BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/RM/2021-22/14712-14715]

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

In respect of –

1. **Blue Circle Services Limited (AAACB2131L)** having address at Unit No.324, Building No. 9, 3rd Floor, New Link Road, Laxmi Plaza, Andheri (West), Mumbai, Maharashtra, 400053
2. **Anil Kumar Purohit (AGOPP5498D)** having address at 6/1, Bijay Mukherjee Lane, Bhowanipur, Kolkata, West Bengal- 700020
3. **Ashok Bothra** (**AADPB5818Q)** having addresses at (i) A-2, 302 Tirupati Darshan Balaji Nagar, Station Road, Bhayander (West), Thane, Maharashtra – 401101; and (ii) B-207, Baldev Bhavannarayan Nagar Road, Mumbai, Maharashtra – 401101
4. **Dhruva Narayan Jha (ACVPJ2857K)** having address at P-27 Princep Street, 3rd Floor, Kolkata - 700072

In the matter of Blue Circle Services Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings under Section 23E of Securities Contracts (Regulation) Act, 1956 (**SCRA**), Section 15A(a) and 15A(b) of SEBI Act,1992 (hereinafter referred to as, '**SEBI Act**') against Blue Circle Services Limited (**BCSL/Company/"Noticee-1")**, for alleged violation of Clause 43 of the Listing

Agreement read with Regulation 32 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 **(**hereinafter referred to as **'LODR Regulations')** and Regulation 13 (4A) and 13(6) of SEBI (Prohibition of Insider Trading) Regulation 1992 **(**hereinafter referred to as **'PIT Regulations')**; under Section 15HA of SEBI Act against **Noticee-1**, Mr. Anil Purohit **("Noticee-2")**, Mr. Ashok Bothra **("Noticee-3")** and Mr. Dhruva Narayan Jha **("Noticee-4")** (hereinafter collectively referred to as, "**Noticees"**) for alleged violation of the provisions of Regulation 3(a),(b),(c),(d), 4(1), 4(2f), 4(2(k)) & 4(2(r)) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 **(**hereinafter referred to as '**PFUTP Regulations');** and under Section 23A of SCRA against **Noticee-2**, **Noticee-3**, and **Noticee-4** for alleged violation of Clause 43 of erstwhile Listing Agreement read with Regulation 32 and Regulation 103(1) and (2) of LODR Regulations pursuant to investigation in the matter of BCSL.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer *vide* order dated April 20, 2021 to inquire into and adjudge under Section 15A(a), 15 A(b) and 15HA of SEBI Act and Section 23A and 23E of SCRA, the aforesaid alleged violations against the Noticees. The appointment of the AO was communicated *vide* order dated dated April 22, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/ST/15399/2021 dated July 15, 2021 (hereinafter be referred to as, the "**SCN**") was served upon the Noticees under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 read with Section 15I of the SEBI Act and Rule 4 of Securities Contract (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 read with Section 23I of SCRA to show cause as to why an inquiry should not be held and penalty not be imposed against Noticees under Sections 15A(a),

15A(b), 15HA of SEBI Act and Section 23E of SCRA upon Noticee-1 and 15HA of SEBI Act and Section 23A of SCRA upon Noticees 2 to 4 for the aforesaid alleged violations.

4. The allegations levelled against the Noticees in the SCN are summarized as below:

5. The investigation was carried out for the period March 01, 2011 to November 25, 2014 (hereinafter referred as '**Investigation Period' or 'IP'**) to examine the preferential allotment process and utilisation of preferential issue proceeds and change in promoter holding in terms of PIT Regulations and/or SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 / 2011 (hereinafter also "SAST Regulations") during the period of investigation by BCSL.

6. BCSL was incorporated on February 22, 1983. The company is engaged in financing and investing in shares and securities, treasury operations by way of providing funding solutions, including loans to clients, corporate finance, private equity, mergers and acquisitions (M&A) syndication, capital advisory and fund management/angel funding. Registered office of BCSL is Unit No.324, Building No. 9, 3rd Floor, New Link Road, Laxmi Plaza, Andheri (West), Mumbai, Maharashtra - 400053. The scrip was listed on BSE on May 9, 1984. The scrip is listed only on BSE and has been suspended for trading due to non-payment of Annual Listing Fees.

7. Management of the company during the Investigation Period is as follows**:** (Source: Annual reports):

(Table 1)

Sr. No.	Name of Director	Designation	Date of Appointment	Date of secession	PAN
1	Anil Purohit	Chairman & Managing Director	03- Nov-2009	Till date	AGOPP5498D
2	Ashok Bothra	Whole time Director	15-May-2009	25-Sep-2012	AADPB5818Q
3	Dhruva Narayan Jha	Whole time Director	10-Aug-2009	Till date	ACVPJ2857K

4	Raj Kumar Mall	Independent Director	17-Mar-2010	09-Oct-2013	AAHPM7507P
5	Chandresh N Shah	Independent Director	17-Mar-2010	Till date	AMKPS9009D
6	Pawan Kr. Borad	Independent Director	18-May-2011	30-Jun-2012	AOIPB1833Q
7	Kashi Prasad Bajaj	Independent Director	09-Oct-2013	Till date	ADAPB9504P

8. Financial Performance of the company (Source: BSE website): The financial results of BCSL for the F.Y. ended 2011, 2012, 2013, 2014 and 2015 are as follows-

(Table 2)

Description	Year ended (Rs. in million)				
	2010-11	**2011-12**	**2012-13**	**2013-14**	**2014-15**
Revenue	18.71	23.61	374.82	24.56	270.86
Expenditure	-4.72	-4.26	-357.39	-21.03	-433.30
Net Profit	10.80	16.43	12.32	1.49	-162.97

9. Shareholding Pattern (Source: BSE website): The quarterly shareholding pattern of Blue Circle during the IP is given below-

(Table 3)

Category of Shareholder	**Mar-11**			**Jun-11**			**Sep-11**		
	No. of Share holders	**Total No. of Shares**	**%**	**No. of Shareholders**	**Total No. of Shares**	**%**	**No. of Shareholders**	**Total No. of Shares**	**%**
Promoter and Promoter Group	1	650000	3.19	1	650000	3.19	1	650000	3.19
Public shareholding	223	19697000	96.81	222	19697000	96.81	226	19697000	96.81
Total	**224**	**20347000**	**100.00**	**223**	**20347000**	**100.00**	**227**	**20347000**	**100.00**

Category of Shareholder	**Dec-11**			**Mar-12**			**Jun-12**		
	No. of Share holder	**Total No. of Shares**	**%**	**No. of Shareholder**	**Total No. of Shares**	**%**	**No. of Shareholder**	**Total No. of Shares**	**%**
Promoter and Promoter Group	1	6500000	3.19	1	6375000	3.13	1	6375000	3.13
Public shareholding	376	196970000	96.81	462	197095000	96.87	593	197095000	96.87
Total	**377**	**203470000**	**100.00**	**463**	**203470000**	**100.00**	**594**	**203470000**	**100.00**

Category of Shareholder	**Sep-12**			**Dec-12**			**Mar-13**		
	No. of Shareholder	**Total No. of Shares**	**%**	**No. of Share holder**	**Total No. of Shares**	**%**	**No. of Shareholder**	**Total No. of Shares**	**%**
Promoter and Promoter Group	1	6375000	3.13	1	6375000	3.13	1	6205000	3.05

Category of Shareholder	Sep-12			Dec-12			Mar-13		
	No. of Shareholder	Total No. of Shares	%	No. of Share holder	Total No. of Shares	%	No. of Shareholder	Total No. of Shares	%
Public shareholding	802	197095000	96.87	906	197095000	96.87	622	197265000	96.95
Total	**803**	**203470000**	**100.00**	**907**	**203470000**	**100.00**	**623**	**203470000**	**100.00**

Category of Shareholder	Jun-13			Sep-13			Dec-13		
	No. of Share holder	Total No. of Shares	%	No. of Shareholder	Total No. of Shares	%	No. of Shareholder	Total No. of Shares	%
Promoter and Promoter Group	1	6205000	3.05	1	6205000	3.05	1	6205000	3.05
Public shareholding	620	197265000	96.95	656	197265000	96.95	662	197265000	96.95
Total	**621**	**203470000**	**100.00**	**657**	**203470000**	**100.00**	**663**	**203470000**	**100.00**

Category of Shareholder	Mar-14			Jun-14			Sep-14		
	No. of Shareholder	Total No. of Shares	%	No. of Shareholder	Total No. of Shares	%	No. of Shareholder	Total No. of Shares	%
Promoter and Promoter Group	2	6842987	3.36	2	6776007	3.33	2	6776007	3.33
Public shareholding	621	196627013	96.64	581	196693993	96.67	581	196693993	96.67
Total	**623**	**203470000**	**100.00**	**583**	**203470000**	**100.00**	**583**	**203470000**	**100.00**

Category of Shareholder	Dec-14		
	No. of Shareholder	Total No. of Shares	%
Promoter and Promoter Group	2	6776007	3.33
Public shareholding	592	196693993	96.67
Total	**594**	**203470000**	**100.00**

10. From the shareholding pattern of the promoters in the company, it was observed as under:

   a. During December 2011 quarter, there was increase of 18,31,23,000 shares in shareholding pattern. This was on account of subdivision/stock split by the company on October 24, 2011.

   b. There was reduction of 66,980 shares in the promoter shareholding during quarter ended June 2014. The company vide reply dated January 10, 2020 submitted the details in this regard that are as under:

(Table 4)

Name Of The Promoter	Transaction Date	No Of Shares Held Pre Disposal / Acquisition	% Of Shareholding Pre Disposal/ Acquisition	No Of Shares (Disposal)/ Acquisition	Value Of Transaction (Rs)	No Of Shares Held Post Disposal/ Acquisition	% Of Shareholding Post Disposal/ Acquisition	Mode	Date Of Disclosure To Company	Date Of Disclosure To Stock Exchange
Prime Capital Market Limited	16/05/2014	62,05,000	3.05	(10000)	1415032	6195000	3.03	Market	16/05/2014	20/05/2014
	23/05/2014	6195000	3.03	(10000)	1415037	6185000	3.03	Market	23/05/2014	26/05/2014
	26/05/2014	6185000	3.03	(10000)	1415038	6175000	3.02	Market	26/05/2014	27/05/2014
	28/05/2014	6175000	3.02	(25000)	365500	61,50,000	3.02	Market	28/05/2014	29/05/2014
Warner Multimedia Limited	01/04/2014	6,37,987		(637987)	6379870	-	-	Off-Market	01/04/2014	-
Unisys Softwares & Holding Industries Limited	05/08/2013	300000	0.15	300000	1575000	300000	0.15	Market	05/08/2013	06/08/2013
	07/08/2013	300000	0.15	200000	1080000	500000	0.25	Market	07/08/2013	09/08/2013
	05/09/2013	500000	0.25	126007	848027	6,26,007	0.03	Market	05/09/2013	06/09/2013
	05/09/2013	6,26,007	0.03	80000*	538400	7,06,007	0.03	Market	05/09/2013	06/09/2013

**The company has informed that 80,000 equity shares were purchased by M/s Unisys Software's & Holding Industries Limited from its Broker M/s Comfort Securities Ltd. The shares were lying in brokers Demat account, hence were not reflected in the Shareholding Pattern for quarter ended June 2014 and the total shareholding was shown as 626007shares. Further, the shares got transferred in the name of M/s Unisys Software's & Holding Industries Limited during Sept 2015.*

11. From the abovementioned table no. 4, it was observed that promoter Warner Multimedia Limited (WML) disposed off its holding of 6,37,987 shares for an amount of Rs. 63,79,870/- through off market transactions on January 8, 2013 and ceased to be the promoter of the company on April 1, 2014.

12. The company in its reply dated January 10, 2020 informed that WML disclosed to the company about the above transaction on January 8, 2013. However, the same was not disclosed to the exchange by the company. BSE vide email dated

February 9, 2021 also confirmed that exchange is not in receipt of any disclosure for transaction of 6,37,987 shares of WML.

13. As the company failed to disclose information about the above transaction to the stock exchange as required under Regulation 13 (4A) and 13(6) of PIT Regulations, the company was alleged to have violated the said provisions.

14. **Preferential allotment by the company**

The summary of the preferential allotment dated September 14, 2010 and March 14, 2011 is as follows:

(Table 5)

I. Object of the Preferential Allotment	To utilize the proceeds in the business of company and in order to meet its growth objectives and strengthen its financial position and to implement its expansion plan and for the requirement long term plan.		
II. Allotment	**Particulars**	**Pref allotment 1**	**Pref allotment 2**
	Date of Preferential Allotment	**14/09/2010**	**14/03/2011**
	No of shares allotted	1,21,00,000	75,00,000
	No of allottees#	49	49
	Rate	15*	10
	Amount	1,21,00,000	75,00,000
		* Rs. 10/- at a price of Rs. 15/- (including premium of Rs. 5/-)	
	#	(includes one promoter and 48 non-promoters)	(All 49 allottees were non promoters)

15. As seen from the above table No. 5, during the investigation period company made two preferential allotments on September 14, 2010 and March 14, 2011. The object of the preferential issue was to utilize the proceeds in the business of company and in order to meet its growth objectives and strengthen its financial

position and to implement its expansion plan and for the requirement long term plan.

16. BCSL issued 121 lakh shares of Rs. 10/- at a price of Rs. 15/- (including premium of Rs. 5/-) on preferential basis on September 14, 2010. These were also issued to the promoter i.e. Prime Capital Market Ltd. (PCML) and 48 other non-promoter entities. After the allotment of shares on preferential basis, shareholding of the company rose to 1,28,47,000 shares. These shares were under lock-in upto September 13, 2013 and September 13, 2011 respectively. These shares were listed on BSE on November 10, 2010.

17. The company again issued 75 lakh equity shares of Rs. 10/- at par to 49 non-promoter entities on March 10, 2011 which were under lock-in upto March 23, 2012. After the allotment of preferential shares, the share capital of the company stood at 2,03,47,000 shares as on March 2011. These shares were listed on BSE on May 6, 2011.

18. The details of utilisation of preferential issue proceeds were provided by BCSL vide its letter dated January 6, 2021.

Utilisation of amount raised in Preferential Allotment 1:-

19. The company informed that total amount received in preferential allotment made on September 14, 2010 was Rs. 18,15,00,000/- which was invested in shares & securities of the different company in order to earn profit. However, due to fall in market company suffered huge losses of Rs 22,47,68,566/- upto March 31, 2019.

(Table 6)

Date	Paid to	Amount	Remarks
08/09/2010	Microchip Infotel Pvt. Ltd.	10,000,000	Adv. Against Shares
08/09/2010	Microchip Infotel Pvt. Ltd.	20,000,000	Adv. Against Shares
08/09/2010	Microchip Infotel Pvt. Ltd.	15,000,000	Adv. Against Shares
08/09/2010	Praguna Power Pvt. Ltd.	5,000,000	Share Application
13/09/2010	Vibhuti Mutitrade Pvt. Ltd	7,500,000	Adv. Against Shares
13/09/2010	Vibhuti Mutitrade Pvt. Ltd	7,500,000	Adv. Against Shares
13/09/2010	Esha Securities Limited	7,000,000	Adv. Against Shares

Date	Paid to	Amount	Remarks
13/09/2010	Vibhuti Mutitrade Pvt. Ltd.	5,000,000	Adv. Against Shares
14/09/2010	Pranidhi Holdings Pvt. Ltd.	7,000,000	Loan given
14/09/2010	Pranidhi Holdings Pvt. Ltd.	6,000,000	Loan given
14/09/2010	Pranidhi Holdings Pvt. Ltd.	1,000,000	Loan given
14/09/2010	Pranidhi Holdings Pvt. Ltd.	8,000,000	Loan given
15/09/2010	Natraj Vinimay Pvt. Ltd.	8,000,000	Adv. Against 4,00,000 Sh. of Suvidha Sec. Pvt. Ltd.
15/09/2010	Natraj Vinimay Pvt. Ltd.	7,000,000	Adv. Against 4,00,000 Sh. of Suvidha Sec. Pvt. Ltd.
15/09/2010	Natraj Vinimay Pvt. Ltd.	5,000,000	Adv. Against 4,00,000 Sh. of Suvidha Sec. Pvt. Ltd.
15/09/2010	Mehta Equities Limited	10,000,000	Investment in Shares
16/09/2010	Natraj Vinimay Pvt. Ltd.	6,000,000	Adv. Against 4,00,000 Sh. of Suvidha Sec. Pvt. Ltd.
16/09/2010	Natraj Vinimay Pvt. Ltd.	4,000,000	Adv. Against 4,00,000 Sh. of Suvidha Sec. Pvt. Ltd.
20/09/2010	Vibhuti Mutitrade Pvt. Ltd.	4,500,000	Adv. Against Shares
20/09/2010	Vibhuti Mutitrade Pvt. Ltd.	5,500,000	Adv. Against Shares
20/09/2010	Natraj Vinimay Pvt. Ltd.	6,000,000	Adv. Against 4,00,000 Sh. of Suvidha Sec. Pvt. Ltd.
20/09/2010	Natraj Vinimay Pvt. Ltd.	4,000,000	Adv. Against 4,00,000 Sh. of Suvidha Sec. Pvt. Ltd.
22/09/2010	Amba Highrise Pvt. Ltd.	4,000,000	Loan given
22/09/2010	Amba Highrise Pvt. Ltd.	6,000,000	Loan given
23/09/2010	Mehta Equities Limited	3,000,000	Investment in Shares
	Total	**18,20,00,000**	

20. Further company also mentioned that it has used its proceeds towards paying MCA and BSE towards listing fees also. The Break-up of the other expenditure for the amounts utilized for the purposes as mentioned above is as under:

(Table 7)

Date of transaction	**Name of the Counter Party**	**Amount (Rs.)**
September 2, 2010	MCA	3,50,000
September 20, 2010	BSE (1% of listing fees)	1,81,000
	Total Amount	**5,31,000**

21. It was observed that the Rs. 14 Crores out of 18.15 Crores received from the preferential allotment-1 were utilised towards Investment in Shares and Rs. 4.15 Crores were utilized for providing Loans and advances to various companies. The company gave the details of loans and advance for Rs. 4.20 crore which includes amount of Rs. 4.15 crore of preferential allotment proceeds and remaining amount of Rs 5 lakh as company's funds.

(Table 8)

S.No.	**Purpose of utilization**	**Amount(Rs.)**	**% of amount used from the total Issue (Rs.18,15,00, 000/-)**
1.	Investments in shares	14,00,00,000	77%
2	Provided loans	4,15,00,000	23%

22. The details of utilization of the proceeds towards and advances as informed by the company are as under :

(Table 9)

S.No	**Name of the Company**	**Amount(Rs.)**	**Purpose**
1.	Pranidhi Holding Pvt Ltd	2,20,00,000	Loan given
2.	Amba Highrise Pvt Ltd	1,00,00,000	Loan given
3.	Sree Metaliks Limited	1,00,00,000	Loan given
	Total	4,20,00,000	

23. With regard to loans provided, vide summons dated June 16, 2020 company was advised to furnish the supporting documents like loan agreements for the loan given and also to confirm whether the loan given has been received back, with supporting documents viz. bank statement(s).

24. The Company in its reply dated January 6, 2021, stated that it has not entered into any agreement with the borrowers but all the loans were refunded by the borrowers with interest. However, the above statement of the company was contradictory with the documentary evidences that were submitted by the company, as given below.

25. Company submitted the Axis bank account (909020032026872) statement showing return of the amount by the following borrowers:

- Pranidhi Holding Pvt. Ltd. Rs. 2,20,00,000/-

- Amba High Rise Pvt. Ltd. Rs. 1,00,00,000/-
- Sree Metaliks Ltd. Rs. 1,00,00,000/-

26. From the submission of the bank statements and ledgers by the company vide letter dated January 6, 2021, following are the details showing loans provided by the Company and the return of the same to the company:

(Table 10)

SN	Name of the Company	Date of loan	Bank a/c through which loan provided	Amount of loan	Date of Refund	Bank a/c in which money received	Amount received	Interest received	Tenure of the loan
1	Pranidhi Holding Pvt Ltd	14/09/2010	Axis Bank (A/c no. 909020032026872)	2,20,00,000	04/01/2011	Axis Bank (A/c no. 909020032026872)	50,00,000		6 months
					/2011		50,00,000		
					19/03/2011		24,50,000		
					24/03/2011		95,50,000		
	Total			**2,20,00,000**			**2,20,00,000**	Nil	
2	Amba Highrise Pvt Ltd	22/09/2010	Axis Bank (A/c no. 909020032026872)	1,00,00,000	30/08/2012	Kotak Bank (A/c 091612180000752)	45,00,000		2 ½ year
					05/10/2012		61,51,808		
					16/02/2013		7,71,179		
	Total			**1,00,00,000**			**1,14,22,987**	14,22,987	
3	Sree Metaliks Limited	22/09/2010	Axis Bank (A/c no. 909020032026872)	1,00,00,000	2/12/2010	Axis Bank (A/c no. 909020032026872)	66,576		10 months
					07/01/2011		66,576		
					28/01/2011		66,576		
					07/04/2011		1,33,150		
					29/06/2011		1,99,726		
					05/07/2011		1,00,00,000		
	Total			**1,00,00,000**			1,04,66,028	4,66,028	
Total loan given (1+2+3)				**4,20,00,000**			**4,34,22,987**	**18,89,015**	

27. As shown in the above table no. 10 and from the supporting documents viz. bank statements and ledger provided by the company, it was observed that company had received all the amount from the borrowers whom BCSL had provided loans. However, no loan agreements were provided in support of the same. Further, the tenure of the loans varied from 6 months to 2.5 years. The above table no.10 shows that out of three borrowers only 2 borrowers refunded the loan with

interest. However, Pranidhi Holding Pvt. Ltd. refunded only loan amount of Rs. 2.20 crores (12% of the proceeds). The company failed to provide the recovery of interest from Pranidhi Holding Pvt. Ltd.

28. In view of the above, it was alleged that the company did not utilize Rs. 2,20,00,000 (12%) of preferential allotment-1 in terms of object of the issue as disclosed to shareholders/public in the notice of EGM of the Company dated July 31, 2010.

Utilisation of amount raised in Preferential Allotment 2

29. It was observed from the reply of the company vide letter dated December 20, 2019 that pursuant to Preferential allotment on March 14, 2011, company had invested Rs. 1 crore out of 7.50 Crores towards Investment in Shares and remaining Rs. 6.50 Crores towards loans and advances. The details of utilizations are as under:

(Table 11)

SN	Date	Paid to	Amount	Remarks
1	21/03/2011	Tilak Raj Sharma	5,000,000	Loan given
2	21/03/2011	Tilak Raj Sharma	7,500,000	Loan given
3	21/03/2011	Fort Projects Pvt. Ltd.	12,500,000	Adv. Against Property
4	21/03/2011	Mehta Equities Limited	10,000,000	Investment in Shares
5	21/03/2011	Tilak Raj Sharma	7,500,000	Loan given
6	22/03/2011	Tilak Raj Sharma	7,500,000	Loan given
7	22/03/2011	KIC Metaliks Limited	20,000,000	Loan given
		Total Utilization	**7,50,00,000**	

30. The break-up of utilization for preferential allotment 2 for Rs. 7,50,00,000/- is as follows:

(Table 12)

S.N	Purpose of utilization	Amount (Rs.)	% of amount used from the total Issue (Rs.7,50,00,000/-)
1.	Investments in shares	1,00,00,000	13%
2.	Refund of advance against property	1,25,00,000	17%
3.	Loans	5,25,00,000	70%
	Total	**7,50,00,000**	**100%**

31. The details of utilization towards property and loans is as under:

(Table 13)

S.No.	Name of the Company	Amount (Rs.)	Purpose
1	Fort Projects Pvt Ltd	1,25,00,000	Advance refunded against property
2	KIC Metaliks Limited	2,00,00,000	Loan given (amounts 70% of the proceeds)
3	Tilak Raj Sharma	3,25,00,000	
	Total	**6,50,00,000**	

32. The company utilised Rs. 5.50 Crores towards providing loan to following two entities:

i. Tilak Raj Sharma Rs. 3,25,00,000/-
ii. KIC Metaliks Limited Rs. 2,00,00,000/-

Total : Rs. 5,25,00,000/-
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33. This amounts to 70% of the total allotment proceeds. In this regard, vide letter dated January 6, 2021 the company replied that all the loan amount was refunded with interest and no agreement executed by the company. However, the above statement of the company was contradictory to the documentary evidences that were submitted by the company, as given below.

34. The company submitted Axis bank account (909020032026872) statement highlighting the return of the amount by the abovementioned companies to BSCL. The details of the same are provided as under:

(Table 14)

S.No.	Name of the Company	Bank a/c thorugh which loan provided	Date when advance given	Amount of Advance given (Rs.)	Date of Refund	Bank a/c in which money received	Amount received (Rs.)	Interest received if any	Tenure of use of proceeds
1	KIC Metaliks Ltd.	Axis Bank (A/c no. 909020032 026872)	22/03/2011	2,00,00,000	28/09/2011	Kotak Bank (A/c 091612	2,16,00,000	16,00,000	6 months
2			14/03/2011	3,25,00,000	08/12/2016		75,00,000		5 ½ years

	Tilak Raj Sharma				06/09/2016	180000 752)	1,50,00,000		
					26/09/2016		1,00,00,000	Nil	
			Total	3,25,00,000			3,25,00,000		
		1+2	**Grand Total**	**5,25,00,000**			**5,41,00,000**	**16,00,000**	

35. As shown in the above table no. 14 and from the supporting documents viz. bank statements and ledger provided by the company, it was observed that company had received all the amount from its abovementioned borrowers. However, the company failed to provide any loan agreements in this regard. Further it was noted that company had provided loan to an individual Mr. Tilak Raj Sharma for a period 5 and ½ years without charging any interest or executing any loan agreement or approval of board members in the board meeting of the company..

36. Vide email dated February 10, 2021, BCSL was advised to provide documentary evidences including copy of ledger with respect to loan to Mr. Tilak Raj Sharma. However, the company vide letter dated February 19, 2021 provided only ledger account of Mr. Tilak Raj Sharma which shows loan amount received. Neither ledger account nor bank account statements show any recovery interest on the aforesaid amount**.**

37. Hence, it was alleged that the company did not utilize 43% (Rs.3,25,00,000 /-) of proceeds received in preferential allotment 2 in terms of the object of the issue.

38. In view of the above, it was alleged that company has mis-utilized the following amount of the preferential allotment proceeds dated September 14, 2010 and March 14, 2011:

(Table 15)

S. No.	**Date of Preferential Allotment**	**Total proceeds of Preferential Allotment(PA)**	**Amount misutilized**	**% of the misused amount to the total PA.**
1	14/09/2010	18,15, 00,000	**2,20,00,000**	12%
2	14/03/2011	7,50,00,000	**3,25,00,000**	43%

39. The objects of the issue as presented to shareholders/public in notice of EOGM of the Company held on August 30, 2010 and March 14, 2011 were allegedly deceitful and presented information in a distorted manner. By varying the utilisation of the issue proceeds for purposes other than the objects of issue as disclosed to shareholders and misutilizing the issue proceeds by giving the same as loans without entering into any agreement and without charging any interest, the company misled its shareholders and investors, thereby allegedly committing fraud on them in violation of **provisions of Regulation 3(a)(b)(c)(d), 4(1), 4(2f), 4(2(k)) & 4(2(r)) of PFUTP Regulations.**

40. Mr. Anil Purohit, Mr. Ashok Bothra and Mr. Dhruva Narayan Jha, the then non-independent directors of the company by virtue of holding directorships of the company were therefore responsible to the company for the conduct of its business. In terms of Section 27(1) of SEBI Act 1992, it was alleged that Noticees 2, 3 and 4 are alleged to be in violation of **provisions of Regulation 3(a)(b)(c)(d), 4(1), 4(2f), 4(2(k) & 4(2(r)) of PFUTP Regulations.**

41. As per Clause 43 of the Listing Agreement, companies which mobilise funds through preferential issue would provide to the Stock Exchanges and publish a statement showing the variations between the projected utilisation of the fund made by it in its object/s stated in the explanatory statement to the notice issued for the general meeting for considering preferential issue of securities and the actual utilisation of funds.

42. Information was sought from BSE whether disclosure as per Clause 43 of the Listing Agreement was made to them by the company. BSE vide email dated October 27, 2020 stated that *"Company has not submitted any separate disclosures in terms of Clause 43 of the Listing Agreement.*"

43. As the company failed to submit to the stock exchanges details of deviations on a quarterly basis, Noticee-1 was alleged to be in violation of **Clause 43 of the**

Listing Agreement r/w Regulation 32, 103(1) and (2) of the LODR Regulations.

44. Further, as the company failed to disclose the information about the disposal of holding of 637987 shares by WML to the stock exchange, Noticee-1 was alleged to have violated **Regulation 13 (4A) and 13(6) of PIT Regulations**.

45. The relevant provisions of PFUTP regulations, Listing Agreement, LODR Regulations and PIT Regulations are reproduced 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 markets.*

(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:—*

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

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

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

Listing agreement-

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

b) The statement referred to in clause (1) shall be given for each of the years for which projections are provided in the prospectus/letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities and shall be published in newspapers simultaneously with the unaudited/audited financial results as required under clause 41.

c) If there are material variations between the projections and the actual utilisation/profitability, the company shall furnish an explanation therefore in the advertisement and shall also provide the same in the Directors' Report.

d) The statement referred to in clause (a) shall also be given for warrants issued along with public or rights issue of specified securities.

LODR Regulations-

Statement of deviation(s)or variation(s).

***32.(1)** The listed entity shall submit to the stock exchange the following statement(s)on a quarterly basis for public issue, rights issue, preferential issue etc.,-*

(a)indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b)indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds

(2)*The statement(s)specified in sub-regulation (1), shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.*

(3)*The statement(s) specified in sub-regulation (1), shall be placed before the audit committee for review and after such review, shall be submitted to the stock exchange(s).*

(4)*The listed entity shall furnish an explanation for the variation specified in sub-regulation (1), in the directors' report in the annual report.*

(5)*The listed entity shall prepare an annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice, certified by the statutory auditors of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.*

(6)*Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency.*

(7)*Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on an annual basis, promptly upon its receipt.*

Explanation,— For the purpose of this sub-regulation, "monitoring agency" shall mean the monitoring agency specified in regulation 16 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

(8)*For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which have listed their specified securities on SME Exchange shall respectively be read as "half yearly/half year"*

<u>*Repeal and Savings-*</u>

103.(1) *On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.*

(2) *Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.*

<u>*PIT Regulations-*</u>

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

13 (4A) *Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under sub-regulation (2A) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

Disclosure by company to stock exchanges.

13 (6) *Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (2A), (3) (4) and (4A) in the respective formats specified in Schedule III.*

46. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15A(a), 15A(b) and 15HA of the SEBI Act and Section 23A and 23 E of SCRA as applicable, which are reproduced below for reference:-

SEBI Act:

Penalty for failure to furnish information, return, etc.

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

***(a)** to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

***(b)** to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to penalty which shall not be less than of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

Penalty for fraudulent and unfair trade practices.

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

SCRA-

Penalty for failure to furnish information, return, etc.

***23A.** Any person, who is required under this Act or any rules made thereunder,—*
(a) to furnish any information, document, books, returns or report to the recongnised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recongnised stock exchange shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

(b) to maintain books of account or records, as per the listing agreement or conditions, or bye laws of a recognised stock exchange, fails to maintain the same, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

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

23E. *If a company or any person managing collective investment scheme or mutual fund fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

47. In response to SCN dated July 15, 2021 Noticees filed their reply vide letters dated November 09, 17 and 24, 2021. Opportunity of Hearing was provided to the Noticees through video conferencing on December 02, 2021 and Authorised Representatives of the Noticees attended the hearing on December 02, 2021 and reiterated the submissions made by the Noticees in their replies dated November 09, 17, and 24, 2021. Further, vide email dated December 28, 2021, Noticee-1 submitted a copy of letter dated December 28, 2021 addressed to NSE in regard to disclosures under Reg.13(6) of SEBI PIT Regulations 1992. Vide letter dated December 29, 2021, Noticee 1 and vide letters dated December 30, 2021, Noticee 2,3 and 4 submitted post hearing submissions.

48. The submissions of the Noticees are summarized as below:

Noticee 1

49. <u>Inordinate delay in issuance of SCN:</u> The alleged violations relate to the preferential allotment made by the Company in the year 2010 and non-disclosure of shareholding in the year 2013. The present SCN has been issued on July 15, 2021 (i.e. almost 10 years after the impugned transaction). The aforesaid inordinate delay has severely prejudiced the Noticee. The said inordinate delay has not been explained by SEBI. Further, the proceedings in the matter have

been going on interminably. On this ground alone the SCN proceedings need to be and ought to be discontinued and SCN needs to be dropped qua Noticee.

50. It is well settled now that even though there is no period of limitation prescribed in the SEBI Act and Regulations for the completion of investigations or for the issuance of a show cause notice, the authority is required to exercise its powers within a reasonable period. Facts of the present case amply demonstrate that the powers have not been exercised by SEBI within a reasonable period and therefore, in the facts and circumstances of the case, proceedings need to be discontinued and dropped and no penalty needs to be imposed.

51. In this context, attention is invited to following Orders:
   a) Order passed on January 31, 2020 by the Hon 'ble Securities Appellate Tribunal in the matter of Ashlesh Gunvantbhai Shah Vs SEBI (SAT Appeal no 169 of 2019)
   b) Order passed on November 21, 2020 by the Hon'ble Securities Appellate Tribunal in the matter of Parag Sarda vs. SEBI(SAT Appeal no 279 of2020):
   c) Order dated April 16, 2021 passed by the Hon'ble Securities Appellate Tribunal in the matter of Morepan Laboratories Limited (SAT Appeal No 62 of 2020)

52. With regard to alleged non-disclosure for transactions on January 08, 2013 under Regulation 13(4A), the said regulation is not applicable to Noticee, since the reach of the said regulation is limited and restricted to "promoter" or persons who are part of the "promoter group" of a company. In so far as Regulation 13(6) of PIT Regulations, 1992, at the relevant time Noticee had received the disclosure from WML within the prescribed time, but Noticee had inadvertently missed making the disclosure regarding the same to the Stock Exchange. Subsequently, on becoming aware of the said lapse, Noticee had immediately rectified the same by making the disclosure to the Stock Exchange, albeit belatedly. Therefore, as on date the alleged lapse has been cured. The copy of the disclosures made for

the transaction on January 08, 201 3 under Regulation 13(4A) read with Regulation 13(6) of PIT Regulations, 1992 is placed on records.

53. The aforesaid alleged stray non-disclosure , involving exceedingly minuscule percentage of shares (less than even half percent) was unintentional and by mistake. The alleged non-disclosure has not affected anybody's interest, including the shareholders of the Company. There is nothing on record to substantiate that the alleged non-disclosure has actually impacted anybody's interest. As a responsible and compliance conscious Company, it has been its continuous effort to ensure that all the relevant rules, regulations and the guidelines issued by SEBI are properly complied with. Noticee assures that it will be its persistent endeavour that the stray lapse in making delayed disclosures, does not occur in future.

54. In any event, at the relevant time the details of non-shareholding of the WML in the Company, were already in public domain, inter alia by virtue of subsequent continuous quarterly disclosures made by Noticee to the stock exchanges under the Listing Agreement.

55. Without prejudice to the aforesaid, it is submitted that the said allegation suffers from enormous laches. Admittedly, the alleged violation relating to non-disclosure on the part of Company under Regulation 13 (6) pertains to the year 2013 and the said SCN for the said alleged violation has been issued in the year 2021 i.e. after more than 8 years. The inordinate delay has not explained by SEBI. Thus, on this ground alone the allegation needs to be withdrawn. Referrence is made Order passed on August 22, 2019 by the Hon' ble Securities Appellate Tribunal in the matter of Ashok ShivlalRupani and anr, Vs SEBI (SAT Appeal no 417 of 201 8).

56. <u>Preferential allotment by the company</u>: Both the preferential allotments (made on September 14, 2010 and March 14, 2011 - which are the subject matter of Notice) were bonafide made by the Company in the ordinary course dehors sinister intent

or design. Significantly, the aforesaid preferential allotments were made transparently in consonance with applicable provisions of law and in full compliance of the same. Further, the said allotments had the approval of the shareholders and stock exchanges and details about the same were in public domain. Significantly, at the relevant time, neither SEBI nor stock exchange had raised any grievance about the same, including with regard to any shortcomings/discrepancies (as being raised now) in the disclosures made in the Notices of EGM issued to the shareholders, seeking their approval for the preferential allotments. The preferential allotment funds were utilized strictly in consonance with the "objects of the issue" as disclosed to shareholders.

57. Utilization of proceeds of Preferential Allotment -1: From the first preferential allotment the Company had received Rs. 18,15,00,000/- (Eighteen Crore Fifteen Lakh Only) and out of the said amount, the allegation of misutilization of preferential allotment is limited and restricted to Rs.2,20,00,000/- (Two Crore Twenty Lakh Only). On the remaining amount i.e. Rs.15,95,00,000/- (Fifteen Crore Ninety Five Lakh Only) there is no allegation of misutilization.

58. The allegation that the Company did not utilise Rs. 2,20,00,000/- from the preferential allotment-1 in terms of the object of the issue as disclosed to shareholders/public in the notice of EGM of Company dated July 31, 2010 is based on the premise that the loan given to Pranidhi Holdings Pvt Ltd ("Pranidhi") by the Company was refunded by Parinidhi without interest. Said is based on erroneous understanding and complete misinterpretation.

59. While levelling allegation of "misutilisation", SEBI has completely ignored and overlooked the clause pertaining to "Utilisation of Proceeds" as set out in the Explanatory Statement annexed to the Notice issued to the shareholders seeking their approval . The relevant clause is extracted hereinbelow:
" Utilisation of Proceeds ": The proceeds of the issue of shares will be utilised in the business of the Company and in order to meet its growth objectives and

strengthen its financial positions and to implement its expansion plan, and/or the requirement long term resources."

60. Admittedly , the business of the Company inter alia includes " financing and investing in shares & securities, treasury operations by way of providing funding solutions to clients, including loans to clients, corporate finance, private equity, mergers and acquisitions (M&A) syndication, capital advisory and fund management / angel funding ".

61. Given the aforesaid position, the Company was well within its right to utilise the issue proceeds, amongst other things, for giving loans. Therefore, the issue of Company not utilising the amounts in terms of 'objects of the issue' cannot and does not arise .

62. Further, giving of loan by the Company to Parinidhi cannot be construed as misutilisation,especially when the entire loan amount has already been refunded by Parinidhi to the Company. In so far as non- receipt of interest is concerned, it may be noted that the loan was given on interest. Parinidhi had raised the loan for a period of 2 months and had agreed to repay the same by December 2010, with the interest at the rate of 9%. Parinidhi refunded the whole principal amount in various tranches during January-March 2011 but without interest. Consequently, the Company had issued Legal Notice dated April 11, 2011 for defaulting in payment of Interest (placed on records) through its Advocate to Parinidhi. Merely, because Parinidhi had defaulted in making payment of interest, same cannot result in the loan transaction executed in ordinary course, becoming a case of "misutilisation". Admittedly, during the same period, other loan transactions were also executed by the Company (which have also been recorded in the SCN) and wherein interests have been received, and no fault in terms of 'misutilisation' has been found with the said loan transactions. Just because, one transaction ran into rough weather despite Company's efforts to recover the principal with interest, wherein the Company was able to recover only the principal amount, no adverse inferences can be drawn against the Company.

It is common knowledge that in loan transactions, there is always a potential for default. Merely because, entities default in repayment of loan/interest, the lenders actions cannot be viewed suspiciously as in the present case. The loan transaction by the Company has been erroneously branded as being in the nature of "misutilization'. Transaction has to be viewed holistically and contextually, keeping in forefront the nature of business activities of the Company.

63. Further, it is not the case that the alleged misutilized funds were siphoned off (which is normally the case when allegation of misutilization is levelled). The same has not even been alleged in the SCN.

64. Significantly, it may be appreciated that the loan given by Noticee-1 to Pranidhi had come back to the Company during the period from January 04, 2011 to March 24, 2011. Even SCN, acknowledges the same. Admittedly, SCN has been issued much after the repayment of the principal amount by Parinidhi.

65. In view of the aforesaid, it is denied that the Company did not utilize the the amount of preferential allotment I proceeds in terms of the 'objects of issue' as disclosed to the shareholders, as alleged.

66. Utilization of proceeds of Preferential Allotment -2: From the second preferential allotment the Company had received Rs.7,50,00,000/- (Seven Crore Fifty Lakh Only) and out of the said amount, the allegation of misutilization of preferential allotment is limited and restricted to Rs. 3,25,00,000/- (Three Crore Twenty Five Lakh Only). On the remaining amount i.e. 4,25,00,000/- (Four Crore Twenty Five Lakh Only) there is no allegation of misutilization.

67. The allegation that the company did not utilise Rs. 3,25,00,000/- from the preferential allotment-2 in terms of the object of the issue as disclosed to shareholders/public in the notice of EGM of Company dated February 16, 2011 is based on the premise that the loan given to Tilak Raj Sharma ("Tilak") by the

Company, was refunded by Tilak without interest. Said allegation, apart from being based on erroneous understanding and complete misinterpretation, reveals complete non-application of mind.

68. While levelling allegation of "misutilisation", SEBI has completely ignored and overlooked the clause pertaining to "Utilisation of Proceeds" as set out in the Explanatory Statement annexed to the Notice (Annexure- 4 to SCN) issued to the shareholders seeking their approval. The relevant clause is extracted hereinbelow:

" Utilisation of Proceeds ": The proceeds of the issue of shares will be utilised in the business of the Company and in order to meet its growth objectives and strengthen its financial positions and to implement i/s expansion plan, andfor the requirement long term resources."

69. Admittedly, the business of the Company inter alia includes financing and investing in shares & securities, treasury operations by way of providing funding solutions to clients, including loans to clients, corporate finance, private equity, mergers and acquisitions (M & A) syndication, capital advisory and fund management/angel funding.

70. Given the aforesaid position, the Company was well within its right to utilise the issue proceeds, amongst other things, for giving loans. Therefore, the issue of Company not utilising the amounts in terms of 'objects of the issue' cannot and does not arise.

71. Further, giving of loan by the Company to Tilak cannot be construed as misutilisation ,especially when the entire loan amount has already been refunded by Tilak to the Company. In so far as non- receipt of interest is concerned, it may be noted that the loan was given on interest. Tilak had raised the loan for a period of 11 months and had agreed to repay the same by 28-02-2012, with the interest at the rate of 9%. But Tilak defaulted in its commitment to repay the loan to the Company.Consequently, the Company had issued Legal Notice dated 12-03-

2012 through its Advocate to Tilak. Pursuant to issuance of said Legal Notice and rigorous follow up by the Company, Tilak refunded the whole principal amount in various tranches during September 16, 2016 to December 28, 2016. Merely, because Tilak had defaulted in making payment of interest, same cannot result in the loan transaction executed in ordinary course, becoming a case of "misutilisation". Admittedly, during the same period, other loan transactions were also executed by the Company (which have also been recorded in the SCN) and wherein interests have been received, and no fault in terms of 'misutilisation' has been found with the said loan transactions. Just because, one transaction ran into rough weather despite Company's efforts to recover the principal with interest, wherein the Company was able to recover only the principal amount, no adverse inferences can be drawn against the Company.

72. It is reiterated that the impugned loan transaction with Tilak was done in the ordinary course of business dehors sinister intent or design. Out of various loan transactions, merely based on one transaction SEBI isdrawing adverse inference againstus. Further, it is not the case that the alleged misutilized funds were siphoned off (which is normally the case when allegation of misutilization is levelled). The same has not even been alleged in the SCN.

73. Significantly,it may be appreciated that the loan given by Noticee-1 to Tilak had come back to the Company during the period from September 06, 2016 to December 28, 2016. Even SCN, at acknowledges the same. Admittedly, SCN has been issued much after the repayment of the principal amount by Tilak.

74. In view of the aforesaid, it is denied that the Company did not utilize the amount of preferential allotment -2 proceeds in terms of the 'objects of issue' as disclosed to the shareholders, as alleged.

75. <u>Deceitful and distorted manner of presentation of objects of issue in Notice of EOGM:</u> It is reiterated that the preferential allotments made by the Company were bonafIde and not actuated by any sinister intent or design. The funds raised

by the Company through preferential allotments were utilised for benefit of the Company and its shareholders. Further, during the Investigation the details of fund transferred/received by the Company to/from other entities/persons have been properly explained by Noticee-1 with supporting bank statements and ledger statements as and when sought by SEBI.

76. Admittedly, out of the total preferential allotment proceeds of Rs 25,65,00,000/- (1^{st} Allotment - Rs 18,15,00,000/- and 2^{nd} Allotment- Rs 7,50,00,000/-) , the erroneous allegation of misutilisation is qua an amount of Rs 5,45,00,000/- which was given as loan. Regarding the balance amount of Rs 20,20,00,000/- there is no allegation. It may be noted that out of the total preferential allotment proceeds of Rs 25,65,00,000/- , an amount of Rs 9,40,00,000/- was given as loan. Out of the said total amount of loan, an amount of Rs 5,45,00,000/- given as loan has been alleged to be misutilized and qua the remaining loan amount of Rs 3,95,00,000/-, there is no allegation of misutilization.

77. lt is denied that the 'objects of the issue' as presented to the shareholders/public in notices of EGM of the Company held on August 30, 2010 and March 14, 2011 were allegedly deceitful or presented information in a distorted manner, as alleged. Same is an exceedingly vague, sweeping and bald allegation, and based merely on surmises and conjectures. Admittedly, the said notices of EGM were filed by the Company with the exchange and same were in public domain. At no point of time, over the last more than a decade, either the stock exchange or SEBI had raised any issues with the said notices of EGM or their contents or the disclosures made therein, in terms of same being "deceitful and presented infòrmation in a distorted manner". Significantly, even there are no complaints from any shareholders/investors, inter alia, regarding the contents of the said notices of EGM. Now after a decade, allegations have been raised qua the contents of the said notices of EGM. The Company had clearly, transparently and in most straightforward manner disclosed, that all the "proceeds of the issue of shares will be utilised in the business of the Company and in order to meet its growth objectives and strengthen its financial positions and to implement its

expansion plan, and for the requirement long term resources." (Refer Para 14 of SCN) . Clearly , there was no "deceit" involved and also there was no "distortion" of any information, in the disclosure in the said notices of EGM. Contents of the Notices are unequivocal and unambiguous.

78. It is denied that there was any variation in the utilisation of the issue proceeds for the purposes other than 'objects of the issue', as alleged. Same is again a vague, sweeping and bald allegation and based merely on surmises and conjectures.Admittedly, as stated in earlier paras, utilisation of the proceeds, inter alia for the purposes of giving loan cannot be construed as variation in light of the express disclosure that the "proceeds of the issue of shares will be utilised in the business of the Company......" and, admittedly, the business of the Company inter alia includes "financing and investing in shares & securities, treasury operations by way of providing funding solutions to clients, including loans to clients, corporate finance, private equity, mergers and acquisitions (M&A) syndication, capital advisory and fund management/angel funding. Patently, there was no variation in the utilisation of the issue proceeds for the purposes other than 'objects of the issue'. Clearly, the allegation is based on incomplete appreciation of the material available on record.

79. It is denied that there was any "misutilisation" of the issue proceeds "by giving the same as loans without entering into any agreement and without charging any interest as alleged .It is reiterated that, given the fact that the Company was well within its right to utilise the issue proceeds, amongst other things, for giving loans, the issue of "misutilisation" cannot and does not arise. Further, non-execution of loan agreement ,in the facts of the case cannot be viewed adversely. Admittedly, various loans were given out of the issue proceeds. In none of the cases loan agreement was executed. But, admittedly, the loan amounts have been repaid by the entities with interest to the Company ,except in two impugned cases (viz. Parinidhi and Tilak). Ideally loan agreements should have been executed. But the alleged non-execution of loan agreements, when the loan amounts have already been repaid by the entities, at this juncture (i.e. after a decade), is at the

highest a technical lapse and nothing turns on the same. Admittedly, save and except two impugned parties, all other parties have paid interest (same has also been recorded in the SCN). In the two impugned cases (viz. Parinidhi and Tilak), loan was given on interest , but the loan transactions ran into rough weather, as stated hereinbefore, and the said parties reneged on their commitment to repay the principal amount in time with interest. Consequent to issuance of Legal Notice Company was able to recover the principal amount alone and the said two parties defaulted in making payment of interest. Further, the funds have come back not pursuant to issuance of SCN, but much prior to it consequent to the follow up by the Company. We submit it is "case of default in payment of interest" by the parties and not a "case of not charging of interest as alleged. It is reiterated that the alleged loan transactions with the alleged parties were in the ordinary course and the amounts lent have already been repaid by the said entities to the Company much prior to the initiation of the present proceedings. Therefore, merely because the business decision of the Company to loan a particular person/entity has gone wrong and the said entities defaulted in payment of interest, no adverse inferences can be drawn.

80. Both Pranidhi Holding Pvt Ltd and Tilak Raj Sharma were persons of healthy financial means. It is not the case, where the Company had loaned the funds based on whims and fancies. In this regard following be noted:

a) In so far as Pranidhi Holding Pvt Ltd is concerned Pranidhi Holdings Pvt. Ltd. (Formerly Pranidhi Estates Pvt. Ltd.) is engaged in investing in shares, securities and real estate projects in India. The company was founded in 1999 and having registered office in Delhi.

b) In so far as Tilak Raj Sharma, is concerned he is a liquor baron operating, majorly, out of Uttar Pradesh and Rajasthan. Tilak Raj Sharma is director with Ganga Nagar Commodity Limited which is registered with the Ministry of Corporate Affairs (MCA), having DIN00217431. He is currently associated with 6 Companies and is director with Aarti Distilleries Private Limited, Utkarsh Granites Private Limted, V C Motors Private Limited, India Reconstrvion Corporation

Limited, Ganga Nagar Commodity Limited. Further he is Managing Director with Rajasthan Liquors Limited. The total paid-up capital of all companies where Tilak Raj Sharma holds active positions is around Rs.1,88,49,96,408/-. Previously, he was associated with 12 companies, Columbia Granites Private Limited, Maharashtra Breweries Limited, Unnao Sugar Mills Limited, Mohan Goldwater Breweries Limited, Unnao Distilleries And Breweries Limited, Raghukul Contractors And Builders Private Limited, Aishwarya Town Project Private Limited, Quaff Exim Private Limited, Jya Securities Limited, Jya Finance And Investment Company Limited, Chetan Real Estate Limited, Veechetan Exports Private Limited.

81. In order to further buttress submissions, Noticee annexed certification from the Auditor of the Company (viz M/S Mahato Prabir & Associates) inter alia certifying from the books of the. Company that the amounts given to Pranidhi Holding Pvt Ltd (i.e. Rs. 2,20,00,000/- on September 14, 2010) and Tilak Raj Sharma (i.e. Rs. 3,25,00,000/- on March 14, 2011) were in fact loan transactions and were accordingly reflected in the books of the Company during the relevant financial years in the Balance sheet of the Company filed with the regulatory/statutory authorities. Copy of the certificate from the Auditor is placed on records.

82. Under the circumstances, based on non-execution of loan agreement and alleged non charging of interest, the nature of transaction cannot be altered in order to allege that Noticee had 'varied' the utilization of the issue prcceeds & 'mis-utilized' the issue proceeds.

83. Admittedly, the allegation is totally unsubstantiated. No material particulars have been set out as to how the "objects of issue" were deceitful or distorted. The matter pertains to preferential allotment made by the Company. The allottees who were subscribing to the shares by way of preferential allotment at a premium were all sophisticated investors.

84. The said Notice containing the disclosures regarding the "objects of issue" was filed by the Company with the stock exchanges and the same was in public domain. At no point of time, either stock exchange or SEBI has raised any issues with the disclosures in the said Notice. It may be noted that both the preferential allotments were carried out in consonance with the then applicable provisions of Companies Act 1956, SEBI ICDR Regulations 2009 and Stock Exchange Circulars.

85. It is denied that we have misled our shareholders and investors and thereby committed fraud on them, as alleged. The said misplaced and unsubstantiated allegation is offshoot of mere surmises and conjectures.Admittedly, there is not even a single shareholder/investor complaint in this regard. Based on the purported theory of alleged misutilisation - which on the face of it is erroneous, allegation of committing fraud on shareholders and investors has been erected, which is legally untenable and unsustainable. We respectfully submit that the allegation of fraud lacks any plausible foundational basis.

86. It is denied that Noticee has violated regulations 3(a),(b), (c) and (d) and 4(1), (2) (f) (k) and (r) of PFUTP Regulations, as alleged. Said provisions have been sweepingly invoked without substantiating as to how the same are applicable in the facts and circumstances of the case.

87. <u>Non-publication of Statement showing variations between projected utilisation made in obejects of the issue and actual utilisation of proceeds:</u> From the reading of Clause 43(a) of the Listing Agreement, it is clear that for alleging its breach, it is to be shown,

    a) that the company had made some projections regarding utilisation of funds or projections regarding profitability, in its prospectus/letter of offer/ object's stated in the explanatory statement to the notice for the genera) meeting for considering preferential issue of securities.

b) That post raising of the funds by the company, there has been "variation" between the proiected (utilization of funds or profitability) and actual (utilization of funds or profitability).

c) That despite the aforesaid variation, the company has failed to indicate the same on quarterly basis to the exchanges.

88. In Noticee's case, admittedly, it had not made any projections at all(either regarding the utilization of funds or the profitability) in the object's stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities. Therefore, in the absence of fulfillment of the threshold requirement for the applicability of Clause 43, the issue of its breach by Noticee cannot and does not arise. Further, since no projections were made the issue of variation can also not arise.

89. Pertinently, it may also be pointed out that at the relevant time (i.e. 2010, 2011), the preferential allotments by listed companies were governed by Regulations 70 to 79 (contained in Chapter VII) of the SEBI ICDR Regulations 2009. The preferential allotments made in terms of issuance of notice, disclosures in the explanatory statement etc., were in consonance with the applicable provisions of Companies Act 1956, SEBI ICDR Regulations 2009 & Stock Exchange Circulars/requirements. It may be noted that ICDR Regulations 2009 pertaining to preferential allotments did not obligate the companies to make projections.

90. In the Notice, in context of violation of Clause 43 of the Listing Agreement, reference has also been made to Regulation 32 of LODR Regulations. The said reference is also totally misplaced. Firstly, the said LODR Regulations (which became applicable from the year 2015), came much after the impugned preferential allotments (in the year September 2010 & March 2011). Secondly, the substantive requirements of the present Regulation 32 cannot be read into Clause 43 of the Listing Agreement, in order to allege breach. Thirdly, the provisions of Regulation 32 (which are substantive in nature and breach thereof results in adverse civil and punitive consequences) cannot be applied

retrospectively. It may be noted that to some extent the provisions of Regulation 32 (1) (b) are pari materia with Clause 43 of the Listing Agreement. However, the provisions of Regulation 32 (1) (a) are absolutely new and have come into force for the first time in the year 2015. The requirements of Regulation 32 (1) (a) also cannot be applied retrospectively in order to allege breach qua us. In view of the aforesaid, we have not breached the provisions of Clause 43 of the Listing Agreement , as alleged.

91. Without preiudice to our submission that Noticee has not violated any of the provisions the SEBI Act, SCRA, PIT Regulations or PFUTP Regulations as alleged, Noticee is setting out following mitigating/ extenuating factors for your kind consideration:

   a) Admittedly, the loan amounts given by the Company to certain persons/entities — which are alleged to be misutilized, have already come back into the Company lone-time back. It is not the case that the alleged misutilized amounts were siphoned off (same is not even alleged) and have not come back. In fact, much prior to the issuance of the Notice, the amounts which are alleged to be misutilized had already come back to the Company.
   b) That 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. 0.95 million in F/Y 2009-10 to Rs. 10.80 million in F/Y 2010-11 and to Rs. 16.43 million in F/Y 2011-12. Post the preferential allotment we had also declared a dividend for F/Y- 2011-12 and FY 2012-13. Same is also reflected by Noticee's balance sheet and the financial information filed with the stock exchanges over the years.
   c) There have been no investor complaints etc. against the Company.
   d) That the alleged violations, if any, are not deliberate and intentional and in disregard of provisions of law.
   e) That the alleged violations have not caused any loss to any investor and have also not adversely affected the investors or the securities market

in any manner. Further, it may be noted that there are no investor complaints in this regard.

f) There are no allegations that the Company had tried to manipulate its share prices or indulged in any fraudulent practices pertaining to volume creation etc. It may be appreciated that we all are in the middle of pandemic today. Business houses are facing severe operational constraints and existential threats. Therefore also, at this juncture, given the facts and circumstances of the case, it would be in the fitness of things and also in consonance with the well settled principles of proportionality and fairness, that no monetary penalty be imposed on the Company and its directors.

g) There has been undue delay in initiation of proceedings (i.e. around 10 years). It is well settled now that "undue delay is a mitigating factor which has to be considered while imposing a penalty under section 15J of the SEB/ Act". (Refer: Anita Jajodia vs SEBI - SAT Order dated 20.1 .21)

h) Clearly, the allegations pertain to a very old period i.e. around 10 years old. The alleged violations, if any, have already been cured and have been rendered academic. At this distance of time, no purpose would be served by penalizing the Company or its directors.

92. With regard to the observations regarding imposition of monetary penalty in the Notice, it is submitted that in the facts of this case no penalty be imposed and any imposition of penalty on Noticee would be unjustified and unwarranted. In view of the foregoing submissions, it is humbly prayed that the Notice be discharged and no penalty be imposed.

Submissions of Noticees 2, 3 and 4:

93. It is denied that Noticees have violated the provisions of Regulations 3 (a), (b), (c), and (d), 4(1), 4(2) (f) (k) and (r) of PFUTP Regulations as alleged.

94. SCN not maintainable: SCN is not legally maintainable and the same needs to be dropped forthwith. Admittedly the said SCN has been issued to Noticee, taking

recourse to the provisions of sec 27 (1) of the SEBI Act by inter alia alleging that Noticees being a director were responsible for the conduct of business of the Company. Sec 27 of SEBI Act deals with vicarious liability of the directors for the acts of the company.

95. With regard to the applicability of Section 27 of the SEBI Act, 1992, it is pointed out that during the relevant period i.e. Financial Years 2010-11 to 2015-16 when the alleged violations took place, Section 27 did not provide for the vicarious liability of Directors in respect of the civil liability of the company arising out of the violations committed by such company. However, vicarious liability of directors in respect of the civil liability of the company, got covered by sec 27 (1) of the SEBI Act, only after the amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time i.e. from 2010-11 to 2015-16, did not create any vicarious liability on Noticees as a Director for the violations committed by the Company, which were ,admittedly, civil in nature.

96. In this context attention is invited to the Order passed by the Ld. Whole Time Member, SEBI in the matter of VB Industries Limited dated July 08, 2021:
"39. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 1 to 7, who were the directors/CFO of VBIL at the relevant time, are liable for the violations alleged to be committed by VBIL, viz: …….. Thus, SCN imputes all the allegations which are levelled against VBIL, automatically, on the directors of VBIL. ….. In the previous paras, it has been found that VBIL is in violation Regulations 30(4)(ii), 33(l)(d), 33(2)(a), 33(3)(a), 34(2)(c) and 46(2)(i) of the LODR Regulations and Section 21 ofSCRA, 1956. Therefore, in the context of Noticee no. 1 to Noticee no. 7, it has to be determined whether these Noticees are liable for those violations for which VBIL has been found to be in violation, either by virtue of Section 27 of the SEBI Act, 1992 or otherwise. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during the relevant period (i.e. Financial Years 2015-16 to 2017-18), Section 27 provided for the vicarious liability of certain persons who were in charge of

and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word "offence" with the word "contravention" in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by VBIL, with reference to LODR Regulations for which proceedings under Section 11, 11A, 11B and monetary penalty has been proposed, which are civil in nature..."

97. As a matter of judicial discipline, the said Order passed by the Whole Time Member is binding on AO. In view of the aforesaid, Noticeed are not vicariously liable for the alleged violations committed by the Company at the relevant time. Therefore, the proceedings need to be dropped qua Noticees and no penalty be imposed.

98. Inordinate delay in issuance of SCN: The Impugned proceedings suffer from enormous laches. Admittedly, the alleged violations relate to the preferential allotment made by the Company in the year 2010 and non-disclosure in the year 2013. The present SCN has been issued on July 15, 2021 (i.e. almost 10 years after the impugned transaction). The aforesaid inordinate delay has severely prejudiced Noticees. The said inordinate delay has not been explained by SEBI. Further, the proceedings in the matter have been going on interminably. On this ground alone the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped qua Noticees.

99. It is well settled now that even though there is no period of limitation prescribed in the SEBI Act and Regulations for the completion of investigations or for the issuance of a show cause notice, the authority is required to exercise its powers within a reasonable period. Facts of the present case will amply demonstrate that

the powers have not been exercised by SEBI within a reasonable period and therefore, in the facts and circumstances of the case, proceedings need to be discontinued and dropped and no penalty needs to be imposed. In this context attention is invited to following Orders passed by the Hon'ble Securities Appellate Tribunal:

a) Order passed on January 31, 2020 by the Hon'ble Securities Appellate Tribunal in the matter of Ashlesh Gunvantbhai Shah Vs SEBI (SAT Appeal no 169 of 2019)
b) Order passed on November 21, 2020 by the Hon'ble Securities Appellate Tribunal in the matter of Parag Sarda vs. SEBI(SAT Appeal no 279 of 2020).

100. In the Notice, the allegations are qua the Company and the Company has with regard to the allegations in the Notice, already filed a detailed reply to the captioned Notice inter alia dealing with each of the allegations and denying all the allegations level led against it and placing on record the correct factual position on record and demonstrating its bonafides. Noticees adopt the submissions made by the Company in its reply, in support of his contention that both Noticees as well as the Board of the Company have acted bonafIde and in the best interests of the Company and its shareholders at all points of time, in consonance with the applicable provisions of law.

101. Since Noticees are not covered by sec 27(1) of the SEBI Act (which is the sole basis for alleging the violations), the issue of violating the provisions of Regulations 3 (a), (b), (c), and (d), 4(1), 4(2) (f) (k) and (r) of PFUTP Regulations cannot and does not arise. In any event , it is denied that Noticees have violated any of the provisions of Regulations 3 (a), (b), (c), and (d), 4(1), 4(2) (f) (k) and (r) of PFUTP Regulations as alleged .

102. Noticees have not committed any wrong and no charge has been established against Noticees for imposition of any monetary penalty. In the facts and

circumstances imposition of any monetary penalty on Noticees would be unjustified and unwarranted.

103. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticees and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

104. The issues that arise for consideration in the instant matter are:

Issue No. I	Whether Noticees are in violation of Regulation 13 (4A) and 13(6) of SEBI PIT Regulations; Regulation 3(a),(b),(c),(d), 4(1), 4(2f), 4(2(k)) & 4(2(r)) of SEBI PFUTP Regulations, 2003; and Clause 43 of erstwhile Listing Agreement read with Regulation 32 and Regulation 103(1) and (2) of SEBI LODR Regulations, 2015.
Issue No. II	If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 23A, 23E of Securities Contracts (Regulation) Act, 1956 (SCRA), Section 15A(a), 15A(b), 15HA of SEBI Act,1992? And
Issue No. III	If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act and 23 J of SCRA read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether Noticees are in violation of Regulation 13 (4A) and 13(6) of SEBI PIT Regulations; Regulation 3(a),(b),(c),(d), 4(1), 4(2f), 4(2(k)) & 4(2(r)) of SEBI PFUTP Regulations, 2003; and Clause 43 of erstwhile Listing Agreement read with Regulation 32 and Regulation 103(1) and (2) of SEBI LODR Regulations, 2015.**

105. The Noticees have contended that there has been inordinate delay in initiation of adjudication proceedings in the matter, which has prejudiced the Noticees. In this regard Noticees have cited SAT judgements, which held that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. Further, what would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute etc.

106. In this regard, I note that investigation in the matter for the period March 2011 to November 2014 was initiated in 2016 pursuant to references received in respect of Noticee-1 from the Income Tax Department (ITD) in 2014 and 2015. Investigation was initiated in 2015 in regard to alleged price manipulation in the scrip of Noticee-1. In 2016, the investigation relating to preferential allotment process of Noticee-1 and the utilization of the preferential issues was initiated. The aforesaid investigation in the matter was concluded in March 2021, and in March 2021 the competent authority approved adjudication proceedings in respect of Noticees. The undersigned was appointed Adjudicating Officer in the matter in April, 2021 and the SCN was issued in July, 2021. Considering the time taken to complete the investigation, I do not find that there is inordinate delay in initiation of the proceedings. I also note that there is no limitation prescribed in SEBI Act or Regulations for issuance of SCN or for completion of the Adjudication proceedings.

107. It is alleged in the SCN that Noticee-1 failed to disclose the information about the off-market transaction of Warner Multimedia Limited ("WML"), a promoter of the Company on January 08, 2013 to the stock exchange as required under Regulation 13(4A) and 13(6) of PIT Regulations, 1992. I note that WML (one of the promoters of the company) entered into off market transaction on January 08, 2013 disposing off its holding of 6,37,987 shares of Noticee-1, resulting into reduction in its promoter shareholding. This reduction resulted into change in holding of promoter WML in excess of Rs. 5 lakh in value as well as 25,000 shares, thereby triggering disclosure on part of WML to the company (Noticee-1) and the stock exchange in terms of Regulation 13(4A) of PIT Regulations.

108. In this regard, I note that Noticee-1 in its letter dated January 10, 2020, November 09, 2021 and December 29,2021, has interalia confirmed that WML had disclosed the off market transaction to it on 08/01/2013. Accordingly, in terms of regulation 13 (6) of PIT Regulations, the Noticee-1 was required to disclose the off market transaction and change in shareholding of promoter to the stock exchange within two working days of receipt of above information from WML. However, it's noted that no such disclosure was made by Noticee-1 to the exchange, which is confirmed from BSE email dated February 09, 2021 and not disputed by the Noticee-1.

109. Further, in its submissions dated November 09, 2021 Noticee-1 has submitted that it unintentionally and inadvertently missed out making the aforesaid disclosure, and on becoming aware, the disclosure was made to the Stock Exchange. Further, Noticee-1 contended that the said non-disclosure was a technical lapse and has not affected anybody's interest, including the shareholders of the Company. I note that the disclosure was eventually made by Noticee-1 on December 28, 2021, and whereas Noticee-1 was required to make the disclosure within two working days of receipt of the information received from WML .

110. In view of the above, I find that Noticee-1 by failing to make disclosure to the Stock Exchange regarding the change/reduction in shareolding of the pomoters in view of the off market transaction dated January 08, 2013 by WML has violated Regulation 13(6) of PIT Regulations.

111. WIth regard to allegation of misutilization of preferential allotment issues proceeds, and misleading of shareholders and investors, the allegation arises from loan transactions of Noticee-1 made without entering into any agreement for loan of Rs. 2.20 Crores to Paranidhi Holding Pvt. Ltd. (from issue proceeds of preferential allotment -1) and a loan of Rs. 3.25 Crores to Tilak Raj Sharma (from issue proceeds of preferential allotment – 2) where Noticee allegedly did not charge any interest on the aforesaid loans. Therefore it allegedly did not utilise

the issue proceeds of the preferential allotments -1 and 2, as per the objects of issue as disclosed to shareholders and violated Regulation 3(a),(b),(c),(d), 4(1), 4(2f), 4(2(k)) & 4(2(r)) of SEBI PFUTP Regulations.

112. In this regard I note that as per the clause 2 of the item no.3 of the explanatory statement of EGOM Notice dated July 21, 2010, "*The proceeds of the issue of shares will be utilised in the business of the company and in order to meet its growth objectives and strengthen its financial positions and to implement its expansion plan, and for the requirement long-term resources*." Similarly as per the clause 2 of the item no.3 of the explanatory statement of EGOM Notice dated February 16, 2011, "*The proceeds of the issue of shares will be utilised in the business of the company and in order to meet its growth objectives and strengthen its financial positions and to implement its expansion plan, and for the requirement long-term resources*". Hence, as per objects of the issues, preferential issue proceeds were to be utilised by Noticee-1 for the business of the company. Further, as per material on record, the company is engaged in the business of financing and investing in shares and securities, treasury operations by way of providing funding solutions, including loans to clients, corporate finance, private equity, mergers and acquisitions (M&A) syndication, capital advisory and fund management/angel funding. Hence, giving loan to clients is a business of the company.

113. I have examined whether Noticee 1 extended loan to Paranidhi Holding Pvt. Ltd. and Tilak Raj Sharma as per its usual business practices like other loans granted where it received back interest and principal both from the borrowers. In this regard I note that the company utilised 23% of issue proceeds of preferential allotment -1, i.e. Rs. 4.15 Crores towards giving loans and advances to three entities (Paranidhi Holding Pvt. Ltd., Amba Highrise Pvt Ltd, and Sree Metaliks Limited); and it received Rs.14,22,987/- and Rs.4,66,028/- as interest for the loans given to Amba Highrise Pvt Ltd, and Sree Metaliks Limited respectively along with the principal repayment. Similarly, the company utilised 70% of the of issue proceeds of preferential allotment -2, i.e. Rs. 5.25 Crores towards giving

loans and advances to two entities KIC Metaliks Limited and Tilak Raj Sharma and it received Rs.16,00,000/- as interest for the loans given to KIC Metaliks Limited along with the principal repayment. Paranidhi Holding Pvt. Ltd. and Tilak Raj Sharma repaid only the principal amount of the loan but did not pay the interest obligations to Noticee-1.

114. I note that vide its letter dated January 06, 2021 Noticee 1 has submitted that it did not enter into any loan agreement with its borrowers for the aforesaid loans granted. I also note that for both type of loans, i.e. loans where interest was received and loans where interest remain unpaid, there is nothing on record to show any difference in the practice adopted, the type of borrowers, or loan procedure undertaken in respect of both types of loans. The difference between category of the issue proceeds considered utilised as per the objects of the issue and category of issue proceeds considered misutilised, is non receipt/recovery of interest against the loans granted from the issue proceeds by Noticee- 1.

115. Noticee-1 has contended that the loan given to Paranidhi Holding Pvt. Ltd. and Tilak Raj Sharma ran into rough weather and it was a bad business call on part of the Noticee-1, since both the parties defaulted on their payment obligations and Noticee-1 had to issue Legal Notices to them for recovery of dues; and after long drawn correspondence and follow up the Noticee-1 could recover only the principal amount. In this regard, I note that Noticee-1 has submitted copies of Legal notices issued by advocate of Noticee-1 on its behalf to Paranidhi Holding Pvt. Ltd. and Tilak Raj Sharma calling upon the payment of dues in respect of the loans. I also note that Noticee-1 has placed on record, CA certified break up of loans and advances given by Noticee-1 from 2011 to 2017 which includes the aforesaid two loans.

116. An allegation of misutilisation of funds amounting to fraud is a serious allegation and in order for it to sustain, material on record must establish that funds raised have been utilized for a purpose other than what was stated as objects of issue, and that investors and shareholders were misled and deceived by such mis-

utilisation. In the instant case, the company was in in the business of giving loans, and thus giving a loan cannot be considered a purpose other than as stated in objects of issue. There is insufficient material on record to conclude that the funds given to Paranidhi Holding Pvt. Ltd. and Tilak Raj Sharma were not loans as funds were given and subsequently returned to the Company. Merely because of non-payment of interest, it cannot be concluded that the transactions were not loans, as it has not been established that the funds were used for any other purpose by the recipients or that the funds were not returned to the company.

117. I note that generally in all the loan transactions, the lender is always exposed to the payment default risk by the borrower. This is a business risk, which the lender undertakes in lieu of interest charged to the borrower. Further, the practice of non-execution of the agreement by Noticee 1 and its borrrowrers has been found to be common for all the loans granted by it. Further, Noticee-1 has recovered principal amount in all the cases including the aforesaid loans granted to Paranidhi Holding Pvt. Ltd. and Tilak Raj Sharma. I take note of the Noticee's submission that in the aforesaid loans the interest was charged by the Noticee-1, but the borrowers did not pay the interest. I find that mere non-payment of interest obligation by the borrower to the lender, or non-execution of the loan agreements between parties cannot be construed to change the nature of the transactions from loan.

118. In view of the above, since giving loans to clients are within the business activities of the Noticee-1, and nature of the impugned transactions are of loan, I find that the utilization of the issue proceeds was not in contravention to the objects of the issues; and consequently there was no variation in the utilisation of the issue proceeds as disclosed to shareholders and investors.

119. In view of the above, I find that it is not established that Noticee-1, violated Regulation 3(a)(b)(c)(d), 4(1), 4(2f), 4(2(k)) & 4(2(r)) of SEBI PFUTP Regulations, and Clause 43 of erstwhile Listing agreement read with Regulation 32 and Regulation 103(1) and (2) of SEBI LODR Regulations 2015.

120. Since the alleged violations have not been established against Noticce-1, i.e. company, Noticee-2, 3 and 4, being the non-independent directors of the Company responsible for the conduct of business, cannot be held in violation of Regulation 3(a)(b)(c)(d), 4(1), 4(2f), 4(2(k)) & 4(2(r)) of SEBI PFUTP Regulations, in terms of Section 27(1) of SEBI Act 1992.

Issue No. II **If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 23A, 23E of Securities Contracts (Regulation) Act, 1956 (SCRA), Section 15A(a), 15A(b), 15HA of SEBI Act,1992? And**

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act and 23 J of SCRA read with Rule 5(2) of the Adjudication Rules?**

121. As it is established that the Noticee-1 violated Regulation 13(6) of PIT Regulations as brought out in the foregoing paragraphs, the Noticee-1 is liable for monetary penalty under Section 15A(b) of SEBI Act,1992 which states as follows:

Penalty for failure to furnish information, return, etc.

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

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

122. While determining the quantum of penalty under Section 15A(b) of SEBI Act,1992, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

SEBI Act, 1992

Factors to be taken into account by the adjudicating officer

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

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

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

(c) the repetitive nature of the default.

123. The material on record does not bring out the quantum of disproportionate gain made or loss caused to investors by Noticee-1 or any repititve nature of violation. I note that the violation is procedural in nature and the non-discloure pertains to the year 2014. I also note that through subsequent quarterly disclsoures, the changed shareholding was available in the public domain. Hence, I am of the view a penalty of Rs. 1,00,000/- under Section 15A(b) of SEBI Act,1992 will be commensurate with the violation committed by the Noticee.

ORDER

124. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) under Section 15A(b) of SEBI Act,1992 on Blue Circle Services Limited (Noticee-1) for violation of Regulation 13(6) of PIT Regulations 1992.

125. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties

Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

126. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – V of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:
    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

127. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: January 12, 2022
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER