**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**(ADJUDICATION ORDER NO: Order/SM/PP/2018-19/2491-2523)**

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

*In respect of:*

| | | |
|---|---|---|
| 1 | SMS Techsoft (India) Ltd. | AAECA1954G |
| 2 | Jagadish Vital | ACJPJ5747L |
| 3 | Akash Jagadish Vital | ATYPA8648K |
| 4 | Anita S. Kadanthalai | ABUPA2184Q |
| 5 | Alakaben Kirtibhai Shah | CPAPS2335R |
| 6 | Bafna S R | AFXPB6525P |
| 7 | Chhaya Umeshchandra Trivedi | AHDPT3058P |
| 8 | Dharmendra Rikhavchand Shah HUF | AAEHD6246F |
| 9 | Himadri Kamleshbhai Shah | AZYPS5654H |
| 10 | Himanshu Prafulchandra Shah | ANEPS9445A |
| 11 | Kaliyaben Himansu Shah | BFQPS1462A |
| 12 | Kanubhai Narandas Thakkar | ADZPT3418R |
| 13 | Karan Kirtibhai Shah | BQYPS0082D |
| 14 | Keval Kirtikumar Shah | DFNPS6796L |
| 15 | Kirtikumar Rasiklal Shah | AKQPS8463F |
| 16 | K Rajagopal | AGCPR8130L |
| 17 | Mahavirsingh N Chauhan | AQOPC6330R |
| 18 | Meenaben Natubhai Thakkar | AHWPT5940M |
| 19 | Minaben Prafulbhai Shah | COYPS9153J |
| 20 | Mitesh Kanaiyalal Thakkar | AHQPT0178H |
| 21 | Mukeshbhai Shantilal Thakkar | AJBPT8789M |
| 22 | Mulchand Ganeshmal Jain | ABBPJ6373M |
| 23 | Natubhai Shantilal Thakkar | AHWPT5944R |
| 24 | Navinchandra Kanubhai Thakkar | ADUPT1264A |
| 25 | Pruthvi Himanshu Shah | DCAPS6011N |
| 26 | S Rajaganesh | ALBPR2586E |
| 27 | Suresh Nenmalji Malvi | AKMPM4951C |
| 28 | Vaishali Natvarlal Thakkar | AMJPT1242N |
| 29 | Vinit Kamleshkumar Shah | BOIPS2506E |
| 30 | Vinod Jain | AEDPJ4235P |
| 31 | Manjulaben M. Chunilal Shah | AFSPS6606M |
| 32 | Rajesh Ranka | ACUPR5573R |
| 33 | Dharmendra Rikhavchand Shah | ACDPS9920N |

**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI**') observed that during the period February - March 2013, several Short Text Messages (SMSs) were sent to the investors with predominantly buy recommendations that were made in the scrip of SMS Techsoft (India) Ltd (hereinafter referred to as '**STL'/ 'Company'**). In view of the SMSs mentioning predominantly buy recommendations in the scrip of STL, SEBI conducted an examination in the matter and based on the observations contained therein, an interim order dated November 05, 2013 (followed by a corrigendum dated November 18, 2013) issued under the provisions of sections 11, 11(4) & 11 B of the Securities and Exchange Board of India Act, 1992 (hereafter referred to as '**SEBI Act'**) was passed against 38 persons/entities wherein, the said persons/entities named in the interim order were, *inter alia,* restrained from accessing the securities market and were also prohibited from buying, selling or dealing in the securities market, either directly or indirectly, in any manner whatsoever, till further directions.
2. Further, vide the said interim order, the aforementioned 38 persons/entities were also directed by SEBI to keep in an escrow account, jointly and severally, within 30 days of the interim order, an amount of Rs 6,00,11,512/- that they have earned as ill-gotten profit during the period March 13, 2013 to October 18, 2013 and were also directed to keep any other amount that they have realized as sale proceeds of shares allotted to them in the Preferential Allotment made by the Company on March 15, 2012.
3. Vide confirmatory order dated May 07, 2015 (followed by a corrigendum order dated May 14, 2015), SEBI also confirmed the above directions issued w.r.t the 38 persons/entities, vide the interim order dated November 05, 2013, except in the case of Ms Nila Rajesh Kumar Shah (who had expired on February 26, 2012). In the aforementioned interim order, it was observed by

SEBI that the Company had made a further issue of 3,00,00,000 equity shares at Rs 10 per share on preferential allotment basis on March 15, 2012 to its promoters and also other persons/entities. It was further observed in the interim order that the Company, its promoters/directors along with the other persons/entities, had falsely portrayed the preferential allotment of shares made by the Company, as a genuine preferential allotment and also created artificial volume in the scrip of the Company by adopting fraudulent device and artifice to defraud the shareholders of the Company. It was noted that the allottees in the preferential allotment after falsely portraying the fraudulent transactions as genuine preferential allotment of shares later on after the expiry of lock-in period of the shares, offloaded a large portion of the shares allotted to them in the preferential allotment and made illegal gains.

4. Pursuant to the interim order, SEBI conducted an investigation in the matter of trading/dealings in the scrip of STL for the period March 13, 2013 to November 05, 2013 (hereinafter referred to as '**investigation period'/ 'relevant period'**) and subsequent to the investigations, enforcement proceedings were initiated by SEBI against several persons/entities, including the persons/entities mentioned in the interim order. It was specifically observed by SEBI in the investigation report (' **IR ')** that the persons/entities mentioned in the interim order dated November 5, 2013 have failed to comply with the following direction issued by SEBI :-

"***The aforementioned entities are hereby ordered to keep in an escrow account, jointly and severally, within 30 days of this order, an amount of Rs 6,00,11,512/- that they have earned as ill-gotten profit during the period March 13, 2013 to October 18, 2013 and any other amount that they have realized as sale proceeds of shares allotted to them in the Preferential Allotment of shares made by the company; and*"**.**

5. Subsequently, a final order dated July 27, 2018 was also passed by SEBI in the said matter. The details of the preferential allotment made by the Company

on March 15, 2012 and the number of shares allotted to the promoters/other persons/entities in the preferential allotment are as follows :-

| Sl. No. | Name | No. of shares Allotted in the preferential allotment | % to total share capital-post Pref allotment |
|---|---|---|---|
| 1 | Jagadish Vital ( Promoter) | 998590 | 2.85% |
| 2 | Akash Jagadish Vital ( Promoter) | 451000 | 1.29% |
| 3 | Anita Srinivasabhatt Kadanthalai ( Promoter) | 297000 | 0.85% |
| 4 | K Rajagopal | 998000 | 2.85% |
| 5 | S Rajaganesh | 997000 | 2.84% |
| 6 | Bafna S R | 996000 | 2.84% |
| 7 | Chhaya Umeshchandra Trivedi | 997500 | 2.85% |
| 8 | Meenaben Natubhai Thakkar | 995000 | 2.84% |
| 9 | Mitesh Kanaiyalal Thakkar | 997000 | 2.84% |
| 10 | Mukeshbhai Shantilal Thakkar | 996000 | 2.8% |
| 11 | Mulchand Ganeshmal Jain | 998000 | 2.85% |
| 12 | Natubhai Shantilal Thakkar | 997000 | 2.84% |
| 13 | Navinchandra Kanubhai Thakkar | 995000 | 2.84% |
| 14 | Suresh Nenmalji Malvi | 997000 | 2.84% |
| 15 | Vaishali Natvarlal Thakkar | 998500 | 2.85% |
| 16 | Vinod Jain | 997000 | 2.84% |
| 17 | Dharmendra Rikhavchand Shah HUF | 1045000 | 2.98% |
| 18 | Kanubhai Narandas Thakkar | 997000 | 2.84% |
| 19 | Himanshu Prafulchandra Shah | 995000 | 2.84% |
| 20 | Kaliyaben Himansu Shah | 995000 | 2.84% |
| 21 | Alakaben Kirtibhai Shah | 996000 | 2.84% |
| 22 | Karan Kirtibhai Shah | 995000 | 2.84% |
| 23 | Keval Kirtikumar Shah | 997500 | 2.85% |
| 24 | Kirtikumar Rasiklal Shah | 995000 | 2.84% |
| 25 | Vinit Kamleshkumar Shah | 994500 | 2.84% |
| 26 | Minaben Prafulbhai Shah | 994000 | 2.84% |

| | | | |
|---|---|---|---|
| 27 | Himadri Kamleshbhai Shah | 996000 | 2.84% |
| 28 | Pruthvi Himanshu Shah | 996000 | 2.84% |
| 29 | Nila Rajeshkumar Shah | 995000 | 2.84% |
| 30 | Mahavirsingh N Chauhan | 1253410 | 3.58% |
| 31 | Maheshchandra Chunilal Shah | 1050000 | 3.00% |
| **Total shares allotted in the preferential allotment** | | **3,00,00,000** | **85.57%** |
| **Total shareholding of company after the preferential allotment** | | **3,50,57,200** | **100%** |

As can be seen from the above Table, the company had allotted 3 crore shares through the preferential allotment made to 31 persons/entities on March 15, 2012. After the stock split announced by the company in November 2012, the shares of the company were split in the ratio of 1:10 and consequently, the 3 crore shares allotted by the company in the preferential allotment became 30 crore shares. In the case of Shri Maheshchandra Chunilal Shah who was allotted 10,50,000 shares in the preferential allotment (mentioned at Sl no 31 above), it was observed that he had expired on October 02, 2013 and therefore, the Whole Time Member, SEBI, vide Final Order dated July 27, 2018, directed that the legal representative of Late Shri Maheshchandra Chunilal Shah i.e Mrs Manjulben Chunilal Shah shall be liable to comply with the above directions of SEBI. Therefore, in view of the above observations, the present proceedings are not initiated against Shri Maheshchandra Chunilal Shah and the liability of Late Shri Maheshchandra Chunilal Shah has been fixed on his legal representative i.e Ms. Manjulaben M Chunilal Shah (wife of Late Shri Maheshchandra Chunilal Shah). Further, as already mentioned at para 3 above, the present proceedings are also not initiated against Ms Nila Rajesh Kumar Shah (preferential allottee mentioned at Sl no. 29 above) who had expired on February 26, 2012.

6. It is alleged that SMS Techsoft (India) Ltd. (Noticee no.1/ SMS Techsoft/ the Company) and its three promoters & preferential allottees viz, Jagadish Vital (Noticee no.2), Akash Jagadish Vital (Noticee no.3) and Anita S. Kadanthalai

(Noticee no. 4) and the other preferential allottees namely, Alakaben Kirtibhai Shah (Noticee no.5), Bafna S R (Noticee no.6), Chhaya Umeshchandra Trivedi (Noticee no.7), Dharmendra Rikhavchand Shah HUF (Noticee no. 8), Himadri Kamleshbhai Shah (Noticee no. 9), Himanshu Prafulchandra Shah (Noticee no.10), Kaliyaben Himansu Shah (Noticee no. 11), Kanubhai Narandas Thakkar (Noticee no.12), Karan Kirtibhai Shah (Noticee no.13), Keval Kirtikumar Shah (Noticee no.14), Kirtikumar Rasiklal Shah(Noticee no.15), K Rajagopal (Noticee no.16), Mahavirsingh N Chauhan (Noticee no.17), Meenaben Natubhai Thakkar (Noticee no. 18), Minaben Prafulbhai Shah (Noticee no.19), Mitesh Kanaiyalal Thakkar (Noticee no. 20), Mukeshbhai Shantilal Thakkar (Noticee no. 21), Mulchand Ganeshmal Jain (Noticee no. 22), Natubhai Shantilal Thakkar (Noticee no. 23), Navinchandra Kanubhai Thakkar (Noticee no.24), Pruthvi Himanshu Shah (Noticee no.25), S Rajaganesh (Noticee no. 26), Suresh Nenmalji Malvi (Noticee no. 27), Vaishali Natvarlal Thakkar (Noticee no. 28), Vinit Kamleshkumar Shah (Noticee no.29), Vinod Jain (Noticee no.30) and also other persons *viz.* Manjulaben Maheshchandra Chunilal Shah (Noticee no. 31), Rajesh Ranka (Noticee no.32) and Dharmendra Rikhavchand Shah (Noticee no.33) and (hereinafter collectively referred to as '**Noticees'** in the context of the present proceedings) have failed to comply with the directions of SEBI mentioned in the Interim order dated November 05, 2013 and confirmatory order May 07, 2015, details of which have been discussed above. As the Noticees have failed to comply with the directions of SEBI, adjudication proceedings have been initiated against them under the provisions of section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**).

## APPOINTMENT OF ADJUDICATING OFFICER

7. The undersigned was appointed as the Adjudicating Officer, vide an order dated September 08, 2016, under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter

referred to as **'Adjudication Rules'**) to inquire into and adjudge under the provisions of section 15HB of the SEBI Act, the alleged non-compliance by the Noticees w.r.t the directions issued to them vide Interim Order dated November 05, 2013 and Confirmatory Order dated May 07, 2015.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

8. Show Cause Notice dated March 10, 2017 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticees and penalty, if any, be not imposed on them for their alleged failure to comply with the directions of SEBI, which were issued to them vide Interim Order dated November 05, 2013 and Confirmatory Order dated May 07, 2015.
9. The allegations levelled against the Noticees in the SCN are summarized as under:

    (a) The Noticees have failed to comply with the direction mentioned in Para 2(b) of the Interim Order dated November 05, 2013, wherein Noticees were *inter-alia* directed to "*keep in an escrow account, jointly and severally within 30 days of this (Interim) order, an amount of Rs. 6,00,11,512/-…. and any other amount that they have realised as sale proceeds of the shares allotted in the preferential allotment".*

    (b) It is observed that, on February 22, 2016, letters were sent to the Noticees by SEBI, wherein they were advised to confirm by February 29, 2016, that they have deposited the said amount in the escrow account as directed in the *Interim Order*. It was also mentioned in the aforesaid letters that in case no reply is received from the Noticees by February 29, 2016, it shall be presumed that the Noticees have not complied with the direction of SEBI vide the Interim and Confirmatory Order.

    (c) Noticee Nos. 1, 5, 9, 10, 11, 13, 14, 15, 19, 25, 29 and 32 had confirmed in their replies to SEBI that they have not deposited the money in any escrow account as directed in the Interim Order. It is further alleged that all the Noticees have failed to comply with the aforementioned direction of SEBI contained in the interim order dated November 05, 2013.

(d) It is further alleged that apart from Noticees mentioned in the previous paragraph, all the other Noticees have failed to submit their response to the SEBI letter dated February 22, 2016. In view of the same, prima facie, it appears that the Noticees have failed to comply with the directions issued by SEBI vide Interim Order and Confirmatory Order i.e. the specific direction mentioned at Para 8(a) above.

(e) In view of the observations made above, it is alleged that the Noticees have, *prima facie*, not deposited any funds in the escrow account within the stipulated time period as directed by SEBI vide Interim Order and Confirmatory Order and have thereby allegedly not complied with the directions issued by SEBI under the provisions of Sections 11(1), 11(4) and 11B of the SEBI Act. The alleged non-compliance on the part of the Noticees of the above direction of the SEBI, vide the Interim Order & Confirmatory Order, if proved, makes the Noticees liable for penalty under the provisions of Section 15HB of the SEBI Act.

10. In response to the SCNs, the Noticees (except Noticee no. 31) vide separate letters submitted their reply to the SCN. The submissions made by the Noticees, *inter alia,* were identical in its content. Briefly, the Noticees made the following submissions:-

*(i) Noticees have no such role in share allotment or trading in said company and it was malafide act of Mr. Mahesh C Shah ;*
*(ii) Noticees are not connected to the company at all and our documents have been misused by Mr. Mahesh C Shah;*
*(iii) Noticees had no role in any of the function and business of the Company,*
*(iv) Noticees* have not earned any profit out of their dealings.

*(v) The company has deposited a post-dated cheque (dated November 24, 2016) with SEBI for Rs. Six Crore and Eleven Thousand Five Hundred and Twelve only.*

11. Thereafter, in the interest of natural justice, the Noticees were granted an opportunity of personal hearing in the matter on August 24, 2018 at SEBI, Western Regional Office, Ahmedabad. Mr Bhrugesh Brahmabhatt (Advocate), appeared as the Authorised Representative ('AR') on behalf of Noticee nos. 1 to 4, 6 to 8, 12, 16, 18, 20 to 24, 26 to 28, 30, 32, 33 and Mr Vishal Acharya (Advocate) appeared as the AR on behalf of Noticee nos. 5, 9 to 11, 13 to 15, 19, 25, 29 on the stipulated date of hearing i.e on August 24, 2018 and mainly reiterated the submissions made by the Noticees vide their abovementioned letters. Subsequently, Noticees also made additional submissions in the matter vide their letters dated September 05, 2018.
12. I find that Noticee no. 17 i.e Shri Mahavirsingh N Chauhan had submitted his reply to the SCN but failed to appear for the personal hearing on the stipulated date. I note from the postal records that the letter dated August 06, 2018 granting opportunity of personal hearing to Noticee no. 17 was served on him, however, Noticee no. 17 failed to appear for the hearing on the stipulated date. I further observe that Noticee no 31 i.e Ms Manjulaben M Chunilal Shah not only failed to respond to the SCN but also failed to appear for the hearing fixed on the stipulated date i.e on August 24, 2018. In view of the above reasons, I am convinced that both Noticee nos. 17 & 31 were provided with ample opportunities to present their case and make their submissions in the matter. However, they have failed to appear for the hearing on the stipulated date. In this context, it is pertinent to place reliance on the Order dated February 11, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Sanjay Kumar Tayal and Ors vs SEBI (Appeal No 68 of 2013), wherein Hon'ble SAT had observed that *"............................... As rightly contended by Mr Rustomjee, the learned senior counsel for respondents, appellants have neither filed any reply to the 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 the charges leveled against them in the show cause notices ...................."*

Therefore, in view of the above observations, I am compelled to proceed further in the matter *ex-parte* against Noticee nos. 17 & 31 on the basis of facts/material on record.

**CONSIDERATION OF ISSUES AND FINDINGS**

13. I have carefully perused the facts and circumstances of the case, the submissions made by the Noticees, the material made available on record, and also the allegations levelled against the Noticees in the SCN. I have also carefully perused the observations/directions of the Whole Time Member, SEBI in the Interim Order dated November 05, 2013, Confirmatory Order dated May 07, 2015 and the Final Order dated July 27, 2018.

14. Vide Interim Order dated November 05, 2013, the following direction was issued to the Noticees:-

*"**the aforementioned entities are hereby ordered to keep in an escrow account, jointly and severally within 30 days of this order, an amount of Rs. 6,00,11,512/- that they have earned as ill-gotten profit during the period March 13, 2013 to October 18, 2013 and any other amount that they have realised as sale proceeds of the shares allotted in the preferential allotment by the company;***

15. I observe that the preferential allotment of the company was fraught with serious irregularities, which warranted SEBI to issue the aforementioned direction to the Noticees. The Noticees were duty bound to comply with the said direction by December 5, 2013. However, it is on record that they have failed to comply with the direction even as on July 27, 2018 i.e the date when WTM-SEBI had passed the Final Order in the said matter.

16. As regards the irregularities observed in the preferential allotment of the company, I note from the Interim Order dated November 5, 2013 and also from the findings of the Investigation Report that Noticee no. 32 (who was an

employee of the company) along with the active participation of Noticee no. 2 (the promoter of the company) and also with the support of Late Mr Maheshchandra Chunilal Shah, circulated the funds in the said preferential allotment back and forth between the Company and the 31 preferential allottees (including the Noticees) and thereafter, the amounts originally funded by Noticee no. 32 for the purpose of the purported preferential allotment were ultimately returned to him by the Company on March 19, 2012 and March 21, 2012 i.e immediately after the allotment of shares in the preferential allotment. Thus, in the process, I note that on account of the repeated circulation of the same money between different allottees in the preferential allotment, the receipt of allotment money towards the 3,00,00,000 equity shares had been shown in the books of the company merely by way of 'fictitious book entry'. Therefore, I observe from the material/records made available that the Company had fraudulently issued 3,00,00,000 new equity shares for a value of Rs 30,00,00,000/- in the names of the above mentioned 31 allottees (which includes the Noticees) without the receipt of any consideration towards the shares allotted in the said preferential allotment. Thus, the Noticees, by acting in concert, illegally devised a scheme of preferential allotment without any consideration, which resulted in them acquiring 80.59% shares of the company and the Noticees later on sold these shares in the market to reap illegal gains. I also observe from the records made available that the Managing Director of the company i.e Noticee no. 2 in the context of the present proceedings, by his own admission mentioned that the funds were returned to Noticee no. 32 by the Company after rotating the funds among the preferential allottees but had allowed the shares to subsist.

17. In this context, it is pertinent to mention the relevant observations made by WTM- SEBI in the interim order and final order passed against the Noticees in the matter of irregularities observed in the preferential allotment of the company and the subsequent trading of the shares of SMS Techsoft by these entities. Vide interim order dated November 05, 2013, the following observations were made:-

*“ In the facts and circumstances brought out during the inquiry, I, prima facie, find that SMS Tech had issued 3,00,00,000 new equity shares for value of Rs 30,00,00,000/- in the names of the above mentioned 31 allottees without receipt of any consideration for the shares allotted in the said purported preferential allotment. Thus, the connected entities, i.e. Shri Rajesh Ranka and 31 allottees, including the three promoters of the company, acting in concert, illegally acquired 80.59% shares in the company without paying any consideration for the allotted shares. I further note that while the amount of Rs 1,00,00,000/- received from Rajesh Ranka was routed through the joint account of Shri Maheshchandra Chunilal Shah and his wife Ms Manjulaben Shah had been repeatedly routed to the company through the respective bank accounts of the 21 allottees, in case of 10 other allottees, the said amount had not even come from their account rather it came from account of Manjulaben Shah. Further, SMS Techsoft had allotted 10,50,000 equity shares to Shri Maheshchandra Chunilal Shah against Rs 1,00,00,000/- received from Shri Rajesh Ranka in his joint account with his wife which was transferred to SMS Techsoft purportedly for the preferential allotment of 10,00,000 shares. These facts and circumstances indicate that Shri Rajesh Ranka acting hand-in-glove and in a concert with SMS Techsoft, its 3 promoters and 28 other allottees orchestrated a fraudulent, manipulative, and deceptive device, plan or artifice of creating the shares without payment of consideration to the company. I, therefore, prima facie, find that the preferential allotment of SMS Techsoft, apart from being in contravention of the provisions of Regulation 77(1) of the ICDR Regulations, is irregular, illegal and fraudulent”*

18. In the Final Order dated July 27, 2018, WTM- SEBI made the following observations:--

*“134. I also note that after the expiry of lock-in period, preferential allottees had sold the shares and exited a large portion of their position in the scrip of SMS Tech (details are mentioned at Table-9) and made a profit (including*

*notional profit) of Rs. 6.79 crores (except Nila R Shah). This profit is ill-gotten as the shares which were sold were obtained through fraudulent process. Thus, Noticees by playing their respective roles in this elaborate scheme, adopted fraudulent device and artifice to defraud the genuine shareholders of the company by falsely portraying the transactions as a genuine preferential allotment and offloading the shares allotted in the preferential allotment in the market thereby earning illegal profits. I find that the concerted trading by the connected entities under a premeditated plan or strategy not only erode the market integrity but also are detrimental to the interests of investors who might have been lured to invest in the scrip due to such manipulative and fraudulent trading in the scrip and price movement trend.*

*135. The aforesaid facts indicate that the acts, omissions and concealment of the Noticees were 'fraudulent' as defined in regulation 2(1)(c) of the PFUTP Regulations*

*136. The acts, omissions, misrepresentations, active concealments, false statements, deceptive behaviour, reckless representation etc. in respect of the preferential allotment without consideration compel the finding that the preferential allotment in this case was not a genuine preferential allotment rather it was irregular, illegal and fraudulent. Upon considering all facts and circumstances in totality, I find that such acts and omissions were with deliberate design of the Noticees as part of their manipulative and deceptive device, plan or artifice. Such acts of serious irregularities threaten the market integrity and orderly development of the market and call for regulatory intervention to protect the interest of investors. Such entities are not allowed to unjustly enrich themselves at the cost of innocent investors.*

*137. Considering the sequence of events and pattern of transactions in this case I find that Noticees playing their respective roles in this elaborate scheme, adopted fraudulent device and artifice to defraud the genuine* *shareholders of the company by falsely portraying the transactions as a genuine preferential allotment and offloading the shares allotted in the preferential allotment in the market thereby earning illegal profits i.e. preferential allottees have earned profit (including notional profit) to the tune of Rs. 6.79 crore.*

19. During the course of investigations by SEBI, I observe that the Noticees were advised to confirm their compliance with the aforementioned direction of SEBI issued through the Interim Order dated November 05, 2013. In this regard, I note that the Noticees have confirmed that they have not deposited the said amount in the designated escrow account. I further note that the company had contended that it had deposited a cheque dated November 24, 2016 for Rs. 6,00,11,512/- with SEBI in compliance with the above directions. However, the said post-dated cheque was not accepted by SEBI, and the Noticees were directed to deposit the said amount in an escrow account, strictly as per the directions/instructions contained in the Interim Order. From the above observations, it is amply clear that Noticees had no intention to deposit the amount of Rs 6,00,11,512/- in the separate escrow account in compliance with the Interim Order. The reasons cited by the Noticees that the financial position of the company was precarious, at present funds were not available with the company and therefore, a post-dated cheque for the said amount has been submitted etc are weak arguments and cannot be cited as valid reasons for not complying with the SEBI directions.
20. It is pertinently noted from the investigation report that SEBI had sent letters dated February 22, 2016 to the Noticees wherein they were advised to confirm by February 29, 2016 that they have deposited the above mentioned amount in the escrow account, in terms of the directions issued to them through the interim order. In response, the Noticees in their confirmation made to the concerned department of SEBI (i.e IVD) categorically stated that they have not deposited the funds in the escrow account, as directed in the interim order. In fact, as already brought out in the previous paragraphs of this order, the

Noticees have not complied with the directions issued to them through the Interim Order till the date of the Final Order i.e till July 27, 2018 and the same is also evident from the following observation made in the Final Order:-

*"All the Noticees (including legal representatives of Late Maheshchandra Shah as per applicable law) except Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar shall, jointly and severally, disgorge an amount of Rs. 6,78,85,716/- as ascertained in para 143 above along with simple interest calculated at the rate of 12% per annum from the date of end of investigation period i.e. November 05, 2013, till the date of payment."*

21. The sequence of events, pattern of transactions and the observations of WTM SEBI contained in the Interim & Final Orders, as mentioned above, clearly shows that Noticees have played a significant role in the manipulation of the preferential allotment of STL. The Noticees, by their active collusion, adopted a fraudulent device and artifice to defraud the genuine shareholders of the Company. I find that the funds towards the preferential allotment of the company was fraudulently circulated back and forth among the Noticees who were the persons/allottees of the preferential allotment and shares were allotted to the Noticees in the preferential allotment without any actual infusion of funds. Therefore, I am of the view that Noticees have not only carried out a fraud on the investors of the securities market with regard to their dealing pertaining to the preferential allotment of shares of STL but have also blatantly shown utter disregard towards complying with the directions of SEBI, which were issued as corrective measures for the benefit of the investors. Therefore I conclude that the non-compliance by the Noticees is not only an act of mere non-compliance with SEBI directions but also was a part of a well-planned strategy on the part of the Noticees to defraud the investors. In this regard, I note that the company vide its letter dated December 24, 2016 has mentioned that it was Late Mr Maheshchandra Chunilal Shah who had committed the

fraud and the Noticees were not aware of the fraudulent transactions that took place in their accounts. The Company vide its letter dated December 24, 2016 also stated that it would undertake the responsibility of the wrongdoings of Late Shri Maheshchandra Shah. This again is a weak argument on the part of the Noticees as the records and material made available clearly shows the direct dealings of Noticee no 1 in collusion with Noticee no 32 and other Noticees (who were the allottees in the purported preferential allotment) with fraudulent intent.

22. Therefore, from the foregoing, I am convinced that the Noticees have clearly violated the directions issued to them vide interim order dated November 05, 2013 and confirmatory order dated May 07, 2015, by not depositing an amount of Rs. 6,00,11,512/- in the escrow account within 30 days of the date of the said Interim Order. In view of the above, I conclude that Noticees have violated the statutory requirements of law.

23. In this context, the Hon'ble Supreme Court of India, in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006]} 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".*

24. In view of the above observations, I am convinced that it is a fit case to impose monetary penalty on the Noticees under the provisions of Section 15 HB of the SEBI Act, which reads as follows:

**Penalty for contravention where no separate penalty has been provided**.

*15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

25. In this regard, the provisions of Section 15J of the SEBI Act require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely;

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

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

*(c) the repetitive nature of the default.*

26. I note that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by investors as a result of the default committed by the Noticees. However, it is clear from the facts of the case that the Noticees have failed to comply with the directions of SEBI by failing to deposit the amount of. Rs. 6,00,11,512/- in the escrow account, as directed through the interim order dated November 05, 2013. I am of the view that the entities violating the directions issued by SEBI seriously compromise the regulatory framework and are detrimental to the interest of the investors in the securities market. The interest of the investors and the orderly development of the securities market requires that perpetrators of such activities should be suitably penalized. Such stark defiance displayed by the Noticees towards regulatory directions cannot be viewed lightly. The non-compliance of the Noticees with the SEBI directions have jeopardized the interests of the gullible investors. The imposition of commensurate penalty is the need of the hour for such willful defiance displayed by the Noticees towards the regulatory directions issued by SEBI.

**ORDER**

27. After taking into consideration the facts and circumstances of the case, material on record , the submissions of the Noticees, the seriousness and gravity of the irregularities committed by the Noticees in the preferential allotment of the company, I, in exercise of the powers conferred upon me under Section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby, impose a total penalty of Rs 50,00,000/- (Rupees Fifty lakhs only) on the Noticees under the provisions of Section 15HB of the SEBI Act for their failure to comply with the directions of SEBI, which were issued to them vide Interim Order dated November 05, 2013 and Confirmatory Order May 07, 2015 under the provisions of sections 11,11(4) and 11 B of the SEBI Act, 1992. The Noticees shall be jointly and severally liable to pay the said penalty.

28. The Noticees shall remit / pay the said amount of penalty within 45 days of the 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 e-payment facility into Bank Account , the details of which are given below-

| Account No. for remittance of penalties levied by Adjudication Officer | |
|---|---|
| Bank Name | State Bank of India |
| Branch | Bandra-Kurla Complex |
| RTGS Code | SBIN0004380 |
| Beneficiary Name | SEBI – Penalties Remittable To Government of India |
| Beneficiary A/c No | 31465271959 |

29. The Noticees shall forward the said Demand Draft or the details/ confirmation of penalty so paid through e-payment (in the format given in the table below) to "The Division Chief, Enforcement Department (**EFD DRA-II**), Securities and Exchange Board of India, SEBI Bhavan, Plot No C-4A,"G" Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051" .

| | |
|---|---|
| 1. Case Name: | |
| 2. Name of the Payee: | |
| 3. Date of payment: | |
| 4. Amount Paid: | |
| 5.Transaction No: | |
| 6. Bank Details in which payment is made: | |
| 7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details) | |

30. In terms of rule 6 of the Adjudication Proceedings, copies of this order are sent to the 33 Noticees and also to the Securities and Exchange Board of India.

**Place: Mumbai** **SURESH B MENON**

**Date: March 29, 2019** **ADJUDICATING OFFICER**