BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SD/KS/2022-23/17536-17537]

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

In respect of:

1) **Geetaben Joshi (PAN- AAJPJ8345A)** having address at -71-A, Benhur Apts. Chandavarkar Lane, Borivali (West), Mumbai, MH – 400 092 IN

2) **Shivshankar Joshi (PAN- AAEPJ8684M)-** having address at - Bhatia Nivas , Ground Floor, Jivaji Lane , Near Central Camera , Fort, Mumbai, MH – 400 001 IN

In the matter of
M/s Esaar India Limited

Facts of the Case in Brief

1. Securities and Exchange Board of India (hereinafter be referred to as, "**SEBI**") initiated adjudication proceedings under Section 15HA of SEBI Act, 1992 (hereinafter be referred to as, the **"SEBI Act)** against **Geetaben Joshi**(PAN- AAJPJ8345A), **Shivshankar Joshi** (PAN- AAEPJ8684M) (hereinafter be referred to as, **"Noticee No. 1,** and **Noticee No. 2** respectively or Collectively as **the Noticees")** for the alleged violation of Section 12A (a), (b), (c) of the Securities and Exchange Board of India Act, 1992(SEBI Act) r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as '**PFUTP Regulations**')

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer, vide communique dated August 23, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticees.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. Show Cause Notices ref. SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/9/2021 and SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/10/2021 dated October 20, 2021 (hereinafter referred to as '**SCN'**) were issued to the Noticee No.1 and Noticee No.2 respectively in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against her and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act, 1992

4. The allegations levelled against the Noticees in the SCNs, *inter alia*, mentioned as below-:

i. *During the examination stage it was observed that there was preferential allotment of 31,77,000 equity share of ₹.10/- each issued at a premium of ₹.40/- per share to 44 non-promoter entities in the scrip Esaar (India) Ltd on May 25, 2011 and these shares were listed on BSE on August 4, 2011. Total 31,77,000 equity share were in lock in till May 24, 2012. Also, during the period from May 24, 2012 to October 20, 2014) 41 allottees have sold 2,34,17,000 shares out of which 37 allottees are appearing as counterparties of connected entities. These 37 allottees sold 2,21,67,000 shares and out of which 1,40,86,874 (63.55%) shares were sold to connected entities. Total selling by allottees to connected entities i.e. 1,40,86,874 shares are 44.34% of allotted shares (3,17,70,000).*

ii. *With regard to preferential allotment of 31,77,000 equity shares by EIL on May 25, 2011 to 44 non-promoter entities, aggregating to ₹.15,88,50,000, analysis of Bank statements of all the 44 preferential allottees regarding fund flow was carried out. On analysis of the Bank statements it was observed that there are certain violations made by Noticees pertaining to fund flow*

iii. *It is observed that Noticee 1 and Notice 2 were allotted 60,000 shares in the preferential allotment for which they had transferred ₹.15,00,000/- each from Account numbers 014400100001324 and*

014400100001343 maintained with Dhanlaxmi Bank. It is also observed from the analysis of the bank statement of Noticee-2 that the bank account with account number 014400100001324 had received ₹30,00,000 from bank account with account number 910020041102497 maintained with Axis Bank. On further analysis, it is observed that the account is belongs to Surface Finance Private Ltd and the Authorized signatories for the said bank account are Surface Finance Private Limited., Avinash Arvind Jagushte., Vijay Agarwal., Pradeep Dhanuka

iv. *It was also observed that the registered e-mail address mapped to the said account is gkagrawal1@gmail.com. As per Form 32 data this email account belongs to Giriraj Kishore Agrawal. It was also observed that Giriraj Kishore Aggrawal was one of the directors of Esaar India Limited for the period of July 2010- March 2011. Thereafter, from the information on MCA website it was observed that the company named Surface Finance Pvt Ltd has been struck-off.*

v. *It is also observed that pursuant to receipt of Rs 30,00,000/- from Surface Finance Private Ltd. by Noticee-2, an amount of ₹15,00,000 was then transferred by him to Noticee-1 in her bank account with account number 014400100001343 maintained with Dhanlaxmi Bank and the same amount was transferred to EIL(the company) from account number 014400100001343.*

vi. *Further, it is observed that EIL vide it letter dated September 19, 2019 informed that Surface Finance received ₹1,52,00,000 from the proceeds of preferential allotment during the period of May 20,2011- May 30, 2011.*

vii. *From the analysis it is observed that Surface Finance Pvt Ltd financed the subscription amount paid by the two allottees i.e., Noticcee-1and Noticee-2 and subsequently Surface Finance Pvt Ltd had received ₹1.52 crore out of the Issue Proceeds Amount from the company EIL thereby funding the preferential allotment dated May 25,2011 to the extent of ₹30,00,000.*

viii. *In this regard, SEBI vide email dated June 18, 2021 sought details from the company Surface finance about the reason for transfer of ₹30,00,000 to Shiv Shankar Joshi and also reasons and supporting documents substantiating for nature of inward credit of ₹1,52,00,000 from EIL. Further, SEBI had also sought the information about Nature of Relationship / Association (Professional or Personal, Past / Present) between following entities:*

a. *Surface Finance Private Ltd & Shiv Shankar Joshi.*
b. *Surface Finance Private Ltd & Esaar India Limited.*
c. *Giriraj Agarwal and Surface Finance Private Ltd.*

However, it was observed that no reply has been received in this regard from Surface Finance Ltd.

ix. *It is observed that SEBI vide e-mail dated June 18, 2021 had also sought information from Shivshankar Joshi and Geetaben Joshi about receipt of amount ₹30,00,000 from Surface Finance*

Private Ltd and nature of their association with the Surface Finance. However, no reply has been received in this regard from them.

x. *In view of these transactions during preferential allotment, it is alleged that Noticee No.1, Noticee No.2 have violated Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003 for financing the subscription amount paid by the two allottees Noticee-10 and Noticee-11 to the extent of ₹30,00,000 and Subsequently received ₹1,52,00,000 out of Issue Proceeds A/c from the company EIL thereby funding the preferential allotment dated May 25,2011 to the extent of ₹30,00,000*

5. The SCN with reference number SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/9/2021 and SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/10/2021 dated October 20, 2021 were issued to the Noticees via Speed Post Acknowledgement Due (SPAD), which were duly served on the Noticees as per the Tracking details obtained from the India Post website.

6. In response to the said SCN, Advocates, Joby Mathew & Associates ("Authorized Representatives of the Noticees" hereinafter referred as 'AR') vide letters dated October 27, 2021 *inter-alia* requested for inspection of list of documents mentioned in the said letter. In this regard, vide email dated October 28, 2021 the Noticees were granted an opportunity of inspection of documents on November 11, 2021. Thereafter, vide email dated November 01, 2021 the AR has authorized Adcocate, Ms. Tanya Gupta for carrying out the inspection of documents and same was held on the stipulated date. The said inspection of documents was carried out on stipulated date by Advocate Ms. Tanya Gupta, Advocate i/b Joby Mathew & Associates, Authorized Representative ('AR') of the Noticee

7. Thereafter, vide letter dated November 30, 2021, AR had submitted reply on behalf of the Noticees, wherein it inter-alia submitted the following:

   i. *Our clients carry on the business as a Custom House Broker assisting Importers and Exporters to obtain Customs clearance and in logistics; our clients have been in the said business since 1989. Our client, Mr. Shivshankar Joshi started the business in a proprietorship firm, namely, Ajay Shipping & Trading Co.; he along with our client Mrs. Geetaben Joshi incorporated Ajay Cargo Mover Pvt. Ltd. and the said company acquired the business of the proprietorship firm in 1993. The name of the company was changed to M/s Ajay Logistics Private Limited in 2008. Our clients are regular investors in securities; however, they are not short term traders.*

ii. *In and around February 2011, an importer who was our clients' customer introduced M/s Surface Finance Pvt. Limited **("Surface"** or **"Noticee 9")** as requiring a short term loan; since our clients had surplus funds with them and trusting the importer who introduced them to Surface, our clients extended a short term loan of a total sum of Rs.78,00,000/- as follows:*

a. Rs.33,00,000/- (Rupees Thirty-Three Lakhs) by Noticee No.ll's on February 26, 2011; the said loan was repaid in 2 tranches - Rs.30,00,000/- on May 16, 2011 and Rs.3,00,000/- on March 22, 2012.

b. Rs. 45,00,000/- (Rupees Forty-Five Lakhs) by Noticee No.10 account on March 11, 2011. The said loan was repaid on March 22, 2012 by Surface.

iii. *In and around March 2011, our clients came to know that the Company was offering shares to non-shareholders on a preferential basis and since they considered this as a good investment, vide letter dated March 17, 2011, they applied for 60,000 shares and after payment of application money of Rs.30,00,000/- (Rs.15,00,000/- each) on May 18, 2011, our clients were allotted 60,000 shares of Rs.10/- each and the same were credited to their joint Beneficiary Account bearing Client ID: 10008927 with Canara Bank, the Depository Participant bearing Depository ID: IN301356*

iv. *The said 60,000 shares were subdivided into shares of Rs.1/- each by the Company on August 8, 2011 and accordingly, on February 23, 2012, the shareholding of our clients in the Company became 6,00,000.*

v. *The Noticees submit that the said transactions took place over a decade ago and therefore, it has been difficult for them to obtain documents pertaining to the same. The details of the loan have been retrieved from the Noticees' Income Tax Returns and Balance Sheets annexed thereto these records reflect the said transaction under the heading of "Loans and Advances.*

vi. *it appears from the record that no interest was paid by Surface for the Eoans; the Noticees did not pursue Surface for recovery of the interest because of their relation with the Importer. Since 2012, the Noticees have had no contact or dealing with Surface.*

vii. *It is evident from the above that the amount of Rs. 30,00,000/- received by the Noticee No,11 from Surface on May 16, 2011 was a partial re-payment of the aforesaid short term loan and not funding of the Noticees for subscription to the Preferential Issue of shares by Noticee No.l as erroneously alleged or otherwise.*

viii. *In and around June 2021 i.e. more than 10 years after the preferential allotment and 9 years after the shares allotted to them were sold by our clients, they received an email dated June 18, 2021 seeking details regarding the amount of Rs.30,00,000/- received by our client, Mr. Shivshankar Joshi on May 16, 2011. Vide email dated June 24, 2021, our clients had stated that since the events took place over a decade ago, it was difficult to obtain the details of the same. Thereafter, Noticee No. 10 and Noticee No. 11 were served the SCN on October 23,* *2021 and October 29, 2021 respectively. On receipt of the said SCN, our clients obtained the said details and have submitted the same through the present reply/submissions.*

ix. Noticee submitted that SCN was issued after 6 years after the investigation period. The delay caused prejudice to the Noticees.

x. Noticee submitted that Investigation Report and Other relevant documents not provided during the inspection. Noticee had relied upon the judgments of Hon'ble SAT in the matter of Ms. Smitaben Shah vs SEBI and Pricewaterhouse coopers vs SEBI and Noticee stated that denial of complete inspection and copies of documents as requested is in gross violation of natural justice and has impaired and prejudiced the ability of Noticee to put in an effective reply to SCN and legally defend it.

xi. Noticee submitted that amount received by Noticee No. 1 from Surface Finance was repayment of a loan given to Surface Finance by Noticee No 1 and 2. Noticee also submitted that besides the loan transaction there is no connection of the Noticees with Surface Finance pvt ltd.

xii. Noticee submitted that they were unaware of the relationship between company and Surface finance and the reason for transfer of sum Rs. 1,52,00,000/- to surface in May 2011. i.e. after the preferential issue of shares was closed.

xiii. Noticee submitted that there is no relation established between the Noticees and EIL.

xiv. Noticee in its reply also stated that SEBI has failed to consider the reply of the Noticees to email of June 18, 2021.

8. Thereafter, In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide email dated November 15, 2021, the Noticee was granted an opportunity of Personal Hearing in the matter on December 02, 2021, through the online Cisco webex platform. Further, Mr. Jobby Mathew (Advocate) appeared as the Authorized Representative ('AR') on behalf of the Noticee on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticees in their reply dated November 30, 2021.

9. Further AR vide email dated December 17, 2021 *inter-alia* made the following submissions pursuant to personal hearing:

Loan by the Noticees to Surface arid repayment thereof

3. The Noticees submit that in and around February 2011, Late Pawan Poddar {"the Importer"), who was in the business of importing goods into India, introduced M/s Surface Finance Pvt. Limited ("Surface" or "Surface Finance") to them as requiring a short term loan. The Noticees are promoters of M/s Ajay Logistics Pvt. Ltd., which is in the business of Customs Clearing Brokerage. Based on the introduction by the Importer who was known to our clients and with a view to *investing surplus funds available with them, the Noticees extended a short term loan of a total sum of Rs.78,00,000/-.*

4. The details pertaining to the said loan have been submitted vide Reply dated November 30, 2021 and reiterated during the persona! hearing on December 2, 2021 before the Ld. Adjudicating Officer; however, the same are set out hereunder for the sake of convenience as follows: -

(a) Rs.33,00,000/- (Rupees Thirty-Three Lakhs) was extended by Noticee No.2 to Surface on February 26, 2011; the said loan was repaid in 2 tranches - Rs.30,00,000/- on May 16, 2011 and Rs.3,00,000/- on March 22, 2012.

(b) Rs. 45,00,000/- (Rupees Forty-Five Lakhs) was extended by Noticee No.1 to Surface on March 11, 2011. The said loan was repaid on March 22, 2012.

The Bank statement reflecting the aforementioned transaction was annexed to the Reply dated November 30, 2021 and marked as Annexure A

5. The Noticees submit that the said transactions took place over a decade ago and therefore, it has been difficult for them to obtain documents pertaining to the same. The details of the loan have been retrieved from the Noticees' Income Tax Returns and Balance Sheets annexed thereto these records reflect the said transaction under the heading of "Loans and Advances". The said Income Tax Returns and Balance sheets are annexed hereto and marked as "Annexure - 1". it appears from the record that no interest was paid by Surface for the Eoans; the Noticees did not pursue Surface for recovery of the interest because of their relation with the Importer. Since 2012, the Noticees have had no contact or dealing with Surface.

6. It is evident from the above that the amount of Rs. 30,00,000/- received by the Noticee No2 from Surface on May 16, 2011 was a partial re-payment of the aforesaid short term loan and not funding of the Noticees for subscription to the Preferential Issue of shares by Noticee No.l as erroneously alleged or otherwise.

7. SEBl has failed to consider other transactions that took place between the Noticees and Surface during the relevant period i.e. the transfer of the loan amount of Rs.33,00,000/- to Surface by Noticee No.2 and the repayment of Rs. 3,00,000/- being the balance Principal amount of the loan on March 22, 2012. SEBl has also failed to consider the transactions in Noticee No. 1's account i.e. the transfer of Rs 45,00,000/- to Surface on March 11, 2011 and repayment thereof on

8. The details of sale of the shares of Noticee No.1 which had been allotted on preferential basis to the Noticees have been submitted before the Ld, Adjudicating Officer vide reply dated November 30, 2021, The said shares were sold during the period 2012 to 2014. The transaction statements pertaining to the same are once again annexed hereto and marked as "Annexure 2", *9. It is evident from the above that SEBI has misconstrued a loan transaction as funding of subscription to a preferential issue. In this regard it is pertinent to note that there were no transfers from the Noticees to Surface after May 16, 2011; if the credit in Noticee No.2's account on May 16, 2011 had been for the purpose of funding, then Noticee No. 2 would have been obliged to repay the said funding, which was not done. Clearly, the credit in Noticee No.2's account on May 16, 2011 was on account of part repayment of the short term loan taken by Surface.*

Clarifications sought bv the AO

5. *During the personal hearing held on December 2, 2021, the Ld. Adjudicating Officer had sought the following information from the Noticees; the same is provided hereunder:*

(a) Are there any supporting documents to show that the Noticees had the capacity to give loans of Rs. 33,00,000/- and Rs. 45,00,000/- or any such loans to other entities? Were they habitual lenders and were all loans provided by the Noticees provided without charging any interest?

Our clients submit that they are not "habitual" tenders; however, as prudent business persons, they loathe to keep capital idle and invest the same as short term loans. This is a prevalent business practice and as mentioned herein above, the loans are duly disclosed by them in the Income Tax Returns. The loans were not interest free loans, however, Surface failed to pay interest; the Noticees did not pursue for recovery of interest. Instances of other such lending are evident from the Income Tax Returns records of our clients; a copy of which are at Annexure 1 hereto,

(b) Any document/loan agreement reflecting that the amounts transferred from the Noticees' accounts to Surface were given as loans? Is there any document reflecting that Surface has requested for the said amounts as loans?

The Noticees repeat, reiterate and submit that the said loan was given to Surface over a decade ago and despite their best efforts, they have not been able to locate or retrieve documents pertaining to the same. However, as mentioned above, the Income Tax Returns of the Noticees disclose that then said amounts were loans extended to Surface.

(c) Why was the loan given to Surface provided without any interest?

The Noticees submit that the loans extended to Surface were not interest free loans; however, Surface failed to pay interest. !n this regard, it may be noted that the commercial effect of a borrowing is not negated merely because interest has not been paid by the borrower. In a recent judgement passed by the Hon'ble Supreme Court in the matter between Orator Marketing Private Ltd. v Samtex Desinz Pvt. Ltd., 2021 SCCOnline *SC 513, as decided on July 26, 2021, it was held that there is no discernible reason wherein a loan free of interest which has a commercial effect of borrowing should be excluded from the purview of a financial debt |para 29 of the judgement); It was further held that a 'financial debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body {para 32 of the judgement). Thus, even if the loans were to be construed as interest free, they have to be construed as commercial transactions.*

(d) Details of the importer who has introduced Surface to the Noticees required. If the said importer is dead, then a copy of the death certificate to be submitted or any document reflecting that the importer had introduced surface to the Noticees to be submitted.

As mentioned hereinabove, Surface was introduced to the Noticees by Late Pawan Poddar, a person who was engaged in the business of importing goods. The Noticees do not have his address on record since they did not do any business with him. To the best of the knowledge of the Noticees, Mr. Pawan Poddar died around 4 years ago; despite their best efforts, the Noticees have not been able to get in touch with the legal heirs of Late Pawan Poddar to obtain his death certificate or other details.

CONSIDERATION OF ISSUES AND FINDINGS:

10. I have taken into consideration the facts and circumstances of the case, the material available on record.

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

Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of SEBI Act, 1992? And

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules? Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

Issue No. I Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

12. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are reproduced below:--

<u>Relevant Provisions of Securities and Exchange Board of India Act, 1992</u>

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;

Relevant provisions of PFUTP Regulations:

3. ***Prohibition of certain dealings in securities***
No person shall directly or indirectly—

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

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any

manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

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

4. ***Prohibition of manipulative, fraudulent and unfair trade practices***

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

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

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security

13. Before proceeding with the matter on merits, I first deal with the preliminary submission of the Noticees that there has been an unexplained inordinate delay in issuance of SCN, proceedings did not initiate within reasonable time, and this delay has made it difficult for Noticees to retrieve data and offer submissions effectively. In this regard, I note that the investigation in the matter for period April 01, 2011 to February 28, 2015. The aforesaid investigation was concluded in July 2021, and in August, 2021 competent authority approved adjudication proceedings in respect of Noticees. The undersigned was appointed Adjudicating Officer in the matter in August, 2021 and the SCN was issued in October, 2021. Considering the time taken to complete the investigation, I do not find that there is inordinate delay in initiation of the proceedings. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act or Regulations which may have the effect of

prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case.

14. In this regard, I am inclined to rely upon the decision of Hon'ble SAT in the matter of Bipin R Vora vs SEBI held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market'*.

15. Further, I note that in Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 08, 2013, Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI(Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)reported in2003 (158) ELT 129 (S.C.),held as under:

"....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."

16. The decision of Hon'ble SAT in the aforesaid case, were reiterated by it, in a subsequent order in the matter of Kunal Pradip Savla & Ors. v. SEBI (Appeal no. 231 of 2017) decided on April 13, 2018.

17. Further, I note that in Rajendra Aggarwal. v. SEBI(Appeal No. 552/ 2019) decided on September 17, 2021, Hon'ble SAT held that

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

18. The Hon'ble SAT in the matter of M/s Adamina Traders P. Ltd (Appeal No. 331/2020) decided on December 15, 2021 held that

"We find that the trades in question are of the year 2013. The show cause notice was issued on September 28, 2017 by the WTM and January 18, 2018 by the AO. We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected."

19. In view of aforesaid Judgments, I conclude that there is no merit in the preliminary objections made by Noticee, regarding the delay in issuance of SCN in the instant proceedings.

20. I note that AR had contended that inspection of the certain documents were not provided to them during the Inspection carried out on November 11, 2021 it was stated that only those documents that have been annexed to the SCN were provided during inspection. In this regard, I note that in Shruti Vora matter, the Hon'ble SAT has clearly mentioned that "the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence". Thus, I note that all documents relied upon for the present proceedings have been shared with the Noticees as per the ratio mentioned in the Shruti Vora matter in the backlight of principles of natural justice.

21. Further, the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that "the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".

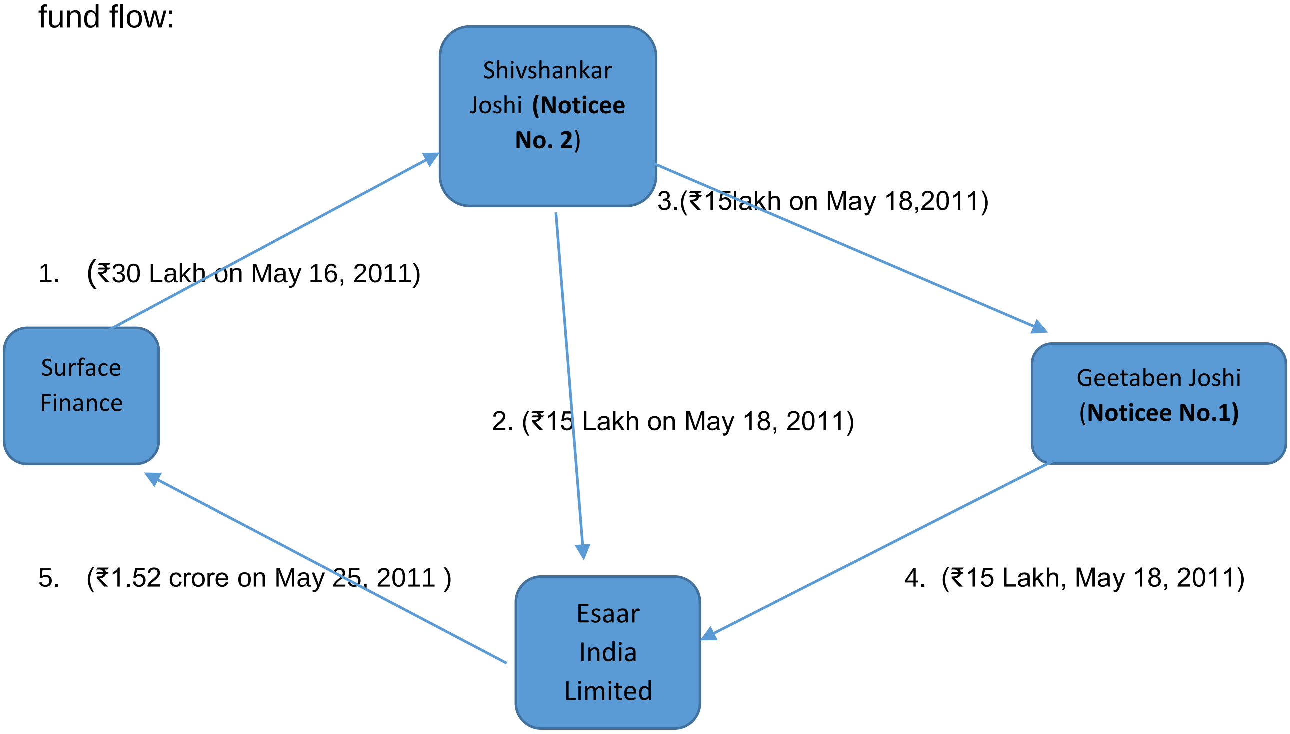
22. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticees, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticees. Having decided the preliminary objections raised by the Noticees, now I proceed to deal with the merits of the matter.

23. I note from the SCN that ***Noticee 1*** and ***Notice 2*** were allotted 60,000 shares in the preferential allotment for which they had transferred ₹.15,00,000/- each from their Account numbers 014400100001343 and 014400100001324 maintained with Dhanlaxmi Bank. In this regard, I note from the bank statement of the Noticee No-2 he had received ₹30,00,000/- from Surface Finance Private Limited through its Axis bank account bearing number 910020041102497. Further, I found that the Authorized signatories for the said bank account are Surface Finance Private Limited("Surface Finance")., Avinash Arvind Jagushte., Vijay Agarwal., Pradeep Dhanuka

24. I also note that the registered e-mail address mapped to the said account is **gkagrawal1@gmail.com.** As per Form 32 data this email account belongs to Giriraj Kishore Agrawal. It was also observed that Giriraj Kishore Aggrawal was one of the director of Esaar India Limited for the period of July 2010- March 2011. Thereafter, from the information on MCA website it was observed that the company named Surface Finance Pvt Ltd has been struck-off.

25. Pursuant to receipt of Rs 30,00,000/- from Surface Finance Private Ltd. by Noticee-2, an amount of ₹15,00,000/- was then transferred by him to Noticee-1 in Dhanalaxmi bank account bearing number 014400100001343 and the same amount of ₹15,00,000/- was transferred to EIL(the company).

26. I note from the available records that EIL vide it letter dated September 19, 2019 informed that Surface Finance received ₹1,52,00,000 from the proceeds of preferential allotment during the period of May 20,2011- May 30, 2011. The same is summarized diagrammatically as under where the number indicates the chronology of fund flow:



27. From the above diagram, It has been seen that Surface Finance Pvt Ltd had transferred Rs. 30 Lakhs to Noticee No.2 and in turn he had transferred Rs. 15 lakhs to his wife i.e. Noticee No.1 and both of them have paid subscription amount to EIL. It has been further seen that Surface Finance Private Limited has received Rs. 1.52 Crores from EIL, including Rs. 30 lakhs which were paid as the subscription amount paid by the two allottees i.e., Noticcee-1 and Noticee-2.

28. In this regard, I note that funding of preferential allotment by the company would mean flow of money for buying preferentially allotted shares from the Company to the allottees (noticee 1, 2 and Surface Finance), which is then used by allottees for payment to the company towards purchase of preferentially allotted shares. This would result in flow of money back to the Company, while giving an impression of capital infusion through preferential allotment.

29. However, I note from the above diagram that the aforesaid transfers of funds, were made for the purpose of applying for preferential allotment. This can also be inferred based on circumstantial evidence that the funds received from Surface Finance Private Limited were used by Noticees for applying for preferential allotment.

30. I note that Noticees have contended that the amount received by Noticee No. 2 from Surface Finance was repayment of a loan of Rs. 33 lakhs given to Surface Finance by Noticee No 2. Noticee also contended that besides the loan transaction there is no connection of the Noticees with Surface Finance Pvt Ltd. Noticee submitted that they were unaware of the relationship between company viz., EIL and Surface Finance and the reason for transfer of sum Rs. 1,52,00,000/- to surface on May 25, 2011. i.e. after the preferential issue of shares was closed. Noticee submitted that there is no relation established between the Noticees and EIL.

31. In this regard, I categorically recall that at the time of Personal Hearing held on Webex on December 02, 2021, I had asked AR to submit the copy of Loan Agreement to support his contention that he had given the loan to the tune of Rs. 33 Lakhs to Surface Finance. I further asked the AR to produce the copy of Loan Request Letter. However, AR stated that despite their best efforts, they have not been able to locate or retrieve documents pertaining to the same.

32. The AR has also stated that the Surface Finance Private Limited was not known to the Noticees and was introduced to him and his wife, for the first time by Late Pawan Poddar. By considering this fact, I am astonished to see that how Noticee No. 1 and Noticee No 2 have given loans to the tune of Rs. 45 Lakhs and Rs. 33 Lakhs to unknown company which they never dealt with. Further, I cannot ignore the fact that nowhere in the Bank Statements of the Noticees, I found any entry of interest received by Noticees from Surface Finance Private Limited for such loans, more particularly, when the AR has stated that the loans given to Surface Finance Private Limited were not interest free and the Surface Finance had failed to pay the interest on such loan. At this juncture, I find that Noticees had not submitted supporting documents for the steps to recover the interest amount from Surface Finance.

33. In view of this, I am surprised to note that Noticees have not made any efforts for the recovery of interest on such huge amount and not adopted any legal recourse. The

Noticees were also failed to keep the Original Loan Agreement, the basic document which they should preserve for their legal recourse to recover the interest.

34. Additionally, to the query to provide the details such as address of Late Pawan Poddar, a person who introduced the surface Finance Private Limited to the Noticees, AR submitted that Noticees do not have his address on record since they did not do any business with him and they are not been able to get in touch with the legal heirs of Late Pawan Poddar to obtain his death certificate or other details.

35. By considering all above facts, it is difficult to believe and keep reliance on the story projected by the AR that the Noticees have given loans to Surface Finance Private Limited and the Surface Finance Private Limited has made the repayment of the exact amount Rs. 30 lakhs, which Noticees have used for Preferential allotment by Esaar India Limited.

36. I note that AR in reply contended that the commercial effect of a borrowing is not negated merely because interest has not been paid by the borrower and AR relied upon the judgement of Hon’ble Supreme Court in the matter of *Orator Marketing Private Ltd. v Samtex Desinz Pvt. Ltd., 2021 SCCOnline SC 513,* as decided on July 26, 2021. Wherein the Hon’ble Supreme Court interalia held that 'financial debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body. However, I do not agree with the contention of the AR that the ratio of aforesaid Judgement of Supreme Court applicable in the instant matter as AR in its reply submitted that the loan was not interest free and Surface Finance has failed to pay the interest on the loan given by Noticees.

37. Therefore, though I accept that the loan given by Noticee without recovering interest fall under interest free loan and has commercial transaction, But I failed to understand the contention of Noticees as they failed to produce Loan Request Letter or copy of Loan Agreement between Noticee and Surface Finance Private Limited more particularly when Noticees were not in lending business and more over Surface Finance Private Limited was not known to them.

38. Thus, I am constrained to view based on the facts and material available on record that the aforesaid transactions of Noticees were for meant only funding of preferential allotment giving an impression of capital infusion in the company through preferential

allotment, wherein EIL was routed the allotment amount through Surface Finance Limited, and not for the purposes as claimed by the Noticees.

39. Therefore, I conclude that that Noticee No.1, Noticee No.2, have violated Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003 for financing the subscription amount paid by the two allottees Noticee-1 and Noticee-2 to the extent of ₹30,00,000 and Subsequently received ₹1,52,00,000 out of Issue Proceeds A/c from the company EIL thereby funding the preferential allotment dated May 25,2011 to the extent of ₹30,00,000 .

Issue No. II *If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of SEBI Act, 1992?*

40. I am of the view that the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, which 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.*

41. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, **SEBI Vs Shriram Mutual Fund** { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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 and hence the intention of the parties committing such violation becomes wholly irrelevant…………...*"

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

12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?

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

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

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

    (c) the repetitive nature of the default.

43. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, and suffered by the investors as a result of the Noticee's failure. I also note that no prior default of the Noticee is available on record. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. In this case, I find that the act of Noticees to involve in false representation through preferential allotment has the potential to mislead and induce genuine investors to trade in the scrip and harm them and, thus, violate the fundamental tenets of market integrity. Such acts of Noticees, If dealt with lightly, could seriously undermine investors' confidence in the securities market and therefore, deserve suitable penalty commensurate with such serious violations

ORDER

44. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose following penalties under the provisions of Section 15HA of the SEBI Act on the Noticees.

Name of the Noticee	Provisions Violated	Penalty
Geetaben Joshi (PAN-AAJPJ8345A)	*Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003*	Rs. 10,00,000 (Rupees Ten Lakhs only)
Shivshankar Joshi (PAN-AAEPJ8684M)	*Section 12A(a), (b), (c) of the SEBI Act, 1992 r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (PFUTP) Regulations, 2003*	Rs. 10,00,000 (Rupees Ten Lakhs only)

45. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

46. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department - I (EFD), Division of Regulatory Action - I [EFD1-DRA-2] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1. Case Name:	
2. Name of 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)	

OR

Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

47. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

48. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticees viz. Geetaben Joshi (PAN- AAJPJ8345A), Shivshankar Joshi (PAN- AAEPJ8684M) and also to Securities and Exchange Board of India.

Place: Mumbai
Date: June 30, 2022

SANDEEP P DEORE
ADJUDICATING OFFICER