BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/JS/N./2022-23/18728-18730]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of

NOTICEE	NAME OF THE NOTICEE	PAN
1	**Triveni Enterprises Limited**	**AAACT3669F**
2	**Bhavin Hemendra Nagda**	**ABVPN6070F**
3	**Ramchandra Ramhit Varma**	**AEKPV4433J**

In the matter of preferential issue of shares of Triveni Enterprises Limited

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FACTS OF THE CASE

1. Triveni Enterprises Limited (hereinafter referred to as "Noticee-1") is listed on BSE Ltd. As per its website, Noticee-1 was in the business of trading of textiles and it was planning for expansion of business into imports, exports and manufacturing unit.

2. Noticee-1 had made two preferential allotments on 01.02.2014 (hereinafter referred to as "first preferential allotment") and 05.03.2014 (hereinafter referred to as "second preferential allotment"). Noticee-1 was listed on the Delhi Stock Exchange (DSE) during the time of preferential issues in February 2014 and March 2014. Thereafter, Noticee-1 was listed on BSE w.e.f. 01.08.2014. The details of the preferential allotments are as under:

Sr. No.	Date of allotment	No. of allottees	No. of shares	Price per share (Rs.)	Issue Proceeds (Rs.)
1	01.02.2014	38	36,40,000	15	5,46,00,000
2	05.03.2014	42	18,35,000	15	2,75,25,000

3. BSE carried out a preliminary examination of the utilisation of funds raised by Noticee-1 and it was *prima facie* found that there was misutilisation of funds raised by the Noticee-1 through preferential allotments.

4. On the basis of findings of BSE, SEBI initiated investigation in the matter and the period of investigation was taken from 01.10.2013 to 31.12.2014. The investigation, *prima facie*, revealed that Noticee-1 did not comply with the disclosure requirements and violated the provisions of clause 43 of the erstwhile Listing Agreement [now regulation 32 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015] read with section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA"). Further, Noticee-1 and its directors, viz. Bhavin Hemendra Nagda (Whole Time Director and CFO) (hereinafter referred to as "Noticee-2") and Ramchandra Ramhit Varma (Whole Time Director and CEO) (hereinafter referred to as "Noticee-3") were alleged to have misutilised the proceeds of the preferential allotments in violation of section 12A (a) (b) (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations").

APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI initiated adjudication proceedings against the Noticees in terms of:
   (a) section 15HA of the SEBI Act against Triveni Enterprises Limited and its directors viz. Bhavin Hemendra Nagda and Ramchandra Ramhit Varma;
   (b) section 23E of the SCRA against Triveni Enterprises Limited,

as per the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "SEBI Rules") read with sub-sections (1) and (2) of section 15-I of the SEBI Act and the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "SC(R) Rules") read with sub-sections (1) and (2) of section 23-I of SCRA. The undersigned was appointed as the Adjudicating Officer in this matter vide communique dated 05.08.2021 to enquire into and adjudge the alleged violations by the Noticees as per section 15-I of SEBI Act, 1992 read with rule 4 of the SEBI Rules and section 23-I of SCRA read with rule 4 of the SC(R) Rules.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A common show cause notice dated 13.10.2021 (hereinafter referred to as 'SCN') was issued to the Noticees under rule 4(1) of the SEBI Rules/SC(R) Rules to show-cause as to why an inquiry should not be initiated against them and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the alleged violation by all

the Noticees and under section 23E of the SCRA for the alleged violation by Noticee-1. The allegations made in the said SCN are given in the following paragraphs.

7. As mentioned in the table above at para 2, Noticee-1 had raised an aggregate amount of Rs. 8.21 crore through two preferential allotments, i.e. Rs. 5.46 crore in first preferential allotment and Rs. 2.75 crore in second preferential allotment. The objects of both the preferential allotments, as presented by the Noticee-1 to the shareholders was to fulfil the additional fund requirements for capital expenditure including acquisition of companies/business, funding long term working capital requirements, marketing, setting up of offices abroad and for other approved corporate purposes. Although the funds were purportedly raised for aforementioned objects, Noticee-1 allegedly deployed substantial portion of the funds for corporate lending under the guise of utilization of issue proceeds for the objects.

8. In this regard, the Noticee-1 vide letter dated 14.12.2018, *inter alia,* submitted that the issue proceeds were utilised in the following manner:

Utilization of issue proceeds w.r.t. preferential issue on 01.02.2014

Sr. No.	Purpose	Name of counterparty	Amount(Rs.)
1	Approved Corporate Purpose - For acquiring land, for building godown	Dwivedi Construction	5,00,00,000.00
2	Working Capital – Advance	Shree Rajeshwar Construction	10,00,000.00
3	Working Capital - Placing of purchase of railway scrap	The Central Province Railways Co. Ltd.	36,00,000.00
		TOTAL	5,46,00,000.00

Utilization of issue proceeds w.r.t. preferential issue on 05.03.2014

Sr. No.	Purpose	Name of counterparty	Amount(Rs.)
1	Approved Corporate Purpose - For acquiring land, for building godown	Dwivedi Construction	2,15,00,000.00
2	Working Capital - Franchise Agreement	Gini and Jony Ltd	30,00,000.00

3	Working Capital - Advance towards textile fabrics	VAM Enterprises	15,00,000.00
4	Working Capital - Placing of purchase of railway scrap	The Central Province Railways Co. Ltd.	17,00,000.00
		TOTAL	2,77,00,000.00

9. Vide letter dated 08.08.2019 and email dated 28.09.2020, information and clarification in respect of its transactions with Dwivedi Construction ("Dwivedi"), The Central Province Railways Co. Ltd. ("CPRCL") and Shree Rajeshwar Construction were sought by the Investigating Authority. Noticee-1 replied vide letter dated 09.10.2020, *inter-alia*, submitting that:

(i) **Dwivedi Construction:** The total consideration payable to Dwivedi as per MOU dated 03.02.2014 was Rs. 20 crore. Noticee-1 made payment of Rs. 7.15 crore as against Rs.20 crore. With regard to the payment of balance consideration, Noticee-1 submitted that due to financial constraint as a result of recession and adverse market conditions, the same was still payable to Dwivedi. As a result, the property is still to be transferred to the company due to non-payment of balance amount;

(ii) **The Central Province Railways Co. Ltd. (CPRCL):** CPRCL operates in the business of transportation through railways and trading business. It owns narrow gauge railway lines (approx. 227 kilometres), which was leased out to Central Railway (Government of India). At the time of giving advance by Noticee-1, CPRCL had a dispute with CR with regard to sharing of profits and cost incurred. CPRCL did not have funds. Hence, with the intention of gaining some maintenance and scrap business, Noticee-1 had given an advance to CPRCL. However, the dispute between CR and CPRCL is still ongoing. As such, CPRCL has refunded all amount paid to them;

(iii) **Shree Rajeshwar Construction:** The funds were given as temporary advance so that the Noticee-1 could earn interest on its idle funds. Further, the sum advanced was repaid by Shree Rajeshwar Construction on 29.02.2016.

10. Vide e-mails dated 26.02.2021, 04.03.2021 and 10.03.2021, additional information such as purpose of fund transfer to entities, refund by entities, redeployment of funds after receiving the money back from the entities, reason for not notarizing/ registering MoU with Dwivedi and Working Capital loan agreement with CPRCL, setting up of Gini & Jony store, etc. were sought from Noticee-1. Noticee-1 submitted its reply vide e-mails dated 10.03.2021 and 12.03.2021.

11. Upon scrutiny of the Bank Statement of the Company, i.e., IndusInd Bank A/c No. 200999375671, it was found that pursuant to receipt of allotment money from

preferential allottees in the first preferential allotment, the funds were transferred to following entities which is at variance with Noticee-1 's reply mentioned at para 9 above:

(a) Rs. 3 crore to Dwivedi on 03.02.2014 for purchase of agricultural land;
(b) Rs. 10 lakh to Shree Rajeshwar Construction on 03.02.2014 as loan (interest @ 12% p.a.);
(c) Rs. 8 lakh to Violet Infra and Trading Pvt. Ltd. on 03.02.2014 as temporary loan (interest @ 12% p.a.);
(d) Rs. 32 lakh to Laurus Textiles Pvt. Ltd. i.e. Rs. 7 lakh on 03.02.2014 and Rs. 25 lakh on 06.02.2014 respectively, as temporary loan (interest @ 12% p.a.);
(e) Rs. 50 lakh to Purohit Food Products Pvt. Ltd. on 03.02.2014 as temporary loan (interest @ 12% p.a.);
(f) Rs. 35 lakh to Gujarat Realtors on 04.02.2014 as temporary loan (interest @ 12% p.a.);
(g) Rs. 50 lakh to Bharat M. Jain on 05.02.2014 as temporary loan (interest @ 12% p.a.);
(h) Rs. 50 lakh to Mithalal Jain on 05.02.2014 as temporary loan (interest @ 12% p.a.);
(i) Rs. 10 lakh to Alfa Exim Pvt. Ltd. on 18.02.2014 towards payment for purchase of fabrics.

12. It was found that three entities viz. Gujarat Realtors, Violet Infra Trading Pvt. Ltd. and Laurus Textiles Pvt. Ltd. returned the entire amount, aggregating to Rs. 75 lakh, to Noticee-1 on 14.02.2014, i.e., within a period of 8-12 days. Thereafter, the exact amount, i.e., Rs. 75 lakh was, in turn, transferred to Dwivedi (Rs. 40 lakh on 14.02.2014 and Rs. 35 lakh on 15.02.2014). Information was sought from all the aforesaid three entities as well as Noticee-1. Violet Infra Trading Pvt. Ltd. and Laurus Textiles Pvt. Ltd. stated that they had taken loan from Noticee-1, which they returned along with interest @ 12% p.a. Gujarat Realtors stated that the amount was received for land sale, however the deal was cancelled due to land clearance issue and that it had paid interest @ 12% p.a. to Noticee-1. With regard to the aforesaid transactions, Noticee-1 submitted that it had given temporary loan to those entities at interest rate of 12%. It was observed from Noticee-1's bank statement that all the three entities had paid interest to Noticee-1.

13. Thereafter, Bharat M. Jain and Mithalal Jain returned the entire loan amount of Rs. 50 lakh each (aggregating to Rs. 1 crore) to Noticee-1 on 16.07.2014 and 31.07.2014 respectively, which were in turn transferred to Dwivedi, i.e., Rs. 50 lakh on 17.07.2014 and Rs. 50 lakh on 01.08.2014. Information was sought from both the individuals as well as Noticee-1. Bharat M. Jain and Mithalal Jain stated that they had taken loan from TEL for business purpose, which they returned along with interest @ 12% p.a. With regard to the aforesaid transactions, Noticee-1 submitted that it had given temporary loan to those individuals at interest rate of 12%. It was observed from bank statement that both of them had paid interest to Noticee-1.

14. In view of the above, out of Rs. 5.46 crore raised through first preferential allotment, the Noticee-1 transferred the amount to following entities:

Sr. No.	Entity to whom the Company transferred funds out of First preferential allotment	Reason for transfer of funds	Amount (in Rs. crore)
1	Dwivedi Construction	Purchase of Agricultural Land	4.75
2	Shree Rajeshwar Construction	Loan	0.10
3	Purohit Food Products Pvt. Ltd.	Loan	0.50
4	Alfa Exim Pvt. Ltd.	Purchase of fabrics	0.10
	Total		**5.45**

15. Upon scrutiny of the bank statement of Noticee-1, it is found that pursuant to the receipt of allotment money in the second preferential allotment, Noticee-1 transferred the funds to Dwivedi, CPRCL and Alfa Exim Pvt. Ltd.

16. Apart from issue proceeds of Rs. 2.75 crore, additional amount of Rs. 49.13 lakh (i.e., existing account balance of Rs. 1.73 lakh and credit transactions aggregating to Rs. 47.4 lakh) was found in the account during the period from 28.02.2014 to 04.03.2014. Out of Rs. 3.12 crore (i.e., issue proceeds of Rs. 2.75 crore + additional amount of Rs. 49.13 lakh), Rs. 62.50 lakh was transferred to Alfa Exim Pvt. Ltd. (Rs. 13 lakh on 04.03.2014 and Rs. 49 lakh on 05.03.2014), Rs. 1.25 crore to Dwivedi on 05.03.2014 and Rs. 1.25 crore to The Central Province Railways Company Ltd. (CPRCL) on 05.03.2014.

17. In view of the above, out of Rs.2.75 crore raised through second preferential allotment, Noticee-1 transferred the amount to following entities:

Sr. No.	Entity to whom the Company transferred funds out of second preferential allotment	Reason for transfer of funds	Amount (Rs. crore)
1	Dwivedi Construction	Purchase of Agricultural Land	1.25
2	The Central Province Railways Co. Ltd.	For getting maintenance and scrap business	1.25
3	Alfa Exim Pvt. Ltd.	Purchase of fabrics	0.25
		Total	**2.75**

18. **Proceeds transferred to Dwivedi-**As part of proceeds from both the allotments were transferred to Dwivedi, the same were analysed together. Noticee-1 vide its letter dated 14.12.2018 stated that Rs. 5 crore (out of issue proceeds for first preferential allotment) and Rs. 2.15 crore (out of issue proceeds of second preferential allotment) was utilised for building godown and submitted a copy of MoU dated 03.02.2014 entered into with Dwivedi as proof. However, scrutiny of the bank statement revealed that Rs. 4.75 crore was transferred to Dwivedi out of proceeds of first preferential allotment and Rs.

1.25 crore was transferred out of proceeds of second preferential allotment. Vide its letter dated 09.10.2020, the Noticee-1 submitted that it made payment of Rs. 7.15 crore out of total consideration of Rs. 20 crore and the balance amount was still payable. As a result, Noticee-1 submitted that the property is yet to be transferred to the Company.

19. SEBI sought information from Dwivedi regarding status of MoU, refund of Rs. 7.15 crore to the Noticee-1 and its relationship with the Noticee-1. In response, Dwivedi vide letter dated 15.02.2021 *inter alia*, stated that MoU dated 03.02.2014 was cancelled by deed of cancellation dated 25.07.2018 and that it had refunded Rs. 3.35 crore to Noticee-1, without any interest. On seeking clarification regarding balance payment of Rs. 3.8 crore to TEL, Dwivedi vide e-mail dated 04.03.2021 stated that *"The Agreement cancelled on 25th July, 2018 and period decided for refund was 36 to 48 month and we are in process of making payment as decided."* In the regard, Noticee-1 vide email dated 10.03.2021, *inter alia*, submitted that:

(i) *Noticee-1 while initiating the project was confident of raising the required funding for the project. For this it even undertook two rounds of preferential issues in 2013 and 2014. However, there was a financial crunch in the market. As such Noticee-1 was unable to raise the balance funds. Hence, Noticee-1 had cancelled the deal with M/s. Dwivedi Construction and started the recovery process and received Rs. 3.35 crore. Balance amount will be received in due course;*

(ii) *After much follow-up with M/s. Dwivedi Construction, they have signed the deed of cancellation dated July 25.07.2018. As per the said document, M/s. Dwivedi Construction has agreed to refund the amount within a period of 36 to 48 months. As such, M/s. Dwivedi Construction sought time of 3 to 4 years from the date of signing the deed of cancellation;*

(iii) *As per the normal business practice, property deals are executed by entering MOU in the initial stages. There is no need to register an MOU;*

(iv) *Further, under the Indian Contract Act, for a contract to be enforceable, needs to have consent of both parties to the contract. Even oral agreements are permitted if both the parties to the contract have consented. In the present case, both the parties have put it down in writing. Hence, this is a valid document*.

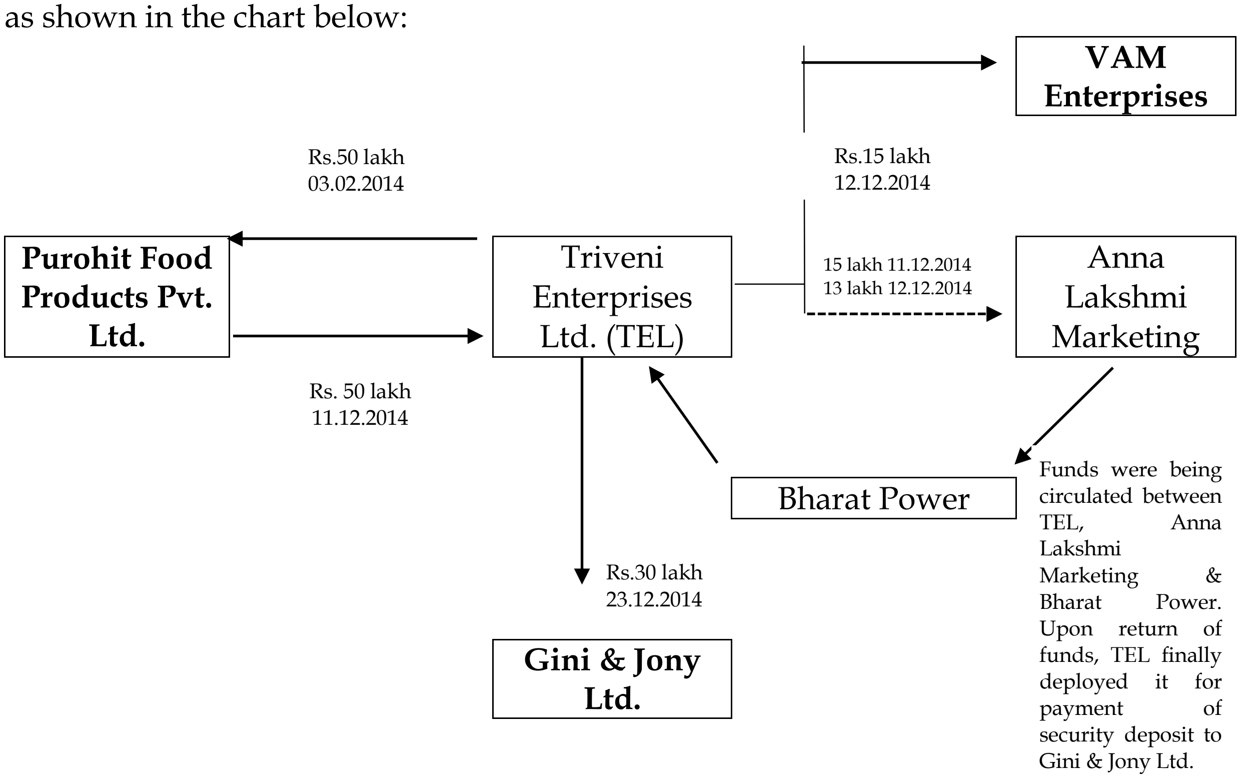
20. On perusal of the MoU dated 03.02. 2014 and deed of cancellation dated 25.7.2018 executed between Noticee-1 and Dwivedi, it was found that the documents were executed on stamp paper though the same were not notarized or registered.

21. As per the MoU, Noticee-1 had to pay the entire consideration amount to Dwivedi on or before 30.09.2015, failing which Dwivedi was entitled to cancel the MoU and refund the amount to Noticee-1, without interest and profit. However, the land deal was mutually cancelled only on 25.07.2018 by deed of cancellation, i.e., almost three years after the date mentioned in MoU. Further, Noticee-1 did not mention cancellation of MoU with Dwivedi when the information was initially sought from Noticee-1 vide email dated 28.09.2020 and it came to light only when information was sought from Dwivedi.

22. As per deed of cancellation, the refundable amount is to be recovered from Dwivedi by July, 2022 and Noticee-1 received only Rs. 3.35 crore from Dwivedi Construction (out of total amount of Rs. 7.15 crore) even after 7 years since the first payment was made to Dwivedi. However, Noticee-1 is alleged to have taken no action to expedite recovery of the balance amount. It is further alleged that on receipt of partial repayments from Dwivedi, Noticee-1 again transferred those funds to various entities as temporary interest-bearing advances. In view of the above, it was alleged that the Noticee-1 had no intention to purchase any land and the transaction with Dwivedi was designed to use preferential issue proceeds for corporate lending under the guise of purchase of agricultural land. Hence, Noticee-1 was alleged to have misutilised the issue proceeds aggregating to Rs. 6 crore (i.e. Rs. 4.75 crore or 87% of the total issue proceeds of first preferential allotment and Rs. 1.25 crore or 45% of the total issue proceeds of second preferential allotment) only for providing loan to Dwivedi Construction, without interest.

23. **Proceeds transferred to Purohit Food Products Pvt. Ltd.**-Upon perusal of the bank statement of Noticee-1, it was found that pursuant to receipt of allotment money, Noticee-1 transferred Rs. 50 lakh to Purohit Food Products Pvt. Ltd. ("**Purohit**") on 03.02. 2014 and the entire loan amount was repaid to Noticee-1 on 11.12.2014. When information was sought from Noticee-1 regarding purpose of transfer, it submitted that Rs. 50 lakh was given to Purohit as temporary loan which was repaid by Purohit along with interest.

24. Pursuant to receipt of money from Purohit, Noticee-1 routed funds to many entities before ultimately transferring the funds to Gini & Jony Ltd. and VAM Enterprises as shown in the chart below:



25. Vide letter dated 14.12.2018, Noticee-1, *inter alia,* stated that Rs. 30 lakh was transferred to Gini & Jony Ltd. as per MoU dated 23.12.2014**.** On perusal of the MoU, it was observed that the MoU was executed on the letterhead of Gini & Jony Ltd. wherein, the Noticee-1 was appointed as "franchisee" of Gini & Jony Ltd. In this regard, Noticee-1 informed that it did not set up store after becoming franchisee as circumstances were not in favour of the business and the agreement with Gini & Jony Ltd. was cancelled and Rs.30.24 lakh was received as refund on cancellation of the agreement. Further, Noticee-1 submitted that Gini & Jony Ltd. paid interest at the rate of 11% on the aforesaid amount.

26. Although the transaction with Gini & Jony Ltd. falls under the category of working capital, which is one of the objects of preferential issue, the fact that after making the necessary payment on 23.12.2014 and becoming a franchisee, Noticee-1 chose to cancel the agreement with Gini & Jony Ltd. citing unfavourable business circumstances and earned interest on the amount transferred to Gini & Jony Ltd., it was alleged that this was with the purpose to use preferential issue proceeds for corporate lending to earn interest income rather than the declared objects of issue. Hence, it was alleged that Noticee-1 misutilised the issue proceeds of Rs. 30 lakh (i.e. 5% of the total issue proceeds of first allotment) by providing loan to Gini & Jony Ltd. to earn interest.

27. **Proceeds transferred to CPRCL**-Vide letter dated 14.12.2018, Noticee-1 stated that out of the preferential issue proceeds of Rs. 5.46 crore, Rs. 36 lakh was utilised for working capital - placing of purchase of railway scrap from CPRCL and submitted a copy of working capital loan agreement dated 03.02.2014 as proof. Further, Noticee-1 vide letter date 09.10.2020, *inter alia*, stated that it had given advance to CPRCL with the intention of gaining some maintenance and scrap business though due to non-resolution of dispute between Central Railway (Govt. of India) and CPRCL regarding sharing of profits and costs incurred, CPRCL refunded all amounts paid to it.

28. However, as per the bank statement of the Noticee-1, it is found that pursuant to receipt of allotment money from second preferential allotment, Noticee-1 had transferred a total amount of Rs.1.25 crore to CPRCL on 05.03.2014. Subsequently, CPRCL refunded Rs.1.26 crore to Noticee-1 in several tranches from 09.05.2014 to 27.02.2017.

29. In this regard, CPRCL vide letter dated 15.02.2021, *inter-alia*, submitted a copy of working capital loan agreement entered into with Noticee-1 and stated that it did not pay any interest on the fund of Rs. 1.25 crore. CPRCL also submitted a copy of bank statement highlighting the repayments made to Noticee-1 showing refund of Rs. 1.26 crore.

30. It was found from the bank statement of CPRCL that the entire amount received from Noticee-1 on 05.03.2014 was transferred by CPRCL to Effingo Textile & Trading Ltd. on the same day. CPRCL informed that it had repaid loan of Rs. 1.25 crore

to Effingo Textile & Trading Ltd. Similar information was also sought from Effingo Textile & Trading Ltd. vide letter dated 26.02.2021 and e-mail dated 10.03.2021. Effingo Textile & Trading Ltd.in this regard replied that it gave temporary loan for business purpose to CPRCL on 23.04.2013 and the same was repaid by CPRCL on 05.03.2014, without any interest. Effingo Textile & Trading Ltd. further stated that loan agreement was not executed for the said loan to CPRCL. Hence, it was alleged that CPRCL had taken loan from Noticee-1 in order to repay its earlier loan with Effingo Textile & Trading Ltd.

31. It was also found that CPRCL refunded Rs. 1.26 crore to Noticee-1 from 09.05.2014 to 27.02.2017. As and when funds were received from CPRCL, Noticee-1 again transferred those funds to various entities viz. Dwivedi (Rs. 60 lakh), Pine Animation (Rs. 5 lakh), Shobhita Rani Kaushal (Rs. 10 lakh), Focus Biotech (Rs. 35 lakh) and Shree Balaji Shipping (Rs. 9 lakh). Vide e-mail dated 04.03.2021, explanation was sought from Noticee-1 regarding deployment/utilisation of the funds returned by CPRCL. Noticee-1 replied on 10.03.2021, *inter-alia*, stating that the funds were utilized for giving temporary interest-bearing advances so as to earn basic income till the funds were deployed for profitable business project and that rate of interest was charged in the range of 9% to 12% p.a. based on the situation.

32. On perusal of the working capital loan agreement dated 03.02.2014 provided by Noticee-1, it was found that CPRCL had borrowed Rs. 1.25 crore from Noticee-1 for its working capital requirements. With regard to the nature of business of CPRCL, it is mentioned in the said agreement that CPRCL provides transportation services through railways and it had contracts with the Central Railways. It was observed that the said agreement, signed by both parties, was executed on plain paper without stamp.

33. The said working capital loan agreement dated 03.02.2014, *inter-alia*, contained the following provisions:

(a) If dispute between CPRCL and Central Railways is resolved and it gets business from Central Railways, then CPRCL will give the business (or part thereof) to Noticee-1;
(b) If it fails to provide business to Noticee-1 within 3 months from date of agreement, then it will repay Rs. 60 lakh to TEL on or before 3 months from date of agreement;
(c) In any case, CPRCL to provide business to TEL within 3 years from the date of agreement as no interest is being levied by TEL on the loan amount;
(d) CPRCL to repay the loan amount in any event on or before 3 years from date of agreement.

Further, it was observed that the agreement had contradictory provisions regarding interest payment. At clause 2(d) of the said agreement, it was mentioned that

Noticee-1 was not levying any interest on the loan amount whereas, clause 3(a) stipulates that CPRCL must repay the loan amount along with accrued interest within seven business days of receipt of notice from Noticee-1. However, the rate of interest was not mentioned in the agreement.

34. As stated above, at the time of signing the said agreement, Noticee-1 was aware of the ongoing dispute between CPRCL and Central Railways and that Central Railways had stopped making payments to CPRCL for the past couple of years due to disputes over payments. Even after knowing this, Noticee-1 provided loan of Rs. 1.25 crore to CPRCL for its working capital requirements on the conditions that either CPRCL would give the business (or part thereof) or repay the entire loan amount on or before three years from date of agreement (out of which, Rs.60 lakh was to be repaid on or before three months from date of agreement). Although the agreement states that CPRCL would give the business (or part thereof) to Noticee-1, the specific business that would be provided to Noticee-1 once the dispute between CPRCL and Central Railways is resolved, was mentioned in the agreement. It was Noticee-1 who stated that the advance given to CPRCL was for gaining some maintenance and scrap business.

35. One of the objects of preferential issue was to fulfil the additional fund requirements for capital expenditure including acquisition of companies/business. Noticee-1 stated that it had entered into agreement with CPRCL for gaining some maintenance and scrap business, which can be construed as one of the objects of the preferential issue. However, considering the casual manner in which the agreement was drafted and executed, it appears that Noticee-1 was preparing ground for diverting the funds. It was further noted that out of Rs. 1.25 crore transferred to CPRCL on 05.03.2014, Rs. 60 lakh (i.e., 48 per cent of funds) was refunded by CPRCL to TEL during 09.05.2014 to 20.05.2014, i.e., within 3 months as per the agreement and were immediately transferred by Noticee-1 to Dwivedi under the guise of purchase of agricultural land. The remaining funds were also refunded by CPRCL to Noticee-1, who again transferred those funds to other entities as temporary interest-bearing advances. It was further noted that Noticee-1 received Rs. 1.26 crore from CPRCL as against loan amount of Rs. 1.25 crore, i.e., additional amount of Rs. 1 lakh. In view of the same, the transaction of Noticee-1 with CPRCL was planned to use preferential issue proceeds for corporate lending rather than the declared objects of issue. Hence, it was alleged that Noticee-1 had used the issue proceeds of Rs. 1.25 crore (i.e., 45 per cent of the total issue proceeds of second allotment) only for providing loan to CPRCL.

36. A summary of the transfer of proceeds of the first and second preferential allotments) by various entities and the refund or non-refund by those entities, is given in the following tables:

First Preferential Allotment

Sr. No.	Entity Name	Amount (in Rs.Cr.)	Refund(Rs.Cr.)		Balance to be repaid (in Rs.Cr.)
			Principal	Interest	
1	Dwivedi Construction	4.75	3.35	NA	1.4
2	Shree Rajeshwar Construction	0.10	0.10	0.0227	Nil
3	Purohit Food Products Pvt. Ltd.*	0.50	0.50	0.0083	Nil
	Gini & Jony Ltd.	0.30	0.30	0.0497	Nil
	VAM Enterprises	0.15	NA (security advance against order for fabric)		
4	Alfa Exim Pvt. Ltd.	0.10	NA (payment towards purchase of fabrics)		
	TOTAL	5.45			1.4

**The amount refunded by Purohit Food Products Pvt. Ltd. was transferred by TEL to Gini & Jony Ltd. and VAM Enterprises.*

Second Preferential Allotment

Sr. No.	Entity Name	Amount (in Rs.Cr.)	Refund(Rs.Cr.)		Balance to be repaid (in Rs.Cr.)
			Principal	Interest	
1	Dwivedi Construction	1.25	Nil	NA	1.25
2	The Central Province Railways Co. Ltd.	1.25	1.25	0.01	Nil
3	Alfa Exim Pvt. Ltd.	0.25	NA (payment towards purchase of fabrics)		
	TOTAL	2.75			1.25

37. Thus, out of total amount of Rs. 6 crore transferred by Noticee-1 to Dwivedi, Rs. 2.65 crore is yet to be recovered from Dwivedi. Noticee-1 stated that the balance amount is to be received from Dwivedi by July 2022 as per deed of cancellation executed between TEL and Dwivedi.

38. **Ratification of deviation by the shareholders of Noticee-1-**BSE vide its notice No.20180613-29 dated 13.06.2018 had, *inter-alia,* directed Noticee-1 to make mandatory disclosures w.r.t. misutilisation of preferential issue proceeds along with ensuing quarterly unaudited/ audited financial results and to get the same ratified by the shareholders of the company within three months from the intimation of its notice.

39. In this regard, BSE vide e-mail dated 24.12.2020 submitted to SEBI a copy of letter dated 21.08.2018 received from Noticee-1 enclosing the AGM Notice, shareholder resolution for ratification of proceeds and unaudited financial results for quarter ended June 30, 2018. Noticee-1 in its letter dated August 21, 2018 to BSE stated that "*the Company has in its Annual General meeting held on August 12, 2018 have ratified the proceeds received under preferential issue from the shareholders of the company as required by the exchange Notice No. 20180613-29 and 20180613-38 dated June 13, 2018. The same has been also disclosed in the quarterly results of June 2018 as note no.5 of the Quarterly Result*." Further, in the documents submitted by Noticee-1 to BSE, it was specifically mentioned that pursuant to BSE notice dated June 13, 2018, the Noticee-1, though not agreeing to any misutilisation of funds, had ratified the utilisation of funds raised through preferential allotments.

40. Though the alleged misutilisation of the preferential issue proceeds was in the year 2014, Noticee-1 ratified it after four years, i.e., in 2018. Further, Noticee-1 ratified it only after receiving explicit directions from BSE vide notice dated 13.06.2018. In this regard, it was alleged that Noticee-1 diverted and used substantial part of the proceeds of both the preferential issues as explained above only for providing loans. The past fraudulent acts/ deeds of Noticee-1 cannot be legitimized by subsequent ratification of the same by the Noticee-1's shareholders through shareholders' resolution. Thus, Noticee-1 was alleged to have violated section 12A (a) (b) (c) of the SEBI Act, 1992 read with regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of SEBI (PFUTP) Regulations by diverting and misutilising the preferential issue proceeds.

41. With respect to disclosure to stock exchanges regarding deviation from the purpose of the preferential issues, clause 43 of the erstwhile Listing Agreement [which is now regulation 32 of SEBI (LODR) Regulations, 2015], *inter alia*, states that "*the Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilisation of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilisation of funds and/or actual profitability.*"

42. Noticee-1 ratified the utilization of funds to the tune of Rs.8.21 crore raised through two preferential issues by way of passing Special Resolution in AGM held on 12.08.2018. The extent to which the company had diverted the issue proceeds should have been disclosed to DSE, on a quarterly basis, as per clause 43 of the erstwhile Listing Agreement [which is now regulation 32 of SEBI (LODR) Regulations, 2015]. In this

regard, DSE vide e-mail dated January 11, 2021 stated that *"Delhi Stock Exchange Ltd. had stopped its trading operations since 2003. And Ministry of Finance, Government of India vide notification in Official Gazette dated 15.03.2016 has derecognized Delhi Stock Exchange Limited as a stock exchange and SEBI has issued Exit Order on 23.01.2017. Further the information required by you is not traceable, as all the staff, who handles the Listing Deptt. has left the Organization."*

43. BSE in its show cause notice dated 10.05.2016 issued to Noticee-1, had *inter-alia* observed that, *"the Company has not followed the process laid down in case of deviation/ variation of the fund raised under preferential issue in terms of regulation 32 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 further substantiating that there has been mis-utilization of funds"*. In this regard, Noticee-1 was also asked by BSE to show cause as to why action should not be taken against it for misutilization of fund raised through preferential issue. In response to the same, Noticee-1 vide its letter dated 17.05.2016 had, *inter-alia,* submitted that the funds were utilized as per the objects of the issue and denied having violated clause 43 of the Listing Agreement.

44. As mentioned in preceding paragraphs, Noticee-1 deviated and used substantial part of the proceeds of both the preferential issues only for providing loans, and therefore, allegedly failed to disclose the extent of deviation to the stock exchanges on a quarterly basis, as stated above. As such, Noticee-1 was alleged to have violated clause 43 of the erstwhile Listing Agreement [which is now regulation 32 of SEBI (LODR) Regulations, 2015] read with section 21 of SCRA.

45. **Role of Directors-**It was found that the following directors were in the board of the Noticee-1 from the date of EGM for first preferential allotment, i.e., 05.12.2013 to the date of ratification of utilization of issue proceeds, i.e., 12.08.2018. The details of the directors are as follows:

Sr. No.	Name of Director	Designation	DIN/ DPIN	Date of appointment	Date of cessation
1	Bhavin Hemendra Nagda	Wholetime Director & CFO	06727240	16/08/2013	-
2	Ramchandra Ramhit Varma	Wholetime Director & CEO	06729665	16/08/2013	-
3	Vinod Jain	Managing Director	00361541	05/03/1992	12/11/2014
4	Indrajeet Kumar Kuwar	Independent Director	06877684	21/05/2014	-

5	Sureshchandra Rameshwarlal Modi	Independent Director	06877694	21/05/2014	23/04/2019
6	Vidya Mahesh Chalke	Independent Director	02903650	01/08/2013	10/01/2015
7	Pushpa Jain	Director	00373604	18/04/1993	15/04/2014
8	Lalita Jain	Director	00373625	18/04/1993	15/04/2014
9	Paras Mal Bagrecha	Director	00361678	05/03/1992	15/04/2014
10	Pintu	Independent Director	07189665	31/03/2015	-

46. As per Noticee-1's Annual Report 2014, the board of directors comprised of 6 directors, i.e. Vinod Jain (Managing Director), Vidya Mahesh Chalke (Independent Director), Bhavin Hemendra Nagda (Whole Time Director and Chief Financial Officer), Ramchandra Ramhit Varma (Whole Time Director and Chief Executive Officer), Indrajeet Kumar Kuwar (Independent Director), Sureshchandra Rameshwarlal Modi (Independent Director). Bhavin Nagda, Vinod Jain and Ramchandra Varma were designated as KMP of the Noticee-1. Further, as per the Annual Report, three directors, viz. Pushpa Jain, Paras Mal Bagrecha and Lalita Jain had resigned from the board on 15.04.2014.

47. As per Noticee-1's Annual Report 2015, the board of directors comprised of 5 directors, i.e. Bhavin Hemendra Nagda (Whole Time Director and CFO), Ramchandra Ramhit Varma (Whole Time Director and CEO), Indrajeet Kumar Kuwar (Independent Director), Sureshchandra Rameshwarlal Modi (Independent Director) and Ms. Pintu (Independent Director). Ms. Pintu was appointed as an Independent Director on 31.03.2015. Further, Bhavin Hemendra Nagda and Ramchandra Ramhit Varma were designated as KMP of the company.

48. The information available on MCA website shows that Bhavin Hemendra Nagda, Ramchandra Ramhit Varma, Vinod Jain, Vidya Mahesh Chalke, Indrajeet Kumar Kuwar, Sureshchandra Rameshwarlal Modi, Pushpa Jain, Lalita Jain, Paras Mal Bagrecha and Pintu were the directors of Noticee-1 from 05.12.2013 to 12.08. 2018. As per Noticee-1's Annual Report 2014, Bhavin H. Nagda (WTD and CFO), Vinod Jain (MD) and Ramchandra R. Varma (WTD and CEO) were KMPs of Noticee-1, by virtue of which they were responsible for management of the affairs of the company during that period, including activities related to both the preferential issues. The Annual Report also indicates that three directors, viz. Pushpa Jain, Paras Mal Bagrecha and Lalita Jain resigned from the board on 15.04.2014, i.e., shortly after the preferential allotments. Further, as per Noticee-1's Annual Reports 2015, Bhavin H. Nagda and Ramchandra R.

Varma were KMPs of the company and were holding the position of CFO and CEO respectively. Vinod Jain (MD) resigned from the board on 12.11.2014.

49. It was found that Bhavin H. Nagda and Ramchandra R. Varma were the authorized signatories in the balance sheets of Noticee-1 for FYs 2013-14 and 2014-15. As confirmed by IndusInd Bank vide e-mail dated 05.02.2021, Bhavin H. Nagda (PAN: ABVPN6070F) and Ramchandra R. Varma (PAN: AEKPV4433E) were the authorized signatories in TEL's IndusInd Bank Account No. 200999375671, where allotment money was deposited by the preferential allottees. Further, it was found that Bhavin H. Nagda was the signatory in all the documents related to both the preferential issues such as notice of EGM, board minutes, MoU executed with Dwivedi for land purchase, working capital loan agreement executed with CPRCL, MoU for franchise executed with Gini & Jony Ltd. and confirmation of accounts in respect of transactions with Shree Rajeshwar Construction and VAM Enterprises. With reference to the Independent Directors of Noticee-1, i.e., Vidya Mahesh Chalke, Indrajeet Kumar Kuwar, Sureshchandra Rameshwarlal Modi and Pintu, no such evidence in the form of Board Memorandum, meeting attendance sheet, Board Agenda and Board Minutes was available on record to show their involvement in respect of preferential issues by Noticee-1. Further, there is no evidence on record to show that the three directors, viz. Pushpa Jain, Paras Mal Bagrecha and Lalita Jain who resigned from the board on 15.04.2014, were involved in the activities related to the two preferential issues. Hence, based on available documents, it was alleged that Bhavin Hemendra Nagda (Whole Time Director and CFO), Ramchandra Ramhit Varma (Whole Time Director & CEO) and Vinod Jain (Managing Director) were the key persons managing the affairs of Noticee-1 during the time of both preferential issues and that misutilisation of preferential issue proceeds occurred during their tenure as directors/ KMPs.

50. Vide letters dated 15.03.2021, the directors of Noticee-1, i.e., Bhavin Hemendra Nagda (Whole Time Director and CFO), Ramchandra Ramhit Varma (Whole Time Director and CEO) and Vinod Jain (Managing Director) were asked to provide their explanation, along with documentary evidence, to the *prima facie* allegation that they had violated the provisions of SEBI (PFUTP) Regulations read with section 12A (a) (b) (c) of the SEBI Act, 1992 by deviating and misutilising the preferential issue proceeds. Bhavin Hemendra Nagda and Ramchandra Ramhit Varma did not provide any response. Vide e-mail dated 24.03.2021, Vinod Jain, *inter alia*, stated that the whole management of the company changed w.e.f. 16.08.2013, new directors were appointed on 16.08.2013 and from the date of appointment of new management, old management had no participation/ involvement in the regular activities. He stated that he had resigned from the company w.e.f. 30.09.2014, which was informed by the new management to RoC w.e.f. 12.11.2014 and that he was never part of any kind of allotment/preferential allotment of any nature. He further stated that the company's earlier bank account maintained with Canara Bank was closed w.e.f. 15.04.2014 and the registered office was also changed by the new management w.e.f. 14.03.2014. In addition, he also submitted a

copy of company master data from MCA showing that Bhavin Hemendra Nagda and Ramchandra Ramhit Varma were the signatories of Noticee-1 from 16.08.2013.

51. As per the records available at MCA website, it was found that Bhavin Hemendra Nagda and Ramchandra Ramhit Varma were the signatories of Noticee-1 from 16.08.2013. Further, Bhavin Hemendra Nagda was the authorized signatory of Noticee-1 in all the documents w.r.t. both the preferential issues and Bhavin Hemendra Nagda and Ramchandra Ramhit Varma were the authorized signatories in Noticee-1's IndusInd Bank Account, wherein preferential allotment money was deposited. However, no document is available on record to show that Vinod Jain was involved in the activities related to the two preferential issues.

52. In view of the above, it was alleged that the aforesaid fraudulent act of deviating the preferential issue proceeds raised through two preferential allotments dated 01.02.2014 and 05.03.2014 was done by Noticee-1 with the knowledge of its directors namely, Bhavin Hemendra Nagda (Whole Time Director and CFO) and Ramchandra Ramhit Varma (Whole Time Director and CEO). Thus, the Noticee-1 and the aforesaid directors were alleged to have violated section 12A (a) (b) (c) of the SEBI Act, 1992 read with regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations.

53. Pursuant to the SCN dated 13.10.2021, Noticees filed preliminary reply dated 27.10.2021 denying all the charges and seeking inspection of documents and personal hearing. Noticees inspected the documents on 10.06.2022 and sought further time to file written submissions vide letter dated 21.06.2022. Noticees filed their written submissions vide letter dated 4.07.2022. The main arguments of the Noticees are given in the following paragraphs.

54. Inordinate delay in issuance of SCN- "*Present SCN is issued to us on 13.10.2021 pursuant to Investigation conducted by SEBI for the period from 01.10.2013 to 31.12.2014 (Ref. Para No. 4 on Internal Page No. 2 of the SCN). Thus after more than 7 ½ years from the execution of impugned transactions, SCN is issued to us. Notably 7 out of 10 Directors/KMPs of the Company existing at the have relevant time have retired/resigned (Ref. Para No. 44 on Internal Page No. 14 of the SCN). In view thereof, initiation of present proceedings against us after gap of around 7% years has caused great prejudice to us in defending our case in proper and complete manner. Pertinently in the SCN, no explanation for the delay in initiating present proceedings against us is mentioned. Thus relying on the various judgments passed by Hon'ble Securities Appellant Tribunal ("Tribunal") and Hon'ble Supreme Court on delay in initiating proceedings, we respectfully submit that SCN issued to us deserves to be withdrawn and proceeding initiated against us ought to be dropped at the threshold.*"

55. Double jeopardy-"*Incidentally we have listed our securities with BSE Ltd. ("BSE") w.ef. 01.08.2014 I,e, after issuance of the above referred two preferential issues.*

Importantly at the time of listing of shares including shares issued preferential allotments, BSE had carried out proper and complete due diligence. Even then vide Notice dated 18.12.2015 bearing reference no. 20151218-28, BSE inter-alia initiated examination of preferential allotment of various Companies Including us and as an interim measure vide Notice dated 21.12.2015 bearing reference no. 20151221-2, BSE suspended trading in shares of 35 Companies including us w.e.f. 24.12.2015. Aggrieved by the aforesaid notice, we had preferred an Appeal before Hon'ble Tribunal, (Appeal No.291 of 2016). Notably, vide order dated 10.10.2016, Appeal was disposed of on terms mentioned therein. For ready references, relevant extract from the above referred order is reproduced as under:

> *"1. This appeal is files to challenge the communication of BSE Ltd. dated December 21, 2015, by that communication trading in securities of the appellant company has been suspended w.e.f. December 24, 2015 on ground that the appellant has failed to furnish details of particulars sought for by BSE Ltd. relating to the preferential allotment.*
>
> *2. It is not in dispute that as on date the appellant has furnished requisite particulars to the BSE.*
>
> *3. Counsel for BSE, on instruction, states that BSE is considering these particulars furnished by the appellant and appropriate order would be passed within a period of four weeks from today. Statement made by counsel for BSE is accepted.*
>
> *4. Accordingly, without going into the merits, the appeal is disposed of in the aforesaid terms with no order as to costs."*

Subsequently, on the basis of information and documents furnished by us, vide Notice dated 24.10.2016 bearing reference no. 20161024-32, BSE revoked suspension of trading w.e.f. 27.10.2016, Thus, we respectfully submit that the subject matter of present proceedings wherein the alleged violation of Clause 43 of the erstwhile Listing Agreement executed with BSE has already been looked into by BSE. In view thereof, in our respectful submission, present proceedings amounts to "Double jeopardy".

56. *Preliminary Submissions:*

"(i) At the outset, we respectfully submit that the subject matter of present proceedings is similar to the facts of Terrascope Ventures Limited and other connected Appeals against whom Adjudicating proceedings were initiated and Adjudication Orders were passed on 29.04.2020 against them. Aggrieved by the orders passed against them, they had preferred Appeals before Hon'ble Tribunal (Appeal Nos. 114 to 116 of 2021). Vide order dated 02.06.2022, Hon'ble Tribunal has quashed the Adjudication orders passed against them on the grounds as mentioned in the Order. In our respectful submissions, since the subject matter of present proceeding is squarely covered under the said order, present SCN ought to be disposed of without issuing any directions against us. For

ready reference, copy of the above referred order dated 02.06.2022 passed by Hon'ble Tribunal is enclosed hereto marked as Annexure-5".

(ii) Further on perusal of the SCN, we understand that during the course of investigation conducted by SEBI, clarification and documents were sought by the Ld. Investigating Officer, SEBI from entities with who financial transactions had taken place. Accordingly, SCN has referred to and relied upon the response filed by those entities. In the interest of justice, an opportunity to cross examination those entities whose submissions are referred to and relied upon, may please be granted to us before drawing any adverse inference on the financial transaction executed by us with them.

57. *Without prejudice to our aforesaid submission on the subject matter of present proceedings, we humbly submit as under:*

(i) Notably at the time of preferential issues, we were listed only at Delhi Stock Exchange Ltd. ("DSE"). In compliance to all the requirements of DSE, we had made two preferential issues. Pertinently till date, no query or any examination is conducted by DSE on the said two preferential issues. Thus undisputedly/admittedly we have complied with all the statutory provisions of law as applicable to us w.r.t. issuance of two preferential issues which is the subject matter of present proceedings.

(ii) Notably BSE had carried out investigation on the utilization of funds during the years 2015 and 2016 and as an interim measure, trading in shares of our Company was suspended w.e.f. 24.12.2015. However, on the basis of information and documents furnished by us, suspension in trading of shares imposed w.e.f. 24.12.2015 was revoked w.e.f. 27.10.2016.

58. *On consideration of the same, we respectfully submit that the funds had been utilized as per the object of the issue and therefore alleged violation of Clause 43 of the Listing Agreement is not sustainable on facts and in law.*

(ii) Be the case as it may, on directions received from BSE vide Notice dated 13.06.2018; we undertook ratification process in the Annual General Meeting of shareholdings held on 12.08.2018 (Ref. Para No. 39 on Internal Page No. 13 of the SCN). In this regard, we place reliance on the Judgment dated 01.07.2015 passed by Hon'ble Supreme Court in the matter of National Institute of Technology and Another Vs. Pannalal Choudhury and Another. For ready reference relevant extract from the above referred Judgment published on SCC online website is reproduced as under:

"C Doctrines and Maxims – "Ratihabitio mandato aequiparatur"- Meaning- Held, means a subsequent ratification of an act is equivalent to a prior authority to perform such Act-Further held, ratification assumes an invalid act which is retrospectively validated"

Thus we respectfully submit that on consideration of the ratification process followed by us, adverse finding, if any, made against us becomes infructuous.

(iv) Role of Directors viz. Noticee No. 2 Bhavin Nagda ("Bhavin") and Noticee No. 3 Ramchandra Varma ("Ramchandra")

> *(a) At the outset, we respectfully submit that, in response to letter dated 15.03.2021 issued by the Investigation Department SEBI, Mr. Bhavin had filed response by email dated 14.04.2021 attaching therewith reply dated 14.04.2021 and Mr. Ramchandra had filed reply dated 07.04.2021. Thus we respectfully submit that in the SCN it is erroneously mentioned that they did not provide any response (Ref. line Nos. 6 and 7 of Para No. 49 on Internal Page No. 16 of the SCN).*
>
> *(b) Besides, we humbly submit that they had carried out their duties in the best interest of all the stake holders and in compliance to the norms of Corporate Governance as statutorily prescribed. Therefore, in our respectful submissions, they ought not to be held personally responsible for the violation, if any, an alleged in the SCN or otherwise. For kind ready references, a "Report on Corporate Governance" for the financial year 2014-2015 which forms part of the 30th Annual Report is enclosed hereto marked as Annexure "10"*
>
> *(c) Besides, in this regard, we place reliance on the order dated 28.05.2021 passed by Ld. Whole Time Member SEBI in the case of M/s Tatia Global Venture Limited ("Tatia Global"). For ready references, relevant extract from the above referred order is reproduced as under:*
>
>> *"53. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during the relevant period (Le. Financial Years 2015-16 to 2017-18), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word "offence" with the word "contravention" in Section 27 of the SEBI Act 1992. Therefore, Section 27 of the SEBI Act 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by TGVL, with reference to LODR Regulations for which proceedings under Section 11, 11A, 11B and monetary penalty has been proposed, which are civil in nature."*

Thus we humbly submit that on consideration of the aforesaid submissions, proceeding initiated against Noticee Nos. 2 and 3 deserves to be dropped.

59. *Denials of alleged violation of the Provision of Law as alleged in the SCN.*

(i) At the outset, we deny alleged violation of the provision of law as mentioned in the SCN.

(ii) Notably in the SCN it is alleged that, on account of alleged violation of Clause 43 of the erstwhile Listing Agreement, Noticees are alleged to be in violation of section 12A (a) (b), (c) of SEBI Act, 1982 SEBI (PFUTP) Regulation, 2003(Ref. Para 51 and 52 SCN). In this regard, we place reliance on the Order dated 28.05.2021 passed by Ld. Whole Time Member, SEBI in the case of Tatia Global wherein violation of above. referred provision of law alleged in the Show Cause Notice issued to them were not upheld. On similar grounds, we humbly request you to drop the alleged violation as alleged against us in the SCN. For ready reference, relevant extract from the above referred Order is reproduced as under

> *"46. I note that Section 12A(a), (b), (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2) & (r) of PFUTP Regulations, 2003 deals with fraud manipulation/unfair trade practices while dealing in securities and in relation to securities market. Section 12A (a), (b) & (c) of the SBBI Act, 1992 may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities. In the SCN, there are no trading or order data or details of any purchase, sale or issue or subscription of securities by any of the Noticees.*
>
> *47. It is further observed that Regulation 4(1) of PFUTP Regulations, 2003, at the relevant time, dealt with fraudulent and unfair trade practices relating to securities while Regulation 4(2) is nothing but an enumeration of specific instances of fraudulent and unfair trade practices relating to securities. The common thread through these provisions is that the ingredients of fraud or manipulation or unfair trade practices must be satisfied. In this regard, I note that the Explanation inserted to Regulation 4(1) of PFUTP Regulations, 2003 with effect from October 19, 2020 clarifies as follows:*
>
> *"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 act 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."*
>
> *Thus, as per the aforesaid explanation also any device, scheme or artifice to manipulate the books of accounts or financial statement of a company, in order to be termed as manipulative, fraudulent and an unfair trade practice in the securities market must directly or indirectly result into manipulation of the price of securities of that*

company. In the present case, there is no allegation of manipulation of price shares of TGVL such as from any issue of securities or siphoning off of assets or earnings of TGVL. I note that FAR does not allege any diversion/misutilisation of funds and nor any data/particulars of movement of price or volume of shares of TGVL, during investigation period has been furnished or incorporated in FAR or the SCN which as per the aforesaid explanation can be termed as manipulation, fraudulent and an unfair trade practice in the securities market without there being any direct or indirect manipulation of the price of the securities of the company. I note that while in the FAR the mandate was included related to examination of misuse of finds but the conclusion did not mention the same. I further observe that the definition of fraud as given under Regulation 2(1) (c) and as interpreted by the Hon'ble Supreme Court of India in Securities and Exchange Board of India and Ors v. Kanaiyalal Baldevbhai Patel and Ors (2017) 15 SCC 753, makes it clear that inducement is required to constitute 'fraud' under PFUTP Regulations 2003 and must be made while 'dealing in securities' and must be made for the purpose to induce others to deal in securities. The allegations made in the SCN does not bring out findings or any facts relating to trading in securities by Noticees or these essential ingredients of fraud' such as 'manipulation in securities', 'dealing in securities", inducement', etc."

(iii) Besides w.r.t. proposed penalty to be imposed u/s 23E of the SCRA, we place reliance on the Orders passed by Ld. Whole Time Member, SEBI dated 28.05.2021 in the case of Tatia Global and dated 29.06.2022 in the case of Parsvnath Developers Ltd. wherein violation of above referred provision of law alleged in the Show Cause Notice issued to them were not upheld on the ground as mentioned in Tatia Global Order that "60.... Section 23E of SCRA, 1956 provides for penalty for failure to comply with, inter alia, listing conditions by "a company or any person managing collective investment scheme or mutual fund In the present case, it has been found that TGVL is in violation of listing conditions, however, TGVL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA. (Ref. Para No. 60 on Internal Page No. 70 of Tatia Global Order and Para No. 32 on Internal Page No. 32 and 33 of Parsvnath Order).

(iv) Besides we place reliance on the order dated 03.05.2021 passed by Hon'ble Tribunal in the matter of Suzlon Energy Ltd and Ors. vs. SEBI (Appeal No. 201 of 2018). For ready reference relevant extract from the above referred order in reproduced as under:

18. Section 23E has nothing to do with the violation of the provisions of the Listing Agreement especially Clause 36. Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23B refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 *of the Securities Contracts (Regulation) Rules, 1957 (SCRR for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognised -+-requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 238. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E The AO has made an error.*"

60. The Noticees further argued that they were wrongly roped into the present proceedings, the SCNs issued against them be withdrawn and further proceedings may be dropped. The Noticees sought an opportunity for personal hearing and the same was scheduled for 23.6.2022. However, Noticees vide letter dated 21.06.2022 sought adjournment of hearing and additional time to file written submissions. Accordingly, the hearing was re-scheduled for 30.06.2022. Noticees again sought an adjournment on account of non-availability of authorized representative. Thus, the hearing was re-scheduled for 06.07.2022. Advocate Prakash Shah along with Neha Gada appeared for the hearing on 06.07.2022 on behalf of the Noticees and made submissions in addition to the submissions made in the written submission as follows:

(a) the alleged violation of regulations 4(2)(f) and 4(2)(r) of PFUTP Regulations are not applicable in this matter as the same were inserted subsequent to the date of violations;

(b) no loss has been caused to any investor or to the company as whole of the money came back to the company and nothing was spent;

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

61. I have perused the allegations levelled against the noticees, their reply and the material available on record. The issues that arise for consideration in this regard are as follows:

Issue No.I: Whether Noticee-1 has violated clause 43 of the erstwhile Listing Agreement (which is now regulation 32 of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015) read with section 21 of SCRA and section 12A (a) (b) (c) of the SEBI Act, 1992 read with regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations?

Issue No.II: Whether Noticee-2 and Noticee-3 have violated section 12A (a) (b) (c) of the SEBI Act, 1992 read with regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations?

Issue No.III: Does the violation, if any, by Noticees attract monetary penalty under section 23E of SCRA and 15HA of SEBI Act?

Issue No.IV: If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

62. In this regard, the relevant statutory provisions alleged to have been violated by the Noticees read as under:

Relevant extract of provisions of SCRA:-Section 21
"Conditions for listing.
21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange."

Relevant extract of provisions of Equity Listing Agreement –BSE
"43. a) The Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilisation of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilisation of funds and/or actual profitability.
b) The statement referred to in clause (1) shall be given for each of the years for which projections are provided in the prospectus/letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities and shall be published in newspapers simultaneously with the unaudited/audited financial results as required under clause 41.
c) If there are material variations between the projections and the actual utilisation/profitability, the company shall furnish an explanation therefore in the advertisement and shall also provide the same in the Directors' Report.
d) The statement referred to in clause (a) shall also be given for warrants issued along with public or rights issue of specified securities"

Relevant extract of provisions of SEBI Act:-Section 12A
"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.
12A. No person shall directly or indirectly-
(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;
………………………………………………..
Relevant extract of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003-:Regulations 3 and 4

*"**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 thereunder;
(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 thereunder.

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:
…….
(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
………..
(r) planting false or misleading news which may induce sale or purchase of Securities"

63. However, before proceeding with the consideration of the alleged violations and penalties thereof, it is necessary to deal with certain preliminary issues raised by the Noticees. The Noticees have sought cross examination of entities who had provided clarification and documents to SEBI which is referred to and relied upon in the SCN with respect to their financial transactions with Noticee-1. However, the Noticees have not disputed any of the clarifications or documents or contents thereof so relied upon in the SCN and therefore, no prejudice is caused to Noticees which necessitates cross examination of such entities.

64. In addition to the aforesaid submissions, Noticees have argued that there is inordinate delay in initiation of proceedings against them. Initiation of present proceedings after gap of around 7½ years has caused great prejudice to them in defending their case in proper and complete manner. In this regard, it is noted that the basis of proceedings against the Noticees was the BSE Circular dated 13.06.2018. BSE had, inter

alia, directed 19 companies including Noticee-1 to make mandatory disclosures with respect to misutilisation of preferential issue proceeds. Pursuant to the order of Hon'ble Tribunal in the matter of Viaan Industries Ltd., BSE referred the matter to its Disciplinary Action Committee and SEBI had sought information from BSE regarding these matters in August 2018. Based on the inputs of BSE, SEBI constituted a Joint Scrutiny Committee and later referred this matter for preliminary examination. The preliminary examination was completed in this matter in February 2019 and formal investigation was proposed in May 2019. Thereafter, the matter was internally reallocated in August 2020 due the work exigencies and pendency of cases. The investigation in the matter was completed in March 2021 and enforcement actions were approved against the Noticees in April 2021. Adjudicating Officer was appointed thereafter in August 2021 and the all the records were transferred for enabling inquiry by Adjudicating Officer in October 2021. The SCN in this matter was issued on 13.10.2021. Taking into account the aforesaid facts, I am of the view that the delay is not inordinate as alleged by the Noticees considering the numerous enforcement proceedings pending with SEBI at the relevant period of time. In this regard, reliance is placed on the order of Hon'ble Tribunal dated 15.12.2021 in the matter of Adamina Traders Private Limited vs. SEBI (Appeal Nos. 331 and 366 of 2020) wherein the argument of inordinate delay was rejected as there was nothing on record to show as to how this delay had prejudiced the appellant.

65. Further, taking into account the suspension of trading in the shares of Noticee-1 by BSE from 24.12.2015 to 27.10.2016, the Noticees submitted that the alleged violation of clause 43 of Listing Agreement was looked into by BSE and thus the present proceedings amount to double jeopardy. In this regard, it is noted that the Hon'ble Tribunal vide order dated 04.10.2012 in the matter of Shailesh S. *Jhaveri vs. SEBI* had held that the principle of double jeopardy is not applicable to a civil action for violation of the regulatory framework relating to the securities market. The Hon'ble Tribunal had further held that there is no legal bar in initiating action for violating different provisions of the SEBI Act itself. Therefore, there is no merit in the contentions of the Noticees that the present proceedings amount to double jeopardy in light of BSE's interim suspension of trading as a surveillance measure. Likewise, there is no merit in the argument of the Noticees that DSE did not make any query or examination on the said two preferential issues and therefore the Noticees have complied with all the statutory provisions of law. Thus, BSE's suspension of trading in the shares of Noticee-1 and subsequent revocation as surveillance measure does not preclude SEBI from proceeding under PFUTP Regulations as BSE's action is a surveillance measure as stated in the said circular and not a punitive action. After repelling the preliminary challenges to the present adjudication proceedings, I now proceed to deal with the issue on merits.

Issue No.I-Whether Noticee-1 has violated clause 43 of the erstwhile Listing Agreement [which is now regulation 32 of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015] read with section 21 of SCRA and section

12A (a) (b) (c) of the SEBI Act, 1992 read with regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations?

66. I note that Noticee-1 had deployed a substantial portion of the funds raised through two preferential issues, Rs.8.21 crore for corporate lending under the guise of utilization of issue proceeds for the objects. Noticee-1 has accepted the utilisation of the issue proceeds for acquiring land, building/godown and providing working capital advances to Dwivedi Construction, Shree Rajeshwar Construction, The Central Province Railways Co. Ltd., Gini and Jony Ltd. and VAM Enterprises, etc. It is also not in dispute that Noticee-1 had given loans to various entities such as Violet Infra and Trading Pvt. Ltd., Laurus Textiles Pvt. Ltd., Purohit Food Products Pvt. Ltd., Gujarat Realtors, Bharat M. Jain, Mithalal Jain, Alfa Exim Pvt. Ltd. (towards payment for purchase of fabrics) as narrated in the foregoing paragraphs.

67. Further, it is not in dispute that Noticee-1 concealed the fact of cancellation of MoU with Dwivedi (in 2018) when the information was initially sought vide email dated 28.09.2020 and this fact came to light only when information was sought from Dwivedi. Noticee-1 received only Rs. 3.35 crore from Dwivedi Construction (out of total amount of Rs. 7.15 crore) even after seven years since the first payment was made to Dwivedi. Noticee-1 did not make any submission as to the receipt to balance amount from Dwivedi (Rs.2.65 crore) during the personal hearing dated July 6, 2022. It is evident from the conduct as explained above that Noticee-1 had no intention to purchase any land and the transaction with Dwivedi was designed to use preferential issue proceeds for corporate lending under the guise of purchase of agricultural land. Hence, Noticee-1 has misutilised the issue proceeds aggregating to Rs. 6 crore (i.e., Rs. 4.75 crore or 87% of the total issue proceeds of first preferential allotment and Rs. 1.25 crore or 45% of the total issue proceeds of second preferential allotment) only for providing loan to Dwivedi, without interest.

68. The amount refunded by Purohit was given to various entities including Gini & Jony Ltd. by Noticee-1. However, Noticee-1 cancelled the franchisee agreement with Gini & Jony Ltd. and earned interest on the amount transferred to Gini & Jony Ltd. Therefore, it is found that Noticee-1 misutilised the issue proceeds of Rs. 30 lakh (i.e., 5 per cent of the total issue proceeds of first preferential allotment) by providing loan to Gini & Jony Ltd. to earn interest. Similarly, as explained in the forgoing paragraphs, Noticee-1 had transferred a total amount of Rs.1.25 crore to CPRCL on 05.03.2014. Subsequently, CPRCL refunded Rs.1.26 crore to Noticee-1 in several tranches during 09.05.2014 to 27.02.2017. CPRCL utilised the entire amount received from Noticee-1 to repay its loan taken from Effingo Textile & Trading Ltd. by making a money transfer on 05.03.2014(the same day it received the amount from Noticee-1). CPRCL had taken loan from Noticee-1 in order to repay its earlier loan with Effingo Textile & Trading Ltd. As per the clauses in the working capital loan agreement dated 03.02.2014, between Noticee-1 and CPRC, at the time of signing the said agreement, Noticee-1 knew that Central

Railways is not paying CPRCL for the past couple of years due to disputes over payments and the business is in standstill. However, Noticee-1 provided loan of Rs. 1.25 crore to CPRCL with the knowledge that no business is forthcoming. Thus, from the fashion the agreement is executed as narrated above, the transaction of Noticee-1 with CPRCL was planned to use preferential issue proceeds for corporate lending rather than the declared objects of issue and the Noticee-1 used the issue proceeds of Rs. 1.25 crore (i.e. 45% of the total issue proceeds of second preferential allotment) only for providing loan to CPRCL. It is interesting to note in this regard that one of the directors of CPRCL since 2010, Mr. Arvind Kumar Gupta has joined the board of directors of Noticee-1 in April 2022 as per MCA website.

69. Noticees have argued that the violation of section 12A (a) (b), (c) of SEBI Act, PFUTP Regulations is on account of alleged violation of clause 43 of the erstwhile Listing Agreement and they have relied upon the order of Ld. Whole Time Member, SEBI dated 28.05.2021 the case of Tatia Global to dispute the same. However, it is noted that the SCN has not alleged that the violation of the provisions of PFUTP Regulations are on account of the violation of provisions of SCRA and Listing Agreement. In this regard, reliance is placed on the Explanation inserted to Regulation 4(1) of PFUTP Regulations, 2003 with effect from October 19, 2020 as follows:

> "*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 act 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.*"

70. The clarification provided as above broadly deals with three types of conducts with respect to a listed company as under:

(a) diversion, misutilisation or siphoning off of assets or earnings of a company;
(b) concealment of such act of diversion, misutilisation or siphoning off of assets or earnings of a company;
(c) device, scheme or artifice to manipulate the books of accounts or financial statement that would directly or indirectly manipulate the price of securities of that company.

However, for the first two types of conducts, the element of price manipulation is not essential. In this regard, it is relevant to note the contents of Board Memorandum of SEBI placed before its Board Meeting on 29.09.2020 on 'Amendments to provide for clarification in the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003', proposing insertion of the aforesaid Explanation to regulation 4(1) of PFUTP Regulations. The relevant portion of the said Board Memorandum reads as follows:

> ***"3.0 Explanation to bring clarity***
> *3.1 It is important that gullible investors are not duped by such manipulative diversion or misstatements and that the trust reposed in securities markets is not eroded by such fraudulent and manipulative activity. For the purpose of removal of doubts, it is proposed to clarify that the existing provisions of PFUTP Regulations always provided for effectively dealing with such fraudulent activities of manipulating the price of listed securities or diverting, misutilising or siphoning off or hiding the diversion, misutilization or siphoning off public issue proceeds or assets or earnings of a company whose securities are listed."(underline supplied)*

The underlined portion makes it abundantly clear that the PFUTP Regulations deals with two types of fraudulent activities, i.e., one where price manipulation needs to be established and the other where price manipulation is not required to be established. Thus, diversion, misutilisation or siphoning off of assets or earning of the company and concealment thereof as such is in violation of PFUTP Regulations.

71. The activities of Noticees in this matter squarely fit into the first and second type of conduct as (a) preferential issue proceeds were diverted and misutilised as explained above and (b) such diversion and misutilisation of preferential issue proceeds were concealed as the Directors' Report in the Annual Reports for the FYs 2013-14 (29th Annual Report) and 2014-15 (30th Annual Report) are silent on this matter. Further, this matter is distinguishable from *Tatia Global* as the preferential issue proceeds which were diverted by the Noticees are yet be received back by Noticee-1. The outstanding amount of Rs.2.65 crore (with Dwivedi) is almost 96 per cent of the issue proceeds of second preferential allotment, i.e., Rs.2.75 crore. Besides, the Noticees had come out with two preferential issues and proceeds of both the issues were utilised for the purposes other than the purpose mentioned in the notices of Extra Ordinary General Meeting (EOGM) and as such the conduct is repetitive in nature rather than a one-off incident.

72. Hon'ble Supreme Court in the matter of *SEBI and Ors. vs. Kanaiyalal Baldevbhai Patel and Ors.* (2017) 15 SCC 753, interpreted the definition of fraud under regulation 2(1)(c) of the PFUTP Regulations to bring out its ingredients and held that there shall be 'inducement' to 'deal in securities'. With respect to inducement, the Hon'ble Court observed that "*The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of*

dishonesty or bad faith in the making of the inducement would be required.' The Hon'ble Court further elucidated the ingredients of the term 'dealing in securities' as follows:

"………….For a transaction to be termed as dealing in securities, following ingredients need to be satisfied-

1. includes an act of buying, selling or subscribing pursuant to any issue of any security, or

2. Agreeing to buy, sell or subscribe to any issue of any security, or;

3. Otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in Section 12 of the Act.

25. The definition of 'dealing in securities' is broad and inclusive in nature. Under the old regime the usage of term 'to mean' has been changed to 'includes', which prima facie indicates that the definition is broad. Moreover, the inclusion of term 'otherwise transacting' itself provides an internal evidence for being broadly worded so as to include situations such as the present one."

73. In the view of the aforesaid interpretation, the question here is whether the notice of EOGMs with the object of '*capital expenditure including acquisition of companies/business, funding long term working capital requirements, marketing, setting up of offices abroad and for other approved corporate purposes'* amount to inducement (irrespective of the presence of the element of dishonesty) and whether subscription of preferential shares by non-promoter members on such inducement amounts to 'dealing in securities.' The answers to both these questions is in the affirmative as the object of the issue indicates the expansion plans of the company which induced subscription of the shares and the act of subscription of shares is dealing in securities. Thus, the ingredients of fraud are evident in the process of preferential issues by the Noticees wherein the proceeds of the issue were ultimately diverted and misutilised.

74. Noticees further relied on the order of Hon'ble Tribunal dated 02.06.2022 in the matter of *Terrascope Ventures Limited vs. SEBI* and other connected appeals (Appeal Nos. 114 to 116 of 2021) wherein the Hon'ble Tribunal had quashed the Adjudication orders upon the finding that as a result of the subsequent ratification of misutilisation of proceeds of preferential issue, there is no variance in the utilisation of the proceeds and thus, the variance in the utilisation of the proceeds as alleged in the SCN is erroneous and consequently, there is no violation of clause 43 of the Listing Agreement. In this regard, Noticees have argued that they undertook ratification process in the Annual General Meeting of shareholdings held on 12.08.2018. They further placed reliance on the Judgment of Hon'ble Supreme Court dated 01.07.2015 in the matter of *National Institute of Technology and Anr. vs. Pannalal Choudhury and Anr.*, holding that a subsequent ratification of an act is equivalent to a prior authority to perform such Act and ratification assumes an invalid act which is retrospectively validated.

75. In this regard, reference is drawn to the letter dated 21.08.2018 of the Noticee-1 sent to BSE enclosing the AGM Notice, shareholder resolution for ratification of proceeds and unaudited financial results for quarter ended June 30, 2018. The said letter had enclosed the Notice of Annual General Meeting (AGM) of Noticee-1 dated

11.08.2018. An extract of the relevant part of the said Notice of AGM is reproduced as under:

4 **Special Resolution for Ratification and Approval of Utilisation of proceeds received from issue of equity shares of the Company on Preferential Basis:**

"**RESOLVED THAT** the Company having allotted 36,40,000 equity shares of face value Rs. 10/- (Rupees Ten Only) per share on February 01, 2014 offered at a price of Rs. 15/- (Rupees Fifteen Only) per share (including premium of Rs. 5/- (Rupees Five Only) per share) and 18,35,000 equity shares of face value Rs. 10/- (Rupees Ten Only) per share on March 04, 2014 offered at a price of Rs. 15/- (Rupees Fifteen Only) per share (including premium of Rs. 5/- (Rupees Five Only) per share); The object of issue of shares was that your Company needed funds for long term working capital requirements and for approved corporate purposes.

AND WHEREAS the Company received a total sum of Rs. 8,21,25,000/- (Rupees Eight Crores Twenty One Lakhs Twenty Five Thousand Only) against the above stated allotment of 54,75,000 equity shares of face value Rs. 10/- per share;

AND WHEREAS the Company has utilised the abovestated funds in the manner stated below:

Sr. No.	Payment to	Purpose	Amount Utilised
1	M/s Dwivedi Constructions Limited	For acquiring land and building godown	Rs. 7,15,00,000/-
2	Ginni&Jony	Franchisee Agreement	Rs. 30,00,000/-
3	Working Capital requirement	Repayment of loans and placing of purchase orders	Rs. 76,25,000/-
	Total		Rs. 8,21,25,000/-

AND WHEREAS BSE vide letter dated May 10, 2016 alleged that the Company had mis-utilised the funds raised and had suspended the trading in equity shares of the Company;

AND WHEREAS the Company had provided appropriate replies to BSE Ltd. and had also received an order from Hon'ble Securities Appellate Tribunal in favour of the Company for resumption of trading;

AND WHEREAS BSE Ltd. vide its notice number 20160613-29 dated June 13, 2018 requires the companies which have undergone surveillance measures for mis-utilisation of funds to undertake "Mandatory disclosures to be made by the companies w.r.t. mis-utilisation of preferential proceeds along with ensuing quarterly unaudited / audited financial results and same to be ratified by the shareholders of the company within 3 months from intimation";

AND WHEREAS the members of the Company, pursuant to the said BSE Ltd. notice number 20160613-29 dated June 13, 2018, the Company, though not agreeing to any mis-utilsation of funds hereby ratify and approve the utilization of funds received under preferential issue by the Company in the manner stated in the table earlier."

In the table given in the notice as above, Noticees had provided just three line entries pertaining to utilization of funds whereas the issue proceeds were actually used by many entities such as Shree Rajeshwar Construction, CPRCL, VAM Enterprises, Violet Infra and Trading Pvt. Ltd., Laurus Textiles Pvt. Ltd., Purohit Food Products Pvt. Ltd., Gujarat Realtors, Bharat M. Jain, Mithalal Jain, etc. as narrated above, and the Noticees did not reveal the names of all beneficiaries of the proceeds of the preferential issue even while seeking ratification of the misutilisation of the issue proceeds from the shareholders.

76. As per the notices of EOGM of Noticee-1 dated 05.12.2013 and 17.02.2014 "the funds so raised shall be fulfil the additional fund requirements for funding long term working capital requirements and other approved corporate purposes". Further, as per the annual report of the company for the year 2014-15, the principal business activity of the company is stated as "wholesale of textile, fabrics, yarn, household linen, article of clothing, which has contributed 100% of the turnover of the company." As per the Memorandum of Association (MOA) of the company, the main object of the Noticee-1 is "*1. To carry on the business of dealers, general order suppliers, contractors, importers, exports, merchants, stockists, buyers, sellers, growers, agents, brokers, commission agent and dealers in cotton, jute, tea, coffee, rubber, oil, grains, pulses, seeds, vegetable product, cotton goods, jute goods, textiles, garments, yarn, synthetic goods, fibrous materials, mill stores, coal, chemicals, fertilizers, building materials, office appliances, Domestic appliances, furniture, decorative items, gift items ,steel utensils, plastic goods, rubber items, pulp, paper, engineering goods, all kinds of electrical and electronic items, including chandelier, lampshades and other decorative items. 2. To buy, sell, import, export and deal in all kinds of commodities and articles*.' 'In the objects incidental and ancillary to the attainment of main objective', Noticee-1 is empowered to '*7. To lend and advance money, either with or without security and give credit to such persons (including Government) and upon such terms and conditions as the Company may think fit, provided that the company shall not carry on banking business.*' However, substantial portion of the proceeds of preferential issue was used for corporate lending, as against the main object of the Noticee-1 and the incidental and ancillary objects since the lending was not for the purposes given in the main objects in MOA. Thus, this matter could be distinguished from the case of *Terrascope Ventures Limited vs. SEBI* based on the aforesaid facts. Although the present case pertains to departure from the objects stated in the MOA, Noticees contended that the same was ratified by a Special Resolution in the AGM. In this regard, it is pertinent to refer to the judgment of Hon'ble Calcutta High Court in the matter of *Rajendra Nath Dutta vs. Shibendra Nath Mukherjee*, [1982] 52 COMP CASE 293 (Calcutta) where the doctrine of *ultra vires* was invoked and the Court held as under:

> *"While an act, which is ultra vires the company, is incapable of ratification, an act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form. The execution of a document by the managing directors, without the common seal, is an ultra vires act and a subsequent resolution cannot ratify it.*

Therefore, an act which is *ultra vires* the MOA is incapable of ratification. There is no enablement in the Companies Act, 2013 for ratification of an illegal act which is not authorised by the MOA of the company. However, an act which is permissible as per the MOA though performed improperly or irregularly by the directors may be ratified by shareholders.

77. The object of both the preferential issues was "the funds so raised shall be fulfill the additional fund requirements for capital expenditure including acquisition of companies/business, funding long term working capital requirements, marketing, setting up of offices abroad and for other approved corporate purposes." However, as evident from the foregoing paragraphs, a substantial portion of the funds were deployed for corporate lending under the guise of utilization of issue proceeds for the objects of the preferential issues. An amount of Rs.2.65 crore so given by Noticee-1 to Dwivedi is still outstanding for receipt even after a substantial period of eight years. Therefore, I am of the view that the objects of the preferential issue as informed to the members/public in the Notice of EOGMs dated dated 05.12.2013 and 17.02.2014, were not true and the Noticees misled the investors. Further, Noticee-1 concealed such variation in proposed and actual utilization of funds raised through the aforesaid preferential issues by not providing the same in the Directors' Report in the Annual Reports for the FYs 2013-14 (29th Annual Report) and 2014-15(30th Annual Report). Such act of corporate lending by the Noticees as explained above is ultra vires the MOA and thus, incapable of ratification. Therefore, in view of the aforesaid, I hold that Notice-1 has violated provisions of section 12A (a) (b) (c) of the SEBI Act read with regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations.

78. SCN has further alleged that Noticee-1 deviated and used substantial part of the proceeds of both the preferential issues for providing loans and failed to disclose the extent of deviation to the stock exchanges and thus, violated clause 43 of the erstwhile Listing Agreement read with section 21 of SCRA. The shares of the Noticee were listed earlier on DSE and thereafter on BSE. Section 21 mandates that Noticee-1 shall comply with the conditions of the Listing Agreement with that stock exchange. Clause 43 of the Listing Agreement, *inter alia*, mandates a listed company to furnish a statement on a quarterly basis to stock exchanges indicating the variations between projected utilization of funds made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds. However, there is no material on record showing that Noticee-1 complied with the requirement of said clause of Listing Agreement. Besides, no explanation regarding variation in proposed and actual utilization of funds was provided in the Directors' Report in the Annual Report of Noticee-1 for the FYs 2013-14 (29^{th} Annual Report) and 2014-15(30^{th} Annual Report). Therefore, as discussed above, I am of the view that Noticee-1 has violated the conditions of Listing Agreement and thus, violated section 21 of SCRA.

Issue No.II: Whether Noticee-2 and Noticee-3 have violated section 12A (a) (b) (c) of the SEBI Act, 1992 read with regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations?

79. As explained in paragraph 44 to 51 above, Noticee-2 and Noticee-3 were KMPs of Noticee-1 and responsible for management of the affairs of the company during

that period, including activities related to both the preferential issues. Noticee-2 and Noticee-3 were holding the position of CFO and CEO respectively. They were the authorized signatories in the balance sheets of Noticee-1 for FYs 2013-14 and 2014-15. As. Further, it is found that Noiticee-2 was the signatory in all the documents related to both the preferential issues such as notice of EGM, board minutes, MoU executed with Dwivedi for land purchase, working capital loan agreement executed with CPRCL, MoU for franchise executed with Gini & Jony Ltd. and confirmation of accounts in respect of transactions with Shree Rajeshwar Construction and VAM Enterprises. Hence, based on available documents, Noticee-2 and Noticee-3 were the key persons managing the affairs of Noticee-1 during the time of both preferential issues and that misutilisation of preferential issue proceeds occurred during their tenure as directors/KMPs. In this regard, Noticee-2 and Noticee- have relied on the order of Ld. Whole Time Member SEBI in *Tatia Global* wherein it was held the directors are not vicariously liable for the civil liabilities of the company though they were in charge as at the time of commission of the said violations as section 27 did not provide for such liability. Such vicarious liability for civil liability of the company was introduced only with effect from 08.03.2019 vide amendments in Finance Act, 2018. It is noted that the violations as alleged above were committed by Noticee-2 and Noticee-3 during the period 2014 to 2018, which is well before such vicarious liability was introduced in the SEBI Act. Therefore, I am of the view that the alleged violation of section 12A (a) (b) (c) of the SEBI Act, 1992 read with regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations against Noticee-2 and Noticee-3 in this regard cannot be sustained.

Issue No. III: Does the violation, if any, by Noticees attract monetary penalty under section 23E of SCRA and 15HA of SEBI Act?

80. The aforesaid violations by the Noticees attract penalty under section 15HA of SEBI Act and section 23E of SCRA which read as under:

> ***"Penalty for fraudulent and unfair trade practices.***
> ***15HA.*** *Penalty for fraudulent and unfair trade practices. - If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty not exceeding twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."*
>
> ***"23E Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.***
> *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding to twenty five crore rupees."*

81. With respect to imposition of penalty under section 23E of the SCRA, Noticees have relied on the orders passed by Ld. WTM, SEBI dated 28.05.2021 in the case

of *Tatia Global* and order dated 29.06.2022 in the case of *Parsvnath Developers Ltd.* wherein violation of section 23E were not upheld. The Noticees have further relied on the order dated 03.05.2021 passed by Hon'ble Tribunal in the matter of *Suzlon Energy Ltd. and Ors. vs. SEBI* (Appeal No. 201 of 2018) which, *inter alia*, reads as follows:

"17. The AO held that since Clause 36 of the Listing Agreement was violated, in addition to the penalty imposed under Section 23A(a), the provisions of Section 23E of the SCRA is also invoked. In our view, the imposition of penalty under Section 23E is patently erroneous. The AO has committed a manifest error in invoking Section 23E of the SCRA, 1956

18. Section 23E has nothing to do with the violation of the provisions of the Listing Agreement especially Clause 36. Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E....."

82. In this regard, it is noted that an appeal was filed by SEBI before Hon'ble Supreme Court against the aforesaid order vide Civil Appeal No. 4741 of 2021. A stay application was also filed by SEBI with respect to the findings of Hon'ble Tribunal in paragraphs 17 and 18 of the aforesaid order. The aforesaid stay application and appeal are pending before Hon'ble Supreme Court. It is relevant to note that vide orders in the matter of *M/s NDTV vs. SEBI* (Appeal No. 358 of 2015) dated 07.08.2019, and *Oasis Securities Ltd. & Ors. vs. SEBI* (Appeal No. 316 of 2018) dated 17.03.2020, the Hon'ble Tribunal had upheld the imposition of penalty under section 23E of SCRA on the appellant companies for the violation of clauses of the Listing Agreement. The limited purpose of going into the issue of violation of Listing Agreement by Noticee-1 here is to determine whether it has violated the provisions of the Listing Agreement, and if so, to impose penalty, however, the enforcement of penalty with respect to the violation under section 23E of SCRA shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court.

83. On the issue whether the violations of the SEBI Act and PFUTP Regulations as above attract monetary penalty under section 15HA of the SEBI Act, it is found that in view of the facts and circumstances of the case and the material available on record, the

Noticee-1 has contravened section 12A (a) (b) (c) of the SEBI Act, 1992 read with regulations 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations. In view of the same, it is a fit case for imposition of monetary penalty on Noticee-1 under section 15HA of the SEBI Act in terms of the judgment of Hon'ble Supreme Court in the matter of *Chairman, SEBI vs. Shriram Mutual Fund & Anr.,* (2006) 5 SCC 361 as under:

> *"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."*

However, Noticee-2 and Noticee-3 are not liable to penalty under section 15 HA of SEBI act as the alleged violations SEBI Act and PFUTP Regulations against them could not sustained.

Issue No.IV: If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

84. With respect to the quantum of monetary penalty that can be imposed on the noticees, it is important to consider the factors as stipulated in section 15J of the SEBI Act, 1992 which reads as under:

> ***"Factors to be taken into account by the adjudicating officer.***
> *15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default.*
> *Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

In the instant case, as evident from the facts, the extent of loss suffered by investors is to the tune of Rs.2.65 crore and interest thereon, as the said amount raised through preferential allotments is yet to be brought back to the company as explained above. However, taking into account the fact that the MoU dated 03.02.2014 was cancelled by deed of cancellation dated 25.07.2018, interest at the rate of 6 per cent per annum on the outstanding amount from such date of cancellation of MoU till date would be sufficient compensation and the total interest in this regard is to the tune of Rs. 65,16,822/- (Rupees Sixty Five lakh Sixteen Thousand Eight Hundred Twenty Two Only). Thus, an amount of Rs. 3,30,16,822/-(Rupees Three Crore Thirty lakh Sixteen Thousand Eight Hundred Twenty Two Only) would be sufficient penalty in the given facts and circumstances of the case in terms of section 15HA of SEBI Act. With respect to the failure to make disclosures as mandated under Listing Agreement, no disclosures were made with respect to both the preferential allotments and the minimum penalty provided for each such violation is Rs. 5 lakh and therefore an amount of Rs. 10 lakh for the said disclosure violation would be sufficient penalty in the given facts and circumstance of the case in terms of section 23E of SCRA.

ORDER

85. In exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the SEBI Rules and section 23-I of Securities Contracts (Regulation) Act, 1956 read with rule 5 of the SC(R)Rules, I impose a penalty of Rs. 3,30,16,822/- (Rupees Three Crore Thirty lakh Sixteen Thousand Eight Hundred Twenty Two Only) in terms of the provisions of section 15HA of the SEBI Act and Rs. 10,00,000/- (Rupees Ten Lakh only) in terms of the provisions of section 23E of SCRA on Noticee-1 (Triveni Enterprises Limited). In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by Triveni Enterprises Limited. As noted above, in light of the fact that an appeal was filed before the Hon'ble Supreme Court in the Suzlon Energy(*supra*) matter, the monetary penalty imposed on Noticee-1 under section 23E of the SCRA shall be payable depending upon the outcome of the aforesaid appeal.

86. The Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of 'SEBI - Penalties Remittable to Government of India', payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: **ENFORCEMENT > Orders > Orders of AO > PAY NOW**

87. The Noticees shall forward the said demand draft or the details/confirmation of penalty so paid to 'The Division Chief (Enforcement Department 1, DRA-1), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C–4 A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai– 400051'. The noticees shall also provide the following details while forwarding the demand draft/payment information:

- Name and PAN of the noticees;
- Name of the case/matter;
- Purpose of Payment – Payment of penalty under AO proceedings;
- Bank Name and Account Number;
- Transaction Number.

88. 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, 1992 for realization of the said

amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

89. In terms of rule 6 of the SEBI Rules/SC(R) Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: August 29, 2022 **JAI SEBASTIAN**
Place: Mumbai **ADJUDICATING OFFICER**