**0BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/22328-22334]**

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

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In respect of

1. **Mr. Vellatu Puthanveetil Ravindran Menon**
   **[PAN: AALPM7451J]**
2. **Mr. Sampath Kumar Krishnan**
   **[PAN: AKWPK4628C]**
3. **Mr. Shailesh Pednekar**
   **[PAN: AJQPP6086J]**
4. **Mr. Bapi Munshi**
   **[PAN: ADNPM5726D]**
5. **Ms Matangi Gowrishankar**
   **[PAN: AAGPG8973J]**
6. **Mr. Jayesh Shah**
   **[PAN: AAKPS1449K]**
7. **Mr. Milind Gandhi**
   **[PAN: ACCPG6840N]**

**In the matter of Cox and Kings Financial Service Limited**

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**FACTS OF THE CASE IN BRIEF**

1. Cox and Kings Financial Service Ltd (hereinafter referred to as '**CKFSL'** or '**the company'** or **or 'By Name'**) is a company having its shares listed on BSE Ltd. ('**BSE'**) and National Stock

Exchange of India Limited (‘**NSE’**) (hereinafter collectively referred to as “**stock exchanges**”) with effect from April 11, 2019. Securities and Exchange Board of India ("**SEBI**") received a complaint dated June 14, 2019 on SCORES against CKFSL, *inter-alia*, alleging insider trading and employment of bad accounting practices. Based on the complaint, SEBI conducted investigation in the matter of CKFSL during the period from April 01, 2018 to March 31, 2019 (hereinafter referred to as “**investigation period**”), to ascertain whether the published financial statements of the company were prepared in accordance with the applicable and notified accounting standards and whether there was any violation of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **‘SEBI Act’**) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘**PFUTP Regulations’**).

2. Pursuant to the aforementioned investigation, SEBI observed that CKFSL did not present a true and fair view of its financial results for the nine month period ending on December 31, 2018. Therefore, SEBI initiated adjudication proceedings against CKFSL and its directors namely Mr. Vellatu Puthanveetil Ravindran Menon (hereinafter referred to as “**Noticee 1**”), Mr. Sampath Kumar Krishnan (hereinafter referred to as “**Noticee 2**”), Mr. Shailesh Pednekar (hereinafter referred to as “**Noticee 3**”), Mr. Bapi Munshi (hereinafter referred to as “**Noticee 4**”), Ms Matangi Gowrishankar (hereinafter referred to as “**Noticee 5**”), Mr. Jayesh Shah (hereinafter referred to as **“Noticee 6**”) and its Chief Financial Officer, namely Mr. Milind Gandhi (hereinafter referred to as “**Noticee 7**”) (hereinafter collectively referred to as “**Noticees**”) under the provisions of Section 15HA of SEBI Act for the alleged violations of Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations by the aforementioned entities.

## APPOINTMENT OF ADJUDICATING OFFICER

3. On June 29, 2020, competent authority of SEBI appointed Ms. Sangeeta Rathod, General Manager, as Adjudicating Officer (‘**1st erstwhile AO’**) under Section 15-I (1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Adjudication Rules’**) to inquire into and adjudge the alleged violations by the Noticee under Section 15HA of the SEBI Act. Subsequently, on transfer of the 1st erstwhile AO to another department of SEBI, this case was transferred to Shri Prasanta Mahapatra, Chief General Manager, as Adjudicating Officer (‘**2nd erstwhile AO**’). Thereafter, vide a communication order dated December 04, 2020, the

case has been transferred to undersigned. It has been advised that except for the change of the Adjudicating Officer, the other terms and condition of the original orders (whereby the 2nd erstwhile AO was appointed) '*shall remain unchanged and shall be in full force and effect'*. It has also been advised that '*I shall proceed in accordance with the terms of reference made in the Original Orders read with this Order*.'

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

4. A show-cause notice dated July 12, 2021(hereinafter referred to as '**SCN**') was issued to CKFSL and Noticees under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against CKFSL and Noticees and penalty, if any, not be imposed upon them under the provisions of Section 15HA of SEBI Act for the violation of provisions of Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulations 4(1) and 4(2)(f) of the PFUTP Regulations alleged to have been committed by them.

5. The allegations levelled against Noticees in the SCN are summarised hereunder:

   a) During the investigation by SEBI ,complaint dated June 14, 2019 on SCORES against CKFSL, *inter-alia*, alleging insider trading and employment of bad accounting practices was sent to the Company vide email dated July 23, 2019 to provide its comments on the same. The Company, *inter-alia,* submitted the following in its reply dated July 26, 2019 :

   - *NCLT order for demerger of foreign exchange division from Cox and Kings Limited (CKL) into Cox & Kings Financial Service Limited (CKFSL) was received in August 2018. Prior to this, the forex business was a division of CKL. Hence, the existing business of CKFSL is by virtue of demerger of the forex business of CKL into CKFSL.*

   - *In FY19, the profitability of the company was impacted due to an increase in Working Capital requirements as a result of which the borrowings of the Company have increased from Rs 350 crores at Dec 18 to  Rs 400 crores at Mar 19. The increased borrowings have resulted in higher interest expenses.*

   - *With respect to allegations pertaining to debtors and sales, the Company submitted that as disclosed in the Notes to Accounts – "Revenue reflects profit or loss on purchase and sale of foreign exchange by the Company. Thus the revenue as reflected is the net revenue earned or margins realized and not the Gross turnover of such transactions whereas, the receivables are determined based on the gross turnover.*

b) From the audited financial results for FY 2018-19 filed by the Company on May 29, 2019, the figures of quarterly profit before tax for 4 quarters of FY 2018-19 were observed as under:

| **Quarter ending** | **Profit Before tax (` in crores)** |
|---|---|
| June 30, 2018 | 9.14 |
| September 30, 2018 | 2.10 |
| December 31, 2018 | 3.43 |
| March 31, 2019 | (9.70) |
| **Total** | **4.97** |

c) As noted from above, the Company showed profit before tax of Rs 14.67 crores for 9 months ending on December 31, 2018 or an average profit before tax of Rs. 4.89 crores per quarter. However, the loss for the quarter ended March 31, 2019 was shown at Rs. 9.70 crores dragging the profit before tax for the entire FY 2018-19 to Rs. 4.97 crores. Upon further examination of the financial statements, SEBI observed that the reason for loss in Q4FY19 was substantial increase in finance cost. The quarter-wise details of the finance cost for FY 2018-19 are as follows:

| **Quarter ending** | **Finance Cost (` in crores)** |
|---|---|
| June 30, 2018 (Q1 FY 19) | 7.44 |
| September 30, 2018 (Q2 FY 19) | 10.23 |
| December 31, 2018 (Q3 FY 19) | 8.65 |
| March 31, 2019 (Q4 FY 19) | 18.02 |
| **Total** | **44.34** |

d) Vide e-mail dated August 23, 2019, explanation was sought from the company for unusual difference in finance cost quarter-on-quarter specifically between quarter ending December 31, 2018 and March 31, 2019. In response to the same, the company vide its email dated August 30, 2019 submitted the following:

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- *The finance cost of Rs 8.65 crores in Q3 FY19 included interest charged for 19 days of September, October and November 2018, i.e., ~2.5 months, amounting to Rs. 8.25 crores and Bank charges of Rs. 0.40 crores. The average borrowing during this period was Rs. 350 crores and the average interest rate was 10.75%.*
- *The interest expense of Rs.18.02 crores in Q4 FY19 included interest charged for the months of December 2018, January, February and March 2019, i.e. 4 months, amounting to Rs.16.72cr, Bank Charges of Rs. 0.79 crores and Interest on Income Tax of Rs. 0.51cr. The average borrowing during this period was Rs.355 crores and the average interest rate was ~14.38%.*
- *During demerger related activities, the Company had inadvertently missed out on correctly recording 19 days of September Interest in Q2 FY19 and interest for December 2018 in Q3 2019. This matter was identified in Q4 FY19 and accordingly the interest for March 2019 was recorded in Q4 FY19 itself. Hence, an additional interest cost of Rs. 3.81 crores pertaining to Q3 FY 19 was booked in Q4 FY19, resulting in higher finance costs.*
- *The above point coupled with the rising borrowing and interest costs is the reason for the additional interest expense of Rs. 9.37 crores (`Rs.18.02 crores - Rs. 8.65 crores) for Q4 FY19.*
- *The following is the details of finance cost as per books and actual quarterly finance cost:*

| ***Quarter*** | ***Finance cost as per books (` in crores)*** | ***Actual finance cost (` in crores)*** | ***Difference (` in crores)*** |
|---|---|---|---|
| *June 2018* | *7.44* | *7.44* | *-* |
| *September 2018* | *10.23* | *12.18* | *(1.95)* |
| *December 2018* | *8.65* | *10.50* | *(1.85)* |
| *March 2019* | *18.02* | *14.21* | *3.81* |

| ***Quarter*** | ***Finance cost as per books (` in crores)*** | ***Actual finance cost (` in crores)*** | ***Difference (` in crores)*** |
|---|---|---|---|
| ***Total*** | ***44.34*** | ***44.33*** | ***0.01*** |

e) Vide email dated October 17, 2019, the Company was advised to provide the explanation for higher actual finance cost of Rs. 14.21 crores shown in Q4 FY19 as compared to Rs. 10.50 crores shown in Q3 FY19. In response, the Company vide email dated October 25, 2019 provided the detailed workings for the incremental finance cost in Q4 FY 2019 and stated that the finance cost was higher due to increase in interest rate by 2.25% p.a. and charging of penal interest @ 2% p.a. for incomplete documentation. The Company also submitted copies of the bank statements highlighting the instances of charging of interest by the lender i.e. Yes Bank.

f) Thus, it was observed that the Company recorded finance cost incorrectly in quarters ending September 30, 2018 and December 31, 2018 which was subsequently rectified in quarter ending March 31, 2019. From the Information Memorandum dated March 13, 2019 and Newspaper Advertisement dated March 29, 2019, SEBI observed that the Company had disclosed profit before tax of Rs.14.67 crores for nine months' period ending December 31, 2018 which should have been Rs. 10.86 crores based on actual finance cost of Rs. 30.12 crores rather than incorrectly recorded finance cost of Rs. 26.32 crores. Therefore, from the Information Memorandum dated March 13, 2019 and newspaper advertisement dated March 29, 2019 published by the Company before its listing, it was observed that the Company overstated its profit before tax by Rs.3.81 crores for the nine months' period ending December 31, 2018.

g) In its Information Memorandum dated March 13, 2019, the Company has mentioned that it maintains accounts on accrual basis and borrowing costs are expensed in the period in which they are incurred. However, as observed by SEBI, the Company recorded interest cost incorrectly for quarters ended September 30, 2018 and December 31, 2018 and it did not account the interest cost for the month of December 2018 in its results for nine-month period ending on December 31, 2018. In view of the same, it was alleged that that the accounting treatment of interest i.e. borrowing cost adopted by the Company was not in accordance with the applicable and notified

Accounting Standards as it had overstated its profit before tax by Rs. 3.81 crores for the nine-month period ending on December 31, 2018 which was published by it in the Information Memorandum dated March 13, 2019 and newspaper advertisement dated March 29, 2019. Resultantly, the financial statements of the Company for the nine-month period ending on December 31, 2018, do not present a true and fair view of its affairs.

h) It was further alleged that all the signatories to the Information Memorandum dated March 13, 2019 i.e. Mr. Vellatu Puthanveetil Ravindran Menon, Director, Mr. Sampath Kumar Krishnan, Director, Mr. Shailesh Pednekar, Director, Mr. Bapi Munshi, Independent Director, Ms Matangi Gowrishankar, Independent Director, Mr. Jayesh Shah, Independent Director and Mr. Milind Gandhi, Chief Financial Officer had failed to discharge their duties in ensuring that the published financial statements of the Company were in accordance with the applicable and notified Accounting Standards and that the financial statements present a true and fair view of the company's affairs. Therefore, in view of the overall observations/allegations recorded in the preceding paragraphs, it was alleged that CKFSL, its directors and CFO have violated the provisions of provisions of Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations.

6. The details of delivery of SCN to Noticees and reply received are as given hereunder:

<table>
<tr><th>Noticee No.</th><th>Name of Noticee</th><th>Mode of Service</th><th>Status of Delivery</th><th>Date of reply</th><th>Whether Inspection sought and provided (Y/N), Date of Inspection</th></tr>
<tr><td rowspan="2">1</td><td rowspan="2">Mr. Vellatu Puthanveetil Ravindran Menon</td><td>Speed Post Acknowledgement due (SPAD)</td><td>Delivered</td><td rowspan="2">Common reply filed by Noticees 1 and 2 dated September 09, 2021</td><td rowspan="2">No</td></tr>
<tr><td>Digitally signed email dated July 13, 2022</td><td>Delivered</td></tr>
<tr><td>2</td><td></td><td>SPAD</td><td>Delivered</td><td></td><td>No</td></tr>
</table>

| Noticee No. | Name of Noticee | Mode of Service | Status of Delivery | Date of reply | Whether Inspection sought and provided (Y/N), Date of Inspection |
|---|---|---|---|---|---|
| | Mr. Sampath Kumar Krishnan | Digitally signed email dated July 13, 2022 | Delivered | Common reply filed by Noticees 1 and 2 dated September 09, 2021 | |
| 3 | Mr. Shailesh Pednekar | SPAD | Delivered | August 02,2021 | No |
| | | Digitally signed email dated July 13, 2022 | Delivered | | |
| 4 | Mr. Bapi Munshi | SPAD | Delivered | August 04, 2021, December 12, 2022. | No |
| 5 | Ms Matangi Gowrishankar | SPAD | Delivered | April 23, 2022 and July 26, 2021 | No |
| | | Digitally signed email dated July 13, 2022 | Delivered | | |
| 6 | Mr. Jayesh Shah | SPAD | Delivered | August 03, 2022 | Yes; December 15, 2021 |
| | | Digitally signed email dated July 13, 2022 | Delivered | | |
| 7 | Mr. Milind Gandhi | SPAD | Not Delivered | February 17, 2022; March 12, 2022. | Yes; January 25, 2022 |
| | | Digitally signed email dated July 13, 2022 | Delivered | | |

7. Thereafter, in the interest of natural justice, an opportunity of personal hearing was granted to Noticees. The details regarding the aforementioned opportunity of personal hearing granted to Noticees are as given hereunder:

<table>
<tr><th>Noticee No.</th><th>Name of Noticee</th><th>Hearing Notice Dated</th><th>Mode of Service</th><th>Status of Delivery</th><th>Date of hearing</th><th>Hearing attended or not</th></tr>
<tr><td rowspan="2">1</td><td rowspan="2">Vellatu Puthanveetil Ravindran Menon</td><td rowspan="2">February 15, 2022</td><td>SPAD</td><td>Delivered</td><td rowspan="2">March 07, 2022</td><td rowspan="4">Yes, ARs of Noticees 1 and 2, Mr. Anshul Pandey, Ms. Priyanka Rajkumar Zaveri, Akash G Menon and Anshu Bhanot appeared on of aforementioned Noticees and reiterated contents of Noticees’ earlier reply dated September 09, 2021.</td></tr>
<tr><td>Digitally signed email dated February 16, 2022</td><td>Delivered</td></tr>
<tr><td rowspan="2">2</td><td rowspan="2">Mr. Sampath Kumar Krishnan</td><td rowspan="2">February 15, 2022</td><td>SPAD</td><td>Delivered</td><td rowspan="2">March 07, 2022</td></tr>
<tr><td>Digitally signed email dated February 16, 2022</td><td>Delivered</td></tr>
<tr><td rowspan="2">3</td><td rowspan="2">Mr. Shailesh Pednekar</td><td rowspan="2">February 15, 2022</td><td>SPAD</td><td>Delivered</td><td rowspan="2">March 07, 2022</td><td rowspan="2">Yes; During the hearing, Notice 3 reiterated contents of his earlier reply dated August 02, 2021.</td></tr>
<tr><td>Digitally signed email dated February 16, 2022</td><td>Delivered</td></tr>
<tr><td rowspan="2">4</td><td rowspan="2">Mr. Bapi Munshi</td><td rowspan="2">February 15, 2022</td><td>SPAD</td><td>Delivered</td><td rowspan="2">March 07, 2022</td><td rowspan="2">Yes; Noticee 4 and his AR reiterated contents of his earlier</td></tr>
<tr><td>Digitally signed</td><td>Delivered</td></tr>
</table>

| Noticee No. | Name of Noticee | Hearing Notice Dated | Mode of Service | Status of Delivery | Date of hearing | Hearing attended or not |
|---|---|---|---|---|---|---|
| | | | email dated February 16, 2022 | | | reply dated August 04, 2021. |
| 5 | Ms Matangi Gowrishankar | February 15, 2022 | SPAD | Delivered | March 07, 2022 | Hearing adjourned at the request of AR of Noticee made vide email dated March 05, 2022. |
| | | | Digitally signed email dated February 16, 2022 | Delivered | | |
| | | April 04, 2022 | SPAD | Delivered | April 22, 2022 | AR of Noticee 5, appeared on behalf of Noticee 5 and reiterated contents of Noticee's earlier reply dated July 26,2021. |
| | | | Digitally signed email dated April 05, 2022 | Delivered | | |
| 6 | Mr. Jayesh Shah | August 19, 2022 September 05, 2022 | SPAD | Delivered | September 05,2022 | No. Hearing on adjourned request of Noticee 6. |
| | | | Digitally signed email dated August 19, 2022 | Delivered | | |
| | | | Email dated | Delivered | ptember 12, 2022 | Yes; Noticee 6, reiterated contents of |

| Noticee No. | Name of Noticee | Hearing Notice Dated | Mode of Service | Status of Delivery | Date of hearing | Hearing attended or not |
|---|---|---|---|---|---|---|
| | | | September 05, 2022 | | | Noticee 6's earlier reply dated August 03, 2022. |
| 7 | Mr. Milind Gandhi | February 15, 2022 | SPAD | Delivered | March 07, 2022 | Yes. During the hearing, ARs of Noticee 7 namely Kunal Katariya, Pulkit Sukhramani and Vidhi Jhawar, reiterated contents of Noticee 7's earlier reply dated February 17, 2022. Further, AR of Noticee requested time till March 14, 2022 for making additional submissions in the matter which was acceded to by the undersigned. |
| | | | Digitally signed email dated February 16, 2022 | Delivered | | |

8. Since six months have elapsed since the date of hearing of Noticees 1,2,3,4,5 and 7, an opportunity of making additional written submissions in the matter were also granted to the Noticees vide emails dated December 6, 2022 and December 12, 2022. I note that apart from Noticee 4, who made additional written submissions vide email dated December 12, 2022, the rest of Noticees did not make any new submissions in the matter.

**CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS**

9. I have carefully perused the charges levelled against Noticees, replies/submissions filed by Noticees and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

   **Issue I:** Whether Noticees have violated Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations?

   **Issue II:** Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act?
   **Issue III:** If the answer to issue no. (ii) is in affirmative, then what should be the quantum of monetary penalty?

10. At this juncture, I find it pertinent to examine the relevant provisions of the PFUTP Regulations and the SEBI Act which are reproduced hereunder:

    ***SEBI Act***

    *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;.*

    *(d) …..*

    ***PFUTP Regulations***

    *3. Prohibition of certain dealings in securities*

    *No person shall directly or indirectly—*

    *(a) …*

*(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 manipulative, fraudulent or an unfair trade practice in securities markets.*

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

*(a) ….*

*(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*

*(g) ….*

**Issue I : Whether Noticees have violated Section 12A(a),(b),(c) of the SEBI Act read with Regulations 3 (b), (c), (d), 4(1) and 4(2)(f) of the PFUTP Regulations**?

11. It has been alleged in the SCN that the accounting treatment of interest adopted by CKFSL was not in accordance with Accounting standards as it had overstated its profit before tax by Rs. 3.81 crores for the nine-month period ending on December 31, 2018 which was published by it in the Information Memorandum dated March 13, 2019 and newspaper advertisement dated March 29, 2019 and accordingly the financials statements of CKFSL for the nine month period ending on December 31, 2018 did not present a true and fair view of its affairs and therefore, it has been alleged that CKFSL and its directors and CFO have violated the

provisions of provisions of Section 12A(a),(b),(c) of SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations. In this regard, vide Adjudication Order dated December 07, 2022 passed by the undersigned with respect to CKFSL, it has been concluded that CKFSL had made misrepresentations in financial statements and thereby violated aforementioned provisions of SEBI Act and PFUTP Regulations. In the aforementioned Adjudication Order, it was established that CKFSL had recorded finance cost incorrectly in quarters ending September 30, 2018 and December 31, 2018 and the same was subsequently rectified in quarter ending March 31, 2019. In the aforementioned Adjudication Order, it was also held that due to such incorrect recording of the interest cost in the quarters ending September 30, 2018 and December 31, 2018, the Company had disclosed in Information Memorandum dated March 13, 2019 and Newspaper Advertisement dated March 29, 2019, the profit before tax as Rs 14.67 crores for nine months' period ending December 31, 2018 which should have been Rs 10.86 crores based on actual finance cost of Rs. 30.12 crores rather than incorrectly recorded finance cost of Rs 26.32 crores. Thus, it was held that CKFSL had overstated its profit before tax by Rs. 3.81 crores for the nine months' period ending December 31, 2018.

12. The relevant extracts of Adjudication Order dated December 07, 2022 that established violations of provisions Section 12A(a),(b),(c) of SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations by CKFSL are reproduced hereunder:

“ *17. I observe from the audited financial results for financial year (FY) 2018-19, as placed on record that the figures of quarterly profit before tax for 4 quarters of 2018-19 were reported by Noticee as under:*

| ***Quarter ending*** | ***Profit Before tax (Rs in crores)*** |
|---|---:|
| *June 30, 2018* | *9.14* |
| *September 30, 2018* | *2.10* |
| *December 31, 2018* | *3.43* |
| *March 31, 2019* | *(9.70)* |
| ***Total*** | ***4.97*** |

18. *The above table shows that Noticee (CKFSL) reported profit before tax of Rs.14.67 crores for nine months ending on December 31, 2018 or an average profit before tax of Rs. 4.89 crores per quarter till December 2018. However, I find that Noticee reported loss of 9.70 crores for the quarter ending on March 31, 2019, dragging the profit before tax for the entire FY 2018-19 to Rs. 4.97 crores.*

*…………………………………………………*

20. *Upon perusal of Noticee's email dated August 30, 2019, in reply to SEBI's query during investigation, I observe that Noticee had stated that during the demerger related activity, Noticee had inadvertently missed out on correctly recording 19 days of September Interest in Q2 FY19 and interest for December 2018 in Q3 2019 and that this matter was identified in Q4 FY19 and accordingly, the interest for March 2019 was recorded in Q4 FY19 itself. Hence, as per the Noticee's reply, an additional interest cost of Rs 3.81 crores pertaining to Q3 FY 19 was booked in Q4 FY19, resulting in higher finance costs.*

21. *I note that in its aforementioned email, Noticee further stated that the above point coupled with the rising borrowing and interest costs was the reason for the additional interest expense of Rs 9.37 crores (Rs 18.02 crores - Rs 8.65 crores) for Q4 FY19.*

*……………………………………………………………….*

23. *From the foregoing, I observe that Noticee incorrectly reported the figures for finance costs as well as profit before tax for the quarters ending on September 30, 2018 and December 31, 2018, which were subsequently rectified in the 4th quarter ending on March 31, 2019. I also find that Noticee had admitted to the same during the course of investigation, stating it to be an inadvertent error.*

………………………………

25. It *is stated in the SCN that Noticee had issued an Information Memorandum dated March 13, 2019 (**IM**) and Newspaper Advertisement dated March 29, 2019 (**Newspaper Advertisement**). From perusal of the extract of the Information Memorandum dated March 13, 2019 and Newspaper Advertisement dated March 29, 2019, as placed on record, I find that Noticee had disclosed the profit before tax for the nine months' period ending on December 31, 2018 as Rs 14.67 crores which should have been Rs 10.86 crores based on actual finance cost as determined above. Therefore, it is clear that*

*Noticee overstated its profit before tax by Rs 3.81 crores for the nine months' period ending on December 31, 2018 ……….and …the accounting treatment of interest i.e. borrowing cost adopted by Noticee was not in accordance with the applicable and notified Accounting Standards as it had overstated its profit before tax by Rs. 3.81 crores for the nine-month period ending on December 31, 2018 and therefore, did not present a true and fair view of its affairs…...*

*……………………………...*

29. *……………….Noticee had stated investigation that during the demerger related activity, Noticee had inadvertently missed out on correctly recording 19 days of September Interest in Q2 FY19 and interest for December 2018 in Q3 2019 and that this matter was identified in Q4 FY19 and accordingly the interest for March 2019 was recorded in Q4 FY19 itself. In this respect, I find that the IM and the Newspaper Advertisement containing the inflated profit figures for the nine month period ending on December 31, 2018 were issued in the Q4 FY 19 itself. Significantly, the Newspaper Advertisement was issued on the last working day of Q4 FY 19, by when, as per Noticee's own admission, they were definitely aware of the incorrect profit figures in the nine month period prior to that quarter. Despite knowing the aforementioned inflated and incorrect profit figures, Noticee still proceeded to issue these public announcements without rectifying the financials. On the contrary, Noticee issued these announcements without even a whisper of such incongruence in profit figures being reported on those announcements.*

*……………………………………………………………………………….*

34. *I note that shares of Noticee got listed on stock exchanges on April 11, 2019. Placing reliance on the aforesaid judgements of Hon'ble Supreme Court of India, I find that Noticee's aforesaid manipulative act of misstating its financials just before the date of listing, satisfy the ingredients of fraud as per SEBI Act and PFUTP Regulations since such misstatements in financials have the power to wrongfully induce gullible investors in trading in the scrip of Noticee. In light of the above, I find that allegation in SCN that Noticee has violated Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations stands established."*

13. The present adjudication proceedings is limited to adjudging the liability of Noticees for the aforementioned acts of CKFSL. It has been alleged in the SCN that Noticees, being signatories to IM, have failed to discharge their duties in ensuring that the published financial statements of the Company were in accordance with the applicable and notified Accounting

Standards and that the financial statements present a true and fair view of the company's affairs and thereby violated the provisions of Section 12A(a),(b),(c) of the SEBI Act read with Regulations 3 (b), (c), (d), 4(1) and 4(2)(f) of the PFUTP Regulations.

14. I note that IM as made available on website of CKFSL and stock exchanges is a public document filed by CKFSL with stock exchanges for listing of its 7,28,54,454 equity shares of ₹10 each. I also note from the perusal of IM that no equity shares were proposed to be sold or offered pursuant to IM. I also note from replies of Noticees 4 and 6 that IM was placed before and approved by the Board of Directors in the board meeting conducted on March 13, 2019. On perusal of the IM, I note that it contained audited financial statements of CKFSL as on December 31, 2018 which includes profit and loss statement for the period ended December 31, 2018. I further note that the newspaper advertisement dated March 29, 2019 published by CKFSL contained balance sheet of CKFSL as on December 31, 2018, profit and loss statement for the period ended December 31, 2018 and Cash flow statements for the period ended December 31, 2018.

15. At this juncture, I find it pertinent to refer to Section 129(1) and Section 129(7) of Companies Act, 2013 and same is reproduced hereunder:

*" **129. Financial statement.**— (1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:*

*Provided that the items contained in such financial statements shall be in accordance with the accounting standards:*

*Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company: ……………………………………..*

*…………………………………………………………………………………………………..*

*(7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence*

*of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.*

*Explanation.—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial 82 statement, giving information required to be given and allowed to be given in the form of such notes under this Act.*

16. Thus, Section 129 of Companies Act, 2013 mandates that financial statements of a company shall give a true and fair view of the state and should be in compliance with the accounting standards notified under section 133. I also note that as per Section 129 (7) of Companies Act, 2013, liability for contravention of provisions of the aforementioned section lies on the managing director, the whole-time director in charge of finance, the Chief Financial Officer **(CFO)** or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors of the company.

17. I note that Noticee 7 and Noticee 3 were the Chief Financial Officers of CKFSL during the investigation period. In this respect, I note from the Annual Report of CKFSL for FY 2018-19 and replies furnished that Noticee 3 was CFO of CKFSL till his resignation on January 23, 2019 but continued to be the executive director of CKFSL even after his resignation and Noticee 7 was appointed as CFO w.e.f January 24, 2019. I note that Noticees 7 and 3, being CFOs of CKFSL, were involved in the day to day affairs of CKFSL and were also responsible for maintaining accounts of CKFSL during their respective period of employment. I note that Noticee 3 was the CFO of CKFSL at the time of finalisation of financial results for the quarters ending September 30, 2018 and December 31, 2018. I note that Noticee 7 was the CFO of CKFSL at the time when IM and newspaper advertisement were published.

18. As established in the Adjudication Order dated December 07, 2022, CKFSL had stated in its reply to SEBI dated August 30, 2019 during the investigation that it had inadvertently missed out on correctly recording 19 days of September Interest in Q2 FY19 and interest for December 2018 in Q3 2019 during the demerger related activity and that this matter was identified in Q4 FY19 and accordingly the interest for March 2019 was recorded in Q4 FY19 itself. Further, it has been established in the aforesaid Adjudication Order that the IM and the Newspaper Advertisement containing the inflated profit figures for the nine month period

ending on December 31, 2018 were issued in the Q4 FY 19 itself. Significantly, the Newspaper Advertisement was issued on the last working day of Q4 FY 19, by when, as per CKFSL's own admission, they were definitely aware of the incorrect profit figures in the nine month period prior to that quarter. Despite knowing the aforementioned inflated and incorrect profit figures, CKFSL still proceeded to issue these public announcements by way of the IM and Newspaper Advertisement without rectifying the financials.

19. In light of the above, I am of the view that since Noticee 7 was the CFO of CKFSL during the Q4 FY19, when the IM and Newspaper Advertisement were published, he was aware of the misrepresentations in the aforesaid public documents released by CKFSL. Further, I note that Noticee 3, even after his resignation as CFO of CKFSL remained as executive director of CKFSL. From a perusal of two emails dated March 08, 2019 as enclosed by Noticee 3 along with his reply to the SCN, I note that these emails sent from one Ms. Kanchan Agarwal, an employee of CKFSL, to Noticees 3 and 7 contained financials and audit report of CKFSL for December 2018. Considering the same, I am inclined to the view that Noticee 3 was also involved in the financials of CKFSL in Q4 FY 19 and was therefore aware of the misrepresentations in IM and Newspaper Advertisement. In light of the above observations and having regard to Section 129 of Companies Act, 2013, I hold Noticees 3 and 7 to be responsible for misrepresentations in financials for nine month period ending on December 31, 2018 as published in IM and Newspaper Advertisement, i.e., for failing to represent a true and fair view of the financials of CKFSL.

20. Section 12A(a), (b), (c) of the SEBI Act deals with fraud related to securities market and the provisions of Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) of PFUTP Regulations, are also related to securities market fraud/manipulation/ unfair trade practices. Section 12A (a),(b)&(c) of the SEBI Act may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities. I note that Regulation 4(1) of PFUTP Regulations at the relevant time, dealt with fraudulent and unfair trade practices relating to securities while Regulation 4(2) of PFUTP Regulations is nothing but an enumeration of specific instances of fraudulent and unfair trade practices relating to securities. I note that Regulation 4(2)(f) of PFUTP Regulations considers publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to

securities, including financial results, financial statements which is not true, as deemed to be a manipulative, fraudulent or unfair trade practice only when it is done “knowingly”.

21. The common thread through these provisions is that the ingredients of fraud/ manipulation/ unfair trade practices must be satisfied. In this regard, I find it pertinent to note that fraud has been defined in Regulation 2(1)(c) of PFUTP Regulations, which is reproduced hereunder: *“fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*

    (*1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*

    *(2) a suggestion as to a fact which is not true by one who does not believe it to be true;*

    *(3) an active concealment of a fact by a person having knowledge or belief of the fact;*

    *(4) a promise made without any intention of performing it;*

    *(5) a representation made in a reckless and careless manner whether it be true or false;*

    *(6) any such act or omission as any other law specifically declares to be fraudulent,*

    *(7) deceptive behaviour by a person depriving another of informed consent or full participation,*

    *(8) a false statement made without reasonable ground for believing it to be true.*

    *(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price. And “fraudulent” shall be construed accordingly;*

22. In light of the aforesaid observations, it was held in the Adjudication Order dated December 07, 2022 that misrepresentations in financials of CKFSL for nine month period ending on December 31, 2018 made by CKFSL through the IM and the Newspaper Advertisement were done while in the knowledge that such reporting of financial information was not true and therefore was fraudulent. Therefore, I am of the view that Noticee 3 and Noticee 7, being involved in the financials of CKFSL in their respective roles were responsible for causing CKFSL to knowingly publish such incorrect financial statements in the public domain which amounted to violation of provisions of Section 12A(a),(b),(c) of the SEBI Act read with Regulations 3 (b), (c), (d), 4(1) and 4(2)(f) of the PFUTP Regulations. In light of the above, I

find that Noticees 3 and 7 have violated Section 12A(a),(b),(c) of the SEBI Act read with Regulations 3 (b), (c), (d), 4(1) and 4(2)(f) of the PFUTP Regulations.

23. With regard to the allegations in SCN, I note that Noticee 3 has contended that Noticee 7 was appointed as CFO in the month of Nov 2018 and resumed official service from January 24, 2019. However, no evidence has been brought on record by Noticee 3 to substantiate his aforementioned claim about appointment of Noticee 7 as CFO. Therefore, I am unable to accept the aforementioned contention of Noticee 3. Further, Noticee 3 has contended that the whole process of finalisation of books of accounts were done by Ms. Kanchan Agarwal and overseen by CFO, Mr. Milind Gandhi i.e. Noticee 7. He has stated that he was marked by Ms. Kanchan Agarwal on emails of financials just for formality and was not made part of accounts finalization discussion between CFO, CEO and the aforementioned Ms. Kanchan Agarwal. Considering the fact that he was the CFO of CKFSL during the nine month period ending on December 31, 2018 as well as the executive director of CKFSL, I am of the view that the aforementioned emails cannot be said to have sent to him as mere formality as claimed by Noticee 3. Therefore, I find that Noticee 3 in this regard cannot extricate himself from the responsibilities cast on him. Thus, I find that the aforementioned contention of Noticee 3 lacks merit.

24. Noticee 3 has also contended that he was not called for the Board meeting and never attended any board meeting when the accounts were presented for board approval nor was given access to such Board approved records subsequently. With regard to the aforementioned contention of Noticee 3, I note from the Annual Report of CKFSL for FY 2018-19 as available in the website of BSE that CKFSL had conducted 16 meetings in the FY 2018-19 and Noticee 3 had attended all the board meetings in the FY 2018-19. Assuming the aforementioned board meetings attendance of Noticee 3 to be wrongfully reported by CKFSL, Noticee 3 has not shown any evidence of having disputed such wrongful depiction of board meetings through any meaningful legal recourse. Therefore, I am not inclined to accept the aforesaid contention. Noticee 3 in his reply has also submitted that the accounts were finalised in March 2019 but were signed backdated in February 2019. With respect to the aforementioned contention of Noticee 3, I note that no evidence has been brought on record by Noticee 3 to substantiate his aforementioned contention. In absence of any evidence to substantiate his contentions, I am not inclined to accept the aforementioned contentions.

25. With regard to allegations in the SCN, I note that Noticee 7 in his submissions has contended that statements in respect of the financials of CKFSL as recorded in the IM have been derived from the audited financial statements of CKFSL as on March 31, 2018 and he was appointed as the CFO of CKFSL with effect from January 24, 2019. Further, Noticee 7 has contended that he was not involved in any of the Cox & Kings group companies in any capacity prior to his appointment as CFO of the company. Noticee 7 has further contended that accounts and financial statements of CKFSL were audited and adopted on October 30, 2018 for the period ended September 30, 2018 and on January 21, 2019 for the 9 month ended December 31, 2018 and therefore, the accounts and statements for the quarter ending September 30, 2018 and for the 9 month period ended December 31, 2018 were finalised and audited prior to his appointment as CFO of the company. Noticee 7 has contended that no liability can be imposed upon him in respect of acts of the company which have been committed without his knowledge or involvement that too, prior to his appointment as CFO of the company.

26. With regard to the aforesaid contention of Noticee 7, as already established, CKFSL in its own submissions had admitted that it came to know about the incorrect reporting of profit before tax for the two quarters ending on September 30, 2018 and December 31, 2018 in Q4 FY19. It is also an admitted fact that Noticee 7 was the CFO when CKFSL detected the error in the financials but nevertheless proceeded to publish the incorrect financials. Since, Noticee 7 was CFO of CKSL during the said period, he cannot escape his liability for the misstatement in the financials.

27. Noticee 7 has contended that no adverse inference can be drawn against him as a signatory to the IM, when the information recorded in the IM was categorically stated to have been derived from audited financial statements of the company, the veracity of which could not have been questioned at the relevant point in time for want of any reasons to question the same. With respect to the aforementioned contention of Noticee 7, I note that Noticee 7, being CFO of CKFSL and being involved in the day to day financial affairs of CKFSL cannot escape his liability by stating that he had only relied upon the audited the financial statements. Further, as already established in the preceding paragraphs, Noticee 7 was responsible for the act of CKFSL in knowingly publishing incorrect financial statements in the public domain. Therefore, I am not able to accept the aforementioned contention of Noticee 7.

28. I note from material available on record that Noticees 1 and 2 were executive directors of CKFSL during the investigation period. I note from replies of Noticees 4, 5 and 6 that Noticee 4 was an independent director of CKFSL from November 01, 2017 to July 10, 2019, Noticee 5 was independent director of CKFSL from August 24, 2018 to June 12, 2019 and Noticee 6 was an independent director of CKFSL from December 24, 2018 (Noticee 6 in his reply has stated that he had received his appointment as director only around February 15, 2019) till August 22, 2019.

29. From the perusal of the replies filed by Noticees 1, 2, 4, 5 and 6, I find that they have, *inter alia*, denied that they have signed the IM and have denied attending any board meeting or having received notice of board meetings conducted for approval of financial results pertaining to 9 month period ending on December 2018. Noticees 1 and 2 have contended that even though they were appointed as directors on the board of CKFSL, the aforementioned Noticees were concerned only with the business related aspects of CKFSL. I also note that the said Noticees have denied their involvement in finalisation/approval of financial results for the 9 month period ended December, 2018.

30. I find that Noticees 4, 5 and 6 in their respective replies have also contended that they were unaware of any misstatements in the financials of CKFSL and being independent directors, they could be held liable only for acts of omission or contravention which occurred with their knowledge, attributable through board process, and with their consent or connivance or when they had not acted diligently. Noticees 4 and 5 have further contended that they had not attended the Audit Committee meeting held on January 21, 2019 which is supposed to have approved the financials for 9 month period ending on December 31, 2018 and Noticee 4 has stated that he had filed complaint with CKFSL for showing his attendance in Audit Committee meeting held in January, 2019. Noticee 5, in support of her contentions regarding liability of independent directors, has placed reliance on decision of Hon’ble Supreme Court in Chintalapati Srinivas Raju v. SEBI (2018) 7 SCC 443, decision of Learned Whole Time Member (WTM), SEBI in the matter of Resurgere Minerals and Mines Limited, order dated September 25, 2020 etc. Further, Noticee 6 in his contentions has placed reliance on the decision of Chintalapati Srinivas Raju v. SEBI (2018) 7 SCC 443, decision of Hon’ble SAT in the matter of G. Unnikrishnan Nair & Ors. Vs. SEBI ( Appeal order dated November 27, 2019) etc.

31. With regard to the contentions raised by Noticees 1 and 2 concerning their attendance in board meetings of CKFSL and signing the IM, I note that as per Annual Report of CKFSL for FY 2018-19, Noticees 1 and 2 are shown to have attended all the board meetings conducted by CKFSL in the FY 2018-19. Apart from a mere denial of their attendance in board meetings of CKFSL and signing the impugned IM, the aforementioned Noticees have not produced any evidence of having disputed such wrongful depiction of their attendance in board meetings or being shown as signatories of IM through any meaningful legal recourse like getting a First Information Report registered in the matter or filing complaint with the CKFSL etc. I am inclined to view such lack of evidence in the nature of a legal recourse or any complaint raised with CKFSL with regard to inclusion of their names as signatories of IM or wrongful reporting of their attendance in the Annual Report on the part of the aforesaid directors to be a deciding factor in itself and thereby I reject their aforesaid claims. Having said that, I find the issue that merits examination is whether the aforementioned directors were involved in the finalisation of financial results as well as whether they were aware of the error that had crept in the financial of CKFSL while recording the interest cost for Q2 FY19 and Q3 FY19 and having such knowledge, caused CKFSL to publish misstatements in the public domain which amounted to violation of Section 12A(a),(b),(c) of the SEBI Act read with Regulations 3 (b), (c), (d), 4(1) and 4(2)(f) of the PFUTP Regulations.

32. As observed above, CKFSL had not correctly recorded interest cost for 19 days of September on Q2FY19 and interest cost for December 2018 in Q3 FY19 in their books of account. As noted in the earlier part of the order, as per Section 129 (7) of Companies Act, 2013, liability for contravention of provisions of the section 129 of Companies Act, 2013 lies *inter alia* on the Chief Financial Officer and in the absence of any other person charged by the Board with the duty, all the directors of the company. It has been also established earlier in the order that Noticee 3 and 7, the then CFOs of CKFSL were in the charge of the financial operations of CKFSL and were responsible for overseeing the preparation and finalisation of financial results of CKFSL during the investigation period. Therefore, at this juncture, I proceed to examine the directors', i.e., Noticees 1, 2, 4, 5 and 6 's role in perpetrating fraud by misrepresenting the financials of CKFSL through the IM and the Newspaper Advertisement.

33. In this regard, I note that apart from being considered as signatories of IM, the investigation report has not detailed any other involvement of Noticees 1 and 2 in the alleged misrepresentation of financials of CKFSL. I also note that there is no evidence available on record to indicate that the aforementioned incorrect recording of interest cost in Q2FY19 and

Q3 FY19 in books of account of CKFSL was discussed in any of the board meetings of CKFSL during the investigation period. SEBI's investigation has also not placed on record any details/documents regarding board meetings conducted by CKFSL for the purpose of finalisation of financial results for 9 month period ending on December 2018, approval of IM etc. I also find that there is no evidence placed on record to show the involvement of Noticees 1 and 2 in the finalisation and preparation of financial results or that of they being aware of the incorrectness of the profit figures for the nine-month period ending on December 31, 2018 due to the incorrect recording of the finance cost for the quarters ending on September 30, 2018 and December 31, 2018. Therefore, in absence of any conclusive evidence in this regard, I am unable to ascertain the role played by Noticees 1 and 2 in perpetrating fraud by misrepresenting the financials of CKFSL through the IM and the Newspaper Advertisement. Thus, I am inclined to give benefit of doubt to Noticees 1 and 2 in this regard.

34. I note that it is a trite law that independent directors could be held liable only for acts of commission or omission of company which occurred with their knowledge attributable through board process, consent or connivance or have not acted diligently. I am also conscious of the fact that being independent directors, Noticees 4, 5 and 6 were not involved in the day to day affairs of CKFSL. Further, I note that from the perusal of the minutes of meeting of board of directors of CKSL held on March 13, 2019, which approved the IM, as placed on record by Noticee 6, I observe that Noticee 1, Noticee 2 , Noticee 3, Noticee 7 and Ms. Manasi Modak, compliance officer of Noticee 1, were shown to have attended the said board meeting while Noticees 4, 5 and 6 were shown to have been absent from the said meeting conducted on March 13, 2019. Thus, I note that even though Noticees 4, 5 and 6 appear as signatories to IM, they have not attended the board meeting conducted on March 13, 2019 which approved the IM. I further observe from the Annual Report of CKFSL for FY 2018- 2019 that Noticees 4 and 5 had attended only one board meeting and Noticee 6 is not shown to have attended any of the board meetings conducted during FY 2018-19. Therefore, I do not find any evidence to conclude that Noticee 6 had attended any board meetings or was aware of the misstatement in the profit figures for the nine month period ending on December 31, 2018 in the IM and Newspaper Advertisement.

35. SEBI's investigation has not placed on record of any details/documents regarding board meetings conducted by CKFSL for the purpose of finalisation of financial results for 9 month period ending on December 2018, approval of IM etc. I find from the Annual Report of CKFSL for FY 2018-19 that Noticees 4 and 5 have been shown to have attended the Audit Committee

meeting held on January 21, 2019 which is supposed to have approved the financials for 9 month period ending on December 31, 2018, which is contradictory to the aforesaid claims of Noticees 4 and 5. In this regard, I also note that even though Noticee 4 has stated that he had filed complaint with CKFSL for showing his attendance in Audit Committee meeting held in January, 2019, no documentary evidence has been produced by him in this regard. Be that as it may, in absence of any other substantiating evidence on record, I find that this fact of their attending the aforesaid Audit Committee meeting does not lead to any conclusive finding of their being aware of the error in the profit figures for the 9 month period ended on December 31, 2018 which as per the statement of CKFSL was detected in Q4 FY19. There is also no evidence available to indicate that the said Noticees were aware of the error in the financials of CFKSL for the nine month period ending on December 2018 and that the misstatements in the IM as well as the Newspaper Advertisement happened with their knowledge, consent and connivance or because they failed to act diligently in ensuring that the published financial statements presented a true and fair view of company's affairs.

36. In this context, I would also like to place reliance on the decisions of Hon'ble SAT in Dr. Jugal Kishore Satapati vs. SEBI appeal no.283 of 2018 decided on 28th June, 2019, G. Unnikrishnan Nair & Ors. vs. SEBI, appeal no.5 of 2018 decided on 27th November, 2019, Sayati Sen vs. SEBI, appeal no.163 of 2018 decided on 9h August, 2019, wherein it was held that mere fact that a person is a Director of a company cannot be held responsible for the acts of the Company unless it is found that the said person was responsible in some way for the alleged violation.

37. Therefore, in light of the aforesaid observations and placing reliance on the aforesaid decisions of Hon'ble SAT, I find that in absence of definitive evidence, I am unable to come to a conclusion regarding the role played by Noticees 4-6 in perpetrating fraud by misrepresenting the financials of CKFSL through the IM and the Newspaper Advertisement and thus I give benefit of doubt to them.

38. In light of the foregoing, I am not inclined to hold that Noticees 1, 2, 4 to 6 were aware of the error in the financials of CFKSL for the nine month period ending on December 2018 and that the misstatements in the IM as well as the Newspaper Advertisement happened with their knowledge, consent and connivance or because they failed to act diligently in ensuring that

the published financial statements of CKFSL presented a true and fair view of company's affairs.

39. In light of the above, I find that the allegation in the SCN that Noticees 1, 2, 4, 5 and 6 have violated Section 12A(a),(b),(c) of the SEBI Act read with Regulations 3 (b), (c), (d), 4(1) and 4(2)(f) of the PFUTP Regulations cannot be established. Further, as mentioned earlier in the Order, I find that allegation in the SCN that Noticees 3 and 7 have violated violated Section 12A(a),(b),(c) of the SEBI Act read with Regulations 3 (b), (c), (d), 4(1) and 4(2)(f) of the PFUTP Regulations stands established.

**<u>Issue II: Do the violations attract monetary penalty under Section 15HA of SEBI Act?</u>**

40. It has been established in preceding paragraphs that Noticees 3 and 7 have violated Section 12A (a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established...….*"

41. Therefore, in view of the violations as established and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violations committed by Noticees 3 and 7 would attract monetary penalty under Section 15HA of the SEBI Act. The said provision of the SEBI Act reads as under:

    **SEBI Act**

    ***Penalty for fraudulent and unfair trade practices.***

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

**<u>Issue III - What should be the quantum of monetary penalty</u>?**

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

***SEBI Act***

***Factors to be taken into account by the adjudicating officer.***

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

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

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

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

*Explanation- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

43. In the instant case, it is not possible from the material on placed record to quantify the amount of disproportionate gain or unfair advantage resulting from the aforesaid default of Noticees or the consequent loss caused to investors as a result of the default. Further, the material on record also do not show that violations of Noticees is repetitive in nature. However, Noticees, being CFOs of CKFSL during investigation period had failed to ensure that financial statements of CKFSL were presented in true and manner and I find that such serious laches on the part of Noticees amount to an act of misleading the investors and would have an adverse impact on investor interests. Be that as it may, it is also a fact that incorrect reporting of financials were rectified by CKFSL in the subsequent quarter and this may be considered as a mitigating factor in the present case.

**ORDER**

44. Having considered all the facts and circumstances of the case, the material available on record and also the factors mentioned in Section 15J of the SEBI Act as enumerated above, 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 following penalties on Noticees 3 and 7: -

| Name of Noticees | Penalty imposed | Penalty under |
| --- | --- | --- |
| Mr. Shailesh Pednekar (Noticee 3) | Rs. 5,00,000/- (Rupees Five Lakh Only) | Section 15HB of SEBI Act. |
| Mr. Milind Gandhi (Noticee 7) | Rs. 5,00,000/- (Rupees Five Lakh Only) | |

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

46. 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.

47. Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - 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." Noticees shall also provide the following details while forwarding DD / payment information:

    a) Name and PAN of the Noticee
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

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

49. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

**Place: Mumbai** **SOMA MAJUMDER**

**Date: December 21, 2022** **ADJUDICATING OFFICER**