BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/BM/DS/2022-23/18147-18164]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA AT, 1992, READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 3 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

Noticee	Name	PAN
1	M/s Goldline International Finvest Limited [CIN:L74899DL1992PLC050250]	AACCG6377M
2	Madhukar Dubey and his Proprietorship firm viz. Alliance Traders, NV Sales Corporation, A One Furniture and Magnum Industrial	AIJPD7329J
3	Satendra Kumar and his proprietorship firm viz. Bright Securities, AR Enterprise, Nisha Traders	AWWPK8525E
4	Sumit Kumar and his proprietorship firm viz. Vijay Bhagwandas & Co., Durga Prasad & Co.	ARUPK1589P
5	Columbia Sales	DAIPS9917R
6	Mohan Garg and his proprietorship firm viz. Garg Traders & Suppliers	AVHPG5782H
7	Ram Prakash and his proprietorship firm viz. Khan Enterprise, Aggarwal Traders	AXFPR4439L
8	Avisha Credit Capital Private Limited [CIN: U74899DL1995PLC66243]	AAACA5715D

9	**AMS Powertronic Private Limited [CIN: U31104DL1992PLC050492]**	**AAECA8718H**
10	**Prakash Gupta and his proprietorship firm viz. Shri Trading Co.,**	**ARVPG7849R**
11	**LMR Green Realty Private Limited [CIN: U70101DL2012PTC231844]**	**AACCL1899B**
12	**Lithmus Capital Consultance Limited [CIN: U74140DL2011PTC222246]**	**AACCL0866A**
13	**Ace Consultant**	**ABGPK4707P**
14	**ECO Friendly Food Processing Park Limited [CIN:L45209DL2008PLC181131]**	**AACCE0416B**
15	**Amar Singh Bisht**	**AKOPB4144J**
16	**Brij Kishore Sabharwal**	**AAXPS6830P**
17	**Vinod Kumar Garg**	**AAAPG4116B**
18	**Neeraj Mittal**	**AAFPM8349F**

(The entities mentioned above are individually known by their respective name or Noticee no. and collectively referred to as "Noticees")

In the matter relating to the Initial Public Offering of
ECO Friendly Food Processing Park Limited

BACKGROUND:

1) Securities and Exchange Board of India (herein after referred to as "**SEBI**") conducted an investigation in the matter of Initial Public Offering (IPO) of ECO Friendly Food Processing Park Ltd., (hereinafter referred to as "**ECO**" or "**the Company**" or "**Noticee 14**"). On the basis of investigation conducted by SEBI, it was alleged that the Noticees have violated provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**"), SEBI

(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**ICDR Regulations**") and Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SC(R) Act, 1956**") as specified in Table - 1 below.

Table – 1

Noticee	**Violations**	**Adjudication Proceedings**
Noticees 1 to 16	Regulations 3(a), (b), (c) and (d) and 4(1) of PFUTP Regulations r/w 12A(a), (b) and (c) of the SEBI Act, 1992	15HA of SEBI Act, 1992
Noticee 1, 14 and 16	Sec. 11 (3) and 11 C (3) of SEBI Act, 1992	15A(a) of SEBI Act, 1992
Noticee 14	Clause 45 and 46 of listing agreement for SMEs r/w section 21 of SCRA, 1956	Section 23E of the SCRA, 1956
Noticees 14 to 18	Regulations 57(1), of SEBI (ICDR) Regulations, 2009 and Sec. 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3 (a), (b), (c), (d) and 4 (1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003.	Section 15HA of SEBI Act, 1992

APPOINTMENT OF ADJUDICATING OFFICER

2) Vide Order dated June 29, 2017, Shri K Sarvanan, Chief General Manager was appointed as Adjudicating Officer under Section 19 read with Section 15-I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing

Penalties Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**"), and section 23-I of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SC(R) Act, 1956**") read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as "**SC(R) Adjudication Rules**"), Section 19 of SEBI Act, 1992 to enquire into and adjudge under the provisions of Section 15A(a) and 15HA of SEBI Act, 1992 and section 23E of SC(R) Act, 1956, the aforesaid alleged violations committed by the Noticees. Pursuant to his transfer, Shri Parag Basu, Chief General Manager, was appointed as Adjudicating Officer vide Order dated July 14, 2021. Pursuant to his transfer, the undersigned was appointed as the Adjudicating Officer ("**AO**") vide Order dated March 10, 2022.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3) A common Show Cause Notice with reference no. SEBI HO/A&E/EAD/KS/VB/7370/2018 dated March 08, 2018 (hereinafter referred to as "**SCN**") was issued by erstwhile AO, Shri K Sarvanan to the Noticees via Registered Post Acknowledgement Due (RPAD) and e-mail under the provisions of Rule 4(1) of the SEBI Adjudication Rules read with section 15-I of the SEBI Act,1992 and Rule 4(1) of the SC(R) Adjudication Rules read with section 15-I of the SC(R) Act, 1956 calling upon the Noticees to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15A(a) and 15HA of SEBI Act, 1992 and section 23E of SC(R) Act, 1956 for the aforesaid alleged violations.

4) The observations made under the investigation and the allegations levelled against the Noticees in the SCN are mentioned hereunder:

a) It is observed that ECO came out with an IPO to raise Rs. 756 lakh by way of issue of 30,24,000 equity shares of Rs. 10 each at an issue price of Rs. 25 which got listed at BSE - SME segment on January 14, 2013. The price of the scrip opened at Rs 24.50 went up to a high of Rs 26 and closed at Rs 25.55 on the listing day. The issue size constituted 30.04% of post issue shares, of Rs.10 each.

b) <u>IPO Funding</u> - It was alleged that certain entities including some of the Noticee were found to have connection with ECO directly / indirectly and have funded the IPO applicants. The details of these entities and basis of such connection is brought out in table below:

Noticee	Particulars	Connection - Fund Movement
1	Goldline International Finvest Ltd. (Goldline)	• Goldline received IPO proceeds from ECO. Further, Goldline had huge fund movement with ECO. • Goldline had also fund movement with other entities who had funded IPO allottees viz. Aggrawal traders, AMS Powertronic Pvt Ltd, Bright Securities, Nisha Traders, Columbia Sales.
2	Madhukar Dubey (PAN:AIJPD7329J) **<u>Proprietorship Firm:</u>** • Alliance Traders • N V Sales Corporation • A One Furniture Magnum Industrial	• Alliance Traders received funds from Columbia Sales, AMS Powertronic Pvt. ltd., Mayfair Infosolution Pvt. Ltd., A One Furniture. • N V Sales Corporatin received funds from Eco, A R Enterprise, Durga Prasad & Co., and Alliance Traders. • A One Furniture received funds from DPRS Buildcon. Further, DPRS Buildcon received from Goldline and Deep Jyoti. • Magnum Industrial received funds from Eco and A One Furniture. • Madhukar Dubey received funds from AMS Powertronic for making ASBA application. • Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. • Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address.

Notice	Particulars	Connection - Fund Movement
3	Satendra Kumar (PAN:AWWPK8525E) **Proprietorship Firm:** • Bright Securities • A R Enterprise Nisha Traders	• Bright Securities received funds from Nisha Traders, Magnum Industrial and A One Furniture. • A R Enterprise received funds from ECO and Shiv Traders. • Nisha Traders received funds from ECO, Alliance Traders, N V Sales Corporation and A One Furniture. • Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. • Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address. • Satendra Kumar is the director in following companies • Core Capital Services Ltd.
4	Sumit Kumar (PAN: ARUPK1589P) **Proprietorship Firm:** • Vijay Bhagwandas & Co. Durga Prasad & Co.	• Vijay Bhagwandas & Co. received funds from A R Enterprise and Nisha Traders. • Durga Prasad & Co. received funds from Alliance Traders, A R Enterprise and N V Sales Corporation. • Durga Prasad & Co. also had fund movement with Mayfair Infosolution Pvt. Ltd. • Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. • Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address. • Sumit kumar is the director in following companies: i. Core Capital Services ltd. ii. AMS Powertronic Pvt. Ltd. • MAA Taluka Buildcon Pvt. Ltd.
5	Columbia Sales	• Columbia Sales had received funds from ECO, Goldline, Aggrawal trades and Garg Traders & Suppliers. • Columbia Sales had also fund movement with AMS Powertronic Pvt. ltd., Alliance Traders and N V Sales Corporation.
6	Mohan Garg **Proprietorship Firm**: Garg Traders & Suppliers	• It had fund movement with ECO
7	Mr. Ram Prakash	• Aggrawal Traders received funds from Goldline.

Noticee	Particulars	Connection - Fund Movement
	(PAN: AXFPR4439L) **<u>Proprietorship Firm:</u>** • Khan Enterprises • Aggrawal Traders	• Khan Enterprise received funds from Shiv Traders, Garg Traders & Suppliers and Columbia Sales. • Ram Prakash is the director in following companies : i. Aavia Buildtech Pvt. Ltd. ii. Aavia Softech Pvt. ltd.
8	Avisha Credit Capital Pvt. Ltd. (Avisha)	• Avisha had fund movement with ECO and Goldline.
9	AMS Powertronic Pvt. Ltd.	• It had fund movement with Eco, Goldline, Shiv Traders, Garg Traders & Suppliers, Columbia Sales, Madhukar Dubey, Core Capital Services Pvt. Ltd., Mayfair Infosolution Pvt. Ltd., Lithmus Capital Consultance Ltd. • Director Name : 1)Sumit Kumar 2) Vinay Kumar • Sumit Kumar is the common director in Core Capital Services Ltd. & Mayfair Infosolution Pvt. Ltd.
10	Prakash Gupta **<u>Proprietorship Firm:</u>** • Shri Trading Co. • Shiv Traders	• Shiv Traders had received funds from ECO. • Shri Trading Co. received funds from N V Sales and Shiv Traders.
11	LMR Green Realty Pvt. Ltd.	• It had fund movement with Goldline.
12	Lithmus Capital Consultance Ltd.	• It had fund movememt with AMS Powertronic Pvt. Ltd.
13	Ace Consultant	• It had fund movement with the ISF Securities Ltd and Goldline. • Common Address with ISF Securities Ltd. • Till March 2014, Brij Kishore Sabharwal (Director of Eco) was the director in ISF Securities Ltd. • ISF Securities received funds from Ace Consultant which subsequently received from the Goldline.

c) Hence, Noticees 1 to 13 were referred to as “**funding group entities**”/ “**funding group**”.

d) It was observed from an analysis of bidding data and allotment of shares that the following category-wise applications were received (before technical rejection & withdrawal of application):

Category	No. of Applications	No. of Equity Shares
Market Makers	1	5,04,000
HNI	7	10,38,000
Retail Individual Investors (RII)	381	22,86,000
Total	**389**	**38,28,000**

e) From the above table, it was observed that issue received 389 applications for 38,28,000 shares. No applications were rejected on technical grounds, however, there were withdrawals of five (5) applications, as detailed below:

Category	No. of Applications	No. of Equity Shares
Market Makers	Nil	Nil
HNI	Nil	Nil
Retail Individual Investors (RII)	5	30,000
TOTAL	5	30,000

f) After withdrawal by RII, the total valid applicants were 384 for 37,98,000 shares which was 1.26 times the offer size. The Category wise allotment details are given in the table below:

Category	No. of shares applied (Excluding the withdrawn applications)	No. of shares allotted	No. of entities who got allotment
Market Maker	5,04,000	5,04,000	1
HNI	10,38,000	8,04,000	7
RII	22,56,000	17,16,000	286
Total	**37,98,000**	**30,24,000**	**294**

g) From the above data it was observed that ECO received applications for 38,28,000 shares out of which applications for 30,000 shares was withdrawn. Finally 30,24,000 shares, after rounding off, were allotted to 296 applicants. It was observed that out of 30,24,000 shares, 11,52,000 shares were issued in physical form to 192 allottees.

h) Further, on perusal of bank accounts of the retail investors, it was alleged that out of 376 retail applicants, applications of 298 applicants were funded by the funding group entities who received the funds back from the IPO proceeds. Out of 298 such applicants, 221 applicants got allotment of 13,26,000 shares. In market maker category, the application for 5,04,000 shares was found to be funded by the alleged funding group. Further, in HNI category, out of applications received from 7 applicants for 10,38,000 shares, 8,04,000 shares were allotted to 7 applicants on proportionate basis. Out of 8,04,000 shares allotted to HNI, 7,62,000 shares were found to be funded by the alleged funding group entities, in some cases the applicants themselves belonged to the funding group. The application money was funded by the funding group entities connected to company who received funds from company directly / indirectly and hence, allotment of these 25,92,000 shares (13,26,000 + 5,04,000 + 7,62,000) was alleged to be non-genuine.

i) Further, out of 11,52,000 shares allotted in physical form, 10,86,000 shares were allotted to the entities who received funds from the entities who were directly / indirectly connected with ECO, to make application.

j) The table below summarizes the fund movement between the company, funding group entities and IPO allottees.

<u>Analysis of funding of IPO Allottees</u>

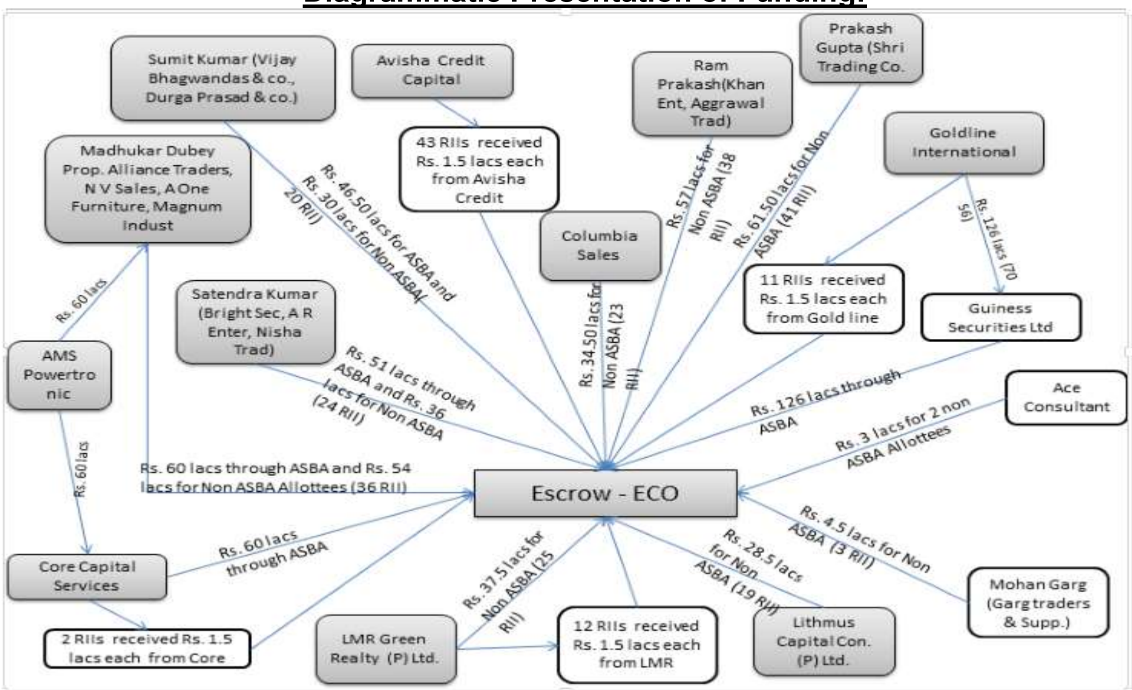
Noticee	Funding Enity	Bank A/c	Observations
1	GoldLine International Finvest Ltd.	ICICI Bank - 663005120449	• It had given Rs. 126 lacs to Guiness Securities Ltd for making ASBA application in IPO of ECO and 11 Non ASBA retail investor had received Rs. 1.50 lacs each for making IPO application in ECO. (9 allottees got allotment) • Further it had fund movement with Bright Securities, Avisha Credit capital, AMS Powertronic, ECO. ECO transferred Rs. 340 lacs from IPO money to Goldline.

Notice	Funding Enity	Bank A/c	Observations
2	Madhukar Dubey **Proprietorship Firm** • Alliance Traders • N V Sales Corporation • A One Furniture • Magnum Industrial	Yes Bank- 013683900002242	• **Alliance Traders** has issued 10 cheques of Rs. 1.50 lacs each on behalf of 10 Non ASBA retail investors.(4 allottees got allotment) It had received Rs. 62.08 lacs from Columbia Sales, Rs. 5 lacs from AMS Powertronic, Rs. 5 lacs from Mayfair Infosolution and Rs. 15 lacs from A One Furniture.
		Yes Bank- 013683900002171	• **N V Sales Corporation** has issued 8 cheques of Rs. 1.50 lacs each on behalf of 8 Non ASBA retail investors. (5 allottees got allotment) It had received Rs. 40 lacs from ECO, Rs. 12 lacs from A R Enterprise, Rs. 35 lacs from Durga Prasad & Co. and RS. 10.10 lacs from Alliance Traders.
		Yes Bank- 013683900002266	• **A One Furniture** had issued 11 cheques of Rs. 1.50 lacs each on behalf of 11 Non ASBA retail investors.(7 allottees got allotment) It had received Rs. 60 lacs from DPRS Buildcon (DPRS has received Rs. 40 lacs from Gold Line & Rs. 20 lacs from Deep Jyoti & Shiv Traders).
		Yes Bank - 013683900002209	• **Magnum Industrial** had issued 7 cheques of Rs. 1.50 lacs each on behalf of 7 Non ASBA retail investors. (4 allottees got allotment) It had received Rs. 45 lacs from ECO and Rs. 9 lacs from A One Furniture..
		Axis Bank- **912010025875970**	**Madhukar Dubey** had received Rs. 60 lacs from AMS Powertronic for making ASBA appliction money.
3	Satendra Kumar **Proprietorship Firm** • Bright Securities • A R Enterprise Nisha Traders	Yes Bank- 013683900002195	• **Bright Sec** had issued 9 cheques of Rs. 1.50 lacs each on behalf of 9 Non ASBA retail investors (6 allottees got allotment) and Rs. 51 lacs for ASBA Allottees (Mr. Satendra Kumar). It had received Rs. 32.50 lacs from Nisha Traders, Rs. 32.50 lacs from Magnum Industrial and Rs. 13.50 lacs from A One Furniture.
		Yes Bank - 013683900002230	• **A R Enterprise** had issued 6 cheques of Rs. 1.50 lacs each on behalf of 6 Non ASBA retail investors.(2 allottees got allotment) It had received Rs. 40 lacs from ECO and Rs. 58 lacs from Shiv Traders.
		Yes Bank- 013683900002254	• **Nisha Traders** Enterprise had issued 9 cheques of Rs. 1.50 lacs each on behalf of 9 Non ASBA retail investors. (7 allottees got allotment)

Notice	Funding Enity	Bank A/c	Observations
			It had received Rs. 25 lacs from ECO, Rs. 3.90 lacs from Alliance Traders, Rs. 3 lacs from N V Sales and Rs. 6 lacs from A One Furniture.
4	Sumit Kumar **Proprietorship Firm** • Vijay Bhagwandas & Co. Durga Prasad & Co.	Yes Bank - 013683900002337	• **Vijay Bhagwandas & Co**. has issued 8 cheques Rs. 1.50 lacs each on behalf of 8 Non ASBA retail investors. (4 allottees got allotment) It had received Rs. 12 lacs from A R Enterprise and Rs. 30 lacs from Nisha Traders.
		Yes - 013683900002325	• **Durga Prasad & Co**. has issued 12 cheques Rs. 1.50 lacs each on behalf of 12 Non ASBA retail investors and Rs. 46.50 lacs on behalf of ASBA Allottees (Mr. Sumit Kumar.). (11 allottees got allotment) It had received Rs. 72 lacs from Alliance Traders, Rs. 68 lacs from A R Enterprise, and Rs. 55 lacs from N V Sales Corporation. Further it had transferred funds to Mayfair Infosolution.
5	Columbia Sales	Tamilnad Mercantile Bank - 211150050800271	• **Columbia Sales** has issued 23 cheques of Rs. 1.50 lacs each on behalf of 23 Non ASBA retail investors.(17 allottees got allotment) • It had received fund of Rs. 70 lacs from Gold Line, Rs. 11 lacs from Aggrawal Traders and Rs. 13.75 lacs from Garg Traders & Suppliers on December 2012. • It had also received Rs. 15 lacs from ECO on October 17, 2012.
6	Mohan Garg **Proprietorship Firm** Garg Traders & Suppliers	Tamilnad Mercantile Bank - 211150050800296	• **Garg Traders & Suppliers** had issued 3 cheques of Rs. 1.50 lacs each on behalf of 3 Non ASBA retail investors.(3 allottees got allotment) • It had received Rs. 60 lacs from HPC Bioscience and Rs. 100 lacs from ECO.
7	Mr. Ram Prakash **Proprietorship Firm** • Khan Enterprise • Aggarwal Traders	Tamilnad Mercantile Bank - 211150050800272	• **Khan Enterprise** has issued 32 cheques of Rs. 1.50 lacs each on behalf of 32 Non ASBA retail Investors. (24 allottees got allotment) • It had received funds of Rs. 92.74 lacs from Shiv Traders , Rs. 8.58 lacs from Garg Traders & Suppliers and Rs. 4.50 lacs from Columbia Sales. • It had also received Rs. 25 lacs from ECO on October 16, 2012.
		Tamilnad Mercantile Bank -	• **Aggrawal Traders** has issued 6 cheques of Rs. 1.50 lacs each on behalf of 6 Non ASBA retail investors.(5 allottees got allotment) • It had received Rs. 40 lacs from Gold Line.

Notice	Funding Enity	Bank A/c	Observations
		211150050800213	
8	Avisha Credit Capital Ltd.	HDFC Bank - 05982740000567	• **Avisha Credit Capital** has funded 43 RIIs for making application of Rs. 1.50 lacs each in the IPO of ECO. (33 allottees got allotment) • Avisha received Rs. 263.05 lacs from ECO during July 2012 to December 2012. Further Avisha Has also fund movement with Goldline.
9	AMS Powertronic Pvt. Ltd.	Axis Bank - 912020004151524	• AMS Powertronic had given Rs. 60 lacs each to 2 ASBA Applicants.
10	Prakash Gupta **Proprietorship Firm** • Shri Trading Co. • Shiv Traders	Dhanlakshmi Bank - 019106700000110	• **Shri Trading Co**. has issued 41 cheques of Rs. 1.50 lacs each on behalf of 41 Non ASBA retail investors. (34 allottees got allotment) • It had received Rs. 11.43 lacs from N V Sales and Rs. 51.58 lacs from Shiv Traders.
		Tamilnad Mercantile Bank - 211150050800237	• **Shiv traders** had receievd Rs. 81.50 lacs from ECO, Rs. 67 lacs from ECO, and Rs. 60 lacs from HPC in October and December, 2012.
11	LMR Green Realty Pvt. Ltd.	IDBI Bank - **0109102000031994**	• **LMR Green** had issued 25 cheques of Rs. 1.50 lacs each on behalf of 25 Non ASBA retail investors and further Rs. 1.50 lacs each given to 12 RIIs for making application in IPO of ECO. (21 allottees got allotment) • It had received Rs. 32 lacs from Goldline and Rs. 28 lacs from HPC Bioscience.
12	Lithmus Capital Consultance Ltd.	Axis Bank- **911020042524981**	• **Lithmus Capital** had issued 19 cheques of Rs. 1.50 lacs each on behalf of 19 Non ASBA retail investors. (17 allottees got allotment) • It had received Rs. 30 lacs from AMS Powertronic.
13	Ace Consultant	HDFC Bank - 03142000000740	• Ace consultant received funds on various transactions and same were transferred to ISF Securities. • Ace Consultant had funded Rs. 1.5 lacs each to 2 Non ASBA entities. (1 allottees got allotment) • Ace Consultant & ISF Securities having same address.

Diagrammatic Presentation of Funding:



k) The table below shows the summary of number of shares allotted for which amount was funded by the funding group entities:

SN	Funding Entity	Amount funded (Rs. lacs)	No. of allottees got allotment	No of shares allotted
1	Gold Line International Finvest Ltd	139.50	10 (1 ASBA)	(54000 + 504000) = 5,58,000
2	Madhukar Dubey & properitorship firm	54	20	1,20,000
3	Satendra Kumar & Properiotorship firm	87	16 (1 ASBA)	(90000 + 204000) =2,94,000

4	Sumit Kumar & Properitorship Firm	76.50	16 (1 ASBA)	(90000 +186000) = 2,76,000
5	Columbia Sales	34.50	17	1,02,000
6	Garg Traders & Suppliers	4.50	3	18,000
7	Ram Prakash & Properitorship firm	57	29	1,74,000
8	Avisha Credit Capital	61.50	33	1,98,000
9	AMS Powertronic	120	2 (2 ASBA)	3,72,000
10	Core Capital Services Limited*	3	2	12,000
11	Prakash Gupta pro. Shri Trading Co.	61.50	34	2,04,000
12	LMR Green Realty Pvt. Ltd	55.50	21	1,56,000
13	Lithmus Capital Consultancy Pvt Ltd	28.50	17	1,02,000
14	Ace Consultant	3	1	6,000
	Total	**785.00**	**221**	**25,92,000**

*Core Capital Services Limited was struck off, and Order dated August 27, 2021 disposing of the allegations against it in this matter was passed. Hence, no allegations made against the entity remain.

l) From above, it was alleged that out of 30, 24,000 shares allotted, 25, 92,000 shares i.e. 85.71% of shares were allotted to the entities who received funds to make application in IPO from entities directly/ indirectly connected with ECO

m) It was observed that IPO of ECO would not have got minimum subscription had the funding group not funded the applicants. Thus, it was alleged that ECO and its Directors in connivance with the Noticee 1 to Noticee 13 employed a fraudulent scheme to get the IPO subscribed in a fraudulent manner by directly/ indirectly funding the IPO applicants.

n) Failure to disclose material information in the offer document and engaged in manipulative, fraudulent and unfair trade practices - In view of the aforesaid, it was alleged that Noticees 1 to 16 have violated Section 12A(a), 12A(b) and 12A(c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations.

o) Proposed utilization of the IPO proceeds by Noticee 14 as per its prospectus is given below:

S No	Particulars	Amount (Rs. in lacs)
1	Development of Farm land for transition to Organic Farming	506.00
2	Construction of storage sheds	114.00
3	Solar Fencing	65.50
4	Brand Building and General Corporate purposes	60.00
5	Issue Expenses	60.00
	Total	805.50

Means of finance:

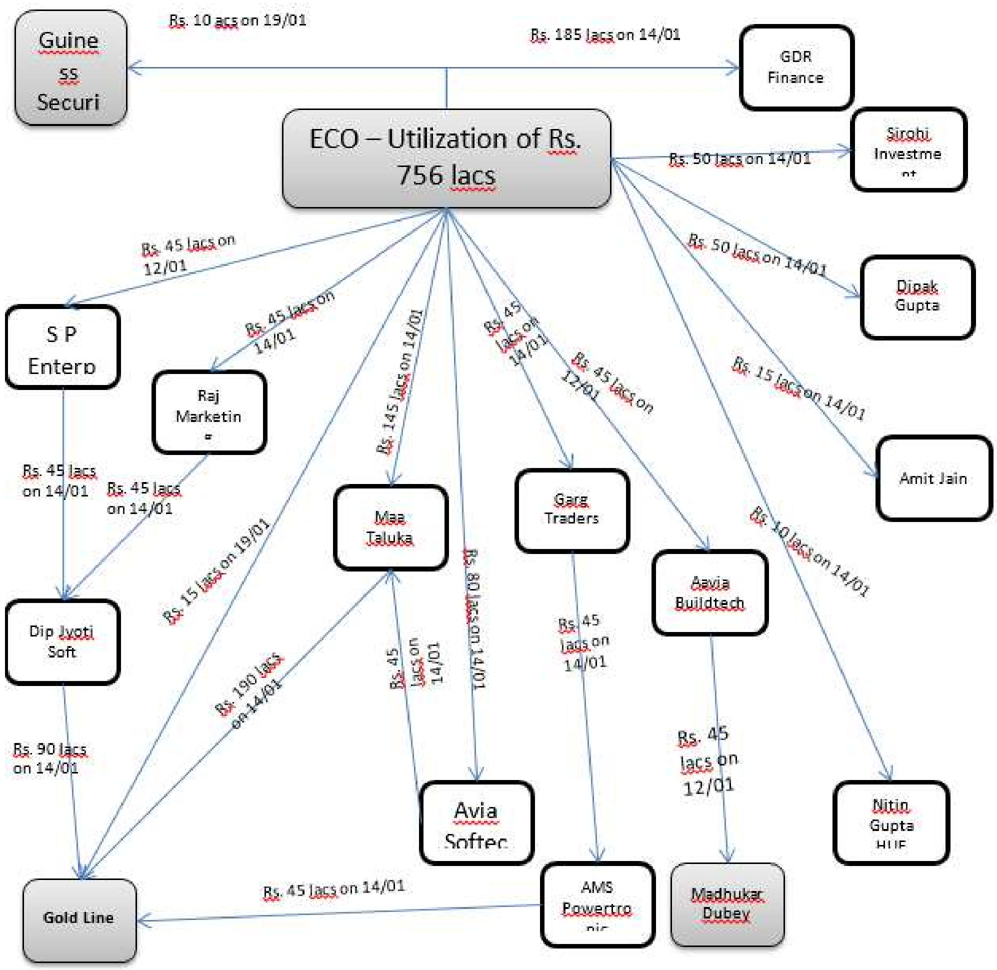
Particulars	Amount (Rs. in lacs)
Initial Public Offering	751.50
Internal Accruals	54.00
Total	**805.50**

p) Pursuant to seeking information along with supporting documents from Noticee-15 through summons u/s 11(3), 11C(3) of SEBI Act, Noticee-14, vide its reply dated 25/12/2015, received by SEBI on 29/01/2016 submitted that the utilization of the IPO proceeds as on 31/03/2015 (Rs in lacs) is as under:

Objects as stated in the Prospectus	Utilized (in lacs)
Development of Farm Land for transition to organic Farming	570.40
Constructions of storage sheds	40.80
Solar Fencing	21.50
Brand Building and General Corporate Expenses	25.50
Issue Expenses	33.16

Investment in short term advances	64.64
Total	**756.00**

q) However, Noticee-14 did not provide any supporting documents with respect to the utilization of the IPO proceeds. Thereafter, on seeking supporting documents with respect to the IPO proceeds utilization, Noticee-14 had provided its bank account statement. On perusal of the bank account statement of Noticee-15, following fund movement was observed.



r) From the above, it was observed that ECO transferred Rs. 340 lacs to Noticee 1 and Rs. 45 lacs to Noticee 2 who had funded the IPO applicants, the remaining IPO proceeds were given to different entities.

s) Thereafter, vide Email dated February 22, 2016, Noticee-14 was advised to provide information with regard to IPO fund transferred. Vide mail dated May 06,2016, Noticee-14 replied that IPO proceeds were utilized for objects, repayment of loan or loan given to entities but no supporting document was provided.

t) It was alleged that Noticee-14 had not disclosed anything about the loan in the prospectus, which was subsequently repaid from the IPO proceeds. The table below shows the reply of the said entities:

S. No.	Name of Etitiy	Amount Received (Rs in lacs)	Summons delivered (Y/N)	Reply Received (Y/N)	Reply of Entity	Reply of ECO (mail dt. 06/05/16)
1	Raj Marketing India	45	N	N	Summons returned undelivered	Utilization of funds for Development of farm land.
2	Maa Taluka Buildcon Pvt. Ltd.	145	N	N	Summons returned undelivered	Repayment of loan.
3	Aavia Buildtech Pvt. Ltd	45	N	N	Summons returned undelivered	Advance for construction of storage sheds.
4	S P Enterprise	45	N	N	Summons returned undelivered	Utilization of funds for Development of farm land.
5	Garg Traders & Suppliers	45	N	N	Summons returned undelivered	Utilization of funds for Development of farm land.
6	Aavia Softech pvt. Ltd	80	N	N	Summons returned undelivered	Repayment of Loan.
7	Sirohi Investment	50	Y	Y	It had taken as a loan.	Loan given without interest.

S. No.	Name of Etitiy	Amount Received (Rs in lacs)	Summons delivered (Y/N)	Reply Received (Y/N)	Reply of Entity	Reply of ECO (mail dt. 06/05/16)
8	Goldline International Finvest Ltd.	15	Y	Y	Extension of time - till date no reply received	-
9	GDR Finance and Leasing Pvt. Ltd.	206	Y	Y	Company replied that it had taken interest bearing loan from Eco.	Loan given on interest.
10	Deepak Gupta	50	Y	Y	He replied that he has taken interest bearing loan from Eco.	Loan given on interest.
	Total	726				

u) On perusal of bank account statements, it was observed that the entities at Sr. No. 1 to 6 of above table had transferred funds received from ECO to funding group entities viz. Noticee-1 and Noticee-2.

v) It is observed that the Noticee-14 transferred Rs. 726 lacs to various entities including funding group entities immediately on receipt of IPO proceeds which clearly shows that the Noticee-14 planned to use it for extending it to funding group entities. However, the same was not disclosed in the object of the issue stated in the prospectus. Further, the following was mentioned in the prospectus:

"(Prospectus Para 12, page 39) There is no Buyback, Standby or similar arrangement for the purchase of Equity Shares by our Company/ Promoters/Directors/Lead Manager for purchase of equity shares offered through the draft prospectus."

"(Prospectus para 29, page 40) No payment, direct, indirect in the nature of discount, commission and allowance or otherwise shall be made either by us or by our Promoters to the persons who receive allotments, if any, in this issue."

w) In view of the aforesaid, it was alleged that ECO failed to disclose material information which is true and adequate so as to enable the applicants to take an informed investment decision. Further, it is also alleged that ECO employed a scheme with the help of funding group entities to get listing of the securities on exchange platform and planted false news with respect to objects of IPO.

x) In view of the aforesaid, it was alleged that Noticee-14 to Noticee-18 have violated Regulations 57(1) of ICDR Regulations and Section 12A(a), 12A(b) and 12A(c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(c), 4(2)(f),4(2)(k) and 4(2)(r) of PFUTP Regulations, 2003.

y) <u>Listing Agreement violation</u> – It was observed that BSE, vide mail dt. 27/09/2016, informed that Noticee-14 made disclosure of IPO proceeds utilization as on March 31, 2013 where Noticee-14 had claimed that it had utilized Rs. 511.50 lacs for development of farm land for transition of organic farming, Rs. 33.16 lacs for issue expenses and remaining Rs. 211.34 lacs have been given for short term advances.

z) As noted from the preceding paragraphs, it was alleged that Noticee-14 did not utilize the IPO proceeds of Rs. 511.50 for stated objects and the funds were transferred to the funding group entities. Thus, it is alleged that Noticee-14 had given wrong disclosure w.r.t. to the IPO proceeds utilization to the stock exchange.

aa) It is noted that as per clause 45 and 46 of listing agreement for SME, issuers have to furnish on a half yearly basis, a statement to the stock exchange indicating the variation between projected utilization of funds made by it in its prospectus. In view of the above facts, it wa alleged that Noticee-14 has violated Clauses 45 and 46 of the SME Listing Agreement read with section 21 of the Securities Contracts (Regulation) Act, 1956.

bb) Non-compliance with SEBI summons – Investigating Authority issued Summons dated 04/03/2016 u/s 11(3), 11C(3) of SEBI Act, 1992 to Noticee-1 seeking details of receipt of Rs. 15 lacs from IPO proceeds from Noticee-14 directly. In response to the said summons, Noticee-1 vide letter dated 14/03/2016 had requested to grant extension of time for reply till 25/04/2016. However, no reply has been received from Noticee-1 in this regard.

cc) Information along with supporting documents with regard to the utilization of the IPO proceeds as per objects stated in the prospectus was sought from Noticee-14 through summons u/s 11(3), 11C(3) of SEBI Act, 1992. The details of the Summons, reminders to summons and mail communications are given in the table below.

SNo.	Description	Date	Delivered (Y/N)	Reply (Y/N)
1	Summons to Noticee-14	15/12/2015	Y	Y (Incomplete Reply)
2	Reminder to summons to Noticee-14	28/12/2015	Y	
3	Reminder to Noticee-14 through mail for supporting documents	18/01/2016	Y	Y (Incomplete Reply)
4	Reminder through mail for supporting documents	29/01/2016	Y	N

dd) Summons u/s 11(3), 11C(3) of SEBI Act seeking information w.r.t. utilization of IPO proceeds were issued to Noticee-14, and as Noticee-16 was whole time director of Noticee-14, replied on December 25, 2016 with respect to the said summons to SEBI without any supporting documents. It was alleged that Noticee-1, Noticee 14 and Noticee-16 had failed to furnish the information/documents sought by the summons referred above, thus violating provisions of Section 11(3) and 11C(3) of SEBI Act, 1992.

5) As the SCN had returned undelivered from the addresses of Noticees 1 to 7, 9, 10, 12, 15 and 17, affixtures were attempted to be made to their respective communication address on March 23 and 27, 2018. However, affixtures of the SCN could be made only to Noticees 1, 9 and 17. Thereafter, Shri Parag Basu was appointed as AO pursuant to transfer of Shri K Sarvanan. Public Notice for the SCN was issued by him through newspaper publication for the notice of Noticees 2 to 7, 10, 12 and 15 on February 22, 2022, wherein the Noticees were advised to submit their reply to the SCN before April 07, 2022 and they were informed that in case no reply is received, the matter will be proceeded with on the basis of material available on record. The undersigned was appointed as AO vide Order dated March 10, 2022 upon transfer of Shri Parag Basu.

6) It was observed that no reply was received from Noticees 1 to 10, 12, 14 to 17. In the interest of natural justice, Hearing Notice dated April 13, 2022 was issued to Noticees 1, 9 and 17 via hand delivery/ affixture at their respective communication address and Hearing Notice was also issued to Noticees 2 to 7, 10, 12 and 15 via public notice through newspaper publication dated May 11, 2022, by the undersigned in the following newspapers:

Sr. No.	Newspaper	Language	Edition/ Circulation
1	Hindustan Times	English	Delhi NCR
2	Dainik Jagran	Hindi	Delhi NCR
3	Qaumi Patrika	Hindi	Ghaziabad

7) The details of hearing scheduled and attendance of the Noticees is given below:

Noticee	**Hearing Opportunity**			**No. of opportunity of hearing**	**Date of submissions**
	Date of hearing	**Mode of Delivery**	**Attendance**		
1	June 08, 2022 June 17, 2022 July 07, 2022 July 11, 2022	E-mail E-mail E-mail E-mail	- - -	I II III IV	July 08, 2022
2	June 07, 2022	Public Notice	-	I	-
3	June 07, 2022		-	I	-
4	June 07, 2022		-	I	-
5	June 07, 2022		-	I	-
6	June 07, 2022		-	I	-
7	June 07, 2022		-	I	-
8	June 20, 2022 July 11, 2022	SPAD E-mail	- -	I II	July 07, 2022
9	June 08, 2022	Affixture	-	I	-
10	June 07, 2022	Public Notice	- -	I II	-
11	June 20, 2022 July 11, 2022	SPAD E-mail	- -	I II	April 03, 2018
12	June 07, 2022	Public Notice	-	I II	-
13	June 20, 2022	SPAD	Attended	I	April 18, 2018 June 15, 2022 June 20, 2022
14	June 20, 2022 July 11, 2022	SPAD E-mail	- Attended	I II	July 07, 2022 July 19, 2022

15	June 07, 2022 July 11, 2022	Public Notice	- Attended	I II	
16	June 20, 2022 July 11, 2022	SPAD E-mail	- Attended	I II	
17	June 17, 2022	E-mail	-	I	-
18	June 20, 2022 July 04, 2022	SPAD E-mail	- Attended	I II	April 18, 2018 July 14, 2022

(SPAD– Speed Post Acknowledgement Due)

8) As also given in table above,

- Noticee 1 – Affixtures were made at the communication address of Noticee 1, advising the Noticee to appear before the undersigned on June 08, 2022, but no response was received from Noticee 1. Thereafter, further efforts were made by calling for UCC details from depositories, and e-mail dated June 13, 2022 was sent to Noticee 1, advising it to appear before the undersigned on June 17, 2022. Vide letter dated June 16, 2022, Noticee 1 informed that no previous communication had been received by it till date, and requested for a copy of the SCN and adjournment of the hearing. The request was considered by the undersigned and SCN, along with annexures was sent to Noticee 1 vide mail dated June 17, 2022 and it was advised to appear for the hearing on July 07, 2022. It was observed that Noticee 1 did not appear for the scheduled hearing. Vide mail dated July 07, 202, Noticee 1 sought one day's time to submit its reply to the SCN. Another opportunity of hearing was provided to Noticee 1 vide mail dated July 07, 2022, in the interest of natural justice, wherein it was advised to appear before the undersigned on July 11, 2022. However, Noticee 1 did not appear for the scheduled hearing.
- Noticee 2 to 7, 10, 12, 15 – As mentioned earlier, and also in the table above, public notice for the hearing was issued to Noticees 2 to 7, 10, 12

and 15, wherein they were advised to appear before the undersigned on June 07, 2022. However, none of them appeared for the scheduled hearing.

- Noticee 8 – Vide hearing notice dated June 13, 2022, Noticee 8 was advised to appear before the undersigned on June 20, 2022. Vide mail dated June 18, 2022, Noticee 8 informed that no previous communication had been received by it till date, and requested for a copy of the SCN and adjournment of the hearing. The request was considered and SCN along with annexures was provided to Noticee 8 vide mail dated June 24, 2022. Vide e-mail dated July 04, 2022, Noticee 8 was advised to appear before the undersigned on July 11, 2022. It was also informed that this was the last and final opportunity of hearing being granted to it in the captioned matter and in case of non-appearance, no request for another hearing will be acceded to. Reply to the SCN was submitted by Noticee 8 vide letter dated July 07, 2022. However, Noticee 8 did not appear for the scheduled hearing
- Noticee 9 - Affixtures were made at the communication address of Noticee 9, advising the Noticee to appear before the undersigned on June 08, 2022, but no response was received from Noticee 9. Thereafter, further efforts were made by calling for UCC details from depositories, but no new communication details were found during the exercise.
- Noticee 11 – Reply to the SCN was submitted by Noticee 11 vide letter dated April 03, 2018. Vide hearing notice dated June 13, 2022, sent through e-mail and SPAD, Noticee 11 was advised to appear before the undersigned on June 20, 2022. The proof of delivery is available on record. However, Noticee 11 did not appear for the hearing. In the interest of natural justice, another opportunity of hearing was granted to Noticee11. Vide e-mail dated July 04, 2022, Noticee 11 was advised to appear for the hearing on July 11, 2022. However, Noticee 11 did not appear for the hearing.

- <u>Noticee 13</u> - Reply to the SCN was submitted by Noticee 13 vide letter dated April 03, 2018. Vide hearing notice dated June 13, 2022, sent through e-mail and SPAD, Noticee 13 was advised to appear before the undersigned on June 20, 2022. Noticee 13 submitted reply vide letter dated June 15, 2022. Noticee 13, being a proprietorship firm, was represented by its sole proprietor, Mr. Sunil Khemka. He appeared before the undersigned on the scheduled date and time and reiterated submissions made vide letter dated April 18, 2018 and June 15, 2022. He was asked to submit details of Noticee's transactions with Goldline International Finvest Limited and the documentary evidence and purpose thereof, for which he sought time till June 22, 2022 for submitting the aforesaid information, which was granted by the Adjudicating Officer. Noticee 13 submitted additional reply vide letter dated June 20, 2022.
- <u>Noticee 14, 15 and 16</u> - Vide hearing notice dated June 13, 2022, sent through e-mail and SPAD, Noticees 14 and 16 were advised to appear before the undersigned on June 20, 2022. As also stated earlier, public notice was issued for the benefit of Noticee 15 through newspaper publication dated May 11, 2022. Noticee 16 informed on his own behalf and also for Noticees 14 and 15 on June 20, 2022 that it is not in possession of SCN and annexures, and requested for adjournment of hearing. The request was considered and SCN along with annexures were provided to Noticee 16 vide mail dated June 24, 2022. Vide e-mail dated July 04, 2022, Noticee 16 was advised to appear before the undersigned on July 11, 2022. Noticee 16 submitted reply to the SCN on behalf of Noticees 14, 15 and 16 vide letter dated July 07, 2022. He also appeared for the scheduled hearing and reiterated its submissions made vide the said letter. Noticee requested for time till July 20, 2022 for making additional submissions, which was granted by the undersigned. During the course of hearing, the undersigned

advised the Notice to submit copy of audit committee's meetings in the year 2012-13 which discussed about utilization of issue proceeds wherein Mr. Neeraj Mittal, erstwhile independent director of the company was present.

- Vide letter dated July 19, 2022, additional submissions were made by Noticee 16 on behalf of Noticees 14, 15 and 16, wherein it had made submissions for inordinate delay in issuing the SCN, requested for cross examination of IPO applicants/ allottees and merchant banker. However, it is noted that it did not submit the relevant copy of audit committee's meetings which it had agreed to submit during the hearing.
- Noticee 17 - Affixtures were attempted at the communication address of Noticee 17, but could not be made. Thereafter, further efforts were made by calling for UCC details from depositories, and digitally signed mail was sent to Noticee 17, wherein SCN and Hearing Notice dated April 13, 2022 were enclosed for the reference of Noticee 17. The emails were duly delivered and proof of delivery is available on record. E-mail dated June 13, 2022 was sent to Noticee 17, advising it to appear before the undersigned on June 17, 2022. The proof of delivery is available on record. However, Noticee 17 did not appear for the scheduled hearing.
- Noticee 18 - Reply to the SCN was submitted by Noticee 18 vide letter dated April 18, 2018. Vide hearing notice dated June 18, 2022, sent through e-mail and SPAD, Noticee 18 was advised to appear before the undersigned on June 20, 2022. Noticee 18, being represented by an authorized representative (hereinafter referred to as "**AR**") requested for adjournment of the hearing by one day. The request was accepted by the undersigned and Noticee 18 was advised to appear for the hearing on July 04, 2022. The AR appeared for the scheduled hearing and reiterated submissions made vide letter dated April 18, 2018. Some documents in support of its

submissions were sought by the undersigned, for which AR requested time till July 14, 2022, which was granted by the undersigned. Noticee 18 submitted reply vide letter dated July 14, 2022.

9) As can be observed, multiple opportunities of hearings was given to the entities. However, Noticees 1 to 12 and 17, still failed to appear for the hearing, despite of repeated opportunities provided to them. Due delivery of hearing notices and rescheduled hearings was done, and is available on record.

10) I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notices were duly served upon Noticees 1 to 12 and 17 and sufficient opportunity was granted to them to reply to the SCN and appear for the personal hearing. Considering the fact that the Noticees 2 to 7, 9, 10, 12 and 17 have neither filed any reply nor have availed the opportunity of personal hearing despite service of notices upon them, I am of the view that they have nothing to submit in terms of Rule 4(7) of the Adjudication Rules and the matter is being proceeded ex-parte in their regard on the basis of material available on record. As the Noticees 2 to 7, 9, 10, 12 and 17 did not file any reply to the SCN, it can be presumed that they have admitted the charges levelled against them.

11) In this regard, it is pertinent to note that the Hon'ble SAT in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed that, *"......the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".*

12) Further, the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia,

observed that: *"........... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

13) Additionally, the same position has been reiterated by the Hon'ble SAT in the matter of Dave Harihar Kirtibhai vs SEBI (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under: *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non- receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*

14) In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against Noticees 2 to 7, 9, 10, 12 and 17 ex parte, based on the material available on record.

15) The main submisisons made by Noticee 1 are reproduced hereunder:

a) Noticee 1 was incorporated for the purpose of carrying out business of financial services.

b) In regard to the observation in SCN that Noticee 1 issued 11 cheques of Rs. 1.50 lakhs to 11 Non ASBA applicants, it submitted that it had granted short term loan to each of the 42 allottees of ECO IPO. That Noticee 1 is unaware as *to why they used the said funds. Also, cheques of Rs. 1.50 lakhs issued on behalf of 11 allottees are still outstanding in Noticee's books.*

c) *In regard to the observation in SCN that Noticee 14 (ECO) transferred Rs. 340 lakhs to Noticee 1 from the IPO money, it submitted that it has not received any amount from IPO proceeds of Noticee 14, and the bank statement of Noticee 14 shows only one transfer of Rs. 15 lakh, and hence the statement is strongly denied.*

d) *In regard to the observation in the SCN that Noticee 1 had fund movement with Mayfair, Noticees 8, 9 and 14, it was submitted that financial transactions with these entities are in its normal course of business. Copies of ledgers of these entities in the books of Noticee 1 were submitted as supporting documents.*

e) *No connection of Noticee 1 with Noticee 14 has been alleged in the SCN, and Noticee 1 has not applied or is in receipt of any gains from the IPO.*

f) *Noticee 1 is unaware of the alleged scheme and relied on and quoted from Hon'ble Supreme Court's judgement in State of Maharashtra vs Dr. Budhikota Subharao (1993 SCR (2) 311, 1993 SCC (3) 339). Noticee 1 also submitted that compelling evidence is required to be brought on record for a person/ entity to be held liable for 'fraud'. In this regard, it quoted and relied on the judgement of Hon'ble Supreme Court in the case of Ram Sharan Yadav v/s Thakur Muneshwar Nath Singh [(1984) 4 SCC 649 (AIR 1985 SC 24)].*

16) The main submissions of Noticee 8 are reproduced hereunder:

a) *The present SCN has been issued after a gap of more than 5 years from the date of IPO of ECO. However, no reasons of delay have been mentioned in the SCN for belatedly initiating present proceedings.Hence, great prejudice has been caused to Noticee 8 to defend the case.*

b) *It is in the business of lending funds to persons/ entities based on fund requirements, and in turn, it borrows from other entities whenever liquidity is* *required. Hence, the transactions with Goldline (Noticee 1) and ECO (Noticee 14) were in normal course of business.*

c) *SCN is silent on Noticee 8's connection with Noticee 14, and apart from the alleged connections of Noticee 8 with Noticees 1 and 14, no other connection has been alleged in the SCN. Even the alleged connection is not sustainable in fact and law. Noticee 8 has not applied or is in receipt of any gains from the IPO.*

d) *In regard to the observation in the SCN of fund transfer of Rs. 1.50 lakh to 43 Non ASBA applicants of IPO of ECO, it was unaware as to why they used the funds. Also, cheques of Rs. 1.50 lakhs issued on behalf of 33 allottees are still outstanding in Noticee's books, as they have not repaid the short term loan given to them.*

e) *Noticee 8 is unaware of the alleged scheme and relied on and quoted from Hon'ble Supreme Court's judgement in State of Maharashtra vs Dr. Budhikota Subharao (1993 SCR (2) 311, 1993 SCC (3) 339). Noticee 8 also submitted that compelling evidence is required to be brought on record for a person/ entity to be held liable for 'fraud'. In this regard, it quoted and relied on the judgement of Hon'ble Supreme Court in the case of Ram Sharan Yadav v/s Thakur Muneshwar Nath Singh [(1984) 4 SCC 649 (AIR 1985 SC 24)].*

f) *It submitted that it is wholly untenable to allege fraud just on the basis of fund transfer with certain entities. In this regard, Noticee 8 quoted from the judgements of Hon'ble SAT, including in the matter of R K Global v/s SEBI (Appeal No. 158/2008 decided on 16/09/2010), Narendra Ganatra v/s SEBI (Appeal No. 47/2011 decided on 29/07/2011).*

17) The main submissions of Noticee 11 are reproduced hereunder:

a) *All the applications to the IPO of ECO was made using its own funds in its own name and names of its promoters/ directors, other family members and friends.*

b) It was not denied that payment was received from Noticee 1 (and HPC Biosciences Limited), but it was only a business deal and incidentally happened on the verge of time of applications filed under IPO. It was an advance under trust for erstwhile proposed purchase of immovable property. That it is these were the only instances of Noticee 11's transaction with Noticee 1 and HPC Biosciences Limited, and it had never in the past or in the future dealt with these two entities.

c) Receiving of fund and filing of application cannot be treated as funding arrangement due to fungibility of funds lying in Noticee 11's bank account. Even after making the applications, balance of more than Rs. 60 lakh was present in the bank account. Also, Rs. 30 lakh and Rs. 15 lakh were received from other sources and it can be said that those funds were utilized for IPO applications from those receipts.

d) That the promoters of Noticee 11 have sufficient sources to be able to make such applications in IPOs

18) The main submissions of Noticee 13 are reproduced hereunder:

a) Ace Consultant is a proprietorship firm of Mrs. Sunita Khemka operating since 1990. Further Mrs. Sunita Khemka is currently the designated director of ISF Securities Ltd. which was acquired by her husband. Apart from herself, her husband is also the designated director in the company.

b) ISF was incorporated in the year 1995 and has been in the business of providing stock broking services, as member of NSE &BSE. The control and management of ISF was changed in the year 2011, in favor of Mrs. Sunita Khemka and her family.

c) Mr. B.K. Sabharwal was in management only till 2011, although he continued as director simpliciter of the company till March, 2014, only for the purpose of proper handover of business & operations. ISF Securities Ltd. has *no financial & other dealings of any kind whatsoever during the year 2011 to 2013 with him. Mr. B. K. Sabharwal is currently neither the director nor the shareholder of ISF Securities Ltd. The undersigned had no financial relationship or transaction of any kind whatsoever with Mr. B.K. Sabharwal. Therefore, for the subscription of Minimum Amount of Application (6000 Shares), no discussions or influence of Mr. B. K. Sabharwal could be presumed.*

d) *That Ace (Proprietor: Mrs. Sunita Khemka) is associated/related to the capital markets for over 20 years and has been investing in securities and also subscribing to various IPOs.*

e) *Mrs. Sunita Khemka and Ace is one and same entity only the proprietary firm and its proprietor cannot be said to be distinct entity and are legally inseparable. Thus the allegation that Ace funded Sunita Khemka and that Ace being one of the funding group entity stands demolished herein itself.*

f) *Investment in capital market and subscription in IPO cannot be done in the name of proprietary firm and can only be done in the name of proprietor.*

g) *That two Applications for 6000 Shares each by Mr. Sunil Khemka and Ms. Sunita Khemka made in the IPO of ECO involving a total amount of Rs. 3,00,000/- is a minuscule amount. Out of which one of the Application of 6000 shares made by Ms. Sunita Khemka was rejected and thus no shares were allotted to her. That only one application for 6000 Shares was accepted and 6000 shares were then allotted to Mr. Sunil Khemka. It is one of the very significant fact that had its intention been to fund the IPO of ECO or acting in connivance with the connected entities, then both the applications would have been accepted. This fact substantiates our bona-fide intent and the investments made through Mr. Sunil Khemka and Ms. Sunita Khemka were genuine investments and they have not in any way, acted in connivance either with ECO or its directors.*

h) *The fact that the amount for subscription to IPO was paid on 01.01.2013 by Mr. Sunil Khemka and Ms. Sunita Khemka whereas funds from Goldline International Finvest Limited of Rs 50 Lacs were obtained by Ace Consultants in its Bank Account only on 15.01.2013 and 17.01.2013. It was totally a separate transaction which was for meeting business needs which is also substantiated from the fact that the loan amount was more than 30 times of the amount subscribed and due interest was paid on the loan so obtained.*

i) *Ace Consultants took an interest bearing loan of Rs. 50.00 lacs from Goldline, vide RTGS no. ICICIH 13015097224 dt. 15.01.2013 for Rs. 25.00 Lacs and RTGS no. ICICIH 13017035295 dt. 17.01.2013 for Rs. 25.00 lacs.*

j) *The money was required for working capital by Ace Consultants & ISF Securities Ltd., a company owned by the proprietor, Mrs Sunita Khemka and her family, in the normal course of business. The amount borrowed was used by Ace Consultants as under:*

15.01.2013	*Loan to husband, Mr. Sunil khemka*	*Rs. 1.00 Lacs*
15.01.2013	*Repayment of Loan to Prayog India Pvt. Ltd.*	*Rs. 10.00 Lacs*
15.01.2013	*Payment to ISF Securities Ltd.*	*Rs. 14.00 Lacs*
17.01.2013	*Loan to husband, Mr. Sunil Khemka*	*Rs. 5.00 Lacs*
17.01.2013	*Payment to ISF Securities Ltd.*	*Rs. 20.00 Lacs*
Total		***Rs. 50.00 lacs***

k) *As already stated above, Mr. Sunil Khemka and Ms. Sunita Khemka are the Designated Directors and majority shareholders of ISF Securities and Ms. Sunita Khemka is the sole proprietor Ace. They being its Directors and shareholders, look after the funds requirements of ISF from time to time. The funds obtained by Ace from Goldline were hence transferred to ISF to meet its working capital requirements. It may please also be noted that before the investigation period also there were several transfer of funds from Ace to ISF and vice-versa, executed in the normal course of business and the transfer of funds during the investigation period was also done in similar nature.*

l) That there is nothing on record to reflect or allege that there had been any false statement made by us to any third party. That Ms. Sunita Khemka and Ace being the same entities there is no question of misrepresentation by Ace to Ms. Sunita Khemka or to any public or third party. Also, the other applicant was Mr. Sunil Khemka who is the husband of Ms. Sunita Khemka only, the charge of "misrepresentation" is vague and without any basis.

m) Noticee 13 relied upon the Order of the Hon'ble Supreme Court in Bank of India v. Degala Surya Narayan (AIR 1999 SC 2407) to submit allegations levelled against Noticee 13 must be established by such evidence acting upon which a reasonable person acting reasonable and objectively may arrive at a finding upholding the gravamen of the charges against the delinquent officer.

19) *The main submissions of Noticees 14, 15 and 16 are reproduced hereunder:*

a) At the outset, we in totality disagree with aforesaid allegations made against us among others. In accordance with regulation 106P of the ICDR Regulations, the Company had appointed Guiness Merchant Bankers Pvt. Ltd (Lead Manager and Underwriter) and Guiness Securities Ltd (Underwriter and Market Maker) which had underwritten 100% of the IPO. Therefore, it is incomprehensible to make any allegation against us for getting ourselves involved in any undesirable manner for indulging into bringing any subscription for the IPO of our company.

b) The Financial dealings with M/S. Goldline International Finvest Ltd. (Goldline) and various persons / entities is the basis for making allegations against us. We state and declare that our financial dealings with Goldline and with all other persons/ entities are purely commercial in nature and we have no control on their business activity independently carried by them. Therefore, no adverse inferences are drawn against us for their inter se financial dealing between them.

c) *We further state that, Goldline was incorporated in 1992, as an Investment Company. It is BSE listed company and scrip code -is 538180. On perusal of their information filed by Goldline with MCA, we understand that main Business of Goldline is basically Investments i.e. Selling, Buying, Acquiring and holding of shares, debentures, bonds, stock, units etc., providing various Services i.e. Advancing loan against Listed shares, securities and properties, margin funding, Corporate Loans, Personal Loans, Trading in shares & Securities, Trade Financing & Bills Discounting. Besides, it also undertakes money market operations and treasury management and they are acting as administrators of various investment trust. Therefore, It is totally incompressible to make us accountable and responsible for their financial dealing with other entities, as listed in the table enumerated under Para 4 of SCN.*

d) *Further, we state that, in due compliance of statutory provision of law, we had come out with an IPO to raise Rs. 751.50 Lakh by way of public issue of 30,24,000 equity shares of Rs.10 each at an issue price of Rs. 25 which got listed at BSE-SME segment on 14.01.2013. At the relevant time, we had appointed Guiness Merchant Bankers Pvt. Ltd. as a "Lead Managers" (BRLM) and M/S. Cameo Corporate Services Ltd as "Registrar to the Issue" to carry out all legal procedure and compliances for purpose of IPO.*

e) *In our humble submission, we state that both aforesaid entities are responsible SEBI registered intermediaries and both have acted and ensured that the underline process of IPO is properly followed. Besides aforesaid, BRLM and RTA, even stock exchange (BSE) has also ensured that proper compliances are carried out before granting permission for listing. Therefore, issuance of SCN by SEBI after a gap of more than 5 years from the closure of the issue is really disheartening and shocking to us. In view of aforesaid, in our humble submission on this ground alone, SCN deserves to be withdrawn at the threshold itself* *f) We would like to place on record, Order dated 06.09.2017 passed by Ld. Whole time Member, SEBI disposing of the proceedings initiated against 216 entities, who had been prima facie alleged to be involved in price manipulation and IPO manipulation in four scrips including ours. Thus, we submit that SEBI has not found any irregularity on price and IPO in our case.*

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

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

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

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

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

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

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

n) *Further on perusal of the SCN, we understand that another allegation against us is that we ".....have failed to furnish the information/ documents sought by the summons, the non-furnishing of the information/ documents amount to violation of Section 11(3) and 11C(3) of SEBI Act..." In compliance of the aforesaid letter, details of utilization of IPO proceeds are being submitted, along with documentary proofs.*

o) *The captioned SCN dated 08.03.2018 is issued after a period which is more than 5 years from the date of impugned transactions. Hence, there is an inordinate delay w.r.t. initiation of proceedings in the present proceedings by SEBI. Reliance was placed on judgements of Hon'ble SAT in the matters of*

Ashok Shivlal Rupani (417 of 2018), Rakesh Kathotia (7 of 2016), Aditi Dalal, H B Stockholdings (114 of 2012) and Khandwala Securities Limited. Judgement of Hon'ble Supreme Court in case of State of Gujarat vs Patel Raghav Natha (AIR 1969 SC 1297).

p) *No cogent evidence has been furnished establishing Noticee 14, 15 and 16's links with other Noticees. Also, connections and fund movement of Aavia Softech Pvt Ltd, Aavia Buildtech and Mayfair Infosolutions are mentioned but no adverse inferences have been drawn against them. Hence, SCN has been issued on the basis of pick and choose method.*

q) *In the interest of natural justice and in compliance to the due process of law, we request your kind selves to grant us an opportunity for cross examination of the Applicants/ Allottees of the IPO of ECO to bring out the true and correct facts of the case.*

r) *Further, it is the role and responsibility of the Merchant Banker who is registered with SEBI to verify that the contents of the DRHP are in compliance with SEBI (ICDR) Regulations. We respectfully submit that the key role w.r.t compliances to SEBI regulation is of the merchant banker and not us.*

s) *On perusal of the SCN/ Annexures to SCN and the Investigation Report, it is submitted that no clarification was sought from the merchant banker w.r.t the aforesaid allegation and therefore great prejudice is caused to us. Be that as it may, in the interest of natural justice and in due process of the law, we request your kind selves to grant us cross examination of the Merchant Banker to bring out the correct facts of the case.*

t) *All the statutory requirements including certificate of utilization of funds by the statutory auditor have been submitted to the Stock Exchange in a timely manner. In fact, no adverse inference has been drawn by the Stock Exchange in this regards. Besides, on perusal of the Investigation Report/SCN, we humbly submit that we did not come across any communication with the Statutory*

Auditor on the adverse finding on the utilization of funds made against us. Hence, the aforesaid allegations as alleged against us are based on presumptions and assumptions without any cogent evidence.

u) *Additionally, we place reliance on the order dated 28.05.2021 passed by the Ld. Whole Time Member, SEBI in the matter of Tatia Global Venture Limited, wherein it is inter alia held that Section 27 at that relevant time did not provide for the vicarious liability on the directors in respect of the civil liability of the company arising out of the violations committed by such company.*

v) *It is also alleged that Noticees 14 and 16 failed to furnish the documents resulting into alleged violation of Section 11(3) and 11C(3) of the SEBI Act. During the course of Investigation conducted by SEBI we have provided large number of documents to the Ld. Inspection Team, SEBI which is evident from the Annexures to the SCN. Details of the submissions were furnished.*

w) *We respectfully submit ·that we have provided the information as required by SEBI and on the basis of Non - Response to one of the summons dated 29.01.2016 (Ref. Sr. No. 4 of Table as referred under Para 22 on Page No. 22 of SCN), we should not be considered as non - compliant m providing response to the summons. In fact, even after the summons dated 29.01.2016 (which is alleged to have not been responded to), we have by Email dated 06.05.2016 provided clarifications on IPO Proceeds utilization which is enclosed as an Annexure herein above.*

20) The main submissions of Noticee 18 are reproduced hereunder:

a) *It is pertinent to note that the Noticee was appointed as an Independent Director on the Board of Directors of the Company for a short period of time and has since resigned from the Company. The Noticee was not in-charge of or looking after the day to day management to the Company nor was he in-charge of or looking after the financial transactions/financial matters of the Company. As an*

Independent director the Noticee was diligently and honestly carry on his duties to best of his ability and capacity and in the interest of the Company and its shareholders. The Noticee carefully perused the documents placed before him, made enquires and raised questions/objections when required.

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

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

d) *In year 2012 during a professional development programme, the Noticee was introduced to Promoter/Directors of ECO namely Mr. Vijay Jhindal, Chartered Accountant and also Mr. Brij Kishore Sabharwal, by one of his professional colleagues namely Mr Vinod Kumar Garg. Mr Vinod Kumar Garg was known to the Noticee for long time (i.e. since he was a student of ICSI). Mr Vinod Kumar Garg being aware of the fact that the Noticee was member of ICSI and being aware of the educational qualifications, experience and knowledge of the*

Noticee, approached and offered the position of independent director to the Noticee in ECO. The request was made at the behest of the promoters with a view to strengthen corporate governance in ECO. The Noticee states that the Noticee is neither a relative nor is in any way is connected directly or indirectly to Mr. Vijay Jhindal or Mr. Brij Kishore Sabharwal or any other promoter or director of ECO.

e) *The Noticee due to his personal commitments and work pressure initially declined the request/proposal, but after continuous persuasion by promoter/directors, Mr. Vinod Kumar Garg and being informed that the promoters want to enhance the standards of corporate governance agreed to accept the position of the Independent Director. The Noticee being assured by Mr. Vinod Kumar Garg and on being informed by the promoters about the growth plans of ECO, relied on their proposal and accepted the offer. The Noticee enquiries revealed that ECO had, by and large, filed its returns under the Companies Act, 1956 and there was no adverse news or information against ECO in the public domain and corporate space. The Noticee then agreed to be an Independent Director on the Board of ECO. The Noticee has at the relevant time checked and cross verified from the industry and know persons the credentials of the ECO. The Noticee had not received any adverse feedback or reports of irregularities etc in respect of the ECO or its promoters etc.*

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

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

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

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

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

k) The Noticee submits that no audit committee meeting took place during his tenure and further that the Noticee did not attend the number of board meetings as stated in the Annual Report for the financial year ending on March 2013;therefore, the Noticee submits that that the Minutes of the Meetings of the Board and those of the Audit Committee are crucial in determining the alleged role of the Noticee, without which the Noticee is prejudiced and is severally curtailed to provide comprehensive submissions with regards to the allegations in the present proceedings. The Noticee submitted that while he attended a few Board Meetings which were related to routine business developments, he has not a single audit committee meeting as incorrectly and falsely alleged by the Company. The Noticee also observed that in the Annual Report for the Financial Year 2012-13 of the Company, he was erroneously shown to have attended a meeting of the Audit Committee of the Board of the Company. In order to provide the correct facts to SEBI, the Noticee, vide letters dated July 8, 2015, November 10, 2015 and October 5, 2016 sought copies of all documents and records from the Company. On July 8, 2022, the Noticee registered a Complaint with the Registrar of Companies ***("RoC"),*** *NCT of Delhi and Haryana against the Company regarding the erroneous statement in the Annual Report for the Financial Year 2012-13 regarding attendance in the Audit Committee meeting and regarding the failure of the Company to provide documents and details especially minutes of meetings sought by him. The said complaint has been sent to the RoC by email and by Speed Post.*

l) The Noticee submits that the IPO of the Company took place in the years 2012-13 and the Noticee resigned from the Company on March 25, 2013. Thereafter, the Noticee has not been associated with the Company nor is in contact with any of the past or present directors and therefore, the Noticee has no access to the Company records including minutes of the meetings of the board as well as the other committees.

m) Merely on account of being directors cannot be held liable for the violations of the company unless it is established that the directors were in charge of the affairs of the company. In the present case, the Noticee has never been in charge of the affairs of the Company and therefore ought not be held liable for the unearthed alleged fraudulent scheme employed by the Company.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

21) After perusal of the material available on record, I have the following issues for consideration.

ISSUE I: Whether Noticees 1 to 16 have violated Regulations 3(a), (b), (c) and (d) and 4(1) of PFUTP Regulations r/w 12A(a), (b) and (c) of the SEBI Act, 1992?

ISSUE II: Whether Noticees 14 to 18 have violated Regulations 57(1), of SEBI (ICDR) Regulations, 2009 and Sec. 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3 (a), (b), (c), (d) and 4 (1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003?

ISSUE III: Whether Noticee 14 has violated Clause 45 and 46 of listing agreement for SMEs r/w section 21 of SCRA, 1956?

ISSUE IV: Whether Noticees 1, 4 and 16 have violated Sec. 11 (3) and 11 C (3) of SEBI Act, 1992?

ISSUE V: Does the violations, if any, on part of the Noticees attract penalty under Section 15HA and section 15A(a) of the SEBI Act, 1992 and/ or section 23E of the SC(R) Act, 1956 for the aforesaid violations?

ISSUE VI: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

22) Before moving forward it is pertinent to refer to the relevant provisions of SEBI Act, SEBI PFUTP Regulations, 2003, SEBI ICDR Regulations, 2009 and SC(R) Act, 1956 which read as under:

SEBI Act

11(3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under 27[clause (i) or clause (ia) of sub-section (2) or sub-section (2A)],the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :—

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

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

(iii)inspection of any books, registers and other documents of any person referred to in section 12, at any place;]28[

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

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

11C(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before it or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

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

***12A**. No person shall directly or indirectly—*

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

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

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

<u>SEBI PFUTP Regulations, 2003</u>

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

……

(c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;

...

(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

SEBI ICDR Regulations, 2009

Manner of disclosures in the offer document.

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

SC(R) ACT, 1956

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

SME LISTING AGREEMENT

Clause 45 a. The Issuer agrees that it will furnish on a half yearly basis a statement to the Stock Exchange indicating the variations between projected utilisation of funds 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.*

b. The statement referred to in clause (a) shall be given for each of the years for which projections are provided in its prospectus/ letter of offer/ object/s stated in the explanatory statement to the notice for considering preferential issue of securities, which shall be displayed in the website of the Issuer.

c. If there are material variations between the projections and the actual utilisation, the Issuer shall furnish an explanation alongwith the statement and shall also provide the same in the Directors'Report.

46. Statement of deviations in use of issue proceeds –

a. The Issuer agrees to furnish to the Stock Exchange on a half yearly basis, a statement indicating material deviations, if any, in the use of proceeds of a public or rights issue from the objects stated in the offer document.

b. Where the Issuer has appointed a monitoring agency to monitor utilization of proceeds of a public or rights issue and such monitoring agency has pointed out any deviation in the use of the proceeds of the issue from the objects stated in the offer document or has given any other reservations about the end use of funds, the Issuer agrees to intimate the same to the stock exchange, without any delay.

c. The information mentioned in sub-clause (a) shall be furnished to the Stock Exchange along with the interim or annual financial results submitted under clause 43 and shall also be displayed in the website of the Issuer.

d. The information mentioned in sub-clause (b) shall, after review by the Audit Committee, be furnished to the Stock Exchange as and when received"

FINDINGS

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

24) I note that some Noticees have raised the preliminary issue with regard to delay in issue of show cause notice, SCN is issued after a gap of more than 5 years from the date of IPO of ECO. In this regard, I note that the investigation was initiated against a large number of entities which apparently took time and ultimately notices were issued to 19 entities in the present matter. Here I find it pertinent to note that during the investigation, information was requisitioned from various entities including but not limited to the stock exchanges, the Company, the directors of the Company, banks, brokers, merchant bankers, registrar and transfer agent and allottees in the ECO IPO. Thereafter, the investigation inter alia entailed examination of bank statements, know your information (KYC) details, transaction details, ledger accounts, replies of the entities to summons, movement of funds

and listing day trade details. The investigation also required coordination with various regional offices of SEBI in order to send summons. The investigation report was approved by the competent authority on June 06, 2017 wherein inter alia proceedings under sections 11(1), 11(4) and 11(B) of the SEBI Act were approved along with adjudication proceedings under sections 15A(a), 15HA and 15HB of the SEBI Act and section 23E of the SCRA Act. Shri K Sarvanan, Chief General Manager was appointed as the AO vide order dated June 29, 2017. SCN dated March 08, 2018 was issued by him through RPAD and Email. As the SCN had returned undelivered from the addresses of Noticees 1 to 7, 9, 10, 12, 15 and 17, affixtures were attempted to be made to their respective communication address on March 23 and 27, 2018. However, affixtures of the SCN could be made only to Noticees 1, 9 and 17. Pursuant to his transfer, Shri Parag Basu, Chief General Manager, was appointed as Adjudicating Officer vide Order dated December 22, 2020. Public Notice for the SCN was issued by him through newspaper publication for the notice of Noticees 2 to 7, 10, 12 and 15 on February 22, 2022, wherein the Noticees were advised to submit their reply to the SCN before April 07, 2022 and they were informed that in case no reply is received, the matter will be proceeded with on the basis of material available on record. The undersigned was appointed as AO vide Order dated March 10, 2022 upon transfer of Shri Parag Basu. Taking the aforesaid into account, I find that investigation is an exhaustive and time consuming process, which requires detailed analysis of facts and law especially considering that there are multiple stakeholders involved in the present matter apart from the Noticees. It was observed that no reply was received from Noticees 1 to 10, 12, 14 to 17. In the interest of natural justice, Hearing Notice dated April 13, 2022 was issued to Noticees 1, 9 and 17 via hand delivery/ affixture at their respective communication address and Hearing Notice was also issued to Noticees 2 to 7, 10, 12 and 15 via public notice through newspaper publication dated May 11, 2022. Multiple opportunities of hearing were provided to all the

Noticees, as tabulated under paragraph 7 above, and the final hearing was completed on July 14, 2022. In view of the above, I note that no delay has been caused to the Noticees, in the way it has been argued by them.

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

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

26) In Rajendra Aggarwal vs. SEBI(Misc. Application No. 426 of 2020 and Appeal No. 552 of 2019), dated September 17, 2021, an appeal was filed against an order of the adjudicating officer imposing penalties against the appellants for violation of regulation 3 and 4 of the PFUTP Regulations. The appellants contended that due to the inordinate delay, the aforesaid order should be quashed since the trades took place in the year 2009, the notice was issued in 2013, the hearing took place in 2018, and 18 months after the hearing, an adjudication order was passed. In this regard, the Hon'ble SAT held:

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

ISSUE I: Whether Noticees 1 to 16 have violated Regulations 3(a), (b), (c) and (d) and 4(1) of PFUTP Regulations r/w 12A(a), (b) and (c) of the SEBI Act, 1992?

27) I note that in the Reply of Noticee 14, it is contended that the Company had appointed Guiness Merchant Bankers Pvt. Ltd (Lead Manager and Underwriter), Guiness Securities Ltd (Underwriter and Market Maker) which had underwritten 100% of the IPO and M/S. Cameo Corporate Services Ltd as "Registrar to the Issue" to carry out all legal procedure and compliances for purpose of IPO. BSE had granted permission for listing on the Small and Medium Enterprises (SME) segment. In this regard, I note that the contentions of the Noticees merely evade the allegations pertaining to employment of scheme with the help of funding group entities to get listing of the securities on exchange platform. Secondly, I note that the charges made in the SCN do not depend on the proceedings initiated against other entities or market intermediaries.

28) I note that there are three important things to be established for attracting the provisions stated in Issue I in the present matter: (i) direct/indirect connection

between ECO and the entities including the Funding Group Entities; (ii) contribution by Funding Group Entities to the IPO; and (iii) deployment of IPO proceeds by ECO to the connected entities including the Funding Group Entities.

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

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

Noticee	**Particulars**	**Connection - Fund Movement**
1	Goldline International Finvest Ltd. (Goldline)	• Goldline received IPO proceeds from ECO. Further, Goldline had huge fund movement with ECO. • Goldline had also fund movement with other entities who had funded IPO allottees viz. Aggrawal traders, AMS Powertronic Pvt Ltd, Bright Securities, Nisha Traders, Columbia Sales.
2	Madhukar Dubey (PAN:AIJPD7329J) **<u>Proprietorship Firm:</u>** • Alliance Traders • N V Sales Corporation • A One Furniture Magnum Industrial	• Alliance Traders received funds from Columbia Sales, AMS Powertronic Pvt. ltd., Mayfair Infosolution Pvt. Ltd., A One Furniture. • N V Sales Corporatin received funds from Eco, A R Enterprise, Durga Prasad & Co., and Alliance Traders. • A One Furniture received funds from DPRS Buildcon. Further, DPRS Buildcon received from Goldline and Deep Jyoti. • Magnum Industrial received funds from Eco and A One Furniture.

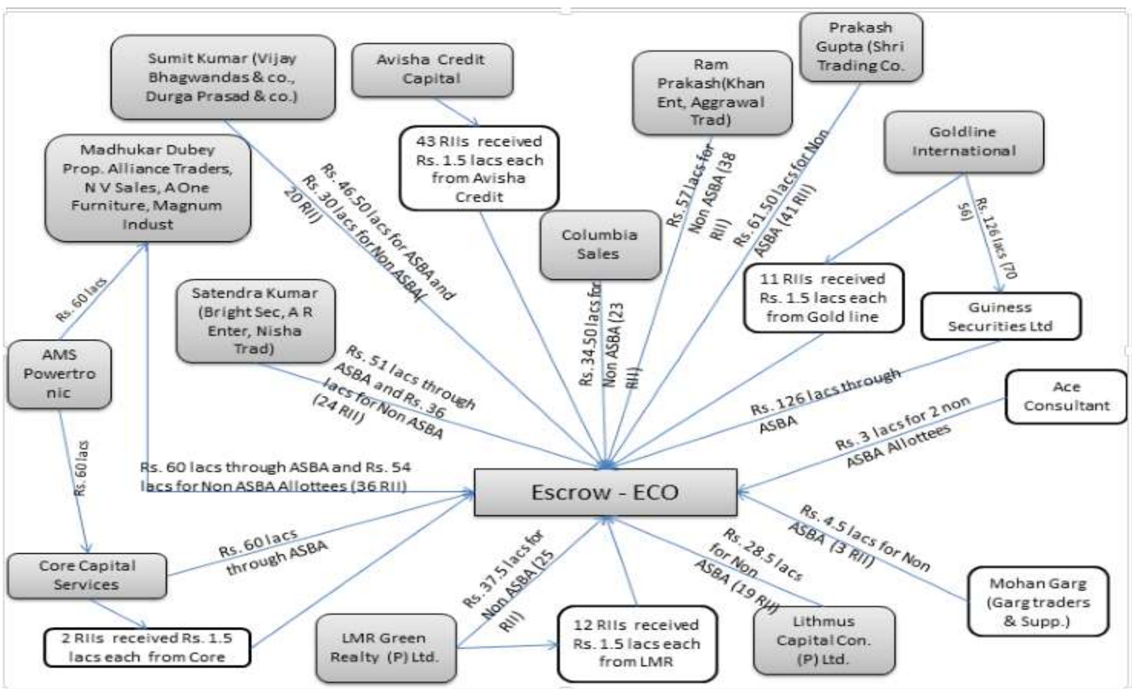
Notice	Particulars	Connection - Fund Movement
		• Madhukar Dubey received funds from AMS Powertronic for making ASBA application. • Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. • Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address.
3	Satendra Kumar (PAN:AWWPK8525E) **Proprietorship Firm:** • Bright Securities • A R Enterprise Nisha Traders	• Bright Securities received funds from Nisha Traders, Magnum Industrial and A One Furniture. • A R Enterprise received funds from ECO and Shiv Traders. • Nisha Traders received funds from ECO, Alliance Traders, N V Sales Corporation and A One Furniture. • Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. • Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address. • Satendra Kumar is the director in following companies • Core Capital Services Ltd.
4	Sumit kumar (PAN: ARUPK1589P) **Proprietorship Firm:** • Vijay Bhagwandas & Co. Durga Prasad & Co.	• Vijay Bhagwandas & Co. received funds from A R Enterprise and Nisha Traders. • Durga Prasad & Co. received funds from Alliance Traders, A R Enterprise and N V Sales Corporation. • Durga Prasad & Co. also had fund movement with Mayfair Infosolution Pvt. Ltd. • Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. • Proprietorship firm of Sumit kumar, Madhukar Dubey and Satendra Kumar having common address. • Sumit kumar is the director in following companies: iii. Core Capital Services ltd. iv. AMS Powertronic Pvt. Ltd. • MAA Taluka Buildcon Pvt. Ltd.
5	Columbia Sales	• Columbia Sales had received funds from ECO, Goldline, Aggrawal trades and Garg Traders & Suppliers. • Columbia Sales had also fund movement with AMS Powertronic Pvt. ltd., Alliance Traders and N V Sales Corporation.

Notice	Particulars	Connection - Fund Movement
6	Mohan Garg **Proprietorship Firm**: Garg Traders & Suppliers	• It had fund movement with ECO
7	Mr. Ram Prakash (PAN: AXFPR4439L) **Proprietorship Firm:** • Khan Enterprises • Aggrawal Traders	• Aggrawal Traders received funds from Goldline. • Khan Enterprise received funds from Shiv Traders, Garg Traders & Suppliers and Columbia Sales. • RamPrakash is the director in following companies : i. Aavia Buildtech Pvt. Ltd. ii. Aavia Softech Pvt. ltd.
8	Avisha Credit Capital Pvt. Ltd. (Avisha)	• Avisha had fund movement with ECO and Goldline.
9	AMS Powertronic Pvt. Ltd.	• It had fund movement with Eco, Goldline, Shiv Traders, Garg Traders & Suppliers, Columbia Sales, Madhukar Dubey, Core Capital Services Pvt. Ltd., Mayfair Infosolution Pvt. Ltd., Lithmus Capital Consultance Ltd. • Director Name : 1)Sumit Kumar 2) Vinay Kumar • Sumit Kumar is the common director in Core Capital Services Ltd. & Mayfair Infosolution Pvt. Ltd.
10	Prakash Gupta **Proprietorship Firm:** • Shri Trading Co. • Shiv Traders	• Shiv Traders had received funds from ECO. • Shri Trading Co. received funds from N V Sales and Shiv Traders.
11	LMR Green Realty Pvt. Ltd.	• It had fund movement with Goldline.
12	Lithmus Capital Consultance Ltd.	• It had fund movememtn with AMS Powertronic Pvt. Ltd.
13	Ace Consultant	• It had fund movement with the ISF Securities Ltd and Goldline. • Common Address with ISF Securities Ltd. • Till March 2014, Brij Kishore Sabharwal (Director of Eco) was the director in ISF Securities Ltd.

Not ice e	Particulars	Connection - Fund Movement
		• ISF Securities received funds from Ace Consultant which subsequently received from the Goldline.

Contribution by Funding Group Entities to the IPO

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



31) I note that in Reply of Noticee 14, company has neither explained the reasons for accepting the cheques issued by Funding Group Entities nor why allotment to the extent of 25,92,000 shares (i.e. 85.71% shares) out of 30,24,000 shares were allotted to the entities who had received funds from the company directly/ indirectly,

for application in the IPO. I find the acceptance and allotment of shares by ECO to the Funding Group Entities is unusual since multiple cheques from a single entity were accepted towards non-ASBA application of multiple retail investors. I note that Noticee 1 has not explained in its reply as to why it had funded 11 retail applicants for the IPO of ECO, and Noticee 8 has also simply evaded the question and replied that it is in the business of lending and it is unaware as for what purpose had the applicants applied for the IPO. Further, it has stated that 33 entities have still not repaid the short term loans advanced by it. However, Noticeee 8 has not made any submissions explaining what further actions for recovering its dues were taken by it. When the SCN has made such strong accusations, I find that the Noticees ought to have offered an explanation for such a misconduct so as to justify the bonafides of such transactions, but clearly, they have failed to furnish any explanation regarding the nature of such transactions.

32) It is pertinent to mention here that the Company has allotted shares to those applicants whose applications were supported by cheques issued by various third-party funding group entities (and not by the applicants themselves). I note that Company hasn't provided any justification whatsoever for its decision to accept cheques from third parties on behalf of a large number of retail applicants, who appeared to have no relationship with the third-party. The company has avoided this issue by arguing that third-party transactions should not be used to attribute wrongdoing to the company since it has no control over the funding entities. This explanation seems casual, vague, and irresponsible, since the third party funding transactions that were imputed have in fact resulted in the allocation of large numbers of shares under the company's IPO. The onus to prove transactions were genuine commercial transaction was with both the transferor and transferee of funds. In my view, the Company has failed to justify why it received payments directly from third party funding group entities (rather than from the applicants).

33) It is further submitted by various Noticees that that company's financial dealings with Goldline/ Noticee 1 and with all other persons/ entities are purely commercial in nature and have no control on their business activity independently carried by them. The Noticees have made bald assertions and explicitly denied any connection with the Company or with other entities, without showing any credible support for their denial. It is noted that company has simply attempted to dismiss the allegations of connections with other entities by arguing that the fund transfers allegedly taken place in the SCN were commercial dealings, yet no verifiable documents such as loan applications, processing documents, internal communications, approvals from relevant officials in the company, invoices, etc have been submitted before me to support the claim of having transferred huge sums of money. In the absence of any plausible explanation offered by these persons/ Noticees, I am bound to conclude that the allegations that these entities were having close connections amongst themselves stand established, based on the common factors such as common directorships, common addresses and fund movements etc., observed amongst these Noticees.

34) Regulation 14(1) of the ICDR Regulations provides that the minimum subscription that needs to be received in an IPO shall be at least 90% of the size of offer of shares being made in such issue. Company has contended that the issue was 100% underwritten and also furnished underwriting agreement. I have carefully perused the contents of the said underwriting agreement dated October 23, 2012 executed between ECO and Guiness Securities Limited and Guiness Merchant Bankers Pvt Ltd. I find that Liability of the underwriter is restricted when the applicant would default in the payment or withdraws his application. Further, the agreement was silent for any omnibus provision that provides underwriter was under contractual obligation to subscribe to the entire unsubscribed portion of the

IPO, so as to cross the minimum threshold of 90% of the offer size of the IPO. The said clause 2 of the aforesaid underwriting agreement is reproduced hereunder:

"***2. Underwriting***

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

……

5. Issue

5.1 Notwithstanding anything contained elsewhere or otherwise in this Agreement, the Company agrees that the maximum number of Equity Shares in the Issue that the Underwriter have to underwrite is 30,24,000 Equity Shares, which is allocated as under:

Name of Underwriter	No. of Shares underwritten
GMBPL	25,02,000
GSL	5,04,000

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

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

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

5.3 The Underwriters shall be liable to discharge its underwriting obligations as follow:

The Underwriter will be required for themselves, to the extent of applications procured by them, to make good any default by such applicants." ***(underlines supplied)***

35) In view of the finding in preceding para, it can be clearly seen that the Company has not been able to show how the Underwriting Agreement can be interpreted as a prima facie presumption that it did not intend to create any plan or scheme to arrange funds for its initial public offering applicants as alleged in the SCN, thus clearing it from the charges of arranging funds with the connivance of connected funded group entities.

36) I note that the Noticees have not disputed the alleged financial transactions, and they have also not explained, with evidence the purpose of such transactions. Hence, there is an overwhelming incidence of probability in support of the allegation of the SCN that the Company and its connected entities engaged in a premediated scheme to fund large numbers of IPO applicants in order to make the IPO successful.

37) Noticee No. 14, 15 and 16 submitted that they have not violated provisions of regulations 3 (a), (b), (c), (d), 4(1),4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations and section 12A (a), (b) and (c) of the SEBI Act as they have not carried out any activity on secondary market segment of capital market and therefore the aforesaid provisions are not applicable to them. I find this contention to be vague, evasive and completely baseless as the fact that ECO did not engage in secondary market segment bears no relevance with respect to the alleged violation by ECO of the aforesaid provisions.

38) Noticee 14, 15 and 16 have also requested for cross examination of applicants/ allottees of IPO and merchant banker, in the additional submissions made by it after the completion of hearing in the instant matter. I note that no statement of any party or counter-party or broker/ dealer has either been recorded or relied upon in the captioned proceeding. In this regard, reliance may be placed on the Hon'ble SAT Order in the matter of Mayrose Capfin Private Limited Vs. SEBI (decided on 30.03.2012) held that: *"....the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."*

39) Hence, the request for cross examination was not found to have any merit and not acceded to.

40) Noticee 11 has submitted that no violations can be alleged against it because it already had sufficient funds in its bank account, so it cannot be said that it has funded 43 IPO applicants out of funds received from Goldline and ECO. However, Noticee 11 has failed to explain why it has issued 25 cheques on behalf of 25 non ASBA retail investors and further given Rs. 1.50 lakh to 12 retail investors for making application in the IPO of ECO.

41) Also, Noticee 1 has submitted that it has received only Rs.15 lakh from ECO/ Noticee 14. However, it has again evaded the allegation by not explaining how has

it received Rs. 325 lakhs on January 14, 2013 from various entities, whose source of funds were the monies which ECO had transferred to them.

42) Further Noticees 1 and 8 in their replies have placed reliance Hon 'ble Securities Appellate Tribunal order in the matter of R. K. Global v/s SEBI (Appeal no. 158/2008 decided on 16.09.2010), Narendra Ganatra v/s SEBI (Appeal No 47 of 2011 decided on 29.07.2011), Videocon International v/s SEBI (2002) 4 CLJ 402, Parsoli Corporation v/s SEBI (Appeal No 146/2011 decided on 12.08.2011.

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

"The definition of 'fraud' under clause (c) of regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of the term "fraud".

If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities

The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands *beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".*

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

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

45) Thus, in line with the definition of "fraud" and the ratio of the aforesaid judgement, it is clear that examination of the definition of "fraud" covers under its ambit amongst other things "an act" which would have an "effect of inducement" on another person dealing in securities. Further, regulation 3(c) of the PFUTP Regulations provides that employment of any device, scheme or artifice for fraud is prohibited. In the instant case, ECO and its Directors in connivance with the funding group entities employed a fraudulent scheme to get the IPO subscribed in

a fraudulent manner by directly/ indirectly funding the IPO applicants. The company also diverted the IPO proceeds for objects other than stated in prospectus. Based on the aforesaid discussion, I find that the aforesaid contention is devoid of merit.

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

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

47) Applying the ratio of the aforesaid case to the present facts, I find that strong preponderance of probabilities have emerged to suggest that the Company along with other Funding Group Entities have acted on a pre-conceived scheme with the motive of achieving the requisite minimum number of applications so as to secure listing of equity shares of the Company. I find that in absence of such funding, with or without the underwriting commitment, it would have been difficult for the Company to reach the 90% threshold required in ICDR Regulations as the allotment to the Funding Group Entities itself amounted to 86.22% of the total number of shares allotted.

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

48) Moving on to the deployment of proceeds, I note that the prospectus provided that the IPO proceeds would be utilized for the objects stated below:

S No	Particulars	Amount proposed to be utilized as per Prospectus (Rs. in lacs)
1	Development of Farm land for transition to Organic Farming	506.00
2	Construction of storage sheds	114.00
3	Solar Fencing	65.50
4	Brand Building and General Corporate purposes	60.00
5	Issue Expenses	60.00
	Total	805.50

49) I note that from the reply submitted by the company that it had utilized Proceeds towards Development of farm land for transition to organic farming. The Company has claimed to have paid INR 4.965 Crore. In this regard, Company has furnished agreements with seven different firms for the purpose of development of portions, by executing exactly identical agreements with each of such seven entities, the Company has also filed copies of bank account statements, invoices, ledger to justify the above noted payment of INR 4.965 crore etc. The details of said agreements with respective funds transfer with the 8 entities are tabulated as under:

Details of land development agreements

Sr. No.	Name of entity	Amount in Rs.	Supporting Documents	Dates of transactions
1	Raj Marketing India	35,00,000	Copy of land development agreement, 12 invoices, ledger of Raj Marketing in books of ECO, Bank Statement	From 14/10/2012 to 14/01/2013
2	Garg Traders and Suppliers	55,00,000	Copy of land development agreement, 19 invoices, ledger of Garg Traders and Suppliers in books of ECO, Bank Statement	From 4/10/2012 to 03/12/2012
3	S P Enterprises	1,10,00,000	Copy of land development agreement, 37 invoices, ledger of Garg Traders and Suppliers in books of ECO, Bank Statement	From 01/10/2012 to 30/12/2012
4	Columbia Sales	15,00,000	Copy of land development agreement, 5 invoices, ledger of Garg Traders and Suppliers in books of ECO, Bank Statement	From 02/10/2012 to 19/10/2012
5	Khan Enterprises	25,00,000	Copy of land development agreement, 8 invoices, ledger of Garg Traders and	From 05/10/2012 to 27/10/2012

Sr. No.	Name of entity	Amount in Rs.	Supporting Documents	Dates of transactions
			Suppliers in books of ECO, Bank Statement	
6	Shiv Traders	31,50,000	Copy of land development agreement, 10 invoices, ledger of Garg Traders and Suppliers in books of ECO, Bank Statement	From 09/10/2012 to 10/11/2012
7	Nisha Traders	2,25,00,000	Copy of land development agreement, 55 invoices, ledger of Garg Traders and Suppliers in books of ECO, Bank Statement	From 06/10/2012 to 25/02/2013
	TOTAL	**4,96,50,000**		

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

valid and lawfully enforceable documents. Hence, the submissions made by the Company in this regard are not acceptable

51) Further it is also noted from the careful reading of aforesaid agreements that there is contradiction with respect to dates mentioned in agreement. For instance, the agreement with Raj Marketing India Limited, proprietorship firm based in Ghaziabad carries date of execution as September 28, 2012, the Company came out with its IPO only in January, 2013. I observe that the said agreement, if was really executed prior to the IPO, should have been mentioned in the disclosures made by the Company in its IPO prospectus. However, the Prospectus filed by the Company does not contain any detail of such an agreement having been executed by the Company, it further stated as “The Company has so far not entered into any technical or financial collaboration agreement”. It is essential to note that the aforementioned observation is crucial to calling the Company's bluff as the purpose behind executing the said invalid agreements, i.e. The claim of company to meet the object of land development for organic farming, which is the principal object disclosed in the Prospectus through those invalid unenforceable agreements with the 7 entities, is clearly found to be untrue and flawed.

52) Further, in spite of the Company's claims of having executed agreements of large values, there is no evidence of Board of Directors approval, Board resolutions, or documents granting authorization for the executant of the agreement to act, or an attempt to disclose them to the stock exchange. Additionally, the execution of these agreements is also not supported by any statutory documents nor the Company has demonstrated crucial compliances like approval of layout/Land development plan from local authorities, incorporating such amounts of transfers in the balance sheets, profits/losses arising out of such agreements as required to be mentioned in Company’s book of accounts, deduction of tax at source from the payments

made to those vendors etc, Moreover, the Company has also failed to produce even the simplest evidence, like a photograph of the land, etc., to show the development undertaken or being undertaken on that land by the developer since the agreements were executed. The key information such as survey numbers etc are clearly missing in aforesaid agreements.

53) I also find that in in prospectus, a reference to the quotation given by Raj Marketing for Land Development at the rate of INR 125 per Sq. Meter, but in the agreement that has been executed for Land development with the same counterparty (total consideration of INR 35,00,000 for 13 Acres/52609 Sq. Meters) at the rate of INR 66.52 per Sq. Meter, it is surprising that price for land development has been shown to have increased multi fold in the IPO documents in a short span of time.

54) The company has obtained substantial financial proceeds from developing farm land for organic production. The transactions account for almost half of the IPO proceeds, which the company has tried to justify by producing unverifiable documents such as unregistered/ un-notarized contracts signed on its letterheads, self-generated invoices and so on. Such documents have no legal validity and cannot be enforced in a court of law. Furthermore, the Company has not been able to produce any documents supporting its claim that the transfers of big sums of money were actually for land development of farm land for transition to organic farming, such as approved development plans, land revenue/property tax payments, audited financial statements showing these transactions. Despite 7 years of the execution of those so-called agreements, the Company has been unable to provide a record of the corresponding revenue earned out of those agreements and payments to various parties or any update on the development of the said land. Even worse, the Company has been unable to identify the respective areas that are actually subject to those fabrication agreements with those 7 entities.

The claim of the company that it has spent INR 4.965 crore on the development of organic farming land stated in its IPO is grossly misleading and lacking any authenticity, as the Company has not been able to furnish even elementary evidentiary material and basic documentary support which could have substantiated the reasoning behind the transfer of such large sums of proceeds. It is evident from the contradictions present in the explanations offered by the Company why these funds have been transferred to those entities cannot be considered legitimate.

55) In my opinion, the aforesaid invalid agreements cannot provide any redress to the Company in responding to such a serious charges misutilization - of IPO proceeds. Thus I find it appropriate to conclude that the Company has no justifiable explanation as to why the Company would present such invalid transactions and agreements of pre IPO period as post IPO transactions. The attempt to conceal pre IPO transactions as post IPO transactions establishes that in reality the Company has misutilized the IPO proceeds for the objects other than development of farm land for transition to organic farming.

56) Moving on to the other objects stated in Prospectus, I note that Company has given inconsistent details regarding utilisation of the IPO funds in its reply to the Investigation and reply to the SCN. The same can be seen from the table below:

S No	Particulars	Amount proposed to be utilized as per Prospectus (Rs. in lacs)	Amounts utilized as on 31/ 03/ 2015, as per submissions dated December 25, 2015	Submissions made in reply to the SCN vide letter dated 07/07/2022

1	Development of Farm land for transition to Organic Farming	506.00	570.00	511.50
2	Construction of storage sheds	114.00	40.80	-
3	Solar Fencing	65.50	21.50	-
4	Brand Building and General Corporate purposes	60.00	25.50	-
5	Issue Expenses	60.00	33.16	33.16
6	Investment in short term advances	Not proposed to be made	64.64	235.00
	Total	805.50	756.00	779.66

57) From the table above, it is noted that Company's reply to the summons vide letter dated December 25, 2015 is different from its reply to the SCN vide letter dated July 07, 2022. Further, while replying to the SCN, it has submitted, along with copy of ledger and bank statements and confirmation from these entities that it had given short term advances of Rs. 2.35 crore to two entities, namely GDR Finance and Leasing Pvt. Ltd. and Deepak Gupta. This clearly shows that the funds were not utilised for the same purposes, as disclosed by it in the Prospectus.

58) Thus, from the material available on record, the company has not been able to furnish any evidence of any such expenditure having been incurred under the aforesaid three objects. Hence the claim of the company with respect to the utilization of IPO proceeds on the above stated objects also is found to be untrue and fictitious.

59) I note that in Reply of Noticee 14 it is contended that the financial dealings of the Company have not been correctly considered and only selected financial dealings of the Company have been considered and therefore, a fresh investigation should

be carried out in the present matter. I also note that to support the aforesaid contention, the following orders of whole time members have been referred to by Noticee no. 1 & 2: (i) WTM/PS/14/CFD/DCR1/JUNE/2014 dated June 12, 2014; (ii) WTM/PS/6/EFD-DRA-1/JUNE/ 2015 dated June 12, 2015; (iii) WTM/SR/SEBI/EFD/26/05/ 2016 dated May 12, 2016; and (iv) WTM/SR/SEBI/ISD/18/03/ 2017 dated March 10, 2017. I have perused the aforesaid orders. I find that the said orders do not lay down any ratio with respect to fresh investigation or reinvestigation and the same has been ordered on case to case basis. Hence, I find that the aforesaid orders are all distinguishable on facts and are not applicable in the present matter. I also find that the present proceedings have been initiated on strong tangible evidence and no facts have been brought to my consideration which would indicate that during the investigation financial dealings of the Company have not been correctly considered or that only selected financial dealings have been considered. I find that in absence of any specific information or document which would indicate the need of fresh investigation, the said contention is liable to be dismissed.

60) I also note that major portion of the IPO proceeds was diverted to few entities, instead of applying the funds to the stated objects of the issue. The details regarding such fund transfers are detailed in the findings to Issue II in later paragraphs.

61) It is submitted in Reply of Noticee 14 that companies listed on SME segment only wherein as policy of government, there is leniency in comparison to company listed on main board of Stock Exchange. In this regard, it is noted that even though the company is listed on SME segment, it is bound to comply with all listing conditions and applicable rules and regulations under SEBI act and other statues. Thus, the Contention being devoid of any merit, liable to be dismissed.

62) In my view, after thorough examination of the material on record, I am convinced that the Company in collusion with the connected entities devised a scheme to, firstly, mobilize the minimum required applications as mandated under the ICDR Regulations, and then ultimately disperse IPO proceeds for purposes other than the stated objects in the IPO prospectus to such entities. Noticee nos. 1 to 12, 14, 15 and 16 have acted hand in hand to fraudulently list the scrip of the Company and subsequently divert the IPO proceeds raised.

Role of Noticee 13- Ace Consultants

63) Based on the submissions made by Noticee 13, following has been noted:

a) As regards to alleged relationship with Noticee 16 (Mr. B.K. Sabharwal), Noticee 13 has contended that there is no financial relationship or transaction of any kind whatsoever with Noticee 16. The control and management of ISF was changed in the year 2011, in favor of Mrs. Sunita Khemka and her family pursuant to her taking over the business. Noticee 16 was in management till 2011, although he continued as director simpliciter of the company till March, 2014, for the purpose of proper handover of business & operations to the new management.

b) Noticee further submitted that Noticee 13/ Ace Consultants and ISF have their offices in the same building but they occupy separate floors. ISF has its office on the first floor whereas Noticee 13/ Ace Consultants operates from the third floor of the building no. 5A/4B at Ansari Road, Darya Ganj, New Delhi –110002.

c) I am unable to accept the justification offered by Noticee 13 that continuation of Noticee 16/ B K Sabharwal as a director was purely for professional reasons. I find that the aforesaid submission is not backed by any kind of document such as board resolution, board minutes etc which indicates that he was retained as a director after the acquisition by Sunita Khemka basis the qualification and experience of Noticee 16 as a past director in ISF. In absence of such documents, a reasonable inference can be drawn that Noticee 16 shares a relationship with the Noticee 13 pursuant to his relationship with Sunita Khemka.

d) An application for 6000 shares was made in the IPO of ECO by Mrs. Sunita Khemka, for Rs. 1.50 Lacs, against which she was allotted shares. It is alleged in the SCN that Sunita Khemka received the aforesaid amount from the Noticee.

e) I note from the material available on record, that M/s Ace Consultants is a proprietorship firm of Ms. Sunita Khemka. The Noticee has been associated with the capital markets inter alia by investing in securities and also by subscribing to various IPOs.

f) It is pertinent to note that for legal and taxation purposes, a proprietorship firm and a proprietor are considered indistinct from each other. A proprietorship firm by itself cannot make an application for subscribing to shares of an IPO. In the present case, Noticee 13 has submitted copy of ITR of Ms. Sunita Khemka for 2 years wherein the details of Noticee 13 as proprietorship firm of Ms. Sunita Khemka, have been duly captured, which in the absence of any other contradictory evidence, have to be accepted. Therefore, as the allegations against Noticee 13 are limited to funding the IPO application of its own proprietor, the said charges are not maintainable in view of the factual support and legal framework.

g) Noticee in its reply has contended that the transaction with Noticee 1/ Goldline Finvest was in ordinary course of business and it had no relationship of any kind whatsoever with the IPO.

h) In this regard, I note from the following documents available on record which are (1) bank statement of Mrs. Sunita Khemka and Ace Consultants; (2) copy of accounts of Noticee 1 / Goldline in the books of Noticee 13/ Ace Consultants for the F.Y. 2012-13; 2013-14 & 2014-15;and (3) copy of account of Noticee 13 / Ace Consultants in the books of ISF Securities Ltd. that the loan was repaid along with interest of Rs. 5,81,917/-over a period of time and was fully settled in July, 2014. Hence, in view of the submissions of the Noticee 13 along with the documents furnished, I find that Noticee 13 has credibly demonstrated that the transactions in question were genuine loan transactions between Noticee 1 / Goldline and Noticee 13. Taking into account the aforesaid, I conclude that the transactions between Noticee 13 and Noticee 1 / Goldline are in the normal course of business. Therefore the charge levelled in the show cause notice cannot be sustained.

64) Hence, I note that the charges levelled against Noticee 13 in the show cause notice for violation of regulations 3(a),(b),(c),(d) and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act does not stand established.

65) After taking into consideration all facts and evidences of the material available on record, I hold that company has devised a scheme in collusion with funding group entities to achieve minimum subscription and then deployed the proceeds for purposes other than the stated objects in the IPO prospectus to such entities. I conclude that Noticee nos. 1 to 12, 14, 15 and 16 have acted collusively to

fraudulently list the scrip of the Company and subsequently divert the IPO proceeds raised. Therefore, I hold that Noticee nos. 1 to 12, 14, 15 and 16 have violated regulations 3(a),(b),(c),(d) and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.

ISSUE II: Whether Noticees 14 to 18 have violated Regulations 57(1), of SEBI (ICDR) Regulations, 2009 and Sec. 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3 (a), (b), (c), (d) and 4 (1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003?

66) It was alleged that Noticee 14/ ECO failed to disclose material information which is true and adequate, so as to enable the applicants to take informed investment decisions. Further, it was also alleged that ECO employed a scheme with the help of funding group entities to get listing of the securities on exchange platform and planted false news with respect to objects of IPO.

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

S No	Particulars	Amount proposed to be utilized as per Prospectus (Rs. in lacs)	Amounts utilized as on 31/ 03/ 2015, as per submissions dated December 25, 2015	Submissions made in reply to the SCN vide letter dated 07/07/2022
1	Development of Farm land for transition to Organic Farming	506.00	570.00	511.50

2	Construction of storage sheds	114.00	40.80	-
3	Solar Fencing	65.50	21.50	-
4	Brand Building and General Corporate purposes	60.00	25.50	-
5	Issue Expenses	60.00	33.16	33.16
6	Investment in short term advances	Not proposed to be made	64.64	235.00
	Total	805.50	756.00	779.66

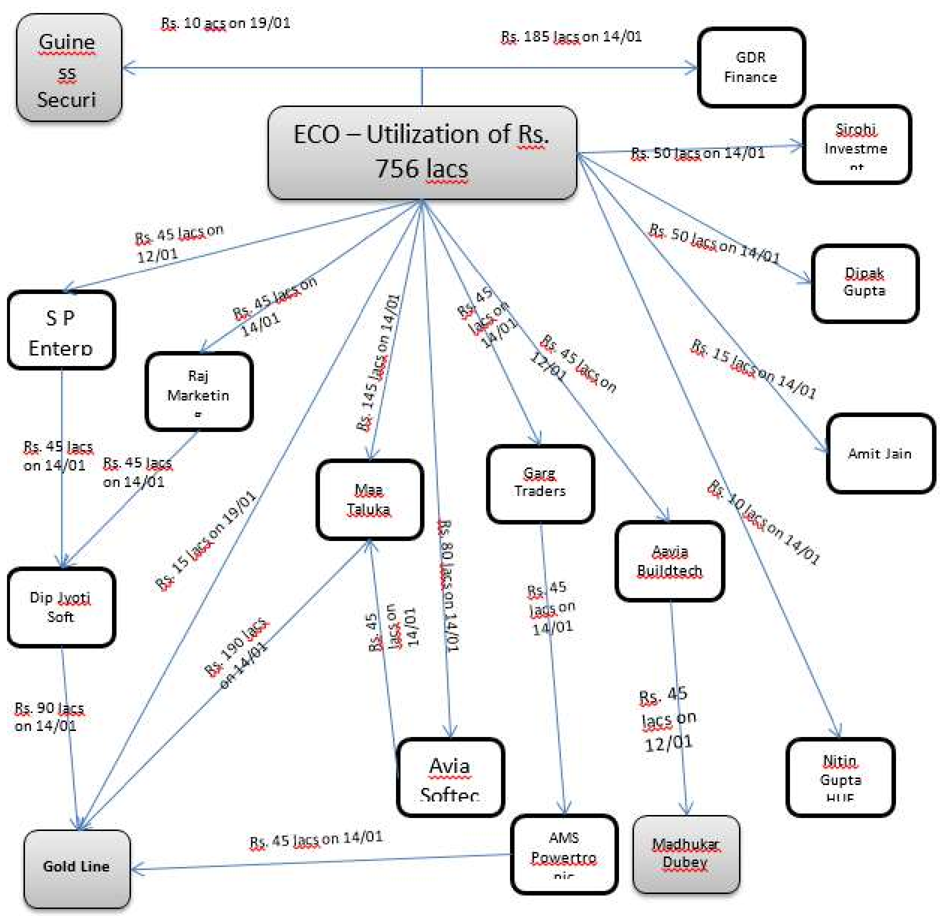
68) I note that regulation 57(1) of the ICDR Regulations clearly provides that the offer document is required to contain all material disclosures to enable the applicant to take an informed decision. The term "material" has not been defined in the aforesaid regulation, however, in general parlance, it can mean anything which is likely to have an impact on the investors' investment decision. I find that if it was clearly stated in the IPO prospectus, that the Company had taken certain loans and the proceeds of the IPO would be utilized for repaying the same or for providing loans or providing advance against objects of the issue, it would have enabled the investors to take an informed decision.

69) I note that Noticee has not submitted copies of Board resolution approving the short term loans and advances it had made to for temporary purposes. Further, vide submissions dated December 25, 2015, it had submitted that short term advances of Rs. 64.64 lakh were made for temporary purposes, while the duration of such advances had already exceeded two years. And during the current proceedings, it has submitted that the amount of short term loans and advances made was Rs. 235 lakh. These submissions are self-contradictory, and hence unacceptable.

70) Similarly, as already recorded previously, there are huge variances in the proposed utilization of the IPO proceeds and the submissions regarding utilization made by

Noticee 14 vide letter dated December 25, 2015. Also, majority of the invoices and the land development agreements which it has submitted pertain to pre-IPO period, and all these agreements are unenforceable and void ab ignition, while the invoices are unverifiable, and issued to unregistered firms, wherein even their proprietors' names are not mentioned, further making these documents unverifiable. Thus, the submissions are false, and hence unacceptable. This clearly shows that it has given false information in its prospectus for the IPO of ECO.

71) Upon perusal of bank statements provided by Noticee 14, fund movement as depicted in the chart below was observed:



72) From the table in paragraph 65 and the chart above, I note that there is glaring discrepancy/contradiction regarding utilization of IPO proceeds, the Company was found to have actually transferred almost the entire proceeds so raised in the IPO to different entities soon after the completion of the IPO, out of which INR 3.85 Crore has also been transferred to a few of the funding group entities, the Company has not provided any explanation or reasoning as to why its submissions made during the investigation were subsequently found to be unsubstantiated by any verifiable evidence, and to be a false claim when compared to actual funds transfers taken place in its accounts post IPO exercise. It is suspicious that all fund transactions were executed by the Company in the period leading up to the IPO. As an example, the Company had projected to have paid Nisha Traders INR 31.50 lakh from the IPO proceeds for land development, however, all were executed during October and November, 2012.

73) I find it suspicious that during investigation despite repeated requests by the investigating authority, ECO did not submit any evidence to support the utilization of IPO proceeds declared in the table above. As per the submissions and supporting documents provided by the company vide letter dated July 07, 2022, an amount of INR 5.115 Crore has been utilized towards land development agreements, issue related expenses of Rs. 0.33 crore and advancing short term loans of INR 2.35 Crore, thus, aggregating to INR 7.795 Crore. However, as per the records, it is found that the Company has not provided any details with respect to the transfer of INR 3.40 Crore made to the Goldline and also to various other transactions made after receiving the IPO proceeds. Even if assuming that the submissions of company is true, the amounts of funds transfers as per the claim of the Company in the submissions at the stage of investigation and as per the explanation offered by the Company during the present proceedings do not match

at all. Even during the present proceedings, the company is unable to furnish any evidence with respect to the expenses incurred towards setting up of storage sheds, solar fencing and brand building etc., towards which the Company had claimed to have spent INR 0.878 Crore, as on March 31, 2015 during the investigation proceedings. I note that on perusal of the bank account statements of ECO, It was found that it has transferred funds involving large sums of money out of the IPO proceeds in the range in the range of INR 15.50 Lakh to INR 4.84 Crore. The Company had transferred INR 3.40 Crore to Noticee 1/ Goldline, as depicted in Chart 2 – ECO utilisation of IPO Funds. However, the company in its reply has merely termed its transaction with Noticee 1 of Rs. 15 lakh as being a commercial transaction while simplistically denying the allegations made in the SCN. Noticees 14, 15 and 16, and have not delved upon the issue or provided explanation for the reasons of the funds given by the Company to the entities of the land agreements, being coincidentally transferred to Noticee 1 at around the same time. The amount of INR 3.40 Crore constituted around 45% of the total amount raised by the Company but the irony is Company has not been able to provide any justification for transferring such huge amount. Moreover, the Company has also not been able to produce any supporting documents of other fund transfers like transfer of INR 0.45 Crore to an entity called Aavia Buildtech; INR 80 Lakh to another entity viz., Aavia Softech; INR 50 Lakh to Sirohi Investment. It is relevant to mention here that all these transactions took place immediately within days after the IPO exercise was over. Hence, the failure on part of the Company to provide any supporting documentation to support the transfer of funds to various entities along with the evasive and misleading explanations put forth speaks volumes about its unscrupulous misconduct. Thus, I find it appropriate to hold that the unexplained transfers of IPO proceeds coupled with the fact that no satisfactory explanation is forthcoming from any of the noticees in support of these transfers further supports that the Noticees devised & successfully implemented a scheme to fund, both directly and indirectly, almost half of IPO subscriptions by a large number of IPO applicants with the collusion of other funding Noticees.

74) I find that non-disclosure of the aforesaid purposes in objects of the issue shows that the disclosures made in the prospectus lacked in material particulars and did not amount to true, fair and adequate disclosures by the Company thereby attracting regulations 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations and resulting in violation of regulation 57(1) of the ICDR Regulations. Further, I find that the transfers to the Funding Group Entities under the garb of loans and advances further strengthens the allegation that the Funding Group Entities had funded the IPO, as it seems logical that after the IPO process was complete, the Company returned the money received by it for the IPO to the Funding Group Entities.

75) Coming to the directors of the Company, I note from the ECO prospectus that Noticee nos. 15 to 18 were the directors of ECO who had signed the prospectus. Noticee no. 15 was the promoter and non-executive non-independent director of the Company and Noticee 16 was executive director of the Company. I note that as per the information available on the ministry of corporate affairs website, Noticee no. 15 is still the director of the Company. Further, Noticees nos. 17 and 18 were non-executive and independent directors of ECO. The role of the aforesaid directors has been discussed in detail in the following paragraphs.

a) Noticee No. 15: I Note that Noticee no. 15 has not disputed his directorship with the Company nor has claimed to be ignorant of the charges made against the Company. It is also important to mention that in the present proceeding, it is Noticee no. 15 who has represented the Company before me. With respect to Noticee No. 15, Prospectus states that “Mr. Brij Kishore Sabharwal, aged 59 years, is the Promoter and Director of our Company. He holds bachelor degree in law and possess post graduate diploma. He has 41 years of experience in various field of finance and commodities market. He was the Chairman and Director of ANMI (Association of National Exchanges Members of India). He is a national president of CPAI (Commodities Participants' Association of India). He has also participated in various conferences & seminars, as a speaker, on securities market all over the country. He is responsible for overall planning & management of our Company. He has been on the Board of Directors of our Company since March, 2012." I note that is obvious that Noticee no. 15 was in control of the Company as well as were responsible for the day to day affairs of the Company. Further, the fact that Noticee no. 15 has been on the board of directors of the Company since March, 2012 indicates that he had been associated with the Company for a substantial time to know of any loans taken by the Company and the use of IPO proceeds by the Company.

b) Noticee no. 18: I find that the Noticee no. 18 in its reply has denied all the allegations levelled in the SCN against him. He inter alia contended that he was not involved in the day to day affairs and management of company. He was not involved in the financial matters or financial transactions of ECO. With respect to Noticee No. 18, Prospectus states that "Mr. Neeraj Mittal, aged 43 years is an Independent Director of our Company. He is a law graduate and also an associate member of Institute of Companies Secretary of India. He has 20 years of experience in the field of general law, corporate law, securities market and finance. He has been on the Board of our Company since March, 2012." The data of annual report available in the public domain for the FYs 2012-2013 and 2013-2014 is tabulated below:

FY	No. of board meetings held by the Company	No. of board meetings attended by Noticee 18	Attendance at AGM of the Company by Noticee 18	Other positions held by Noticee 18 in the Company
2012-13	12	Nil; Attended 1 Audit Committee Meeting ; 1 Remuneration Committee meeting	*NA	• Chairman of audit committee. • Member of Remuneration Committee • Member of shareholder/ Investors grievance committee.
2013-14	*NA	NA	NA	NA

*Neeraj Mittal resigned with effect from March 25, 2013

c) I Note from the Annual Report of year 2012-13 which shows that Noticee no. 18 was present in 1 meeting of Audit Committee in the year 2012-13. However, Noticee No. 18 has disputed aforesaid fact and denies having attended all meetings of the Board of Directors or Committees of the Board including the Audit Committee. It is pertinent to note that Noticee No. 18 (Neeraj Mittal) was made Chairman of Audit committee, Member of Remuneration Committee and Member of shareholder/ Investors grievance committee on Board Meeting held on October 03, 2012. However, minutes of Audit Committee Meeting have not been submitted by Noticee 16, despite of his agreement to submit the same at the time of hearing on July 11, 2022, which is also documented in the Board Minutes. As the company could not provide Minutes of Audit Committee and in the absence of any evidence to the contrary, I am inclined to give benefit of doubt to Noticee 18 regarding the above.

d) Here, I would like to refer section 27 of the Securities and Exchange Board of India Act, 1992 which provides for the offences by companies and reads in relevant part as under:

Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

"13. Section 27 of the Act states that a person is deemed to be guilty of an offence on the condition that he was in charge and responsible to the Company. The proviso to Section 27 states that "Provided that nothing contained in this sub section shall render such person liable to any punishment provided in this

Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence "

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

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

g) In view of the above, since Noticee No.18 was not involved in the day to day affairs of the Company and did not possess any decision making authority, he cannot be held responsible for any of the acts of the company, as there is no evidence to show that he was involved in active management or was in charge of the affairs of the Company. From the records it can be seen Noticee No.18 has not attended any board Meeting. Moreover, there is nothing on record to indicate that he had attended Meeting of Audit committee and Extra ordinary general meeting. Hence, I find that there is no evidence to establish that Noticee No. 18 contravened the provisions related to PFUTP and ICDR.

h) Noticee no. 17: I find that the Noticee no. 17 has not submitted his reply to the SCN. With respect to Noticee No. 12, Prospectus states that "*Mr. Vinod Kumar Garg, aged 47 years, is an Independent Director of our Company. He is a commerce graduate and also member of Institute of Companies Secretary of India. He has 25 years of experience in the field of corporate laws and finance. As an Independent Director of our Company with corporate acumen he brings value addition to our Company. He has been on the Board of our Company* *since March, 2011.*" The data of annual report available in the public domain for the FYs 2012-2013 and 2013-2014 is tabulated below:

FY	No. of board meetings held by the Company	No. of board meetings attended by Noticee 17	Attendance at AGM of the Company by Noticee 17	Other positions held by Noticee 17 in the Company
2012-13	12	8; Attended 1 Audit Committee Meeting ; 1 Remuneration Committee meeting	Yes	• Member of audit committee. • Chairman of Remuneration Committee • Chairman of shareholder/ Investors grievance committee.
2013-14	7	7; Attended 4 Audit Committee Meeting ; 4 Remuneration Committee meeting	Yes	NA

i) I Note from the Minutes of Board Meetings 2012-13 which shows active involvement of Noticee no. 17 in the affairs of the company. The Noticee No.17 has attended 8 Board Meetings in the year 2012-13. It is pertinent to note that Noticee No. 17 (Vinod Kumar Garg) was made Chairman of Remuneration Committee, Chairman of Shareholders / Investors Grievance Committee and Member of Audit Committee on board Meeting held on October 03, 2012. It indicates that Noticee no. 17 had deemed knowledge of the contents of the prospectus and the manner in which the IPO proceeds were being utilized. He occupied most important positions in Board and committees of the Company during his entire tenure. Noticee No. 17 has signed prospectus of the company. I find that after being associated with the Company in the capacity of an independent director before and during the IPO of the company, the Noticee no. 17 cannot plead ignorance regarding the affairs of the Company. Thus, I find it unlikely that the Noticee no. 17 was unaware about regarding material events happening in the Company.

j) I find that the “Risk Factors” section on page 9 of the prospectus inter alia states that the deployment of funds is at the discretion of the board of directors and it shall be monitored by the audit committee. It is important to highlight that Noticee no. 17 was member of the audit committee during his entire tenure with the Company i.e, for FY 2012-2013. Clause 49 of the Listing Agreement provides that the role of audit committee inter alia includes “5A. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter.” Clause 49 also provides that the audit committee has the power to “investigate any activity within its terms of reference” and “to seek information from any employee”

k) As noted from the Minutes of Board meeting placed on record of Year 2012-13. Noticee No.17 had attended 8 Board Meetings of FY 2012-13. As an active Member of the Board, Noticee no. 17 had powers to investigate and/or seek information from employees regarding the loans and the utilization of the IPO proceeds, however, the Noticee no. 17 has not shown any steps taken by him to discharge the duties for example, the Noticee no. 17 could have made inquiries regarding loan taken from the Funding Group Entities, its repayment from the IPO proceeds. I find that if the Noticee no. 17 had performed his duties with skill, diligence and care, he would have known that the IPO proceeds were not being utilized in the manner provided in the prospectus.

76) In view of the above, I find that Noticee no. 17 has failed to carry out his responsibility as an independent director. I find the omission to exercise due diligence on the part of Noticee no. 17 itself falls into the definition of "fraud" as regulation 2(1)(c)(5) of the PFUTP Regulations provides that "fraud" includes "a representation made in a reckless and careless manner whether it be true or false". Noticee no. 17 by virtue of occupying positions in the Board and various committees of Board of directors was required to take steps to ensure that the Company utilized the IPO proceeds as per objects stated in the prospectus. However, as per record, no inquiries were made or objections were raised by Noticee no. 17 with respect to using the IPO proceeds for repayment of loans or giving loans, which reflects their recklessness and negligence in performing their duties.

77) I find it relevant to refer to the case of Official Liquidator, Supreme Bank Ltd. vs. P.A. Tendolkar (Dead) by Lrs. and Ors. (Civil Appeal Nos. 195- 197, 234 and 300 of 1967), dated January 19, 1973, wherein the Apex Court held that:

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

held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company."

78) I find that even though a company is a legal entity, it cannot act by itself, it can only act through its directors. Therefore, the board of directors are individually and collectively responsible for the conduct of the business of a company and any non-compliance resulting thereto. As brought out in the preceding paragraphs, the Company has not stated in the prospectus that it has taken certain loans which it would pay out of the IPO proceeds or that it would be giving loans or advances against the objects of the issue. Thus, it can be concluded that Noticee no. 15 being the promoter and Noticee no. 16 being the executive director of the Company who were responsible for the day to day functioning of the Company were fully aware that the disclosures made by them in the prospectus do not represent the true and fair view of the affairs of the Company.

79) Considering the above, I have no hesitation in arriving at the conclusion that Noticee nos. 15 and 16 being the directors of the Company were not only signatories to the prospectus which contained untrue statements and/or failed to make material disclosures but were also an active participant in the Board Meetings where resolutions relating to IPO and utilization of IPO proceeds was taken up and hence are liable for fraud.

80) In conclusion, I find that ECO along with its connected entities devised a scheme to achieve minimum subscription of IPO of ECO, and funds were transferred back to the entities which funded the IPO. In light of the inconsistent responses of the

Company coupled with the deceiving nature of the explanation furnished vide the Reply of Noticee 14, I find that the Company and its directors has been unsuccessful in justifying the reasons for transferring IPO proceeds to the connected entities which funded the IPO. In light of the aforesaid paragraphs, I find that Noticee Nos. 15, 16 and 17 have violated sections 12A(a),(b) and (c) of the SEBI Act, regulations 3(a),(b),(c),(d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations and regulation 57(1) of the ICDR Regulations.

ISSUE III: Whether Noticee 14 has violated Clause 45 and 46 of listing agreement for SMEs r/w section 21 of SCRA, 1956?

81) The aforesaid violations make the Company liable for penalty under section 23E of SCRA. In this regard, the Hon'ble SAT in the matter of Suzlon Energy Ltd. and Anr. vs. SEBI (Appeal No. 201 of 2018) dated May 03, 2021 has held the following: *<u>"Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement.</u> One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 <u>whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange</u>. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. <u>Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under</u>*

Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E….." **(emphasis supplied)**

82) I note that a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 17 and 18 of the aforesaid order. Further, I note that an appeal has been filed before the Hon'ble Supreme Court against the aforesaid order vide civil appeal no. 4741 of 2021. I note that the aforesaid stay application and the appeal is pending.

83) Coming to merits of case, it is alleged in the SCN that BSE vide e-mail dated September 27, 2016, informed SEBI that ECO has made disclosure of IPO proceeds utilization as on March 31, 2013 wherein it has claimed that it had utilized Rs. 511.50 lakh for development of farm land for transition of organic farming, Rs. 33.16 lakh for issue expenses and remaining Rs. 211.34 lakh have been given for short term advances. As observed in the preceding paragraphs (Issue I), the Company has given inconsistent responses with respect to the funds it claims it has spent on development of farm land for transition to organic farming. As previously noted, the Company did not utilize the IPO proceeds as per the objects stated in prospectus and also made wrong disclosure with respect to the utilization of the IPO proceeds to the stock exchange with intention to mislead the stock exchange.

84) It is also alleged in the SCN that the half yearly result disclosure required to be made disclosing utilization of IPO proceeds was only submitted once by the Company and no statement was submitted to the stock exchange with respect to the remaining unused IPO proceeds. I find that the aforesaid allegation has not been addressed in the Reply of Noticee 14 and therefore, placing reliance on the

ratio of decision of Hon'ble SAT in Classic Credit Ltd. (supra), I conclude that the aforesaid allegation has been accepted by the Company.

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

ISSUE IV: Whether Noticees 1, 4 and 16 have violated Sec. 11 (3) and 11 C (3) of SEBI Act, 1992?

86) With respect to Noticee No. 1, vide summons dated March 04, 2016, Noticee No. 1 was required to furnish details of receipt of Rs. 15 lakh from IPO proceeds of ECO by March 14, 2016. Vide letter dated March 14, 2016, Noticee No. 1 filed for extension for production of documents upto 25.4.2016. However, it is noted from records no reply to summons has been filed by Noticee No. 1.

87) With respect to Noticee No. 14, I note from summons dated December 15, 2015, Noticee No. 14 was required to furnish the data relating to IPO proceeds by December 25, 2015. Vide the aforementioned summons, Noticee No. 14 was also informed that if they fail to furnish the documents as required, they would be held liable for monetary penalty under section 15A(a) of the SEBI Act and also that criminal prosecution may be initiated against them under section 11C(6) of the SEBI Act. Vide letter dated December 28, 2015, a reminder to reply to summons by January 07, 2016 was also sent. Noticee 16, being whole time director of

Noticee 14 replied without supporting documents on 29.01.2016 in hard copy. Following information was sought from Noticees 1 and 14.

Summons issued to Noticee no. 1

1. Eco Friendly Food Processing Park Ltd. (Eco l) came out with an IPO and raised Rs. 756 lacs by way of issue of 30,24,000 equity shares.

2. It has been observed from the bank account of Eco Friendly Food Processing Park Ltd that it had transferred Rs. 15 lacs on 19/01/2013 from the IPO proceeds. In this regard, provide the following information;

i. Purpose for which the amount was transferred by Eco to you with supporting documents.

ii. End use of the money received by you from Eco

3) Name, designation, address and PAN numbers of all the Directors / Partners / proprietors of the Company as on the date of submission of the above information to SEBI.

Summons issued to Noticee no. 14

1. Eco Friendly Food Processing Park Limited came out with an IPO and raised Rs. 756 lacs by way of issue of 30,24,000 equity shares.

2. Following table shows the proposed utilization of IPO proceeds as mentioned in prospectus.

S No	***Particulars***	***Amount (Rs. in lacs)***
1	*Development of Farm land for transition to Organic Farming*	*506.00*
2	*Construction of storage sheds*	*114.00*
3	*Solar Fencing*	*65.50*
4	*Brand Building and General Corporate purposes*	*60.00*
5	*Issue Expenses*	*60.00*
6	*Investment in short term advances*	*Not proposed to be made*

	Total	805.50

3. In this regard, provide the actual utilization of the IPO proceeds with all supporting documents such as receipts, agreements, bank statements etc.

4. Name, designation, address and PAN numbers of all the Directors of the Company as on the date of Prospectus and as on the date of submission of the above information to SEBI.

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

"We note that requisite information and relevant records are pre-requites for a meaningful investigation. In the absence of cooperation by the concerned company, the SEBI cannot move an inch. Therefore, every company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If companies are allowed to take the statutory summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins."

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

"Non-compliance with the summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides that every person associated with the

market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market."

90) Since Noticee No. 1 has not made any submissions in this regard and did not appear for the hearing, I find that there is no justification on record explaining the reasons for failure of Noticee No.1 to furnish the requisite data to the investigating authority. Hence, I hold that Noticee no.1 have violated the provisions of section 11(3) and 11(C)(3) of the SEBI Act.

91) With respect to Noticee nos. 14, I note from records that during the course of investigation, ECO was issued summons dated December 15, 2015 to furnish information with respect to the utilization of the IPO proceeds as per the objects stated in the prospectus along with supporting documents such as receipts, agreements, bank statements etc, by December 25, 2015. Pursuant to the aforesaid summons, a reminder letter was also sent dated December 28, 2015. I further note from the records that:

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

b) Vide emails sent on January 18, 2016, SEBI again sought supporting documents with respect to the IPO proceeds utilization, as its replies vide letter dated December 25, 2015 and January 16, 2016 were incomplete, as supporting documents in regard to utilization of funds were not provided by

Noticee 14. In the aforesaid email sent by SEBI, it was specifically mentioned that if the Company fails to produce the supporting documents then it will be treated as non-compliance of summons and action may be initiated for the same under the SEBI Act.

c) Vide email dated January 29, 2016, SEBI again sent a reminder mail seeking the aforesaid details from Noticee 14 by February 05, 2016. However, no replies were received from Noticee 14 thereafter. In the aforesaid mail, it was specifically mentioned that if the Company fails to produce the supporting documents then it will be treated as non-compliance of summons and action may be initiated for the same under the SEBI Act.

d) Vide email sent on February 22, 2016, clarification was sought with respect to the diversion of the IPO proceeds., however ECO, vide email sent on February 23, 2016 sought 15 days' time to furnish reply to the mail. Its request was considered by SEBI and time till March 04, 2016 was granted to Noticee 14.

e) Vide mail dated March 04, 2016, Noticee 14 sought extension to reply citing the following reason "*team is deeply involved in the ongoing cultivation and harvesting season lasting till second week of april…permit us to provide our comments by 20 April 2016*". The said request was acceded to and extension was granted till April 20, 2016.

f) Vide email sent on May 06, 2016, ECO responded with respect to the fund movements out of IPO proceeds, however, again no supporting documents were provided.

92) I find that it is evident from the various correspondences noted above that Noticee No. 14 did not submit the documents and adopted delaying tactics, which in turn delayed the investigation process. Even after seeking multiple extension for furnishing documents, it has not provided the complete supporting documents, as advised to be furnished in the summons, even though the information was available

with Noticee 14 and only it was in the position to submit the information and further, the information could not be sourced from any other sources. If the Company would have submitted the required information and documents it would have enabled the investigating authority to draw precise conclusions in the matter. Therefore, I conclude that the contention in the Reply of Noticee 14 that the investigation was not hampered is wholly flawed. Further, I find that it is apparent from the records that due to the non-cooperation and non-compliance by the Company, the investigation was stalled as the first summons was issued on December 15, 2015. I find that timely submission of information is important for the purpose of effective investigation proceedings and non-cooperation by an entity can be detrimental to the interest of investors and the securities market on account of hindrance or delay in the investigation.

93) It is pertinent to mention here that it is the responsibility of every person from whom information is sought vide summons to fully co-operate with the IA and promptly produce all documents, records, information, etc., to the IA. If persons are allowed to flout the summons issued to them during the course of the investigation, SEBI, as the watchdog of the securities market, will not be able to discharge its statutory obligations in protecting the interests of the investors and safeguarding the integrity of the securities market. The information was sought from the Noticee against the background of serious irregularities.

94) Non submission of the requisite information has adversely affected the investigation process. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in its order dated October 22, 2013, in the matter of Rich Capital & Financial Services Limited and Mr. Shashwat Agarwal vs. SEBI observed that-"*We note that requisite information and relevant records are pre-requites for a meaningful investigation. In the absence of cooperation by the concerned*

company, the SEBI cannot move an inch. Therefore, every company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If companies are allowed to take the statutory summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins."

95) In this context, it is also important to refer to the order of the Hon'ble SAT in the matter of Mr. Jalaj Batra vs. SEBI (Appeal no. 184 of 2010, order dated December 06, 2010) stated that *"......We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non co-operation with the market regulator has to be viewed seriously. We do not know what else would have come to light if the appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him*." Further, Hon'ble SAT in Appeal No.95/04order dated August 9, 2004in Mayfair Paper & Board Pvt. Ltd. V SEBI observed that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under section 15A of the SEBI Act 1992.

96) In view of the above, I conclude that Noticee no. 14 has failed to comply to the summons issued to it and has therefore fallen foul of sections 11(3) and 11(C)(3) of the SEBI Act.

97) With respect to Noticee 16, I observe that material available on record does not show any summons that were specifically issued to Noticee 16 in his name. Performance of compliance of summons is the personal liability of the person to whom it is served, and cannot be passed on to others, which in this case has not been issued to Noticee 16. Hence, I note that charges levelled against Noticee 16 for the violation of provisions of sections 11(3) and 11(C)(3) of the SEBI Act do not stand established.

ISSUE V: Does the violations, if any, on part of the Noticees attract penalty under Section 15HA and section 15A(a) of the SEBI Act, 1992 and/ or section 23E of the SC(R) Act, 1956 for the aforesaid violations?

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

99) Thus, it is clear in view of my findings recorded above that the Company was able to achieve the threshold of minimum subscriptions in its IPO only through the fraudulent scheme deployed in connivance with the other Noticees. I am of the view that the aforesaid scheming by the Noticees needs to be dealt in a strict manner and warrants imposition of monetary penalty under sections 15A(a), 15HA,

15HB of the SEBI Act and section 23E of the SCRA, the text of which is provided below:

SEBI Act,1992
"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."

"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 of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Securities Contracts (Regulation) Act, 1956

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.*

ISSUE VI : If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

100) While determining the quantum of penalty under aforesaid sections of the SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

15J - Factors to be taken into account by the adjudicating officer

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."

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

Noticee	Order details	Violation
Goldline Finvest International Limited (Noticee 1)	Order in the matter of IPO of Channel Nine Entertainment Limited dated December 22, 2020.	Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.
	Order in the matter of Eco Friendly Food Processing Limited dated December 22, 2020.	
	Order in the matter of Esteem Bio Organic Food Processing Limited dated December 22, 2020.	
	Adjudication Order in the matter of Esteem Bio Organic Food Processing Ltd.	
	Adjudication Order in respect of Goldline International Finvest Limited in the matter of Channel Nine Entertainment Ltd dated May 22, 2019.	Sections 11(3) and 11C(3) of the SEBI Act.
	Adjudication Order in the matter of Esteem Bio Organic Food Processing Ltd.dated April 28, 2022	
Madhukar Dubey and his proprietorship firms	Order in the matter of IPO of Channel Nine Entertainment Limited dated December 22, 2020.	Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with

viz.N V Sales Corporation, Magnum Industrial and Alliance Traders (Noticee 2)	Order in the matter of Eco Friendly Food Processing Limited dated December 22, 2020.	Section 12A (a), (b) and (c) of SEBI Act.
	Order in the matter of Esteem Bio Organic Food Processing Limited dated December 22, 2020.	
	Adjudication Order in the matter of Esteem Bio Organic Food Processing Ltd. dated April 28, 2022	
Satendra Kumar and his proprietorship firm viz. Nisha Traders (Noticee 3)	Order in the matter of IPO of Channel Nine Entertainment Limited dated December 22, 2020.	Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.
	Order in the matter of Eco Friendly Food Processing Limited dated December 22, 2020.	
	Order in the matter of Esteem Bio Organic Food Processing Limited dated December 22, 2020.	
	Adjudication Order in the matter of Esteem Bio Organic Food Processing Ltd. dated April 28, 2022	
Ram Prakash and his Proprietorship firm viz. khan Enterprise, Aggarwal Traders (Noticee 7)	Adjudication Order in the matter of Esteem Bio Organic Food Processing Ltd. dated April 28, 2022	Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.
Avisha Credit Capital Pvt. Ltd. (Noticee 8)	Order in the matter of IPO of Channel Nine Entertainment Limited dated December 22, 2020.	Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.
	Order in the matter of Eco Friendly Food Processing Limited dated December 22, 2020.	
	Order in the matter of Esteem Bio Organic Food Processing Limited dated December 22, 2020.	
	Adjudication Order in the matter of Esteem Bio Organic Food Processing Ltd. dated April 28, 2022	
Brij Kishore Sabharwal (Noticee 16)	Adjudication Order in the matter of Esteem Bio Organic Food Processing Ltd. dated April 28, 2022	Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.
		Section 11 (3) and 11 C(3) of the SEBI Act.
		Regulation 57(1) of SEBI (Issue of Capital and

		Disclosure Requirements) Regulations 2009
Vinod Kumar Garg (Noticee 17)	Adjudication Order in the matter of Esteem Bio Organic Food Processing Ltd. dated April 28, 2022	Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.
		Regulation 57(1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009

ORDER

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

Noticee No.	Name of the Noticee	Violation	Penal provisions	Penalty (in Rs.)
1	M/s Goldline International Finvest Limited	Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.	15HA of SEBI Act, 1992	₹6,00,000 (Rupees Six lakh only)
		Section 11 (3) and 11 C(3) of the SEBI Act.	15A(a) of SEBI Act, 1992	₹5,00,000 (Rupees Five lakh only)
2	Madhukar Dubey and his Proprietorship firm viz. Alliance Traders, NV Sales Corporation, A One Furniture	Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.	15HA of SEBI Act, 1992	₹6,00,000 (Rupees Six lakh only)

Noticee No.	Name of the Noticee	Violation	Penal provisions	Penalty (in Rs.)
	and Magnum Industrial			
3	Satendra Kumar and his proprietorship firm viz. Bright Securities, AR Enterprise, Nisha Traders			₹6,00,000 (Rupees Six lakh only)
4	Sumit Kumar and his proprietorship firm viz. Vijay Bhagwandas & Co., Durga Prasad & Co.			₹6,00,000 (Rupees Six lakh only)
5	Columbia Sales			₹6,00,000 (Rupees Six lakh only)
6	Mohan Garg and his proprietorship firm viz. Garg Traders & Suppliers			₹6,00,000 (Rupees Six lakh only)
7	Ram Prakash and his proprietorship firm viz. Khan Enterprise, Aggarwal Traders			₹6,00,000 (Rupees Six lakh only)
8	Avisha Credit Capital Private Limited			₹6,00,000 (Rupees Six lakh only)
9	AMS Powertronic Private Limited			₹6,00,000 (Rupees Six lakh only)
10	Prakash Gupta and his proprietorship			₹6,00,000 (Rupees Six lakh only)

Noticee No.	Name of the Noticee	Violation	Penal provisions	Penalty (in Rs.)
	firm viz. Shri Trading Co.			
11	LMR Green Realty Private Limited			₹6,00,000 (Rupees Six lakh only)
12	Lithmus Capital Consultance Limited			₹6,00,000 (Rupees Six lakh only)
14	ECO Friendly Food Processing Park Limited	Regulation 57(1) of SEBI (ICDR) Regulations, 2009 Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.	15HA of SEBI Act, 1992	₹6,00,000 (Rupees Six lakh only)
		Section 11 (3) and 11 C(3) of the SEBI Act.	15A(a) of SEBI Act, 1992	₹5,00,000 (Rupees Five lakh only)
		Clause 45 and 46 of listing agreement for SMEs r/w section 21 of SC(R) Act, 1956	Section 23E of the SC(R) Act, 1956	₹2,00,000 (Rupees Two lakh only)
15	Amar Singh Bisht	Regulation 57(1) of SEBI (ICDR) Regulations, 2009 Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.	15HA of SEBI Act, 1992	₹6,00,000 (Rupees Six lakh only)

Noticee No.	Name of the Noticee	Violation	Penal provisions	Penalty (in Rs.)
16	Brij Kishore Sabharwal	Regulation 57(1) of SEBI (ICDR) Regulations, 2009 Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.	15HA of SEBI Act, 1992	₹6,00,000 (Rupees Six lakh only)
17	Vinod Kumar Garg	Regulation 57(1) of SEBI (ICDR) Regulations, 2009 Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.	15HA of SEBI Act, 1992	₹6,00,000 (Rupees Six lakh only)

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

103) 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 website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

104) The aforesaid Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticees shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

105) In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

106) In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai	**BARNALI MUKHERJEE**
Date: July 29, 2022	**ADJUDICATING OFFICER**