BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER No. Order/MC/RM/2022-23/21608-21609]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of –

1. **N & N Financial Consultants Private Limited (PAN : AACCN4898E)** having address at 837/138 Shanti Nagar Tri Nagar New Delhi 110035
2. **Novak Exim Overseas Private Limited (PAN: AADCV7259E)** having address at G-367, Block - G Jaitpur Extn II Delhi 110044

In the matter of Delta Leasing & Finance Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings against N & N Financial Consultants Private Limited ("**Noticee 1"),** and Novak Exim Overseas Private Limited **("Noticee 2"),** for the alleged violations of Section 11C(2) & 11C(3) of SEBI Act, 1992; and Regulation 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') *vide* order dated December 21, 2020 to inquire into and adjudge under Section 15A(a) and 15HA of the SEBI Act, the aforesaid alleged violations against the Noticees. The appointment of the AO was communicated *vide* order dated January 13, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/ST/2021/372381 dated December 14, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('SEBI Adjudication Rules') to show cause as to why an inquiry should not be held and penalty not be imposed against Noticees in terms of Section 15A(a) & 15HA of the SEBI Act for the aforesaid alleged violations.

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

5. Delta Leasing & Finance Ltd. (DLFL) was incorporated in November 1983 and was listed on DSE on June 27, 1984 and at BSE on April 18, 2013. As per the website of DLFL, the company is engaged in investments and providing loan & advances and other related activities. The Noticees engaged in some off-market transactions in the scrip of DLFL during the year 2013 which were required to be settled as spot delivery contract. The off market transactions executed during the investigation period were carried out electronically in dematerialized form by transfer from the account of a Beneficial Owner (Transferor or Source Client) to the account of another beneficial owner (Transferee or the Target Client) through Delivery Instruction Slips (DIS).

6. A "spot delivery contract" is defined in SCRA to mean a contract which provides for actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality.

7. Summons were issued to the Noticees seeking information on date of receipt / payment of consideration and other documentary evidences etc. for the transactions carried out. Noticees had allegedly failed to respond to summons

issued in any manner. Details of non-compliance of summon by Noticees are as under:

Sr no.	Name of Noticee	Status of delivery	Date of Delivery	Proof of Delivery	Particulars of Reminders sent
1.	N & N financial consultants private limited	Delivered through email to 'abomcx@yahoo.com'	28.02.2020	Email delivery receipt	Reminder mail sent on 28.02.2020
2.	Novak exim overseas private limited	Delivered through email to 'novakexim54@yahoo.in'	01.11.2019	Email delivery receipt	Reminder mail sent on 11.12.2019 & 02.01.2020

8. The delivery of summons sent to Noticees through email were confirmed through IT Department-SEBI, vide their email dated 18.12.2019. The email summons were in addition to sending of summons by speed post with acknowledgement due. The scanned copy of the summons were also sent to the e-mail ID of the Noticees registered by them with the Depositories through KYC. No reply was received even after issuance of reminders to the summons as stated above. The reply of the Noticees to the summons was necessary to ascertain the date of settlement of transactions which is crucial to determine whether the transactions carried out were as per the time frame stipulated in Section 2(i)(a) of SCRA.

9. In view of the above, Noticees were alleged to have violated Section 11C(2) and 11C(3) of the SEBI Act.

10. The relevant clauses of SC(R)A and SEBI Act are reproduced as under:

<u>*SC(R)A:-*</u>

2 (i) *In this Act, unless the context otherwise requires,— spot delivery contract" means a contract which provides for,-*

(a) *actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the* *post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;*

<u>SEBI Act:-</u>

Investigation.

11C - *where the Board has reasonable ground to believe that-*

(2) *Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.*

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

Incorrect information in DIS Slips

11. In terms of Section 12 (1) of the Depositories Act, a Beneficial Owner (B.O) may with previous approval of the Depository create a pledge or hypothecation in respect of security owned by him through a depository. Further in terms of sub-section (2) ibid every beneficial owner shall give such intimation of pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly. Any entry in the records of depository under sub-section (2) shall be evidence of pledge or hypothecation.

12. Regulation 58 of SEBI (Depositories and participants) Regulations, 1996 prescribes in detail the manner in which a pledge or a hypothecation can be created, revoked or invoked. Sub-section 11 ibid stipulates that no transfer of security in respect of which a notice or entry of pledge or hypothecation is in force shall be effected by a participant without the concurrence of the pledgee or the hypothecatee as the case may be.

13. Further, SEBI Master circular CIR/MRD/DP/13/2013 dated April 15, 2013, stipulates that Section 12 of the Depositories Act and Regulation 58 of SEBI (Depositories and participants) Regulations, 1996 along with the relevant bye-laws of the Depositories enumerate the manner of creating pledge and that any procedure followed other than as specified under the said provisions of law shall not be treated as pledge. The para 4.3 (ii) of the Circular states that the Depositories shall advise the DPs that an off market transfer of shares lead to change in ownership, the same cannot be treated as pledge.

14. On examination of the DIS slips of Noticees (provided as Annexure 3 of the SCN) for the off market transfers, it was observed that almost in all DIS Slips the reason for transfer stated in the DIS Slips was “Loan of Shares or return of loan of shares”. To consider aforesaid transactions as loan transactions, these transactions ought to have been carried out in the manner provided in Section 12 of the Depositories Act and Regulation 58 of SEBI (Depositories and Participants) Regulations 1996.

15. During investigation, for verification of the nature of the off market transactions by the Noticees, as to whether these transactions were either in the nature of pledge or revocation or invocation of pledge with the Depositories, confirmation was sought from the Depositories. In response, CDSL vide email dated June 18, 2020 and NSDL vide emails dated June 16, 23 and 24, 2020 (enclosed herewith as Annexure 5) informed that none of the off market transactions entered by the Noticees are in the nature of pledge. Accordingly, the off market transfers involved transfer of ownership on the shares and as such these transactions

cannot be considered as Pledge transactions. Therefore, the provisions of Section 2(i)(a) of SCRA, 1956 apply on these transactions.

16. For effecting transfer of shares electronically, it is the Source Clients who issue the DIS duly filled in and signed to the Source DP. Therefore, the Source clients are accountable and responsible for the contents filled in by them in the DIS. When the Source clients state the reasons for transfer in the DIS as Loan Transaction or return of loan transaction, which is not true and when the other records exist contrary to the reasons stated in the DIS by the Source Clients, the act of the Source clients in giving false reason of loan or return of loan for transfer of shares would amount to an act of deceit and undermine the ethical standards and good faith dealings while dealing in securities. In view of the above, it was alleged that such an act has been resorted to by the source clients in order to evade or avoid regulatory compliance on off market transfer of shares as stipulated in Section 2(i)(a) of SCRA, 1956.

17. Noticees by stating their off market transfer of shares as Loan transactions in the DIS when the truth is that none of such transactions were loan transactions, committed an act of deceit by giving false reason of Loan / return of loan in DIS Slips for transfer of shares in order to evade or avoid regulatory compliance stipulated in Section 2(i)(a) SCRA, 1956 for off market transfer of shares.

18. For the reasons detailed above, the Noticees were alleged to have violated Reg. 4(1) of SEBI PFUTP Regulations, 2003, which is reproduced as under:

SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003

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.

19. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15A(a) & 15 HA of the SEBI Act.

20. In response to SCN, Noticees neither filed any reply nor attended personal hearing before undersigned. The details of the delivery of SCN and Hearing Notice (HN) to the Noticees is as follows:

Noticee Name	SCN/HN delivered by
N & N Financial Consultants Private Limited	SCN served by email (on email address abomcx@yahoo.com) on 15.12.2021 and HN on 05.07.2022 respectively
Novak Exim Overseas Private Limited	SCN and HN sent through SPAD and email (on email addresses novakexim54@yahoo.in; parasramsrohini@yahoo.com) were undelivered

21. From the details of delivery of SCN and HN as given in the table above, I note that SCN and HN were served on Noticee 1. SCN and HN could not be served to Noticee 2.

22. From the details of delivery of SCN and HN as given in the table above, I note that Noticee 1 did not submit any reply to the SCN, and did not appear for personal hearing, despite being provided with sufficient opportunity for filing the reply to the SCN and to appear for hearing.

23. In these facts and circumstances, with respect to the Noticee, the matter can be proceeded ex-parte on the basis of material available on record in terms of Rule 4(7) of the Adjudication Rules which reads as under: -

"4(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so."

CONSIDERATION OF ISSUES AND FINDINGS

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

Issue No. I Whether the Noticees violated Section 11C(2) and 11C(3) of SEBI Act; and Reg. 4(1) of SEBI PFUTP Regulations, 2003?

Issue No. II	If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(a) and 15HA of the SEBI Act?
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 the Noticees violated Section 11C(2) and 11C(3) of SEBI Act; and Reg. 4(1) of SEBI PFUTP Regulations, 2003?

25. One of the allegations against the Noticees is that they did not respond to the summons issued and delivered to them as illustrated in the table above. In this regard, I have perused the IT Department- SEBI's email dated 18.12.2019, wherein the delivery report of email through which the summons were sent to Noticees, have been provided. From the delivery report, it is observed that the email sent to Noticee 1 was delivered on email address 'abomcx@yahoo.com', whereas in the case of Noticee 2 the email sent to email address 'novakexim54@yahoo.in' bounced back and was undelivered. Further, it is stated in the SCN that the email summons were in addition to sending of summons by speed post with acknowledgement due, however the proof of delivery of summons to Noticee 2 by SPAD is not available on records.

26. In respect of Noticee 1, while examining the source documents from where email-id of Noticee 1 was taken, I find that client data obtained from BSE and CDSL was relied on. However, on perusing the client data on record, I find that email of Noticee 1 is recorded as 'nandnmcx@yahoo.com'. Considering that delivery is shown on a different email-id 'abomcx@yahoo.com', it cannot be ascertained from material on record that this email-id belongs to Noticee 1. Similarly, in respect of Noticee 2, there are no records to confirm that the summons were delivered to the Noticee.

27. Hence, considering that it is not established that the summons were delivered to the Noticees, the question of non-compliance with summons does not arise. Therefore, I find that material on record is not sufficient material to establish that the Noticees violated Section 11C(2) and 11C(3) of SEBI Act.

28. The other allegation on the Noticees is that they have stated incorrect information in DIS Slips to evade regulatory compliances for transfer of shares and thereby committed an act of deceit, and thereby violated Regulation 4(1) of SEBI PFUTP Regulations. In this regard, I note that the Noticees were Source client in the impugned transactions, and to facilitate the transfer of shares electronically, Noticees as Source Client duly filled in and signed the DIS slips and issued to the Source DP. I also note that in almost all DIS Slips issued by the Noticees for the impugned off market transfers, the reason for transfer stated in the DIS Slips was ‘Repayment of Loan’ or ‘return of loan of shares’ or ‘Loan”. SCN states that depositories i.e. CDSL and NSDL vide emails dated June 18, 2020, and June 16, 23 and 24, 2020 respectively informed that none of the off market transactions entered by the Noticees in the scrip of DLFL were in the nature of pledge. Hence, the reason stated by Noticees in the DIS slips for the transfer of the shares was false and incorrect, and hence an act of deceit.

29. Regulation 4(1) of PFUTP Regulations states that “*no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets”.* The issue to be examined here is whether an incorrect reason given in the DIS slip by a transferor amounts to manipulative, fraudulent or unfair trade practice.

30. In this regard, I refer judgment of Hon’ble SC in the matter of SEBI vs. Kanaiyalal Patel [CA No. 2595 of 2013] of 20.09.2017 wherein the SC held as follows:

    “Market manipulation is normally regarded as an “unwarranted” interference in the operation of ordinary market forces of supply and demand and thus undermines the “integrity” and efficiency of the market.”

    “Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions”

31. Based on the above, incorrect entry in DIS slip does not amount to market manipulation as by itself, it does not affect the market forces of demand and supply. A trade practice would be unfair if it is unfair to the parties involved in the transactions or otherwise affects fairness and integrity in the markets. Wrong entry for reason of sale on a DIS slip, as in this case, has not been shown to have created unfairness for the parties engaged in the transaction. It is also not demonstrated as to whether the fairness or integrity of trading in DLFL is impacted by the wrong entry in DIS slips by the Noticees.

32. As regards fraudulent trade practice, regulation 2(c) of the PFUTP Regulations defines fraud as *"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".* In the SC order in SEBI vs. Kanaiyalal Patel(supra), it is held that

    "The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities."

33. While the act of giving wrong reason for transfer of shares in a DIS slip may be considered to be deceitful, by itself, it has not been demonstrated as to how this act could induce another person to deal in securities. There is no inference in the allegation that any person was induced to act in the manner that he did but for the inducement.

34. In view of the above, I find that violation of Regulation 4(1) of SEBI PFUTP Regulations, 2003 against Noticees on account of giving wrong reason for sale in DIS slip is not established.

35. As the violations alleged against the Noticees are not established, issues II and III do not merit consideration.

ORDER

36. In view of the findings noted in the preceding paragraphs, the adjudication proceedings initiated against the Noticees vide SCN dated December 14, 2021 are disposed of.

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

DATE: November 29, 2022
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER