

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SP/DT/2022-23/ 24931-24934]

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

In respect of

Noticee No.	Name of the Noticee
1.	Mysore Amalgamated Coffee Estates Limited (PAN- AABCM7175L)
2.	Malavika Hegde (PAN- ABFPH9207C)
3.	R. Ram Mohan (PAN- AAXPR7822A)
4.	Sadananda Poojary (PAN- AAOPP0042R)

In the matter of Coffee Day Enterprises Limited

BACKGROUND

1. Late Mr. V. G. Siddhartha (VGS) who was the then Chairman and MD of Coffee Day Enterprises Limited (CDEL), had reportedly committed suicide in July 29, 2019. It was reported that VGS has left behind a suicide note dated July 27, 2019 addressed to Board of Directors of CDEL and Coffee Day family wherein it was revealed that he was in deep debt. Subsequently, in September 2019, the Board of CDEL engaged Shri Ashok Kumar Malhotra, retired DIG of Central Bureau of Investigation and Agastya Legal LLP., inter alia to investigate and to scrutinize the books of accounts of CDEL and its subsidiaries. SEBI also initiated investigation into the matter to ascertain whether funds were diverted from CDEL, a listed entity,

to related entities and to the possible violations of the provisions of Securities and Exchange Board of India Act, 1992 (**SEBI Act**), SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 (**PFUTP Regulations**) and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**). The period of investigation was from April 1, 2018 to March 31, 2020. However, wherever deemed necessary, reference has been made to events/time frames outside this period.

2. The investigation conducted by SEBI revealed that diversion of funds amounting to Rs.3535 Crores from the subsidiaries of CDEL to Mysore Amalgamated Coffee Estates Limited (**MACEL/Noticee 1**) and from Noticee 1 to entities controlled by VGS & his relatives, which is manipulative, fraudulent and unfair trade practice in securities market and Noticee 1 has been alleged to have violated the provisions of Sections 12A (a), (b) and (c) of SEBI Act and Regulations 3 (b), (c) and (d) and 4 (1) of PFUTP Regulations. The investigation also revealed that Malavika Hedge (**Noticee 2**) who was a promoter director of CDEL at the relevant time has failed to disclose to the Board of Directors that she had a material interest in related party transactions directly affecting CDEL and was also a direct beneficiary of the said fund diversion. Noticee 2 has, therefore, alleged to have been violated the provisions of regulation 4 (2) (f) of LODR Regulations. The investigation further revealed that R. Ram Mohan (**Noticee 3**) who was the Chief Financial Officer (**CFO**) of CDEL has failed to obtain requisite approvals for related party transactions with Noticee 1 and the Compliance Certificate provided for the FY 2018-19 and 2019-2020 were untrue and accordingly failed to ensure conformity with the regulatory provisions applicable to the listed entity in letter and spirit and has, therefore, alleged to have violated the provisions of regulation 17(8) read with Part B of Schedule II of LODR Regulations. Sadananda Poojary (**Noticee 4**) who was the Compliance Officer of CDEL at the relevant time, has failed to ensure conformity with the regulatory provisions applicable to the listed entity in letter and spirit, failed to obtain requisite approvals for the related party transactions with Noticee 1 and has, therefore alleged to have violated the provisions of Regulation 6(2) (a) of LODR Regulations.

APPOINTMENT OF ADJUDICATING OFFIER

3. Accordingly, Adjudication Proceedings were approved to be initiated against the aforementioned Noticees and the undersigned was appointed as Adjudicating Officer (**AO**) vide communique dated August 02, 2021 under section 19 of the SEBI Act read with sub-section (1) of section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (**Adjudication Rules**) to inquire into and adjudge under Section 15HA of the SEBI Act, the aforesaid violations alleged to have been committed by **MACEL (Noticee 1)**, and under section 15HB of the SEBI Act, the aforesaid alleged violations committed by Malavika Hegde (**Noticee 2**), R. Ram Mohan (**Noticee 3**) and Sadananda Poojary (**Noticee 4**). {Noticees 1 to 4 are collectively being referred to as **Noticees** hereinafter}.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice No. SEBI/LAD-1/SPV/RK/SCN/27031/2021 dated October 6, 2021 (**SCN**), was served upon the Noticees in terms of Rule 4 of the Adjudication Rules, advising to show cause as to why an inquiry should not be held and penalty be not imposed, in terms of Section 15HA and 15HB of the SEBI Act for the aforesaid alleged violations committed by them.
5. The allegations in the SCN has been summarized as under:
 - (i) 7 subsidiaries of CDEL namely, Coffee Day Global Ltd. Tanglin Retail Reality Developments Pvt. Ltd, Tanglin Developments Ltd, Giri Vidhyuth (India) Ltd, Coffee Day Hotels and Resorts Pvt. Ltd, Coffee Day Trading Ltd, Coffee Day Econ Pvt Ltd were having outstanding dues from MACEL (Noticee 1). Funds amounting to Rs. 3,535 Crores was diverted from these 7 subsidiaries of CDEL to Noticee 1, a related party of CDEL as disclosed in the Annual Reports of CDEL for FY 2018-19 and FY 2019-20.

- (ii) The said act of diversion had impacted the price and had resulted in fall in price of the scrip of CDEL. The closing price of the scrip of CDEL was Rs. 285.15 as on April 1, 2019 and Rs. 225 as on July 2, 2019. The news of suicide of VGS and his admission of responsibility for every financial transaction done by CDEL came out around the end of July 2019. The price fell to Rs. 66.05 by August 19, 2019 due to the aforesaid event (fall of around 70% compared to July 2, 2019 price). The price further fell to Rs. 27.95 as on October 29, 2019 (fall of around 88% compared to July 2, 2019 price). Accordingly, it was alleged that Noticee 1, has aided and abetted VGS in the said act of diversion of funds of Rs. 3,535 Crores from the aforementioned subsidiaries of CDEL to Noticee 1 and from Noticee 1 to entities controlled by VGS & his relatives, which act is manipulative, fraudulent and unfair trade practice in securities market, and therefore, in violation of the provisions of Sections 12A (a), (b) and (c) of SEBI Act and Regulations 3 (b), (c) and (d) and 4 (1) of PFUTP Regulations.
- (iii) Noticee 2, Malavika Hedge, who was a promoter director of CDEL at the relevant time has failed to disclose to the Board of Directors that she had a material interest in related party transactions directly affecting CDEL and was also a direct beneficiary of the said fund diversion. Noticee 2 has, therefore, alleged to have violated the provisions of regulation 4 (2) (f) of LODR Regulations.
- (iv) In the Annual Report of CDEL for FY 2018-19 and 2019-2020, it was disclosed that the compliance certificate was certified by the MD and CFO. However, requisite approvals for related party transactions with Noticee 1 were not obtained, the compliance certificates provided by MD and CFO under regulation 17(8) read with Part B of Schedule II of LODR Regulations were found to be untrue. Therefore, it is alleged that Noticee 3 has violated the said provisions of LODR Regulations.

- (v) Sadananda Poojary (**Noticee 4**) who was the Compliance Officer of CDEL at the relevant time, has failed to ensure conformity with the regulatory provisions applicable to the listed entity in letter and spirit, failed to obtain requisite approvals for the related party transactions with Noticee 1 and has, therefore alleged to have violated the provisions of regulation 6(2)(a) of LODR Regulations.
 - (vi) The aforementioned alleged violations, if established, make the Noticees liable for monetary penalty under section 15HA and 15HB of the SEBI Act.
6. The SCNs were delivered to the Noticees by speed post and through emails. The reply received from each of the Noticee, details of personal hearing and written submissions submitted by them are being dealt with herein as under:

Noticee1

7. Vide letter dated December 9, 2021, the Authorized representative (AR) of the Noticee1 had written to SEBI *inter alia* seeking all the documents such as annexures to the SCN and records that have been relied upon by SEBI while arriving at the charges levelled in the SCN including the investigation report (IR). The Noticee1 also sought an opportunity to inspect the documents through it AR. A time of 4 weeks was sought from the date of such an inspection to provide a detailed reply to SEBI.
8. In the meantime, the AR has, vide email dated December 11, 2021, intimated about the Settlement Application filed by Noticee 1 on December 10, 2021 before SEBI. The Noticee 1 further requested for the instant proceedings be kept in abeyance until the settlement application is disposed off.
9. The AR has, vide email dated December 11, 2021, confirmed their attendance to the opportunity of inspection of documents scheduled on December 16, 2021. On December 16, 2021, Noticee 1 availed the inspection of documents.

10. The Department concerned intimated the AO regarding the rejection of the settlement application on November 21, 2022 and the Noticee 1 was advised to file reply to the SCN, if any, in order to proceed further in the matter. Vide letter dated December 7, 2022, the AR has requested for a copy of the investigation report and also to grant a further time of 4 weeks to enable them to file a detailed reply. Vide email dated December 13, 2022 & letter dated December 14, 2022, copy of the IR and the annexures to the IR, were provided to the Noticee 1. Subsequently, vide email dated January 16, 2023, the Noticee1 has furnished its reply, inter alia, submitting the following:

- (a) The securities issued by it is not listed for trading or proposed to be listed on any stock exchange in India, therefore, it is not a person associated with the securities market as set out in the SEBI Act. Hence, Noticee1 is not subject to the regulatory jurisdiction of SEBI in terms of the SEBI Act and hence, the instant proceedings are not maintainable against it.
- (b) Noticee1 is engaged in the business of sale of coffee and supply coffee beans in the ordinary course of business to a subsidiary of CDEL. Further, Noticee1 owns more than 600 acres of coffee estates in Chikkamagalur and Hassan districts of the Karnataka. Therefore, there were several regular transactions everyday between the Noticee1 and the coffee estates managed by them. Besides payment for coffee, these transactions related to funds transferred for maintenance of the estates, salary payments to staff and loans etc.
- (c) Noticee 1 had continuous business relation with the subsidiaries of CDEL. The IR also notes that the transactions were disclosed as per the relevant accounting standards and other legal requirements in the financial statements of the said subsidiaries as well as in the consolidated financial statements of CDEL.
- (d) The Board of Directors of the subsidiaries showed the advances given to Noticee 1 as “unsecured, considered good” considering that Noticee 1 had honored all dues to the subsidiaries of CDEL in the past.
- (e) Bankers of CDGL and other subsidiaries have not raised any objection to the movement of funds from the accounts of those companies into the

account of Noticee 1, nor reported those transactions as suspicious transactions, nor have auditors reported anything amiss in those transactions.

- (f) According to the IR prepared by Mr. Ashok Kumar Malhotra and Agastya Legal LLP, the transactions were legitimate, commercially acceptable and legally tenable from a banker's perspective.
- (g) Transfer of funds from Noticee 1 to entities controlled by VGS were not objected to or reported as suspicious transactions by bankers, those were legitimate business transactions done at the discretion and solely handled by VGS who took all the financial decisions in this regard. This is confirmed by SEBI in its IR where it is clearly observed that VGS was the sole person who was responsible for the decision to transfer funds from the 7 subsidiaries to MACEL and that financial decisions of MACEL were taken by VGS.
- (h) Therefore, the allegation that these transactions were diversion of funds from subsidiaries of CDEL and fraudulent in nature is erroneous, false, baseless and unsustainable. Noticee 1 denied that they aided or abetted VGS in diverting funds from CDEL as falsely alleged or otherwise.
- (i) Vide letter dated July 27, 2019, VGS had accepted the sole responsibility of all the financial transactions subject to the present proceedings and had admitted that his team, auditors and the senior management were completely unaware of the said transactions.
- (j) It is an admitted fact that 91.75% shareholding in MACEL was held by late SV Gangaiah Hegde, father of VGS and the remaining shareholding was held by 71 shareholders.
- (k) The 7 subsidiaries of CDEL have initiated the process of Commercial suits before the Commercial Courts, Bengaluru for recovery of amounts from Noticee 1. Any submission by Noticee 1 in respect of the aforesaid balances may prejudice its interest in the said suits. Nevertheless, it was reiterated that Noticee 1 has not aided or abetted VGS in any act of diverting any funds from subsidiaries of CDEL to entities controlled by VGS which is manipulative, fraudulent or unfair trade practice in securities market as alleged.

- (l) Noticee 1 is not concerned about the authority to transfer the funds, since the banks have permitted the transfer and hence, the authorizations were in place.
- (m) The transfer of funds by the 7 subsidiaries of CDEL were part of the normal but complex business of managing large coffee estates as noted in the audit and investigation reports considered by SEBI. Noticee 1 has always honored the balances due to the said companies and others and repaid advances extended by them. Therefore, it is erroneous to consider the said transfer of funds as being diversion of funds from CDEL.
- (n) The fund transfers between the subsidiaries of CDEL and Noticee 1 were legitimate, commercially acceptable and legally tangible and thus, cannot be said to lack approvals or authority.
- (o) Noticee 1 denies that the transfer of funds from the 7 subsidiaries of CDEL amounted to diversion of funds from subsidiaries of CDEL and that a fraud was perpetrated as falsely alleged. This is corroborated by the statement of CA Lavitha Shetty, Statutory Auditor of MACEL, recorded by SEBI on March 5, 2021. Even the statutory auditor did not find anything unusual regarding the transfer of funds from subsidiaries of CDEL to MACEL.
- (p) It is denied that the fund trail stated in the SCN revealed that funds allegedly diverted from subsidiaries of CDEL to MACEL were further diverted from MACEL to entities related to VGS.
- (q) The price of the scrip of CDEL was impacted by the news relating to the unfortunate death of VGS and not the information relating to any alleged diversion of funds as alleged in the SCN. The information about transfer of funds came to public domain in July 2020 when Mr. Ashok Kumar Malhotra and Agastya Legal LLP submitted their report. Therefore, it is erroneous to allege that any transfer of funds impacted the price of the scrip.
- (r) Thus, it is denied that Noticee 1 had aided and abetted VGS in the alleged act of diversion of funds of Rs. 3535 Crores from the 7 subsidiaries of CDEL to MACEL and MACEL to entities controlled by

VGS and his relatives as alleged in the SCN. It is thus denied that Noticee 1 has violated the provisions of Section 12A (a), (b), (c) of SEBI Act and regulations 3 (b), (c), (d), 4 (1), PFUTP Regulations and has requested that it be discharged from the instant proceedings.

11. Further, vide Notice of Hearing dated January 17, 2023, an opportunity of personal hearing was granted to Noticee 1 on February 8, 2023. Vide email dated February 6, 2023, the AR intimated about their inability to appear on the scheduled date, due to bereavement in the family of the Advocate. Accordingly, personal hearing has been rescheduled to February 15, 2023 and the same was intimated vide email dated February 6, 2023. Vide email dated February 7, 2023, the AR sought for adjournment of the personal hearing scheduled on February 15, 2023 due to personal reasons. Accordingly, vide email dated February 8, 2023, personal hearing has been rescheduled to February 22, 2023.

12. The AR availed the opportunity of hearing on February 22, 2023 and made submissions on the behalf of the Noticee 1. Pursuant to the said hearing, the Noticee 1 has made its written submissions vide letter/email dated March 8, 2023.

Noticee 2

13. Vide email dated October 12, 2021, scanned copy of the SCN was sent to the Noticee 2. Vide letter dated November 1, 2021, Noticee 2 acknowledged the receipt of the SCN and the annexures and also requested for inspection of documents including the investigation report. Further, the Noticee 2 has requested for a period of 4 weeks after availing inspection of documents, to enable her to file a detailed written reply to the SCN.

14. On December 8, 2021, the AR for Noticee 2 availed inspection of documents. Noticee 2 has intimated vide email dated December 10, 2021 that she has filed a Settlement Application in the matter. The AR vide email/ letter dated December 22, 2021, has *inter alia* informed that, Noticee 2, 3 & 4 have filed Settlement Applications.

15. Vide letter dated November 25, 2022, the Noticee 2 has been intimated that the Settlement Application filed by her has been rejected and thus, in order to proceed further in the matter, the Noticee has been advised to file reply, if any, to the SCN.
16. Vide letter dated December 7, 2022, the Noticee 2 has *inter alia* requested for inspection of the IR and to provide for copy of the same and further requested for grant of period of at least 3 weeks to the Noticee 2 after availing the inspection of documents to enable filing of reply.
17. Accordingly, vide email/letter dated January 6, 2023, the Noticee 2 filed reply to the SCN, *inter alia* submitting the following:
- (a) It is denied that Noticee 2 has failed to disclose to the board of directors of CDEL that the Noticee 2 had material interest in the alleged related party transactions with Noticee 1 directly affecting CDEL as alleged in the SCN. It is further denied that the Noticee 2 was one of the beneficiaries of funds allegedly diverted from CDEL, thus, there is no question of Noticee 2 violating the provisions of regulation 4 (2) (f) of the LODR Regulations.
 - (b) Regulation 4 of the LODR Regulations is only an indicative provision for interpretation of the LODR Regulations. On the face of it, the provisions entail principles to be applied in interpretation and they are not charging provisions themselves.
 - (c) During the IP, Noticee 2 was the Non-Executive Director of CDEL which is supported by the Annual Reports for FY 2018-19 and 2019-20. Noticee 2 was not involved in the day-to-day activities of CDEL as she was the Non-Executive Director of CDEL until December 6, 2020, a year and half after the demise of VGS.
 - (d) The details of outstanding amounts became known only after the receipt of the IR, which was voluntarily communicated by CDEL to SEBI vide its email dated July 27, 2020.
 - (e) VGS was in control of most of the treasury function of CDEL and its subsidiaries. Except VGS, no other person had information w.r.t the transfer of funds as referred to in the SCN, from the 7 subsidiaries of CDEL to

Noticee 1. Even in the dying declaration, it has been stated that VGS has withheld the information from everybody including family.

- (f) Noticee 2 was not aware of the transactions which have come to light by virtue of the investigation conducted. Being unaware of the facts relating to transfers of funds which happened entirely at the hands of VGS, it is absurd to expect disclosure of facts that are outside the knowledge of Noticee 2.
- (g) The SCN does not spell out how the Noticee 2 received funds or was aware of the alleged fund transfers. The Noticee 2 never received any intimation or alerts or emails concerning the receipt of the funds allegedly transferred from Noticee 1 to Noticee 2. Thus, Noticee 2 had no knowledge of receipt of any funds and was simply unaware of the transactions and thus, she could not have been expected to make disclosures.
- (h) It is evident that being the Noticee 2's husband, it was VGS who exercised control over financial operations including those that are discovered to have any connection with the name of Noticee 2.
- (i) There was no related party transaction between CDEL and Noticee 1 or transfer of funds from CDEL to Noticee 1 or any notice of the same to the Noticee 2 directly or indirectly. Thus it is denied that there is any violation of the provision of Regulation 4 (2) (f) of LODR Regulations.
- (j) The definition of "related party transactions" given under Section 2 (zc) of the LODR Regulations pertains only to the transactions between listed entity and a related party. On the other hand, the transactions in the SCN pertain to transactions between various subsidiary companies of CDEL and the Noticee 1. In the instant matter, none of the transactions referred to in the SCN are transactions between CDEL being the listed company and the Noticee 1. Thus the said provision cannot be extended to transaction entered into by subsidiaries of a listed company as alleged in the SCN.
- (k) The LODR Regulations have been amended by the SEBI (LODR) (6th Amendment) Regulations, 2021 wherein, w.e.f. April 1, 2022, related party transactions with a subsidiary of a listed company would require the approval of the audit committee and shareholders of a listed entity. Such a position did not exist until April 1, 2022.

(l) Undisputedly, these transactions have not been entered into between CDEL which is a listed company and the Noticee 1.

(m) It is denied that Noticee 2 was one of the beneficiaries of funds allegedly diverted from CDEL. The transactions alleged in the SCN between subsidiaries of listed company and related parties of the listed company are not related party transactions in the eyes of law.

18. Vide Notice of Hearing dated January 12, 2023, an opportunity of personal hearing was granted to Noticee 2 on January 25, 2023, which was availed of, by the Noticee and submissions were made on behalf of Noticee 2.

Noticee 3 & Noticee 4

19. Vide email dated October 12, 2021, scanned copy of the SCN was sent to the said Noticees. Vide letters dated November 2, 2021, Noticees acknowledged the receipt of the SCN and the annexures and also requested for inspection of documents including the investigation report. The Noticees have requested for a period of 4 weeks after providing inspection of documents, to enable them to file a detailed written reply to the SCN.

20. On December 8, 2021, the AR for Noticees has inspected the documents and copies of the same were provided to person inspecting the same.

21. The AR of the Noticees, vide email/ letter dated December 22, 2021, has *inter alia* informed that, Noticee 3 & 4 have filed Settlement Applications.

22. Vide letter dated November 25, 2022, the Noticees have been intimated that the Settlement Applications have been rejected and thus, in order to proceed further in the matter, the Noticees have been advised to file reply, if any, to the SCN.

23. Vide letter dated December 7, 2022, the Noticees have *inter alia* requested for inspection of the IR and to provide for copy of the same and further requested for grant of period of at least 3 weeks to the Noticees after providing the inspection of

documents to enable filing of reply. Vide email/ letter dated December 13 & 14, 2022, copy of the IR and the annexures were provided to the Noticees.

24. Subsequently, vide email/letter dated January 6, 2023, the Noticees, have *inter alia* made submissions given herein as under:

- (a) Regulation 23 of the LODR Regulations does not apply in connection with the transactions referred to in the SCN which form the basis of the charge in the SCN. Regulation 23 of the LODR Regulations deals with “Related party transactions”. Regulations 23 (2) and 23 (4) of the LODR Regulations states that “related party transactions” shall require approval of the audit committee and shareholders respectively.
- (b) The definition of “related party transactions” given under Section 2 (zc) of the LODR Regulations pertains only to the transactions between listed entity and a related party. On the other hand, the transactions in the SCN pertain to transactions between various subsidiary companies of CDEL and the Noticee 1. In the instant matter, none of the transactions referred to in the SCN are transactions between CDEL being the listed company and the Noticee 1.
- (c) The requirement of taking approvals under Regulation 23 (2) & 23 (4) of the LODR Regulations would not apply in the instant case as the regulation applies only to transactions between a listed entity and a related party. Since none of the transactions are between CDEL being the listed company and the Noticee 1, the provisions of Regulation 23 (2) & 23 (4) read with Regulation 23 (1) of the LODR Regulations are not triggered in so far as the transactions in the SCN are concerned as they pertain to FY 2018-19 and 2019-20.
- (d) A conjoint reading of the LODR provisions show that the said provisions cannot be extended to transactions entered into by subsidiaries of a listed company.
- (e) The LODR Regulations have been amended by the SEBI (LODR) (6th Amendment) Regulations, 2021 wherein, w.e.f. April 1, 2022, related party transactions with a subsidiary of a listed company would require the

approval of the audit committee and shareholders of a listed entity. Such a position did not exist up until April 1, 2022.

- (f) Undisputedly, these transactions have not been entered into between CDEL which is a listed company and the Noticee 1. Hence the requirement of prior approval of the audit committee and the shareholders' of CDEL in connection with the transactions does not arise.
- (g) The law has clearly been declared by the Hon'ble SAT and that too upholding SEBI's own view that, "reading of these two definitions of the term related party transactions would show that to attract the rigors of the terms as per sub-regulation 2 (zc) of the LODR Regulations the transactions should be between a listed entity and a related party."
- (h) The definition of "related party transactions" under Regulation 2 (zc) was substantively amended only in November 2021 to bring within its purview transactions between a listed entity or any of its subsidiaries on one hand and related party of the listed entity or any of its subsidiaries on the other hand. This was not the case during the period of FY 2018-19 and 2019-20 when the transactions referred to in the SCN took place.
- (i) It is submitted that the Noticee 3, the CFO of CDEL has not violated the provisions of Regulation 17 (8) read with Part B of Schedule II of the LODR Regulations. Further, it is submitted that Noticee 4, the Compliance Officer of CDEL has not violated the provisions of Regulation 6 (2) (a) of the LODR Regulations.
- (j) Transactions between the 7 subsidiaries of CDEL and Noticee 1 in FY 2018-19 were disclosed in the Annual Report of CDEL. The consolidated financials were circulated/ disclosed with the approval of Audit Committee and Board of Directors to the Shareholders of the Company as well as the statutory authorities such as the Stock Exchanges, ROC etc.
- (k) Coffee Day Global Ltd (CDGL) had a regular coffee procurement relationship with the Noticee 1 and these transactions in the regular course had been duly approved by the audit committee of CDGL and the same was properly disclosed regularly to the concerned authorities.
- (l) W.r.t the transaction referred to in the SCN concerning transfer of Rs. 789 crores from a subsidiary to Noticee 1, the same pertained to the transaction

concerning sale of Mindtree Ltd. shares to L & T which was approved by the Board of CDEL and also disclosed to the stock exchange.

- (m) The statutory auditors of the subsidiary companies have also certified the financial statements of the subsidiaries and statutory auditors of CDEL have certified the consolidated financial statements of CDEL. Thus, full disclosure of such transactions was made to shareholders and various authorities.
- (n) It is submitted that the Noticee 3 & Noticee 4 have at all times exercised due diligence while performing their functions as a CFO and Compliance Officer of CDEL respectively.
- (o) The transactions stated to have been made as per the SCN were not known to the Noticees or the Board of Directors until the receipt of the IR of Mr. Ashok Kumar Malhotra, retired DIG of CBI along with Agastya Legal LLP, New Delhi. Therefore, there was no question of approval from the Board or Audit Committee or shareholders of CDEL for these transactions.
- (p) Noticees have consistently complied with all requirements of the applicable laws. Further, Noticees were not a part of any of the 7 subsidiaries of CDEL which have transactions with Noticee 1 as alleged in the SCN or the decisions taken in this regard. Banks also processed the said transactions to and from Noticee 1 and no "fraud/suspicious" transaction reporting was done.
- (q) CDEL adopted continuous improvement measures to strengthen the systems acting in the interest of the shareholders and other stakeholders such as constitution of executive committee, high transparency standards, going concern concept.
- (r) Thus, the said Noticees have submitted that they have not violated the provisions of regulation 17 (8) read with Part B of Schedule II of the LODR Regulations and regulation 6(2)(a) of LODR Regulations as alleged in the SCN and hence are not liable for penalty under Section 15HB of the SEBI Act.

25. Vide Notice of Hearing dated January 12, 2023, an opportunity of personal hearing was granted to the Noticees on January 25, 2023, which was availed of by the Noticees and the AR made submissions on behalf of the said Noticees.

CONSIDERATION OF ISSUES

26. Taking into consideration the facts and material available on record, I note that the issues that arise for consideration are as under:

- i. Whether the Noticees have violated the provisions of Section 12A (a), (b) and (c) of SEBI Act, regulations 3 (b), (c) and (d) and 4 (1) of PFUTP Regulations, regulations 4(2)(f), regulation 17(8) read with Part B of Schedule II of LODR Regulations and regulation 6(2)(a) of LODR Regulations?
- ii. Do the violations, if any, attract monetary penalty under section 15HA and 15HB of the SEBI Act?
- iii. If the answer to issue (ii) above is in affirmative, then what should be the quantum of monetary penalty?

- (i) **Whether the Noticees have violated the provisions of Section 12A (a), (b) and (c) of SEBI Act, regulations 3 (b), (c) and (d) and 4 (1) of PFUTP Regulations, regulations 4(2)(f), regulation 17(8) read with Part B of Schedule II of LODR Regulations and regulation 6(2)(a) of LODR Regulations?**

27. Before moving forward, it is pertinent to refer to the relevant provisions of the SEBI Act, LODR Regulations and the PFUTP Regulations alleged to have been violated by the Noticees. The said provisions are reproduced hereunder:

SEBI Act

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;

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a);

(b) 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;

(c) 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 thereunder.

(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 recognized stock exchange in contravention of the provisions of the Act or the rules and regulation made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practice

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

Explanation- For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

LODR Regulations

Principles governing disclosures and obligations.

4 (2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below

(f) Responsibilities of the board of directors:

The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

(1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.

Compliance Officer and his Obligations.

6. (2) The compliance officer of the listed entity shall be responsible for-
(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.

17. (8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

SCHEDULE II: CORPORATE GOVERNANCE

PART B: COMPLIANCE CERTIFICATE [See Regulation 17(8)]

The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

(1) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

(2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.

C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

D. They have indicated to the auditors and the Audit committee

(1) significant changes in internal control over financial reporting during the year;

(2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

(3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

28. From the material available on record, I note that CDEL, incorporated in 2008, is a listed company and its shares are listed at the BSE Limited (BSE) and the National Stock Exchange of India Limited (NSE). MACEL (Noticee1) is a company incorporated on October 14, 1994 and is engaged in the business of Coffee and was a supplier of coffee beans to Coffee Day Global Limited (**CDGL**), a subsidiary of CDEL.

29. With respect to Noticee 1, I note the allegation in the SCN that funds amounting to Rs 3,535 Crores were diverted from 7 subsidiaries of CDEL to Noticee 1 (MACEL), a related party of CDEL as disclosed in the Annual Reports of CDEL for FY 2018-19 and FY 2019-20. The details of the said diversion of funds, as on March, 2019 and July 31, 2019, are as shown in the table below:

Sr. No.	Name of the subsidiary	As on March 31, 2019	As on July 31, 2019
1	Coffee Day Global Ltd.	65	1,112
2	Tanglin Retail Reality Developments Pvt. Ltd.	789	1,050
3	Tanglin Developments Ltd.	-12	620

4	Giri Vidhyuth (India) Ltd.	-	370
5	Coffee Day Hotels and Resorts Pvt. Ltd.	-	155
6	Coffee Day Trading Ltd.	-	125
7	Coffee Day Econ Pvt Ltd.	-	103
Total		842	3,535

30. I also note that the allegation in the SCN that the act of diversion of such huge amounts of funds from CDEL to Noticee 1 had impacted the price and resulted in fall in price of the scrip of CDEL around the period of time when the news of suicide of VGS came to light i.e. by the end of July 2019. Thus, it is alleged in the SCN that MACEL aided and abetted VGS in the said act of fund diversion from the subsidiaries of CDEL to MACEL and from MACEL to entities controlled by VGS & his relatives and hence is manipulative, fraudulent and unfair trade practice in securities market resulting in violation of the provisions of section 12A(a), (b) & (c) of the SEBI Act and regulations 3(b), (c) & (d) & 4(1) of PFUTP Regulations.

31. With respect to the said allegation of aiding and abetting for fund diversion, Noticee 1 has contended that there were several regular transactions every day between the Noticee 1 and the coffee estates managed by CDEL and those were legitimate business transactions done at the discretion of VGS and solely handled by him who took the financial decisions in this regard. Noticee 1 has also contended that VGS had accepted the sole responsibility of all the financial transactions and had admitted in his suicide note that his team, auditors and the senior management were completely unaware of the said transactions and therefore, the allegation that those transactions were diversion of funds from subsidiaries of CDEL and fraudulent in nature is erroneous and unsustainable. The Noticee 1 has also denied that it aided or abetted VGS in diverting funds from CDEL. It is also contended by the Noticee 1 that the transfer of funds by the 7 subsidiaries of CDEL were part of the normal but complex business of managing large coffee estates, as noted in audit and investigation reports considered by SEBI and Noticee 1 always honored the balances due to the said companies and others and repaid advances extended by them and therefore it is erroneous to consider the said transfer of funds as being

diversion of funds from CDEL. I also note the contention of the Noticee that the said 7 subsidiaries of CDEL have already initiated commercial suits against Noticee 1 for recovery of amounts from it. I also note the contention of the Noticee that the price of the scrip of CDEL was impacted by the news relating to the unfortunate death of VGS and not due to the information relating to any alleged diversion of funds, about which the information came into the public domain only in July 2020. Thus, I note the contention of the Noticee 1 that it is erroneous to allege that any transfer of funds impacted the price of the scrip.

32. I note that Noticee 1, i.e. MACEL is a company incorporated on October 14, 1994 and is engaged in the business of Coffee and was a supplier of coffee beans to Coffee Day Global Limited (**CDGL**), a subsidiary of CDEL. I also note the contention of Noticee 1 that the coffee estates of VGS and family were managed and operated by it and there had been regular financial transactions between MACEL and the entities regarding the same. I also note the contention that it had utilized the funds, by way of various current account transfers to entities belonging to VGS for this purpose. With respect to these contentions of MACEL, based on the material available on record and the financials of MACEL as available in the public domain, I note that the said financials do not support the contentions raised by Noticee 1 regarding its operations. The financials, as available on the website of Ministry of Corporate Affairs for the financial years 2019-2020 and 2020-2021 are as under:

Particular	March 31, 2019	March 31, 2020	March 31, 2021
Share Capital	0.10	0.10	0.10
Reserve & Surplus	(223.76)	(264.42)	(283.70)
Long Term Borrowing	1652.22	3830.57	3841.30
Long Term Loan from Related Parties	-	3821.47	3838.87
Short Term Borrowing	2375.87	498.30	498.15
Short Term Loan from Related Parties	-	498.05	498.14

Long Term Loans & Advances	3795.32	4174.77	4199.91
Loan to Related Parties	-	4171.52	4197.16
Revenue from Operations	1.71	3.27	2.55
Profit	(57.54)	(40.66)	(19.29)
Net Worth	(223.66)	(264.32)	(283.60)

33. I note that during the relevant time, Noticee 1 had huge borrowings, both short term and long term, and those borrowings were almost entirely utilized for giving long term loans and advances to its related parties. Further, from the material available on record, I note that Noticee 1 had negligible operations and its net worth was also very negligible at the relevant time as is evident from the table below:

Particulars/Year	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Revenue from Coffee Plantations	4.26	2.17	1.70	3.27	2.55	4.64
Income from Other Sources - Interest	2.42	2.00	2.34	0.15	-	-
Total Revenue	6.68	4.17	4.04	3.42	2.55	4.64
Profit/Loss	-21.07	-32.79	-57.54	-40.65	-19.28	-23.00
Net worth	-133.32	-166.11	-223.65	-264.31	-283.60	-306.61

34. Thus, I do not find any merit in the contentions of the Noticee 1 regarding its operations. I further note that 91.75% of shares of MACEL were held by Late S.V Gangaiah Hegde, father of VGS. Further, almost entire money received by MACEL from the subsidiary companies of CDEL was further diverted to VGS, Noticee 2 and other related entities of VGS. In this regard, I note that Noticee 1 has contended that there is a factual error in the pictorial representation given in the SCN. In this regard, I note that as per the information provided by CA Lavitha Shetty, who was the CA of Noticee 1 at the relevant time and analysis of bank accounts, the amounts diverted from Noticee 1 to VGS and its related entities including Noticee 2 was obtained therefrom. As mentioned above, Noticee 1 is almost entirely owned by VGS's family and CDEL is also controlled by VGS and family members. Thus, the both entities are controlled by the same set of persons,

viz. VGS and his family members. Therefore, from the facts and circumstances of the matter, I find that Noticee 1 was nothing but a pass-through entity which has effectively aided and abetted VGS in the act of diverting funds to the tune of Rs.3,535 Crores from subsidiaries of CDEL to Noticee 1 and from Noticee 1 to entities controlled by VGS & his relatives and has thus violated the provisions of SEBI Act and PFUTP Regulations as alleged in the SCN.

35. In this regard, I note that regulation 4(1) of PFUTP Regulations puts a complete prohibition on all manipulative, fraudulent or unfair trade practice relating to securities market. In the instant matter, large scale diversion of funds of a listed company has taken place and the Noticee 1 herein has effectively acted as a pass-through entity for such diversion as discussed above. Such diversion of funds was never disclosed to the investors till the time of death of VGS. In view of the above, I am not inclined to accept the contention of MACEL that it had business operations with CDEL and the funds were transferred in lieu of the same. Further, I find that after the news of demise of VGS and his admission of responsibility for the financial transactions done by him in CDEL that came out around the end of July 2019, the price of the CDEL scrip which at Rs. 225 on July 2, 2019 fell to Rs. 66.05 by August 19, 2019 (i.e. fall of around 70% compared to July 2, 2019 price) and to Rs. 27.95 as on October 29, 2019 (i.e. fall of around 88% compared to July 2, 2019 price). The above price movement makes it evident that the act of diversion of funds by VGS had impacted the price of the scrip of CDEL because effectively, VGS's admission of responsibility pertained to the very financial transactions carried out by him which is the subject matter at present. In view of the same, the contention of the Noticee 1 that the price was impacted due to VGS's admission and not the said diversion of funds is not acceptable. Hence, as noted above, Noticee 1 has acted as a pass-through entity for the said fund diversion and has aided and abetted CDEL in such a large scale fund diversion.

36. I also note the contention raised by the Noticee that it is not a listed company and not a person associated with the securities market as set out in the SEBI Act and the instant proceedings are beyond the jurisdiction of SEBI. To further its

contention, it has placed reliance on the order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of PNB Housing Finance Limited (Appeal No. 423 of 2021 decided on 09.08.2021). In this regard, I note that as to who will be considered as *'persons associated with securities market'*, reference may be made to the judgement of Hon'ble Gujarat High Court in the matter of Karnavati Fincap Ltd. vs SEBI, decided on May 6, 1996 [1996 87 CompCas 186 Guj] wherein it held that "*.....in ordinary meaning, the persons associated with the securities market would include all and sundry who have something to do with the securities market. It is to be noted that the securities market in the sense is not confined to stock exchanges only. The words "persons associated with the securities market" are of much wider import than intermediaries. "Persons associated with" denotes a person having connection or having intercourse with the other; in the present case that "other" with whom a person is to have connection or intercourse is the securities market...*". In the instant matter, as discussed in the foregoing paragraphs, it is clear that Noticee 1 has played a pivotal role in aiding and abetting CDEL in such huge diversion which has adversely affected the investors. It is also pertinent to refer to the definition of 'fraud' as given under Regulation 2(1)(c) and as interpreted by the Hon'ble Supreme Court of India in *SEBI vs. Kanaiyalal Baldevbhai Patel & Ors. (2017) 15 SCC 753* wherein, a wide connotation has been attributed to the said definition. In para 28 of the said Judgement, it is stated that the definition of 'fraud' has two parts under Regulation (2)(1)(c), first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of term 'fraud'. The specific instances that are included under the term 'fraud' are, a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment or an active concealment of a fact by a person having knowledge or belief of the fact etc. In view of the same, the act of diverting funds to the tune of INR 3,535 crore from subsidiaries of CDEL to Noticee 1 and from Noticee 1 to entities controlled by VGS & his relatives, gets squarely covered under the definition of 'fraud'. In view of the same, I do not find any merit in the said contention raised by the Noticee 1.

37. Therefore, I am not inclined to accept the contentions raised by Noticee 1 that it had business operations with CDEL and the funds were transferred in lieu of the same. Noticee 1 was acting as a pass-through entity for such largescale diversion of funds of a listed entity and the shareholders of CDEL were not aware of such large-scale diversion till the time of demise of VGS. Noticee 1 was also a family concern of CDEL, who without having any financial fundamentals or business operations accepted such the huge funds from CDEL and has, therefore, effectively aided and abetted CDEL in such diversion. I also find that such huge diversion of funds had impacted the price and had resulted in price fall as alleged in the SCN. Therefore, I find that Noticee 1 has violated the provisions of Section 12A (a), (b) and (c) of SEBI Act and Regulations 3 (b), (c) and (d) and 4 (1) of PFUTP Regulations.

38. With respect to **Noticee 2** i.e, Malavika Hedge, I note that it is alleged in the SCN that she has failed to disclose to the board of directors that she had a material interest in related party transactions directly affecting CDEL and has therefore violated the provisions of regulation 4 (2) (f) of the LODR Regulations. I also note that with respect to **Noticee 3** i.e. R. Ram Mohan, the CFO of CDEL, it is alleged in the SCN that requisite approvals for related party transactions with Noticee 1 were not obtained and the compliance certificates provided by the CFO under regulation 17(8) read with Part B of Schedule II of LODR Regulations were found to be untrue. **Noticee 4** i.e. Mr. Sadananda Poojary, the Compliance Officer of CDEL is alleged to have failed to ensure conformity with the regulatory provisions applicable to the listed entity in letter and spirit which is violation of the provisions of Regulation 6(2) (a) of LODR Regulations.

39. I note the contentions of Noticee 2 that during the relevant period, she was a Non-Executive Director of CDEL which fact is supported by the Annual Reports for FY 2018-19 and 2019-20. She has further contended that she was not involved in the day-to-day activities of CDEL as she was the Non-Executive Director of CDEL until December 6, 2020, a year and half after the demise of VGS. It was also contended that the details of outstanding amounts became known to her only after the receipt

of the IR, which was voluntarily communicated by CDEL to SEBI vide its email dated July 27, 2020. She has also contended that VGS was in control of most of the treasury function of CDEL and its subsidiaries. Except VGS, no other person had information with respect to the transfer of funds as referred to in the SCN, from the 7 subsidiaries of CDEL to Noticee 1. It is thus contended that Noticee 2 was not aware of the transactions which have come to light by virtue of the investigation conducted. Being unaware of the facts relating to transfers of funds which happened entirely at the hands of VGS, Noticee 2 has stated that it is absurd to expect disclosure of facts that are outside the knowledge of Noticee 2.

40. Noticee no 2 while denying that she had material interest in the alleged related party transactions with Noticee 1 directly affecting CDEL also denied that she was one of the beneficiaries of funds allegedly diverted from CDEL. She has also contended that there was no related party transaction between CDEL and Noticee 1 or transfer of funds from CDEL. The definition of “related party transactions” given under Section 2 (zc) of the LODR Regulations at the relevant time pertains only to the transactions between listed entity and a related party. On the other hand, the transactions in the SCN pertain to transactions between various subsidiary companies of CDEL and the Noticee 1. In the instant matter, none of the transactions referred to in the SCN are transactions between CDEL being the listed company and the Noticee 1. Thus, the said provision cannot be extended to transactions entered into by subsidiaries of a listed company as alleged in the SCN and there is no question of the Noticee 2 violating the provisions of Regulation 4 (2) (f) of the LODR Regulations.

41. I note that similar contention has also been raised by Noticee 3 & 4 with respect to the definition of ‘related party transactions’. They have contended that regulation 23 of the LODR Regulations does not apply in connection with the transactions referred to in the SCN which form the basis of the charge in the SCN. Regulation 23 of the LODR Regulations deals with “Related party transactions”. Regulations 23 (2) and 23 (4) of the LODR Regulations states that “related party transactions” shall require approval of the audit committee and shareholders respectively. It was

further contended by Noticee 3 & 4 that the definition of “related party transactions” given under Section 2 (zc) of the LODR Regulations pertains only to the transactions between listed entity and a related party. On the other hand, the transactions in the SCN pertain to transactions between various subsidiary companies of CDEL and the Noticee 1. In the instant matter, none of the transactions referred to in the SCN are transactions between CDEL being the listed company and the Noticee 1. The requirement of taking approvals under Regulation 23 (2) & 23 (4) of the LODR Regulations would not apply in the instant case as the regulation applies only to transactions between a listed entity and a related party. Since none of the transactions are between CDEL being the listed company and the Noticee 1, the provisions of Regulation 23 (2) & 23 (4) read with Regulation 23 (1) of the LODR Regulations are not triggered in so far as the transactions in the SCN are concerned which pertain to FY 2018-19 and 2019-20. A conjoint reading of the LODR provisions show that the said provisions cannot be extended to transactions entered into by subsidiaries of a listed company.

42. I have considered the abovementioned submissions of the Noticees. I note that regulation 2(zc) which defines a ‘related party transaction’ and regulation 23 which mandates the need for approval of Audit Committee and shareholders of a listed company, prior to their amendment, which was applied prospectively with effect from April 01, 2022 onwards, did not cover transactions involving subsidiaries of a listed company and only after the amendment, the said provisions now include transactions involving subsidiaries. I note that at the relevant time when the transactions in question involving transfer of funds from subsidiaries to Noticee1 were done, though the amended provisions in Regulation 2(zc) and Regulation 23 did not come into effect, subsidiaries of CDEL ought to have been treated as equivalent to the listed company (i.e. itself), since CDEL predominantly derived all its value from its subsidiaries and had no inherent value of its own. In such circumstances, the Noticees being the promoter director, CFO and Compliance officer of the listed entity, should have been more cautious and careful and should have followed the spirit of the pre-amended regulation by treating the concerned transactions as related party transactions and following the norms applicable to

such transactions. Having said so, considering the fact that the relevant regulations as it stood at the relevant time did not cover transactions involving subsidiaries of a listed company, the allegations levelled against Noticee 2, Noticee 3 and Noticee 4 i.e, Malavika Hegde, R Ram Mohan and Sadananda Poojary respectively are dropped.

43. Therefore, with respect to Noticee 1, from the discussion in the foregoing paragraphs, it is established that Noticee 1 has violated the provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 read with Regulations 3(b), (c) & (d) and 4(1) of the PFUTP Regulations.

Issue No. II-Does the violation of aforementioned provisions of PFUTP Regulations by Noticee 1 attract monetary penalty under Section 15HA of SEBI Act?

Issue No. III. If the answer to Issue No. II above is in affirmative, then what should be the quantum of monetary penalty to be imposed on Noticee 1?

44. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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....."*

45. Since it is established that Noticee 1 has violated the aforementioned provisions of PFUTP Regulations, it is liable for monetary penalty under section 15HA of the SEBI Act.

46. The text of Section 15HA of the SEBI Act is reproduced below:

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”.

47. 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 reads as under: -

SEBI Act

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

1. 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.

48. In view of the charges established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. I note that material available on record neither indicate any quantifiable disproportionate gain or unfair advantage made by the Noticee 1 nor repetitive nature of such violation. In the instant case, Noticee 1 has aided and abetted in such a huge diversion of funds from a listed entity which is highly detrimental to the interest of the securities market and the shareholders of the listed entity. The fraudulent activities carried out by the Noticee 1 poses a threat to the integrity of securities market and I am of the opinion that a justifiable penalty needs to be imposed upon the Noticee 1 to meet the ends of justice.

ORDER

49. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee 1 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 a penalty of Rs. 10,000,000/- (Rs. One Crore only) on Noticee 1 i.e, Mysore Amalgamated Coffee Estates Limited (PAN AABCM7175L). I am of the view that the said penalty is commensurate with the violations committed by the Noticee 1.
50. Noticee 1 shall remit / pay the said amount of penalty within 45 days of receipt of this order 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. In case of any difficulties in payment of penalties, Noticee 1 may contact the support at portalhelp@sebi.gov.in.
51. Noticee 1 shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, Division of Regulatory Action-5 (EFD-1 – DRA-5), SEBI Bhavan II, Plot No. 7,'G' Block, Bandra Kurla Complex, Mumbai -400051 and also send an email to tad@sebi.gov.in with the following details:

Case name	
Name of Payee	
Date of Payment	
Amount paid	
Transaction No.	
Bank Details in which payment is made	
Payment is made for	Penalty

52. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act 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.

53. In terms of rule 6 of the SEBI Penalty Rules, copies of this order are sent to the Noticees and SEBI.

DATE: March 27, 2023

PLACE: MUMBAI

SAKKEENA PV

ADJUDICATING OFFICER