then allegation of manipulation of price by connected entities to the Company is relinquished. Furthermore, there is no manipulation of price because as cited in point 2 at that time object of the Company was changed and from the new object Company started doing well with good turnover which are duly intimated to stock exchange from time to time.*

vi. *However, since the preferential allottees are at liberty to sell or not to sale their share we cannot comment on their status. We are an Independent Company doing its business separate from others have not earned even an single penny from any manipulative transaction.*

vii. *The trade on Stock Exchange is happened between buyer and seller without the knowledge of our Company and any person, entity etc. is at liberty to deal in the equity shares of the Company and it is not necessary that the Company will be part of every transaction happened at stock exchange. (sic)*

viii. *It is pertinent to note that our promoter has not sold any shares of Aplaya Creations Ltd.*

12. I note that Noticee 2 and Noticee 3 made similar submissions vide separate letters dated August 21, 2019. The submissions of the two Noticees are as below:

i. *At the outset, I deny all the allegations levelled against me in the Notice.*

ii. *The charges in the Notice are based on the assumption that I was a part of the scheme to manipulate the price of the scrip to benefit the preferential allottees.*

iii. *There is absolutely nothing to connect me to other entities as set out in the Notice.*

iv. *Adverse inferences qua me has been drawn based on the alleged conduct of others and by clubbing me with other persons/entities. The entire grouping is erroneous and misleading and I have erroneously been lumped with others. Unrelated and unconnected entities have been grouped together based on mere surmises and conjectures to draw adverse inferences without any basis. Acts of other persons/entities cannot be fastened on to me or any adverse inference drawn against me.*

v. *I was appointed as director on the board of directors of ACL on 08/02/2013. I had resigned from the board of ACL on 06/07/2017.*

vi. *It is submitted that the preferential allotments were bonafide made by the Company to the allottees in the ordinary course dehors sinister intent or design. The said preferential allotments had the approval of the shareholders, stock exchanges and neither SEBI nor stock exchange had raised any grievance about the same.*

vii. *The funds raised by the Company have been profitably deployed by the Company and the same is also evidenced by the Financials of the Company wherein the Profit after Tax has increased from Rs. (-14,60,000) in F/Y 2013-14 to Rs. 28,00,000/- in F/Y 2014- 15.*

viii. *It is submitted that adverse inference has been drawn against me based on the trading of certain entities who had traded in the scrip of the company during the* *period from April 17, 2014 to July 31, 2015 ("Investigation Period"). It is submitted that at no point of time I was acting in concert with the said persons who had traded in the scrip of the company during the Investigation Period. There is no allegation in the Notice that I was aware of or involved with the said persons. Admittedly, I am not connected to any of the entities who had traded in the scrip during the relevant period. Further, I had not traded in the scrip of the company during the Investigation Period and that none of the entities mentioned in the Notice had traded at my behalf or at my behest during the relevant period.*

ix. *In the Notice no adverse inference has been drawn against the preferential allottees based on the trading done by them in the scrip of company. Further, no adverse inference has been drawn against the 18 buyers as set out in Table-1 of the Notice based on the trading done by them in the scrip of company. Surprisingly, SEBI has not issued any Notice/SCN against any of the preferential allottees and 18 buyers as set out in Table-1 who had traded in the scrip of company during the Investigation Period. It is submitted that based on the aforesaid factors alone the Notice/SCN is ought to be withdrawn.*

x. *It is submitted that I had no role whatsoever to play in the trading done by various entities/ persons (as set out in the Notice) in the scrip. Significantly, at the relevant when the price rise was allegedly happening, no concerns were raised by stock exchange.*

Alleged Connections

xi. *With regard to the alleged connections as contained in Table -1 of the SCN the following be noted:*

S No. 1 to 10

xii. *I have no link/ connection/relationship with any of the entities referred to at S No 1 to 10.*

S No. 11

xiii. *I have no link/ connection/relationship with Ranjit Sriastava or any of the entities where he was a Director.*

xiv. *With regard to the observation that Sohan Lal Agarwal was a common director in ACL and Wellplan Financial Management Pvt Ltd (Wellplan), it is submitted that nothing turns on the same and based on the said observation no adverse inferences can be drawn against me.*

xv. *In so far as Sohan Lal Agarwal is concerned, it is submitted that he joined as an Independent Director on the board of ACL on 12.02.2014. He did not hold any shares in ACL or Westfiled. He was not involved in day to day management and affairs of ACL.*

xvi. *There is nothing on record to suggest that Sohan Lal Agarwal was involved in the trading done by Wellplan during the relevant time.*

xvii. *Admittedly, there is no allegation that I had funded Wellplan for the purpose of trading or had in any manner provided the shares to them for the purpose of trading etc. The burden of acts of Sohan Lal Agarwal & Wellplan in terms of alleged manipulative trading in the scrip cannot be saddled on to me.*

xviii. *I have no link/ connection/relationship with Pravin Kumar Agarwal or any of the entities where he was a Director.*

S No. 12

xix. *With regard to the observation that Manoj Kumar Sharma was a director in Westfiled, it is submitted that nothing turns on the same and based on the said observation no adverse inferences can be drawn against me.*

xx. *In any event Manoj Kumar Sharma resigned from the Board of Westfiled on 06.08.2012 i.e. much prior to Westfield becoming promoter of ACL by acquisition of 65.53% of shares on 29.12.2012.*

xxi. *There is nothing on record to suggest that Manoj Kumar Sharma was involved in the trading done by Punchmukhi during the relevant time.*

xxii. *Admittedly, there is no allegation that I had funded Punchmukhi for the purpose of trading or had in any manner provided the shares to them for the purpose of trading etc. The burden of acts of Manoj Kumar Sharma & Punchmukhi in terms of alleged manipulative trading in the scrip cannot be saddled on to me.*

S No. 13 and 14

xxiii. *I have no link/ connection/relationship with any of the entities referred to at S No 13 and 14.*

S No. 15

xxiv. *It is reiterated that I am not aware of the common email id i.e. simasingh445@gmail.com shared between various entities. Based on the same no adverse inference can be drawn against me.*

xxv. *With regard to the observation that Manoj Kumar Sharma was a common director in Natural Investment Management Pvt Ltd and Westfiled, it is submitted that nothing turns on the same and based on the said observation* *no adverse inferences can be drawn against me. Further, I am not aware of the directorship held by Manoj Kumar Sharma in various companies*

xxvi. *There is nothing on record to suggest that Manoj Kumar Sharma was involved in the trading done by Natural Investment Management Pvt Ltd during the relevant time.*

S No. 16 to 18

xxvii. *I have no link/ connection/relationship with any of the entities referred to at S No 16 to 18.*

S No. 19 and 20

xxviii. *With regard to the observation that Pravin Kumar Agarwal was a common director in various entities it is submitted that nothing turns on the same and based on the said observation no adverse inferences can be drawn against me. Further, I am not aware of the directorship held by Pravin Kumar Agarwal in various companies*

xxix. *With regard to the allegation that Westfiled, Maheswari Financial Services Pvt Ltd (Maheswari) and Vemuri Finvest Private Limited (Vemuri) have same registered address it is submitted that based on the same no adverse inference can be drawn against me. I submit that Westfiled was occupying the part of the premises as tenants since 2007. From 2010 Maheswari and Vemuri were also occupying a portion of this office space and they had vacated the said office way back in 2017. Admittedly, there is no allegation that I had funded the said entities for the purpose of trading or had in any manner provided the shares to them for the purpose of trading etc. There is no allegation that the said entities were trading at my behest or on my behalf. Merely based on common address wherein Westfield was occupying part of the office premises with Maheswari and Vemuri their manipulative trading cannot be fastened on to me or any adverse inference can be drawn against me as the same is untenable and unsustainable.*

xxx. *With regard to the observations in Para 6.5 of the Notice, I submit that with regard to my phone number appearing in the KYC forms of certain Entities viz., Kuber Dealcom Private Limited, Vindhya Vasini Agency Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited, I was not aware of the same at the relevant time. Here I may highlight that I had not authorised the said Entities to mention my* *phone number of in their KYC forms. Particulars appearing in the KYC forms of the said Entities can be best answered by them.*

<u>Contribution to Price rise</u>

xxxi. *Admittedly, I had not traded at all in the scrip of the company during the relevant period. Based on the trading done by the other entities mentioned in the said Paras, no adverse inference can be drawn against me. Further, it is reiterated that none of the entities had traded in my behalf or at my behest during the relevant period.*

xxxii. *It is denied that 100 % of shares in demat form were held by promoter or its connected entities as alleged. It is denied that we are related/connected to the four entities viz. Maheshwari Financial Services Limited, Vemuri Finvest Pvt Ltd, Ravioday Realtors Pvt Ltd and Paksh Marketing Pvt Ltd. In any event Westfield did not sell any shares during the relevant time.*

xxxiii. *Here it may be appreciated that the company or its directors has no control over the persons/ entities who trade in the scrip in the market or the manner in which they trade. It is submitted that based on alleged tenuous connections serious charges of violating provisions of FUTP Regulations have been levelled, which is legally untenable and unsustainable.*

xxxiv. *I am not aware about the mode and manner of trading of the preferential allottees by way of sale of shares and based on their trading no adverse inferences can be drawn against me.*

xxxv. *Significantly, there is no allegation that I had made any profits in any manner by virtue of sale of shares by preferential allottees. It is submitted that the profits if any, made by the preferential allottees cannot be equated with the profits made by me.*

xxxvi. *I am not aware about the entities who had traded in the scrip of the company during the relevant period. It is denied that company related entities had purchased 26.35 % value of share. The said allegation is sweeping and based on mere surmises and conjectures. There is nothing on record to suggest that the entities had traded on my behalf or at my behest.*

xxxvii. *It is denied that I was a part of the scheme to manipulate the price of the scrip to benefit the preferential allottees.*

xxxviii. *Further, it is denied that I have violated Regulations 3(a), (b), (c), (d) 4(1), 4(2)(a) and (e) of the PFUTP Regulations as alleged.*

Additionally, Noticee 3 made the the following submission:

i. *I was appointed as director on the board of directors of Aplaya Creations Limited ("ACL"/ "the Company") on 08/02/2013 I had resigned from the board of ACL on 06/07/2017.*

13. Further, Noticee 2 and Noticee 3 were provided with an opportunity of personal hearing on July 12, 2019 vide hearing notice dated July 01, 2019. Both Noticee 2 & 3 requested for extension vide their Emails dated July 12, 2019. Thereafter, the Noticee 2 & 3 were given another opportunity of personal hearing on August 21, 2019. Mr. Vinay Chauhan, Advocate appeared as Authorized representative on behalf of Noticee 2 & 3 and reiterated the submissions made by them vide their respective letters dated August 21, 2019. Thereafter, Noticee 2 & 3 made their post-hearing submissions on same lines vide their respective letters dated September 12, 2019. Noticee 2 & 3 made the following additional submissions:

i. *Vide Order dated March 27, 2019 under Section 11 (1), 11 B and 11(4) of SEBI Act in the same matter, WTM had passed the following directions against me:*
   - *restraining me from accessing the securities market for a period of 8 years from the date of the said order;*
   - *prohibiting me from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner;*
   - *that my existing securities holding, including units of mutual funds, shall remain frozen;*
   - *prohibiting me from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a Director and key managerial person, directly or indirectly, for a period of eight years.*

ii. *It is submitted that currently, I am undergoing the ban of 8 years as a result of the aforesaid restraints/prohibitions/directions issued by the WTM. Therefore, any imposition of monetary penalty, in the circumstances, would be hugely detrimental to me. Further the same would be exceedingly disproportionate.*

iii. *In a similar matter wherein trading was done trading done by 2 entities in the scrip of JMD Ventures Limited ("JMD") the Adjudicating Officer of SEBI vide Order dated June 28, 2019 has imposed a penalty of Rs. 5,00,000/- (Five lacs only) each on the directors of JMD. It is submitted that the trading done by various persons/entities in the scrip of JMD in the said order and the allegation against* *the directors in the said order are similarly placed as my case. Therefore, penalty if any on me as a director of Aplaya Creations Ltd can be only to the extent of 5,00,000/- only.*

14. I note that the SCN was delivered to Noticee 4 at its address through its broker SMC Global Securities Ltd. and a proof of such delivery is available on file. However, Noticee 4 did not submit any reply. Vide letter dated July 01, 2019, Noticee 4 was given time till July 08, 2019 to submit its reply. Further, an opportunity of personal hearing was also granted to Noticee 4 on July 12, 2019 vide hearing notice dated July 01, 2019. In response to that, Noticee 4, vide Email dated July 11, 2019 requested for a copy of SCN and sought extension of time to submit its reply. Vide letter dated July 24, 2019, Noticee 4 was informed that a copy of SCN had already been duly served upon it through its broker SMC Global Securities Ltd. However, in the interest of natural justice, a copy of SCN was again provided to Noticee 4. Further, the Noticee was advised to submit its reply to the SCN on or before August 05, 2019 and another opportunity of personal hearing was granted to Noticee 4 on August 07, 2019 vide the said letter dated July 24, 2019. However, vide Email dated August 06, 2019, Noticee 4 again requested extension to submit its reply. Vide letter dated August 09, 2019, Noticee 4 was provided with second extension to submit its reply till August 19, 2019 and a final hearing opportunity was provided to it on August 23, 2019. On the said date, Ms. Aparna Mahesh Wagle, Advocate appeared on behalf of the Noticee and persistently requested for further extension to submit reply to the SCN. It was explained clearly to Ms. Wagle that already 3 extension to submit its reply had been granted to the Noticee 4 along with 3 separate opportunities of personal hearing. However, in the interest of natural justice, a final opportunity was granted to the Noticee to submit its reply to the SCN till August 31, 2019. Noticee 4, vide its letter dated August 31, 2019, made the following submissions:

   i. *It is submitted that the said SCN proceeds on erroneous presumption that during the period April 17,2014 to October 13,2014, the Noticee 4 along with Noticee 5 contributed in the price rise in the scrip of ACL and that the Noticee 4 and 5 appeared to be the alleged major counterparties (sellers) to the top 6 net buy*

LTP contributors as alleged contributing 58.61% of the market positive LTP and that the Noticee No. 4 and 5 have contributed to 99.10% of the positive LTP in 112 trades during the period April 17, 2014 to October 13, 2014 and have contributed positive LTP of Rs. 203,85/- by placing sell orders in small quantity ranging from 1 to 5 shares through multiple trades in multiple days increasing sell volume upto 73.65% by the Noticee No. 4 and 5 and despite buy order of 20 to 100 shares being available, the Noticee paced sell orders to sell 1 to 2 shares contributing to positive LTP as alleged.

ii. *The Noticee denies each and every allegation or contention or conclusion sought to be drawn in the said SCN which is contrary to and/or inconsistent with what is stated herein.*

iii. *It is submitted that the Noticee has not committed any violation of the PFUTP Regulations for the following amongst other grounds, each of which is explained in detail hereinbelow:*

   a. *No common director;*
   b. *No sharing of registered office;*
   c. *SCN proceeds on wrong basis that there was no change in the fundamentals of ACL during the Investigation Period;*
   d. *Noticee is a genuine long-term investor;*
   e. *Miniscule quantum of trades undertaken;*

<u>No common director</u>

iv. *The SCN alleges that Mr. Pravin Kumar Agarwal was the common director in the Noticee and two other companies forming part of Group 1 namely, Vaibhavlaxmi Vanijya Private Limited and Wellplan Financial Management Private Limited and therefore, connected to Group 1 entities.*

v. *It is submitted that Mr. Pravin Kumar Agarwal was a director of Wellplan Financial Management Private Limited only for the period 22.10.2009 to 08.08.2013. Mr. Pravin Kumar Agarwal had ceased to be a director of Wellplan Financial Management Private Limited well before the Investigation Period and the Noticee cannot be labelled as connected to Wellplan Financial Management Private Limited on this count.*

vi. *Further, Mr. Pravin Kumar Agarwal was appointed as an Independent Director on the board of the Noticee and was not in charge of the affairs of the Noticee.*

<u>No sharing of registered office</u>

vii. *It is alleged that the Noticee shared a common registered office with Noticee No. 5 and Westfield Apparels Limited. It is submitted that only a portion of the subject office premises was occupied by the Noticee and the same was vacated in April 2017. There was a clear demarcation between the office of the Noticee and other tenants. Hence, though the registered office address was common but internally there was a clear demarcated office of the Noticee. The Noticee's operations of functioning were independent and whatsoever with the operation or functioning of ACL and Noticee No.5.*

SCN proceeds on wrong basis that there was no change in the fundamentals of ACL

viii. *ACL came out with preferential issues (including subscription by Promoter) in the months of May 2013 and September 2013 as a result of which substantial capital contribution was made to the share capital of ACL.*

It is submitted that infusion of capital through preferential allotments (including subscription by Promoter) would have boosted public's confidence in ACL which in turn may have led to increase in demand and consequently, increase in its scrip price.

Noticee is a genuine long-term investor

ix. *The Noticee had acquired the shares on 1st November 2012 and had been holding them for a long period.*

x. *It is submitted that change in fundamentals of ACL pursuant to the preferential allotments in May and September 2013 led to increase in volume and stock price of ACL during FY 2014-15. As stated in the SCN, there was good demand to acquire ACL's stock in the market during that period and the Noticee, not being a regular player in the market was advised to make small trades. The Noticee had acquired the shares before the investigation period out of the Noticee's own funds. Further, during the investigation period, the Noticee did not purchase any further shares for any circulation of funds or inflating the volume in trading of shares.*

xi. *It is submitted that the Noticee traded the share price LTP was positive which was a positive sign for a seller to trade in ACL's shares. In fact, SEBI ought to question the market players who were giving the buy orders at higher prices.*

xii. *The market value of the said unsold shares of ACL (2699 shares) as on date works out to less than Rs. 15,385/- in aggregate. Had the Noticee been in fact a* *part of the scrip manipulation, it would have offloaded its entire shareholding to other investors and made a windfall of profits.*

<u>Miniscule quantum of trades undertaken</u>

xiii. *As per the IR, the shares of ACL were traded for an average volume of 70,123 shares per trading day and a total volume of 2,17,38,040 shares in 23,088 trades for a total of 310 days.*

xiv. *Out of the total volume of 2,17,38,040 shares in 23,088 trades, the Noticee has only contributed to sale of 801 shares in 86 trades which works out to 0.003% and 0.37% of the total volume and trades respectively. It is submitted that it would be incorrect to hold the Noticee guilty of serious charge of market manipulation and fraud on account of such miniscule trades. It is further submitted that the Noticee has undertaken trading for only about 78 days out of the overall Investigation Period extending to about 15 months. Hence, the question of market manipulation based on the trading of 78 days cannot hold substance.*

xv. *With reference to Para No. 7.1 to 7.4 of the SCN, it has been contended that the Last Traded Price ("LTP") analysis in regard to the Noticee and VFPL was prepared and it has been contended that the Noticee No. 4 and 5 appeared to be the alleged major counterparties (sellers) to the top 6 net buy LTP contributors as alleged contributing 58.61% of the market positive LTP as per Table 2 in the SCN and that the Noticee No. and 5 have contributed to 99.10% of the positive LTP in 112 trades during the period April 17, 2014 to October 13, 2014 as per Table IV of the SCN and have contributed positive LTP of Rs. 203.85/- by placing sell orders in small quantity ranging from 1 to shares through multiple trades in multiple days increasing sell volume upto 73.65% by the Noticee No. 4 and 5 and despite buy order of 20 to 100 shares being available, the Noticee placed sell orders to sell 1 to 2 shares contributing to positive LTP as alleged.*

xvi. *The Noticee submits that the share trading was conducted through stock exchange broker terminals where the information in respect to the counter party could not be known and the trading was done through authorized broker of the stock exchange. In fact, based on Annexure 5 to the Show Cause Notice, the total number of the buyers who have purchased the shares from the Noticee and VFPL are 31 during the said period whereas only 6 buyers have been reflected in the Table 2 provided in the said Show Cause Notice. It is pertinent to note* *that the shares traded to the 6 buyers is only about 59 shares as against the total of 801 shares sold by the Noticee which is approximately 7.36% These 6 buyers bought only 2219 shares out of total 2,17,38,040 traded shares which is negligible i.e. 0.001% of the total turnover of the shares. Additionally these buyers purchased 97.34% of their shares from sellers other than the Noticee. Hence it can be concluded that the Table 2 data does not represent significant/material volume of the trades done by Seller, Buyer and total market trades. The Noticee traded in the shares of ACL during the said period since the share price LTP was positive and it is logical for any seller to trade the shares at such relevant time.*

xvii. *The Noticee submits that in the Table 3 of Show Cause Notice, limited data is considered from 17lh April 2014 till 13th October 2014 whereas the Noticee traded till 30th October 2014. During the period, when the Noticee traded, there were total 19 Sellers who sold total 1,33,364 shares out of which only 801 shares were traded by the Noticee i.e. 0.59% of the total shares traded during the period when the Noticee traded. No sellers, out of 19 sellers, other than the Noticee and Noticee No. 5 were made party to the SCN. Instead of the trades of the Noticee as negligible quantity traded by the Noticee, the number of partial period trades were considered for representing data against the Noticee in the Table 3.*

xviii. *The Show Cause Notice mentions that on analyzing the trades, all the orders were placed for quantity ranging from 1 to 5 shares and that the Noticee No 4 and VFPL had contributed in positive LTP of 203.85/- by placing to sell orders in small ranging from Ito 5 shares through multiple trades.*

xix. *The allegation itself is incorrect and misleading. As per the Trade & Order Logs (Annexure 5 to the Show Cause Notice), it may be observed that the Noticee has also given sale orders for bulk quantities of around 50, 100, 150 shares as well which have not been taken into account. Hence, it is wrongly alleged that the Noticee only placed orders in small quantities. The Noticee submits that as referred in the FR, there were less trades earlier hence, the Noticee sold the shares in market in small quantities. From the Table 5 provided in the Show Cause Notice, it appears that the higher LTP buying orders were placed before the selling orders and since the seller expected the price to rise, the Noticee sold the same in small quantities. Further, it may be observed from Table 5 that the quantity of orders placed do not match with those placed by the counterparty* *and there is a substantial time gap in placing of orders between the counterparties and the Noticee. As stated in the SCN, there was good demand to acquire ACL's stock in the market during that period and the Noticee, not being a regular player in the market was advised to make small trades.*

xx. *The Noticee submits that the Noticee had only 0.125% shares of the total shares of ACL which is miniscule and on account of such less number of shares being held by the Noticee i.e. only 0.003% (801 shares traded by the Noticee out of 2,17,38,040 shares traded in the market), the Noticee maintained its strategy of selling shares in small quantities at high prices for higher profits since the Noticee had no trading experience and traded in small quantities on suggestion of the share broker.*

xxi. *With reference to Para 8 to 11 of the SCN, it is alleged that during the Investigation Period, 72 preferential allottees had sold 1,70,41,854 shares. On further analysis, it was observed that Group-1 and Group-2 entities traded with 71 preferential allotees and purchased 69,68,328 shares for value of' 77.09 Cr. It is submitted that based on the accounts, it appears that about 39.90% of shares were sold by preferential allottees and about 37.04% of the sell value received by the preferential allottees. It is contended in the IR that preferential allottees had sold shares for a value of Rs. 200.02 Cr. However, it is submitted by the Noticee that neither the Noticee is a preferential allottee nor connected to any preferential allottee and has not traded with any preferential allottee and hence, the allegations contended against this Noticee are unsubstantiated. The Noticee submits that it has not purchased or sold a single share to the preferential allottees and as the Noticee's trades were done via stock exchange's trading platform, the Noticee was not aware of the other counterparty.*

xxii. *It is submitted that the Noticee has not made any disproportionate gains, unfair benefits or advantage as the trading was done in normal course of business with no intent to defraud any investor or manipulate the price of the share of ACL. The Noticee submits that the unsold shares since October 30, 2014 are in demat account of the Noticee i.e. 2699 shares (being 3500 shares purchased less 801 shares sold and balance 2699 shares undergoing share split of 1:10 in the year 2015. Hence, the balance shares in the demat being 2699 *10 = 26990). The market value of the said unsold shares of ACL (2699 shares) as on date works out to less than Rs. 15385/- in aggregate. Had the Noticee been in fact a part of* *the scrip manipulation scheme, it would have offloaded its entire shareholding to other investors and made a windfall of profits.*

15. Thereafter, vide letter dated September 20, 2019, a final opportunity of personal hearing was granted to Noticee 4 on September 30, 2019. Mr. Ankur Loona, Advocate appeared on behalf of Noticee 4 reiterated the submissions made by Noticee 4 vide its letter dated August 31, 2019. Further, Mr. Loona requested time to make post-hearing submissions and, accordingly, Noticee 4 was granted 7 days' time to submit its reply.

16. Thereafter, vide letter dated October 07, 2019, Noticee 4 made the following additional submissions:

    i. *The analysis of the trade and order logs made during the investigation period have been made selectively and do not reflect factually correct position. To begin with, on account of the sudden jump in the scrip price from Rs. 18/- (opening price) to Rs. 490/- (high price), SEBI has alleged irregularities and manipulation in trading of ACL and has in its wisdom determined a period of about 15 months commencing from April 17, 2014 and ending on July 31, 2015 as the Investigation Period. However, the findings of the investigation under Tables 2 to 5 of the SCN have taken into consideration the trading data only for a limited period of about 6 months commencing from April 17, 2014 to October 13, 2014.*

    ii. *During the period when the Noticee traded i.e. till October 30, 2014, there were a total of 19 Sellers who sold total 1,33,364 shares out of which only 801 shares were sold by the Noticee which constitutes 0.60% of the total shares traded during the period. As shown in below table No other sellers out of such 19 sellers, other than the Noticee No. 4 & 5 have been made a party to the SCN. Instead of analyzing the trades undertaken by the Noticee as negligible in quantity (as shown in below mentioned table), the number of trades considered during the limited period under Table 3 of the SCN has been reflected in different light much to the detriment the Noticee.*

    iii. *It is further submitted that in addition to reviewing the trading data selectively as aforesaid, the SCN has taken into account collective data of Noticee Nos. 4 and 5 and consequently, the analysis provided under the SCNs are misleading and inaccurate insofar as Noticee No. 4's contribution in trading is concerned.*

iv. *It is submitted that if the Investigation Period were to be applied correctly to the trade and order logs and individual values were to be assigned. Tables Nos. 2, 3, 4 & 5 of the SCN would read as follows:*

Buyer	*% of +ve LTP to Market*	*Major Counterparties*				
		Maheswari Financial Services Limited		*Vemuri Finvest Private Limited*		*Total +ve LTP with major Counterparties*
		Pos. LTP (in Rs.)	*% of Market +ve LTP*	*Pos. LTP (in Rs.)*	*%of Market +ve LTP*	
Kuberdealcom Private Limited	*6.11%*	-	-	*Not Related to Noticee No. 4*		
Overalllogistics Private Limited	*3.30%*	-	-			
Shubhdayak Tradex Private Limited	*3.24%*	-	-			
Aries Commercials	*3.15%*	-	-			
Padmawati Tradevin Private Limited	*2.61%*					
Angeli Quaagencies Private Limited	*2.55%*					
Vindya Vasini Agency Pvt Ltd	*2.53%*	-	-			
Vipul Rajendrabhai Gandhi	*2.23%*	*13.05*	*3.14%*			
Mallinath Shares & Stock Private Limited	*2.21%*	*5.10*	*1.23%*			
Headfirst Vinimay Private Limited	*2.20%*	-	-			
Total	*30.12%*	*18.15*	*4.37%*			

v. *From the above table which have been prepared after taking into account the trading data of the investigation period, it can be seen that even top 10 buyers contribution in positive LTP is 30.12% instead of 59.53% (as per Table 2 of SCN) of top 6 buyers. Further Noticee's Contribution to the positive LTP of these top 10 buyers comes to 4.37% only instead of 30.12% (as per table 2 of SCN) of top 6 buyers. It may also be noted that the total contribution of the Noticee in terms of positive LTP in Rupees to the Top 10 buyer's positive LTP is Rs. 18.15 Only instead of Rs. 60.15 (as per table 2 of SCN) of top 6 buyers.*

vi. *As per the above comparison of Table 2 of the SCN and Table containing the data of whole investigation period it may be clearly noted that the analysis provided under the SCNs are misleading and inaccurate insofar as Noticee 4's contribution in positive LTP is concerned.*

Table 3 - Table for the entire Investigation Period (As per the Noticee 4's contention)

Name	*Net LTP*			*Pos. LTP*			*Negative L I P*			*Zero LTP*		*% of +ve LTP to Mkt*
	Net LTP	*Trade Qty*	*No. of Trades*	*Pos. LTP*	*Trade Qty*	*No. of Trades*	*Neg. LTP*	*Trade Qty*	*No. of Trades*	*Trade Qty*	*No.of Trades*	
Maheshwari Financial Services Private Limited	*108.65*	*801*	*86*	*108.65*	*214*	*54*	*0.00*	*0*	*0*	*587*	*32*	*7.88%*
Market	*242.39*	*21738040*	*13009*	*1378.25*	*3308607*	*1388*	*-1352.10*	*2250815*	*829*	*16178618*	*10792*	*100%*

vii. It may thus be observed that Table 3 when reviewed holistically for the entire Investigation Period, the Noticee can at most be said to have has contributed only Rs. 108.65 of +LTP which constitutes only 7.88% of total Market +LTP% and as opposed to the +LTP contribution of 99.10% (collectively with VFPL) and 43.19% (individually) as alleged by the SCN which is misleading.

Table 4 -Table restricted for the period April 17, 2014 to October 13, 2014 (As per the Noticee 4's contention)

Sell Order Quantity	*No. of trades*	*No. of Pos. LTP Trades*	*Positive LTP (in Rs.)*	*No. of Trading Days*
1	*48*	*28*	*66.1*	*24*
2	*20*	*20*	*20.4*	*20*
3	*2*	*2*	*2.35*	*2*
5	*0*	*0*	*0*	*0*
Total	*70*	*50*	*88.85*	*44*

Table 4 - Table for the entire Investigation Period (As per the Noticee 4's contention)

Sell Order Quantity	No. of trades	No. of Pos. LTP Trades	Positive LTP (in Rs.)	No. of Trading Days
1	50	28	66.1	24
2	20	20	20.4	20
3	2	2	2.35	2
5	2	1	5.1	1
10	2	1	4.9	2
25	3	1	4.5	2
50	3	0	0	2
100	3	1	5.3	3
150	1	0	0	1
Total	86	54	108.65	57

viii. It may thus be observed that Table 4 when reviewed independently for the Noticee during the limited Investigation Period upto October 13, 2014, the Noticee has contributed +LTP of Rs. 88.85/- as opposed to Rs. 203.85 alleged by the SCN which is misleading. Further, as submitted herein, placing orders at a price higher than the LTP is logical and normal market practice in case of *genuine sellers. The SCN has failed to establish what violation has been committed by the Noticee on account of placing sale orders at a price higher than LTP. As submitted in Para 9.6 below, none of the sale orders placed by the Noticee have been in excess of 2% positive LTP, save and except in case of 6 trades. In case of these 6 trades, the positive LTP % was higher than 2%, however, the increase in scrip-price in monetary terms (i.e. LTP Rate) was less than Rs. 1.40/-.*

ix. *Similarly, Table 5 when reviewed holistically for the entire Investigation Period, the Noticee's name does not appear even in the Top 50 +LTP trades by value. However, on account of selective analysis, the SCN has alleged the Noticee to one of the Top 5 contributors to +LTP trades on two occasions which is misleading and incorrect.*

x. *It may also be noted that there were 320 Buyers and 380 Sellers with who traded in the ACL share during the Investigation period and despite of having miniscule share of the Noticee as shown in the above tables and comparisons and the Noticee is not among top 250 sellers (out of 380 sellers) in terms of quantity, the Noticee was made a party to the SCN.*

xi. *In light of the foregoing, it is submitted that the analysis of the Trade & Order Logs is perverse and lacks intelligible differentia.*

xii. *The SCN provides that on analyzing the trades, all the orders by the Noticee were placed for quantity ranging from 1 to 5 shares and that the Noticee and Noticee no. 5 of SCN had contributed in positive LTP of Rs. 203.85/- by placing to sell orders in small quantities ranging from lto 5 shares through multiple trades. The allegation itself is incorrect and misleading. As per the Trade & Order Logs (Annexure 5 to the Show Cause Notice), it may be observed that the Noticee has also given sale orders for bulk quantities of around 10, 25, 50, 100, 150 shares as well which have not been taken into account.*

xiii. *A break-up of the quantity-wise trades undertaken by the Noticee during the Investigation Period as derived from the Trade & Order Log furnished by SEBI is as under:*

Trade Quantity (Per Trade)	*No. of Shares Sold*
1 to 5	*106*
More than 5 (i.e. 10,25,50, 100 and 15)	*695*
Total	*801*

Hence, it is wrongly alleged as per the SCN that the Noticee has only placed orders in small quantities of 1 to 5.

xiv. *It is submitted that the SCN has failed to consider the fact that the Noticee had acquired the shares on 1st November 2012 and continues to hold about 77% of the total shares held by it in ACL. As per the SCN, the shares of ACL were traded for an average volume of 70,123 shares per trading day and a total volume of 2,17,38.040 shares in 23,088 trades for a total of 310 days. Out of the total volume of 2,17,38,040 shares in 23,088 trades, the Noticee has only contributed to sale of 801 shares in 86 trades which works out to 0.003% and 0.0037% of the total volume and trades respectively.*

xv. *As submitted above, there were certain changes in the fundamentals of ACL pursuant to the preferential allotments in May and September 2013 which led to increase in volume and stock price of ACL during FY 2014-15. As stated in the SCN. there was good demand to acquire ACL's stock in the market during that period and the Noticee, not being a regular player in the market was advised to make small trades.*

xvi. *On a perusal of the Trade & Order Logs, it may be observed that where trades resulted in +LTP%, on all occasions (except 4), the buy orders with higher LTP were placed well before the matching selling orders placed by the Noticee.*

xvii. *It may be further observed from Trade & Order Logs that the quantity of orders placed do not match with those placed by the counterparty and there is a substantial time gap in placing of orders between the counterparties and the Noticee. As stated in the SCN, there was good demand to acquire ACL's stock in the market during that period and the Noticee, not being a regular player in the market was advised to adopt a cautious approach by undertaking multiple trades.*

xviii. *Further, lot of emphasis has been made in the SCN on the trades being undertaken by the Noticee being higher than the LTP. It may be observed from Table 2 of the SCN that the buy orders at a price higher than the LTP were placed by the counterparties before the sale orders were placed by the Noticee. Further, out of the total 86 trades undertaken by the Noticee, 32 trades have been undertaken by the Noticee at 0% positive LTP which have not been taken into consideration during investigation. Further, out of the remaining 54 trades, none of the sale orders have been placed at more than 2% positive LTP, save and except in case of 6 trades. In the 6 trades where the positive LTP % was higher than 2%, however, the increase in scrip price in monetary terms (i.e. LTP Rate) was less than Rs.1.40/- in all such cases.*

xix. *It is submitted that save in exceptional circumstances, a genuine buyer will generally try to acquire at a price below the LTP whereas a genuine seller will try to sell at with a positive LTP% and no manipulative intent can be attributed to such buyer or seller unless there is a material variation in the LTP%. It is submitted that the investigations findings have not alleged any irregular or steep jump in the LTP% so as to attribute manipulative intent on the Noticee or to treat the trades as 'not genuine'.*

xx. *Manipulative transactions are to be tested on the conduct of parties and abnormality of practices which defy normal logic and laid down procedures.*

xxi. *It is therefore submitted that in the event the Noticee had placed the sale order below the LTP, the same would be regarded as an abnormality of practice which defy normal logic and hence, could have been considered as fraudulent. It may be further submitted that till date the Noticee continues to hold the remaining unsold shares of ACL (2699 shares x Rs.10/- split), the market value whereof as on date works out to less than Rs. 15,385/- in aggregate. Had the Noticee been in fact a part of the scrip manipulation, the normal logic would have been to offload its entire shareholding to other investors and made a windfall of profits. However, as the Noticee was not a regular market player and adopted a cautious approach towards trading, as per advice and it elected to hold on to the remaining unsold shares of ACL for better prospects.*

xxii. *It is submitted by the Noticee that neither the Noticee is a preferential allottee nor is connected to any preferential allottee nor has it bought any shares during the Investigation Period and thereafter as well and hence, the allegations contended against this Noticee are unsubstantiated. The Noticee submits that it has not sold a single share to the preferential allottees since Noticee's trades were done via stock exchange's trading platform, the Noticee was not aware of the other counterparty.*

17. I note that the SCN was delivered to Noticee 5 by way of RPAD and a proof of delivery is available on file. However, Noticee 5 failed to submit any reply. Thereafter, In the interest of natural justice, two separate opportunities of personal hearing were provided to Noticee 5 on July 12, 2019 and August 07, 2019 vide respective hearing notices dated July 01, 2019 and July 24, 2019. I note that both the hearing notices were delivered to Noticee 5. However, Noticee 5 failed to appear for personal hearings. In this regard, the observations

of Hon’ble Securities Appellate Tribunal (hereinafter referred to as ‘**SAT**’) in the matter of Sanjay Kumar Tayal & Others Vs. SEBI decided on February 11, 2014 is pertinent here. The Hon’ble Tribunal observed as follows:

“*…As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, 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…*”

CONSIDERATION OF ISSUES AND FINDINGS:

18. I have taken into consideration the facts and circumstances of the case, material available on record and the replies submitted by the Noticees 1 to 4. I note that the allegation levelled against the Noticees is that Noticee 4 & 5, by repeatedly selling few shares in the scrip of ACL at a price higher than LTP, have manipulated the price of the scrip. Further, it is also alleged that Noticees 1 to 3 were also part of the said manipulative scheme to increase the price of the scrip. In view of this, it is alleged that the Noticees have violated the provisions of Regulations (a), (b), (c), (d), 4(1) and 4(2)(a) & (e) of PFUTP Regulations. In view of the above, the issues for consideration before me are:-

    a. Whether Noticees 4 & 5 have manipulated the price of the scrip of ACL and, therefore, violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) & (e) of PFUTP Regulations?

    b. Whether Noticees 1 to 3, were part of the manipulative scheme and, therefore, have violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) & (e) of PFUTP Regulations?

    c. If yes, whether the Noticees are liable for penalty?

    d. What should be the quantum of penalty that should be imposed on the Noticees?

19. Before moving forward, the relevant extracts of the provision of law, allegedly violated by the Noticees, are mentioned 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 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 security;

20. Before dealing with the main violations, I would deal with certain preliminary objections raised by the Noticees. It has been contended by Noticee 1 that initiation of adjudication proceedings amounts to 'double jeopardy' under Article 20(2) of the Constitution of India as proceedings in the same matter have

already been initiated before Whole Time Member of SEBI. In this regard, I note that the present adjudication proceedings do not amount to double jeopardy as the proceedings before the WTM was initiated against the Noticees in terms of Section 11 of SEBI Act while the present proceedings have been initiated under Section 19 read with Section 15-I of SEBI Act; thus they are parallel proceedings. Further, Hon'ble Securities Appelllate Tribunal, in its order dated October 04, 2012 in the matter of Shailesh S Jhaveri vs. SEBI, had made the following observations:

"*On issue no.(i), we are clearly of the view that the principle of double jeopardy is not applicable to the facts of the present case. Article 20(2) of the Constitution of provides that no person shall be prosecuted and punished for the same offence more than once. These are not criminal proceedings. This is a civil action for violation of the regulatory framework relating to the securities market and there is no legal bar in initiating action for violating different provisions of the Act. The Act itself permits adjudication proceedings under Chapter VIA of the Act, issue of directions under Sections 11 and 11B of the Act and prosecution under Section 23 of the Act for violating provisions of the Act or the rules made thereunder.*"

Therefore, in light of the above observation of Hon'ble SAT, I am of the view that the issue of double jeopardy has been well settled and I find no basis for the contention of the Noticee 1 in this regard and therefore I reject the contention as meritless.

21. I note from the annual report of ACL for the financial year 2012-13 that Noticee 2 was the Executive Director and CFO and Noticee 3 was the Executive Director of the company. Also, I note from the annual report of ACL for the financial year 2013-14 that Noticee 2 was the Managing Director from February 12, 2014 and Noticee 3 was the Executive Director of the company.

22. I will now deal with the other contentions with respect to connections among the Noticees. On analysis of the KYC documents and details on the website of Ministry of Corporate Affairs (**MCA**), two groups were identified. A Group of 18

buyers and 2 sellers, namely Group-1, and a group of 7 entities, namely Group-2. On the basis of detailed analysis it was observed that Shri Manoj Kumar Sharma (DIN: 2701338) was a common director in Panchamukhi Vincom Private Limited (22/10/2009 to till date), Natural Investment Management Pvt. Ltd. (22/10/2009 to till date), Improve Distributors Private Limited (22/10/2009 to till date) and Westfield–Promoter of ACL (2/09/2010 to 06/08/2012). It was also observed that Shri Sohan Lal Agarwal (DIN: 6636039) was a Director in Wellplan Financial Management Private Limited (Group-1 entity) and ACL during 12/02/2014 to 14/08/2014. Further, it is observed that Shri Ramawtar Gupta, Managing Director of ACL, shares common phone number (i.e., 9331110151) with Kuber Dealcom Private Limited, Vindhya Vasini Agency Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited. Thus, Group-1 is connected to ACL. Further, a detailed analysis of connection was made in form of a table in Investigation Report and the same was given as Table 1 in the SCN which has been reproduced under the heading "Show Cause Notice, Reply and Personal Hearing". On a perusal of the said Table-1, I note that Noticee 4, Noticee 5 and Westfield were sharing the same address as their respective registered office viz. Flat No. 66, G–10, Ground Floor, Sector 15, Rohini, Delhi – 110085.

23. I further note from the IR that all the connections among the Noticees and other entities of the group have been established on the basis of KYC documents and MCA database.

24. In this regard, I note that Noticees 1-4, in their separate submissions, have contended that there was no connection of Noticees 4 & 5 with Westfield. Further, they were occupying separate places within same premises and there was a Chinese wall among them. From available records I find that Noticees 4 & 5 were having their registered address in the same Flat and not merely same building; thus their contention is not agreeable.

25. I further note that Noticee 4 was having a common director with two of the Group-1 entities, both of which had provided exit to preferential allottees.

Further, it cannot be ignored as mere coincidence that Noticee 4 and Noticee 5 acquired 3500 shares each of ACL in the same quarter when Westfield became the promoter of ACL by way of acquisition certain shares from Shri Sanjay Salunkhe (ex-promoter of the company) vide share purchase agreement dated December 29, 2012. The details of acquisition have been mentioned subsequently.

a. Whether Noticee 4 & 5 have manipulated the price of the scrip of ACL and, therefore, violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) & (e) of PFUTP Regulations?

26. I note that Noticee 4 has made a number of submissions in support of its case. I will now deal with those submissions as below:

   a. Noticee 4 has submitted that the Investigation has taken into consideration trade data only for a limited period of 6 months commencing from April 17, 2014 and ending October 13, 2014 which is arbitrary and without intelligible differentia pushing Noticee 4 to a disadvantageous position.

   b. I note that the Investigation period has been first divided into various patches depending factors such as price, volume, split of the face of shares etc. I find that pre-split period has been divided into two patches on the basis of volume of transactions. I note that patch-1, which extends from April 17, 2014 to October 13, 2014, had an abysmally miniscule daily average traded volume of 2 shares. However, in patch-2, which extends from October 17, 2014 to March 10, 2015, the daily average traded volume of shares had increased to 42177. Also, I note from, the investigation report that the price had gone up from an opening price of Rs. 227.30 to as high as Rs. 490/- during the period commencing October 14, 2014 and ending March 10, 2015. This price rise is huge when compared with pre-split period evidencing low volume with prevailing prices around Rs. 18 to Rs. 222. 85. Therefore, I find that the Division of investigation period into various patches has been done with some basis and therefore it is not correct to state that there was no *intelligible differentia* in creation of patches. For the same reasons I do not accept the argument of the Noticee

4 that the investigation should have been considered collectively as one period. Based on the above contention, I note that, Noticee 4 has argued brining out its own calculations of various parameters; hence I reject all those arguments *in toto* for want of reasoned justification.

c. Noticee 4 has also agreed to the patch 1 trade data as mentioned in the SCN. I find no dispute being raised by the Noticee with respect to the data.

d. I also note that the Noticee has claimed that it had sold in bulk quantities of 50, 100, and 150 also which have not been considered. In this regard I note that the allegations against Noticee 4 (for that matter Noticee 5 also) pertain to Patch 1 wherein they have contributed to LTP by selling miniscule number of shares despite much higher buy orders were pending in the system. This established the manipulative intent of the Noticee 4 (for that matter Noticee 5 also). Therefore the contention that bulk quantity trades have been done has no merit for consideration as those trades are not alleged to be violative as they have been done after patch 1 period.

e. I hold that the above contentions are nothing but an attempt by the Noticee to dilute its role in price manipulation in the scrip.

f. Noticee 4 has also submitted that it had traded in the scrip above LTP which is a positive sign for a seller. In this regard, I note that, normally a seller selling shares at a higher price cannot be termed as imprudent. However, in the present matter, I find Noticee 4 to be connected to the other Noticees and the other group entities as has been brought out elsewhere in this order. Also, the manipulative trading pattern of Noticee 4 has also been discussed at length. In view of the above, I cannot agree with the general argument of Noticee 4 in this regard.

27. As referred to in the earlier paragraphs, I note from the disclosures available on BSE website, on March 20, 2013, Westfield became a Promoter of ACL on acquisition of 1,76,450 shares (65.35% of share capital) from Shri Sanjay Salunkhe (ex-promoter of the company) vide share purchase agreement dated December 29, 2012.

28. Thereafter, ACL came out with preferential allotment of shares on two different dates. In this regard, I note from the shareholding pattern available on the BSE website for quarter ending March 2013, prior to a preferential allotment, that the total shareholding of the company was 2,70,000 shares. On May 02, 2013, ACL made preferential allotment of 67,30,000 shares at Rs. 15/- to 47 entities other than Promoters thereby increasing the shareholding of the company to 70,00,000 shares. These shares were locked-in till May 01, 2014. Subsequently, on September 13, 2013, ACL made second preferential allotment of 73,80,000 shares at Rs. 15/- to its Promoter viz. Westfield, wherein it was allotted 12,00,000 shares of ACL, and 46 entities other than Promoters whereby they were allotted 61,80,000 shares thus increasing the shareholding of the company to 1,43,80,000 shares. The shares allotted to Promoter were locked-in till October 14, 2016. The shares allotted to entities other than promoter group entities were locked-in till October 14, 2014.

29. It is further observed from the shareholding pattern submitted by ACL to BSE for the quarter ended March 31, 2014 that the total number of shares issued by ACL was 1,43,80,000 shares. Of these, 58,050 shares were held by shareholders in physical form and 1,43,21,950 were held in demat form. Of the shares held in demat form, 1,41,10,000 shares were issued in preferential allotments dated May 02, 2013 (67,30,000 shares) and September 13, 2013 (73,80,000 shares). Accordingly, these shares were locked-in till May 01, 2014 and October 14, 2014 (October 14, 2016 for Westfield) respectively. Remaining 2,11,950 shares were held by Westfield (1,76,450 shares) and other 4 entities namely Noticee 4 (3,500 shares), Noticee 5 (3,500 shares), Ravioday Realtors Private Limited (24,500 shares) and Paksh Marketing Private Limited (4,000 shares).

30. I observe from the investigation report (herein after referred to as "**IR**") that during the investigation period, the shares of ACL were traded for an average volume of 70,123 shares per trading day and a total volume of 2,17,38,040 shares in 23,088 trades for a total of 310 days. Prior to the investigation period, the scrip had traded only on three days during September 19, 2005 to April 16,

2014. During the Investigation period, price of the scrip increased from Rs. 18/- (opening price) to Rs. 490/- (high price). It is observed from the IR that the company made a net profit of Rs. 0.04 crore for the year ended 2012-13, incurred a loss of Rs. 15 lakh for year ended 2013-14 and made a net profit of Rs. 0.28 crore for the year ended 2014-15.

31. It is observed that the shares of ACL were split in the ratio of 1:10 on March 11, 2015. On the basis of price-volume action, the investigation period has been split into 3 patches, details of which are given below:

Patches	**Period**	**Particulars**	**Open**	**High**	**Low**	**Close**	**Avg. Volume**
Pre – IP	17/03/2014 to 16/04/2014	No Trades					
Pre-Split – Low Volume IP*- **Patch-1**	17/04/2014 to 13/10/2014	Price	18	222.85 [13/10/2014]	18 [17/04/2014]	222.85	2
		Volume	5	37 [13/10/2014]	1 [Multiple Dates]	37	
Pre- Split IP – High Volume IP – **Patch-2**	14/10/2014 to 10/03/2015	Price	227.3	490.00 [05/03/15]	227.3 [14/10/2014]	478.30	42177
		Volume	27502	108615 [08/12/14]	2 [17/10/2014]	45706	
Post – Split IP **Patch-3**	11/03/2015 to 31/07/2015	Price	50.10	51.00 [19/03/15]	42.5 [12/05/15]	43.30	179206
		Volume	110005	840000 [18/03/15]	10000 [24/07/15]	37000	
Post – IP	01/08/2015 to 26/08/2015**	Price	43.25	45.45 [07/08/15]	39.20 [26/08/15]	39.20	55850
		Volume	28540	178081 [26/08/15]	5000 [17/08/15]	178081	

*IP – Investigation Period
** The scrip was suspended from August 27, 2015 to June 13, 2016.
*** Prior to the IP, the scrip had traded only on three days during September 19, 2005 to April 16, 2014.

32. As has been noted, On the basis of KYC analysis and details on MCA website, two groups were identified. It has been alleged that Noticee 4 and Noticee 5 were part of Group 1 which is also connected to ACL, Noticee 2 and Noticee 3. The detailed analysis of the group, its connections with ACL and other analyses in that regard have been done elsewhere in this order.

33. It is observed that, during patch 1, price of the scrip opened at Rs. 18/- (April 17, 2014) and closed at Rs. 222.85 (October 13, 2014) in 113 days with a total volume of 277 shares in 151 trades during the whole Patch 1. This clearly shows that there were very scanty trades during this period with the average volume during the whole Patch 1 was a mere 2 shares. However, there was a sharp

price rise during this period from Rs. 18 to Rs. 222.85 per share. The trades of top 10 net LTP contributing entities contributing more than 5% of market positive LTP (on buy side) were analyzed and it was observed that Noticee 4 and Noticee 5 appeared as major counterparties (sellers) to the top 6 positive LTP contributing buyers. The details are as under:

Buyer	% of positive LTP to Market	Major Counterparties				
		Maheswari Financial Services Limited		Vemuri Finvest Private Limited		Total +ve LTP with major Counterparties
		Pos. LTP (in Rs.)	% of Market +ve LTP	Pos. LTP (in Rs.)	% of Market +ve LTP	
Vipul Rajendrabhai Gandhi	14.93	13.05	6.34	15.8	7.68	14.02
Bharti Goyal	11.86	9.9	4.81	14.5	7.05	11.86
Nirav Rajababu Gandhi	10.28	11.7	5.69	9.45	4.59	10.28
Ankit Mahendra Kachhara	9.14	9.2	4.47	9.6	4.66	9.13
Shyam Kanheyalal Vyas	7.10	7.85	3.82	6.75	3.28	7.10
Manbar Singh Negi	6.22	8.45	4.11	4.35	2.11	6.22
Total	**59.53**	**60.15**	**29.24**	**60.45**	**29.37**	**58.61**

34. From the above table, I observe that top 6 positive LTP contributors (buyers) had contributed 59.53% of the market positive LTP. Of these trades, Noticee 4 and Noticee 5 were the counterparties to the trades contributing 58.61% of the market positive LTP. I am of the view that 58.61% of total Market positive LTP is a very large amount which cannot be ignored under the circumstances.

35. Further, SEBI also conducted analysis of trades of Noticee 4 and Noticee 5 on standalone basis. It is observed from the disclosures on shareholdings, as available on the website of BSE, that Noticee 4 and Noticee 5 acquired 3,500 shares each during the quarter ended March 2013 i.e. the same quarter in which Westfield had become promoter by acquiring shares of ACL. Further analysis on the trades of Noticee 4 and Noticee 5 during the investigation period showed the following details:

- Noticee 4 and Noticee 5 had traded only in patch-1 as sellers. Details of analysis are as under:

Name	Net LTP			Pos. LTP			Negative LTP			Zero LTP		% of +ve LTP to Mkt	No.of Trading Days
	Net LTP	Trade Qty	No.of Trades	Pos. LTP	Trade Qty	No.of Trades	Neg. LTP	Trade Qty	No.of Trades	Trade Qty	No.of Trades		

Vemuri Finvest Private Limited	115.00	110	75	115.00	97	62	0.00	0	0	13	13	55.91	72
Maheshwari Financial Services Private Limited	88.85	94	70	88.85	74	50	0.00	0	0	20	20	43.19	66
Total	**203.85**	**204**	**145**	**203.85**	**171**	**112**	**0.00**	**0**	**0**	**33**	**33**	**99.10**	**138**
Market	**205.7**	**277**	**151**	**205.7**	**185**	**113**	**0**	**0**	**0**	**92**	**38**	**100**	**-**

- From the above table, it is observed that Noticee 4 and Noticee 5 together had entered into a total of 145 trades on 138 trading days. In those 145 trades, Noticee 4 and Noticee 5 sold a total of 204 shares of ACL. Further, out of those trades, none of the trades of Noticee 4 and Noticee 5 had resulted into negative LTP.

- Further, Noticee 4 and Noticee 5 together had contributed to 99.10% of the positive LTP in a total of 112 trades wherein they sold a total of only 171 shares of ACL. Further, all the 112 Positive LTP trades of these two entities were first trades in which, for 11 trades, sell orders were placed first and for the remaining 101 trades, sell orders were placed at the available buy order prices.

- Upon analysis of trading quantity of the total 138 trades done by Noticee 4 and Noticee 5, it was observed that all the orders were placed for a quantity ranging from 1 to 5 shares. The quantity and pattern is detailed as under:

Sell Order Quantity	No. of trades	No. of Pos. LTP Trades	Positive LTP (in Rs.)	No. of Trading Days
1	94	61	153.40	61
2	45	45	44.40	45
3	5	5	5.20	5
5	1	1	0.85	1
Total	**145**	**112**	**203.85**	**112**

- From the above table, it can be observed that Noticee 4 and Noticee 5 had contributed positive LTP of Rs. 203.85/- by placing sell orders in small quantities ranging from 1 to 5 shares through multiple trades on multiple trading days.

- Further, top 5 positive LTP contributing trades of Noticee 4 and Noticee 5 during the patch were considered for order log analysis and analyzed as under:

S. No.	Order Type	Order No	Order Time	Order Qty	Order *Price (in Rs.)*	Counterparty Pending Order Qty Range (total)	Counterparty Pending order Price range	Trade No.	Trade time	Traded Qty	Trade Price *(in Rs.)*	Diff in LTP (in Rs.)
1	Buyer: Manbar Singh Negi Seller: Vemuri Finvest Private Limited Date: 13/10/2014											
	Buy	1413171000001250000	09:23:10	50	222.85	0	0	1	09:32:00	1	222.85	4.35
	Sell	1413171000001250001	09:32:00	1	222.85	50 (50)	222.85					
2	Buyer: Manbar Singh Negi Seller: Maheshwari Financial Services Private Limited Date:10/10/2014											
	Buy	1412911800004220000	09:17:10	50	218.5	0	0	1	10:25:07	1	218.5	4.25
	Sell	1412911800004220005	10:25:06	1	218.5	1-49(58)	210.05 - 218.50					
3	Buyer: Manbar Singh Negi Seller: Maheshwari Financial Services Private Limited Date:09/10/2014											
	Buy	1412825400001252000	09:19:13	100	214.25	0	0	1	09:50:45	1	214.25	4.2
	Sell	1412825400001252001	09:50:44	1	214.25	99(99)	214.25					
4	Buyer: Kinshul Sanjaykumar Jain Seller: Vemuri Finvest Private Limited Date:08/10/2014											
	Buy	1412739000001039000	09:00:00	20	210.05	0	0	1	09:23:56	1	210.05	4.1
	Sell	1412739000001039001	09:23:55	1	210.05	20(20)	210.05					
5	Buyer: Maheshwari Negi Seller:: Vemuri Finvest Private Limited Date:07/10/2014											
	Sell	1412652600002237201	10:19:38	1	205.95	50(50)	201.95	1	10:30:39	1	205.95	4
	Buy	1412652600002237203	10:30:39	2	205.95	1(2)	205.95					

- From the above order log analysis, I note the following points:

  a) From analysis of trade given at S. No. 1, I note that there were no sell orders in the market when Noticee 5 placed the order for sale of 1 share of ACL. It can be observed that Shri Manbar Singh Negi had placed buy order at 09:23:10 to buy 50 shares for Rs. 222.85/- when bid book had no sell orders. Subsequently, Noticee 5 had placed sell order at 09:32:00 to sell only 1 share, even when it could have sold 50 shares, to match the buy order at Rs. 222.85/-. This led the price of scrip of ACL to an increase by Rs. 4.35/- from the LTP.

  b) The same pattern can be observed from the trades mentioned at S. No. 2, 3 and 4.

  c) Further, from analysis of trade given at S. No. 5, I note that there was only one sell order in the market for sale order of 2 shares when Noticee 5 placed the order for sale of 1 share of ACL. It can be observed that Noticee 5 had placed sell order at 10:19:38 AM to sell 1 share of ACL for Rs. 205.95/- when bid book had a buy order for 50 shares at Rs. 201.95/-. Subsequently, Maheshwari Negi had placed a buy order for 2 shares at the price of Rs. 205.95/-. This led to trade of 1 shares and the price of scrip of ACL increased by Rs. 4/- from the LTP.

- In view of the above analysis, I note that Noticee 4 and Noticee 5 repeatedly placed orders on sell side to only sell a few shares ranging from 1 to 5 at prices higher than LTP even when each of them was having higher number of shares in their Demat accounts. Further, these trades had contributed to the price rise even when there was buy demand for more number of shares.
- In view of the trade analysis made above, it is noted that Noticee 4 had executed 70 sell trades in the scrip of ACL for 94 shares and Noticee 5 had executed 75 sell trades in the scrip for 110 shares. Out of the said 70 trades of Noticee 4, 50 trades have led to positive LTP contribution for 74 shares and out of the said 75 trades of Noticee 5, 62 trades have led to positive LTP contribution for 97 shares.

36. From the analysis of order log and trade log, it is observed that the days when Noticee 4 & 5 had executed the said 112 trades over the LTP, there were pending buy orders in the range of 10 shares to 2,000 shares in the scrip of ACL. It is observed that when Noticee 4 & 5 were trading, out of the 113 trading days, on 80 trading days only 1 trade was executed in the scrip. I am of the view given the fact that the average volume in the scrip during patch- 1 of the investigation period which spanned for nearly 6 months, was a mere 2 shares, any prudent investor would sell his shares at the very first opportunity that he/she comes across. In the given situation, there was considerable buy order quantity pending in the system and that too over the LTP. However, Noticee 4 and Noticee 5 were continuously selling merely 1 to 5 shares per trade during this time. Further, it is not the case of Noticee 4 & 5 that on multiple occasions they had placed sell orders for more than 1 to 5 shares and the orders were not executed. Rather in the instant case, most of the sell orders were placed by Noticee 4 & 5 after buy orders, so they had the opportunity to ascertain the number of buy orders pending and the quantity thereof. Despite having the said information, Noticee 4 & 5 chose to sell very small number of shares per trade.

37. Moreover, out of total 145 trades executed by Noticee 4 & 5, a total of 112 trades had taken place over the LTP. In light of this, I note that Noticee 4 & 5 were frequently putting sell orders over the LTP. The same shows a consistency

(both in terms of volume and price) in the way Noticee 4 & 5 were putting orders in the scrip.

38. In the extant matter Noticee 5, by executing trades in miniscule quantity in 62 instances, has contributed to Rs. 115/- to the positive LTP which is 55.91% of total market positive LTP and Noticee 4, by executing trades in miniscule quantity in 50 instances, has contributed to Rs. 88.85/- to the positive LTP which is 43.19% of total market positive LTP.

39. Thus, based on the trading pattern of the Noticee 4 & 5 in the scrip, it is held that the same is not genuine but is manipulative in nature.

40. I note that trades at higher than LTP, undoubtedly have a potential of raising the price of the scrip and. Thus, giving a wrong impression about the price of the scrip in the market.

41. I note that Noticee 5 has not made any submissions during the present adjudication proceedings.

42. I find that Noticees 2, 3 and 4 have argued to suggest that ACL had profitably deployed the preferential issue proceeds that is evidenced by the financials and change in fundamentals which led to increase in price and volume of scrip of ACL. In this regard, I note from the Annual Report of the company for the year 2014- 15 that the income from operations of the company had increased to Rs.11,85,35,238.01 as against for the previous financial year 2013-14, of Rs. 15,39,053. Thus, I find that the income from operations of the company has reportedly increased by 7,702% in one financial year. I also note from the Annual reports of the company for the financial years 2014- 15 and 2013-14 that the expenditure of the company has increased from Rs.11,44,69,094.08 to Rs.14,41,977.86, respectively, registering an increase of 7,938 % in one financial year. However, upon reading the Section on Management Discussion and Analysis (MD&A) forming part of the annual report of ACL I find no justification adduced for such sudden increase either in income from operations or in expenditure. In view of the above, I find it difficult to accept the general

arguments advanced by the above Noticees on fundamentals, financials, etc. of ACL.

43. In cases of market manipulation, admittedly, no direct evidence would be forthcoming / available. Manipulative transactions are to be tested on the conduct of parties and abnormality of practices which may not conform to normal logic and laid down procedures. In this regard, the observations of Hon'ble Supreme Court of India in SEBI vs. Kishore R Ajmera et.al. decided on February 23, 2016 wherein the Hon'ble Court, while deciding the matter under SEBI Act and PFUTP Regulations where there was no direct evidence forthcoming, observed as follows:

"*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…*"

44. In view of the discussions above, I hold that Noticee 4 and Noticee 5 had, regularly and on a continuous basis, deliberately entered into trades for minuscule quantity with an intent to manipulate the price of the scrip. Further, the same trades have also led to a combined LTP contribution of Rs. 203.85 (99.10% of total LTP change during patch 1). Therefore, I hold that Noticee 4 & 5 have violated the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of PFUTP Regulations.

b. Whether Noticee 1 to 3, company and its Directors (other than Independent and Non-Executive Directors), were part of the scheme to manipulate the price of the scrip to benefit the preferential allottees?

45. It is noted from records that the company had made two preferential allotments at Rs. 15/- on May 02, 2013 for 67,30,000 shares to 47 entities other than Promoters of the company and on September 13, 2013 for 73,80,000 shares to 1 Promoter (Westfield–12,00,000 shares) and 46 entities other than Promoters (61,80,000 shares). As per data available on BSE website, the scrip had traded only on 3 days between September 1, 2005 to April 16, 2014 (one trade on September 19, 2005, second trade on December 24, 2008 and third trade on December 2, 2010). It is also observed that post April 16, 2014, shares available for sale in demat form were held by Promoter and its connected entities.

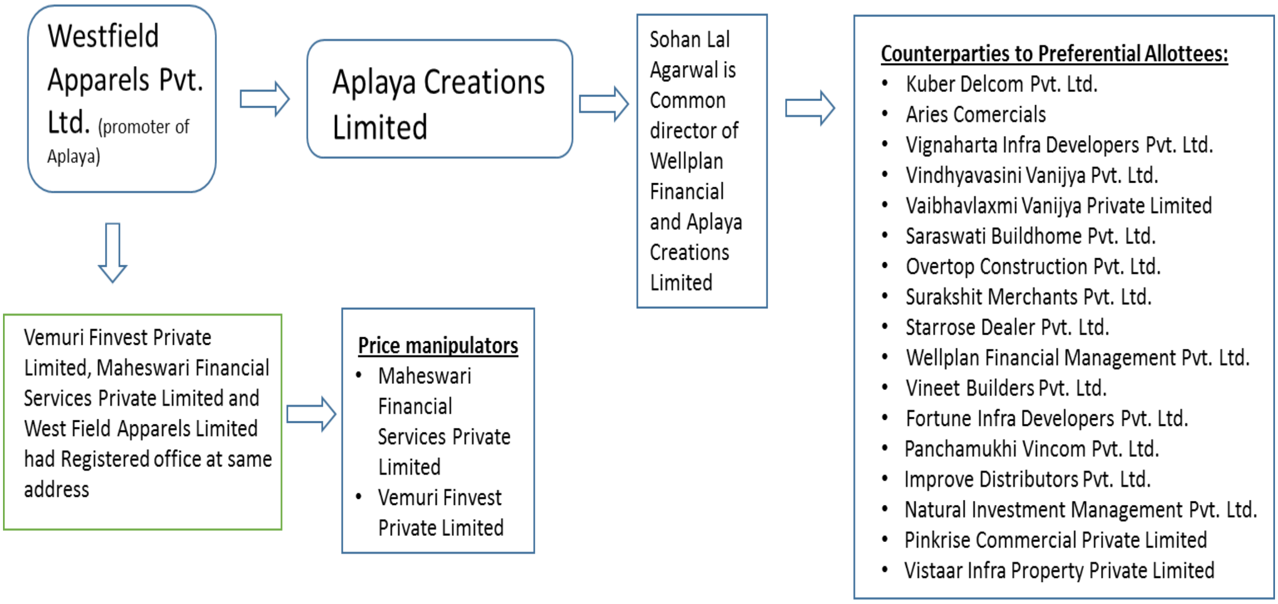
46. Further, it has already been concluded in preceding paragraphs that Noticee 4 and Noticee 5 have contributed to the price rise in the scrip and have manipulated the price of the scrip.

47. Further, as has been discussed in pre-paragraphs, I also note from the IR that the scrip had traded only on 3 days between September 1, 2005 and April 16, 2014 and, thereafter, suddenly, Noticee 4 & 5 started selling shares in minuscule quantity to manipulate the price of the scrip. Further, there was no seller in the scrip during first 4 months of patch-1 except Noticee 4 & Noticee 5. I also note the fact that Noticee 4 & 5 traded only in the scrip of ACL during the financial year 2014-2015. I am of the view that the above facts clearly show that there was a meeting of minds among Noticee 4, Noticee 5 and Westfield behind the whole scheme.

48. I further note that Noticee 1 has submitted that it had no role, involvement and participation on the price movement of its shares. However, in light of the above connections and the fact that there was a meeting of minds among Noticee 4, Noticee 5 and Westfield, I am unable to accept the argument of Noticee 1.

49. Further, from the IR, it is noted that during the investigation period, 72 preferential allottees had sold 1,70,41,854 shares. On further analysis, it is

observed that Group-1 entities who are connected to the company have traded with majority of the preferential allottees and had purchased 26.35% value of shares, amounting to Rs. 52,70,86,234/. Diagrammatic representation of the entities involved in providing exit to the preferential allottees is as under:



50. It is pertinent to mention here that shares were allotted by ACL in a preferential allotment in contrast to a public issue where funds are raised by inviting subscriptions from public in general. There has to be a prior consultation, approach and marketing before issuance of such shares on a preferential basis vis a vis a public issue. I note that the shares of ACL had traded only 3 times in a span of almost 9 years prior to the investigation period and there is nothing on record to show that the fundamentals of the company changed substantially at the time of the preferential allotments which will inspire confidence in the company. The financial condition of ACL at the time of issuance of these preferential shares has been discussed more elaborately elsewhere in this order. It is noted that, even in such a weak circumstances, ACL was able to raise approximately Rs. 19.36 crore from 93 persons other than Promoter at a price of Rs. 15/- per share. This is only possible if there was a prior tacit understanding between the company and the exit providers to benefit the preferential allottees. It is noted that exit providers created the demand against the supply from the preferential allottees as a sudden supply if not matched by

similar demand would have led to a considerable price fall. Out of the total shares sold by preferential allottees after their lock-in was over, 26.35% value of shares amounting to Rs. 52,70,86,234/- sold by the preferential allottees were purchased by the exit providers who apart from being connected with each other are also connected to the company. As has been mentioned in the SCN, the promoters and connected entities were having entire control on the dematerialized shares; thus having a control on the supply side of shares during the investigation period. The below mentioned table depicts the holding status:-

Physical / Demat	**Particulars**	**Number of Shares**	**% of total shareholding**
Physical	Shares held in physical form	58,050	0.40%
Demat	Preferential allottees (under lock-in)	1,41,10,000	98.12%
	Promoter (Westfield Apparels Private Limited)	1,76,450	1.23%
	Company/Promoter Connected entities (4 entities)	35,500	0.25%
Total paid up share capital of ACL		**1,43,80,000**	**100%**

Therefore, it is concluded that the aforesaid elaborate dubious scheme / plan/ device could be successful only if the company, price manipulators and the exit providers were acting in a pre-determined manner and were hand in glove with each other.

51. The company has submitted that in order to raise resource to fund growth plans of the company, organically and inorganically, to meet working capital requirement and general corporate purposes, the company decided to infuse fresh capital by way of preferential allotment of shares. The submission of the company is not acceptable as it has failed to provide any material such as any communication between the preferential allottees and ACL, Information Memorandum, documents showing deployment of funds etc. in order to substantiate its submission.

52. Also, I note that the company has suddenly shown rosy picture in terms of its revenue and profit and the same has been discussed elsewhere in this order.

53. In view of the above, it is held that the company was part of the scheme to manipulate the price of the scrip to benefit the preferential allottees.

54. I further note that, during the whole investigation period, as well as the period before that, when the abovementioned preferential allotments were made,

Noticee 2 and Noticee 3 were the Executive directors of ACL. I also note that, during the investigation period, Noticee 2 was acting as Managing Director of ACL and Noticee 3 was acting as the Executive Director of ACL (who has subsequently been designated as the Chief Financial Officer (**CFO**) of ACL).

55. I note that as Managing Director and as Executive director and CFO, the Noticee 2 & 3 are responsible for the conduct of the business of the Noticee 1, an artificial juridicial person, and they assume the character as “officers in default” for any violation by virtue of Section 5 of the Companies Act, 1956 (section 2(60) of the Companies Act, 2013) read with Section 27 of the SEBI Act. Additionally, I would also like to quote the observations of the Hon'ble Supreme Court of India in the matter of Shri N. Narayanan vs. SEBI decided on 26.04.2013, wherein it was observed that - *"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence….."* Further, Hon’ble High Court of Madras in Madhavan Nambiar vs Registrar Of Companies (2002 108 CompCas 1 Mad) has held that – “*… Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision ; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.*

… Section 29 of the Companies Act provides the general power of the board….Therefore it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be answered against the petitioner…. There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible..."

56. Further, I note that Section 27 of SEBI Act also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default

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.

57. In this regard, I further note that as per Section 291 of Companies Act, 1956 read with Section 179 of Companies Act, 2013, the Board of Directors exercises all such powers and does all such acts and things which the company is authorized to exercise and do; thus making the directors who have been invested with powers to be liable also for the acts of the company.

58. I also note that Noticee 2 & 3, being the Managing Director and Executive Director & Chief Financial Officer of ACL, were also the 'Key Managerial Persons' as defined under Section 2(51) of Companies Act, 2013.

59. I note that Noticee 2 has not denied the fact that he was the Managing Director of the company during the whole period when this whole scheme was operational and he has resigned on July 06, 2017 i.e. only after the whole scheme had taken place. I note that, being the Managing Director, as defined under Section 2(26) of Companies Act, 1956 read with Section 2(54) of Companies Act, 2013 and empowered to act on behalf of the Company under Section 291 of Companies Act, 1956 read with Section 179 of Companies Act, 2013, he was vested with substantial powers of management. He was in charge of the day to day affairs of the company and was bound to discharge his functions with utmost care, skill and diligence in the interest of the company and its shareholders.

60. It has already been held in the preceding paragraphs that the company had come out with preferential allotments and had devised a scheme to manipulate the price of the scrip to benefit the preferential allottees. It has also been established that the fact that, under the given circumstances, wherein the shares of ACL had traded only 3 times in a span of almost 9 years prior to the investigation period and there was no substantial change in the fundamentals of the company at the time of the preferential allotments which could have inspired confidence in the company, ACL was able to raise approximately Rs.

19.36 crore from 93 persons other than Promoter at a price of Rs. 15/- per share.

61. I am of the view that, being the Managing Director of ACL with substantial powers of management, Noticee 2 was responsible for execution of company's policies such as the two said preferential allotments. Such execution of company's policies cannot be possible without prior tacit understanding between the company and the exit providers to benefit the preferential allottees.

62. It is also a fact that Noticee 2 shares a common phone number (9331110151) with Group- 1 entities namely Kuber Dealcom Private Limited, Vindhya Vasini Agency Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited and as noted from the IR, the Group- 1 entities were the counter parties to the trades of preferential allottess. In this regard, I note that Noticee 2 has contended that he had never authorized any of these companies to use his phone number and the same was done without his knowledge. However, the conduct of Noticee 2 does not suggest so as the SCN was issued on October 17, 2017 informing Noticee 2 about such misuse. Yet, Noticee 2 has failed to put anything on record to suggest that it has taken steps against any of these companies for unauthorized use of his phone number. In light of this, the preponderance of probability of these facts and circumstances clearly indicate that the said scheme is possible only with the knowledge and role of Noticee 2, the Managing Director of ACL.

63. Similarly, Noticee 3, being the Executive Director & CFO and, thus, as per Section 2(51) of Companies Act, 2013 is a Key Managerial Person of the company, was also responsible to discharge his functions with utmost care, skill and diligence. Being the Executive Director and CFO of the company, he was involved in running day to day affairs of the company and was also responsible for the financial planning of the company as well as analyzing the company's financials and proposing corrective actions. In this regard, I note that Noticee 3 was an Executive Director of ACL during February 08, 2013 and July 06, 2017 during which the whole scheme had taken place. I note that the Noticee 3 has

argued that he had resigned from the company on July 06, 2017. However, the said resignation does not absolve Noticee 3 of his liabilities as during the relevant period he was holding the position as Executive Director and a CFO.

64. In these circumstances, based on the connections established, the scheme could not have been executed without a prior understanding between the company and the exit providers to benefit the preferential allottees of the company. Noticee 3, being the Executive Director and CFO of the company, was also responsible for all the deeds/acts of the company during the period of his directorship. Considering further that the company being a legal entity cannot act by itself, it can act only through its Directors, it is held that Noticee 2 and Noticee 3 were part of the scheme to manipulate the price of the scrip to benefit the preferential allottees.

65. In the extant matter, company had come out with preferential allotment. Thereafter, the price of the scrip was artificially manipulated by price manipulators, connected to the company namely Noticee 4 & 5. A factor that enabled the price manipulators in their manipulation was that the shares available for trading in the demat form was controlled by ACL/Promoter and its connected entities. At a subsequent stage, the preferential allottees were provided exit at the manipulated price by the exit providers who were also connected to the company (26.35% value of shares traded by preferential allottees). These acts of preferential allotment, price manipulation and subsequent providing of exit constitutes a scheme. The scheme has in effect resulted in benefit to the preferential allottees. In the instant case, the company and the price manipulators connected to the company along with other connected entities not only controlled the supply of the shares and manipulated the price of the scrip but also connected entities of the company provided an exit to the preferential allottees. I, therefore, hold that Noticee 1 and its Managing Director and Executive Director (Non-Independent) & CFO namely Noticee 2 and Noticee 3 to have violated Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a) and (e) of PFUTP Regulations.

c. If yes, whether the Noticees are liable for penalty?

66. As established in the pre-paragraphs, the Noticees have violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a) and (e) of PFUTP Regulations. Therefore, the Noticees are liable for a penalty under Section 15HA of SEBI Act. The text of the said provision of law is being reproduced below:

<u>SEBI Act</u>

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

67. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

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

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

(c) the repetitive nature of the default.

68. With regard to the above factors, it may be noted that the investigation report has not quantified the loss caused to general investors on account of the violations committed by the Noticees. However, I note from the IR that the preferential allottees had subscribed to the shares of the company in preferential allotment by paying approximately Rs. 19.36 crores. Thereafter, the said preferential allottees sold the shares for Rs. 200.02 crores thus allegedly gaining huge profit through the manipulation. At the same time I note that the allottees are not the Noticees in the present matter. Upon an overall perusal of

the matter in toto as brought out in this order, it is established that the Noticees have manipulated the trading in ACL irrespective of the object of manipulation and further that there is no allegation/evidence that the Noticees have made any personal profit out of the said scheme.

69. Further, in light of recent order of Hon'ble SAT in the matter of P G Electroplast vs SEBI, I also note that, vide Order dated March 27, 2019, Hon'ble Whole Time Member of SEBI has debarred the Noticees from Securities Market for a period of 8 years.

70. At this juncture, it is noteworthy to quote the observations of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shriram Mutual Fund [2006] 68 SCL 216(SC) 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....".

ORDER

71. After taking into consideration the facts and circumstances of the case, material/facts on record, the replies submitted by the Noticees and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a following penalties on the Noticees under Section 15HA of the SEBI Act for their violation of the provisions of PFUTP Regulations as discussed in this order:

S. No.	Name of the Noticee	Penalty
1	Aplaya Creations Ltd.	Rs. 15,00,000/- (Rupees Fifteen Lakh only)
2	Shri Ramawtar Gupta	Rs. 10,00,000/- (Rupees Ten Lakh only)
3	Shri Pramod Kumar Gupta	Rs. 10,00,000/- (Rupees Ten Lakh only)

4	Maheswari Financial Services Private Limited	Rs. 20,00,000/- (Rupees Twenty Lakh only)
5	Vemuri Finvest Private Limited	Rs. 25,00,000/- (Rupees Twenty-five lakh only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

72. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

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

74. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Aplaya Creations Ltd., Shri Ramawtar Gupta, Shri Pramod Kumar Gupta, Maheswari Financial Services Private Limited & Vemuri Finvest Private Limited and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: November 22, 2019

K SARAVANAN
CHIEF GENERAL MANAGER
AND ADJUDICATING OFFICER