BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/PM/NS/2022-23/16157)

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

In respect of

Karvy Capital Ltd

In the matter of Vaishno Devi Dairy Products Ltd.,

(Presently known as Sahindra Vaishno Devi Dairy Products Ltd.)

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an examination with regard to issuance and defaults of Non-convertible Debentures (NCDs) issued by Sahindra Vaishno Devi Dairy Products Ltd, (hereinafter referred to as "SVDDPL" / "Company"), for possible violation, if any, of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the **PFUTP Regulations, 2003**).

2. Based on information received from Ministry of Corporate Affairs (MCA), financial year 2013-14 has been selected as examination period. It was observed that SVDDPL had issued NCDs in the financial year 2013-14.

Year	Date of allotment	Type	Nos. of Allottee	Amount (in ₹Crores)
2013-14	February 04, 2014 to March 31, 2014.	Non-Convertible Debentures (NCDs)	185	25

It is observed that Karvy Capital Ltd., was appointed as Debenture Holders Representative and was also appointed to act as Sole Book Runner and Lead Arranger (hereinafter referred to as **Noticee/KCL/Karvy**). On the basis of the said examination, It is alleged that Noticee had acted in a fraudulent manner and thereby violated the provisions of Regulation 3(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 while dealing with issuance of NCDs by SVDDPL . In view of the above, adjudication proceedings were initiated against the Noticee under the provisions of section 15HA of the SEBI Act, 1992, for the alleged violation of the provisions of regulations 3(a) of PFUTP Regulations, 2003.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned *vide* order date April 23, 2021 was appointed as the Adjudicating Officer under section 15-I of the SEBI Act, 1992 r/w rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules,1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under the provision of section 15HA of the SEBI Act, 1992, the alleged violation of the provisions regulations 3(a) of PFUTP Regulations, 2003.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

4. Show Cause Notice dated June 22, 2021(hereinafter referred to as **SCN**) was issued to the Noticee under rule 4(1) of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be initiated against the Noticee and why penalty, if any, should not be imposed on the Noticee under section 15HA of the SEBI Act, 1992, for the alleged violations of the provisions of regulations 3(a) of PFUTP Regulations, 2003. The allegations against the Noticee are as follows:

a) In respect of the aforesaid issue, it is observed that IL&FS Trust Company Ltd., ('ITCL'/ 'DT) was appointed as Debenture Trustee & Escrow Agent. Subsequently, ITCL was taken over by Vistra ITCL (India) Ltd., Further, it is observed that Noticee., was appointed as Debenture Holders Representative and was also appointed to act as Sole Book Runner and Lead Arranger.

b) A Debenture Trustee Agreement dated January 13, 2014 ("DTA" or "Agreement") was executed between the company, ITCL, Noticee and promoters of the company on January 13, 2014 for the proposed debt programme of the company through issuance and allotment of debentures. Further, as per the available records, the agreement was subsequently amended vide amendments dated January 30, 2014 and an Addendum dated March 24, 2014 was added to the Agreement. Importantly, the DTA inter-alia provided the following:

   i. *the first series of debentures were to be issued on private placement basis in terms of the Information Memorandum (IM) and pricing Supplement dated on or about the date of DTA.*
   ii. *Debentures to have a face value of ₹1,00,000/-*
   iii. *Application to be made for a minimum of 10 debentures.*
   iv. *Debentures not to be listed on any stock exchange.*
   v. *Company to solicit subscription as per the terms of the Information Memorandum.*
   vi. *Company to provide a certified true copy of the duly executed Information Memorandum to the Trustee as one of the conditions precedent to the issue*

c) Subsequently, an Information Memorandum (IM) dated January 13, 2014 for issuance of debentures on private placement basis was brought out by the Company, inter-alia, containing the disclosures related to the debenture issuance of the company. In terms of the IM, Noticee was specified to act as Sole Book Runner and Lead Arranger and Karvy Computershare Private Limited (KCPL) as Registrar to the issue. The IM, inter-alia, provided the following:

   i. *Page 39 of the IM provided the following disclaimer clause:*
   'The issue is being made strictly on a private placement basis and <u>is not intended to be circulated to more than 49 persons nor intended to be listed</u> on a stock exchange at any time.'
   ii. *The role of the Sole Arranger in the assignment is confined to marketing and placement of the NCDs on the basis of IM. The IM also provides for*

use of IM by the sole arranger for the purpose of soliciting subscription from qualified institutional investors in the NCDs.

iii. *Minimum no. of NCDs to be applied for were to be 10 and in multiple of 1 NCD thereafter.*

d) The term sheet of the issue provides for 51% share pledge of the company, personal guarantee of the promoter, hypothecation of brand “SHUBHI”, second charge on fixed and current assets of an investment company, post-dated cheques for all outstanding principal and interest repayments, as security cover.

e) Vide letter dated January 23, 2019, SVDDPL, inter-alia, submitted the following:

i. *The total arrangement to be made by KCL was Rs.75 crore which was supposed to bridge funding and the company was planning to opt for a public issue for its fund requirements as well as redemption of its NCDs.*

ii. *KCL did not adhere to the clauses of the Information Memorandum as well as the Debenture Trustee Agreement and transferred and allotted debentures to more than 49 persons.*

iii. *KCL has made the alleged transfer without the knowledge of the company and ultra vires the authority conferred upon it.*

iv. *Debenture holders purchased the debentures of the company from KCL which was not communicated to the company by either parties.*

v. *Vistra ITCL has filed a winding up petition on behalf of the Debenture Holders against the company before the Bombay High Court in 2016 and also filed another application under the IBC Code, 2016 in 2018.*

f) Vide email dated March 29, 2019, SVDDPL submitted that NCDs were allotted to Noticee. With regard to the aforesaid submissions of SVDDPL, it is observed from the demat statement of Noticee that during the FY 2013-14, NCDs allotted by SVDDPL to Noticee from February 4 to March 19, 2014 on various dates which were further down sold to the investors by Noticee from February 4, 2014 till March 31, 2014 on various dates, as per the details given in the table below:

Sl. No.	No. of NCDs allotted by KCL to investors	No. of investors	Date of Allotment by Company to KCL	Dates of down selling by KCL to investors
1	650	47	February 4, 2014	February 10 & 19, 2014
2	619	49	February 10, 2014	February 26, 2014
3	408	35	February 24, 2014	March 3, 10, 11 & 13, 2014
4	252	22	March 10, 2014	March 18 & 19, 2014
5	571	32	March 19, 2014	March 24 & 31, 2014
TOTAL	**2500**	**185**	**-**	**-**

g) IM for the said issue is dated January 13, 2014 and as brought out in the above table, it is observed that Noticee down sold the 2,500 NCDs to the public (185 nos.,) well within six months from various dates of allotment by the Company to KCL. Hence, in terms of Section 25 of the Companies Act, 2013, the issue of NCDs by SVDDPL is *'an issue of debentures, with a view of it being offered to the public'* and thus, is *'deemed public issue'*.

h) It is noted that SVDDPL had filed Form 20B (form for Annual Return) for the financial year ending March 31, 2014 with RoC which was digitally signed by its Managing Director i.e., Mr. Nandkishor Harikishan Attal. The aforesaid form enclosed a list of 185 debenture holders who were allotted NCDs of the company during the year which, inter alia, contain details of series, date of agreement with investors, total investments and DP ID of the investors.

i) Noticee, vide emails dated October 17, 2018 and April 24, 2019 submitted that NCDs of SVDDPL were never accounted for as investments in the books of accounts of KCL and that the NCDs were not subscribed to by KCL but were subscribed with the intention to down sell. Subsequently, vide letter dated November 13, 2019 KCL submitted that it was the only allottee and the subsequent investors were transferees.

j) Further, on perusal of the ledger of collection of funds from the public, as provided by KCL, it is observed that in most of the cases, KCL had received money from the investors well in advance of the issue dates. These funds were transferred to SVDDPL who then credited NCDs to the account of KCL which were subsequently transferred to the ultimate investors. These sequence of transaction flows amongst SVDDPL, KCL and investors gives credence to KCL's initial submissions that the said NCDs were subscribed with the intention to down sell them to prospective buyers identified by KCL through its intermediation.

k) Further, SVDDPL, vide email dated December 11, 2020, was asked to provide information pertaining to the amount of fee paid to Karvy Capital Limited for its services rendered in the issuance of NCDs by SVDDPL during 2013-14 and 2014-15. Vide email dated December 14, 2020, SVDDPL has furnished a statement of ledger account for the FY 2013-14 & 2014-15, pertaining to payments made to a Karvy group entity viz; Karvy Investment Advisory Services Ltd., (KIASL) wherein it is observed that SVDDPL had made payments amounting to ₹1.14 crore and ₹78.31 lacs during the aforesaid 2 years as 'Professional Fees' through two of its SBI Current A/cs (viz; 30270796451 & 30551302614). The tabular representation comparing the chronology of funds raised for SVDDPL and the fees paid to KIASL during 2013-14 is as under:

Date	**Amt raised for SVDDPL (₹)**	**Date**	**Fee paid to KIASL (₹)**
04/02/2014	6,50,00,000	05/02/2014	26,29,224
10/02/2014	6,19,00,000	14/02/2014	25,03,830
24/02/2014	4,08,00,000	28/02/2014	16,50,394
10/03/2014	2,52,00,000	12/03/2014	11,14,700
19/03/2014	5,71,00,000	25/03/2014	23,83,783
		31/03/2014	11,25,025
Total	**25,00,00,000**	**Total**	**1,14,06,956**

l) The aforesaid payment of professional fees has been corroborated by bank account statements of the aforesaid two current accounts provided by SBI evidencing payments to KIASL.

m) KCL was identified to act as Debenture Holder Representative even before the circulation of the IM and also the on-boarding of investors indicating the manipulative intent of SVDDPL in connivance with KCL to circumvent regulatory requirements. It is pertinent to note that *'Debenture Holder Representative'* is not a recognized intermediary either under the SEBI Act, any of the Regulations or the Companies Act, 1956/ Companies Act, 2013. It is apparent from the above that KCL played an integral role in the whole scheme of raising monies, issuance and allotment of NCDs and the subsequent down selling to public with an intent to circumvent public issue norms. Thus, it is alleged that KCL had acted in a fraudulent manner and thereby violated the provisions of Regulation 3(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, which reads as under:

"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"

n) The aforesaid alleged violations, if established, makes the Noticee liable for monetary penalty under Sections 15HA of SEBI Act respectively, the provisions of which are reproduced hereunder:

Section 15HA of SEBI Act

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

5. I note from the material available on record that the SCN was served to the Noticee through speed post acknowledgement due, Reply was received from the Noticee *vide* letter dated August 20, 2021. Subsequently, in accordance with the principle of natural justice, opportunity of personal hearing was accorded to the Noticee on September 01, 2021 vide hearing notice dated August 23, 2021. On the scheduled date of hearing, the Authorized Representatives of the Noticee appeared before me through video conference and requested to take into account the submissions made by the Noticee vide its letter dated August 20, 2021 as his oral submissions. Noticee vide letter dated September 03, 2021 submitted additional reply to the SCN. The submissions of the Noticee are as follows:

(a) At the outset we submit that, save and except the contents of the said Notice which are specifically admitted herein, all other averments, observations, allegations made by SEBI in the said Notice are specifically and individually denied. Nothing contained in the said Notice shall be deemed to be admitted on the basis of non-traversement of specific allegations or findings, unless the same is specifically admitted by us in this reply.

(b) Allegations in the Notice have been levelled against us in context of issuance of Non-Convertible Debentures ("NCDs") by Sahindra Vaishno Devi Dairy Products Ltd ("SVDDPL") in the year 2014, wherein we had acted as 'Sole Book Runner and Lead Arranger'. We submit that the allegations are based on incomplete appreciation of events as have transpired in the matter. We categorically deny that we have acted in a fraudulent manner as alleged or that we have acted in connivance with SVDDPL to circumvent regulatory requirements as alleged. The allegations are baseless and offshoot of surmises and conjectures.

(c) We respectfully submit that the present proceedings suffer from enormous laches. Admittedly, the alleged violations relate to period 2013-14. Admittedly, the SCN has been issued on 22.6.21 (i.e. after almost 7 years).Clearly, there has been extraordinary inordinate delay in the

issuance of SCN. The aforesaid inordinate delay has severely prejudiced us and the said inordinate delay has not been explained by SEBI. On this ground alone, the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped.

(d) *It is well settled now that even though there is no period of limitation prescribed in the SEBI Act and Regulations for the completion of investigations or for the issuance of a show cause notice or for completion of the SCN proceedings, the authority is required to exercise its powers within a reasonable period. Facts of the present case will amply demonstrate that the powers have not been exercised within a reasonable period and therefore, in the facts and circumstances of the case, proceedings need to be discontinued and dropped and no penalty need be imposed.*

(e) *In this context your attention is invited to following Orders passed by the Hon'ble Securities Appellate Tribunal.*

(f) *Order passed on January 31, 2020 by the Hon'ble Securities Appellate Tribunal in the matter of Ashlesh Gunvantbhai Shah Vs SEBI (SAT Appeal no 169 of 2019):*

"In our opinion, the grounds shown by the respondent in its additional affidavit only indicates the lackadaisical attitude in proceeding against the entities. It is quite clear that no urgency was shown by the respondent to culminate the proceedings and has moved at a leisurely pace. We find that after the submission of the preliminary report on April 2, 2012 no further steps were taken in 2012 and the period of 2013-14 has been covered with a vague allegation that there were certain changes in the officers of the Investigation department. We also find that after the report was submitted on February I, 2016 it took the respondent another 17 months to issue the show cause notice. The explanation given in the additional affidavit is patently farcical and appears to be an afterthought........

............we find that on account of the inordinate delay in the initiation of the proceedings by issuance of a show cause notice, the penalty order cannot be sustained. The impugned order passed by the AO is quashed."

(g) Order passed on August 22, 2019 by the Hon'ble Securities Appellate Tribunal in the matter of Ashok Shivlal Rupani and anr. Vs SEBI (SAT Appeal no 417 of 2018):

"Having considering the matter, we are of the view that there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellants for alleged violations. Much water has flown since the alleged violations and at this belated stage the appellants cannot be penalized......... we are of the opinion that on account of inordinate delay the initiation of proceedings by issuance of the show cause notice which culminated into a penalty order cannot be sustained. The show cause notice and the impugned orders passed by the AO are quashed."

(h) In the NCD's issued by SVDDPL, Vistra ITCL (India) Ltd was appointed as the ' DebentureTrustee' by SVDDPL and KCL was acting as a 'Sole Book Runner and Lead Arranger'. Further, KCL was also appointed as a ' Debenture Holder Representative' wherein KCL had provided necessary support and coordination between Investors, Debenture Trustee and the Issuer (i.e. SVDDPL).

(i) It is common knowledge that, private placement of debentures in tranches, through initial subscription by arrangers (such as banks, NBFC's, investment companies etc) followed by secondary sale to prospective investors, is a process which has been in vogue and is an accepted market practice. In such issues, the compliances with various provisions of law including the provisions of Companies Act etc., rests with the Issuer and the Debenture Trustee. The role of the 'arranger' is limited to interfacing with investors who intend to invest in the securities.

(j) In the NCD issuance by SVDDPL ,KCL had played the role of "arranger" pursuant to which it had subscribed to 2500 NCD's valued at Rs 25 crores in 5 tranches. Subsequently, these debentures acquired by KCL, were down-sold (secondary sale) to 185 investors wherein the number of investors per tranche did not exceed 49.

(k) It may be noted that, no restriction was placed by the SVDDPL or the Debenture Trustee through the Information Memorandum/ other issue

documents, on KCL for secondary sale of debentures to investors. At the relevant time, KCL was of the bonafide belief that secondary sale of debentures (wherein the number of investors per tranche did not exceed 49) would not breach the provisions of the Companies Act in any manner.

(l) *It is also pertinent to submit here that on December 31, 2015, SEBI had issued a circular (Annexure A) in connection with offer I allotment of securities to more than 49 up to 200 investors in a financial year ,wherein ,SEBI had inter alia prescribed the procedure to deal with cases prior to April 01, 2014 and avoid penal action. SVDDPL deliberately did not opt for regularizing the violations pertaining to the secondary sale of debentures to 185 investors, since it had no intention of repaying the investors*

(m) *With regard to observations in Para 2 of the Notice, the default committed by SVDDPL with regard to repayments pertaining to NCD's is a matter of record. However, it may be noted that in the default committed by SVDDPL, we have no role to play. Further, consequent to default by SVDDPL, winding up proceedings have been initiated against it by the Debenture Trustee. KCL, as Debenture Holder Representative, has in the interest of investors actively supported the Debenture Trustee. We crave leave to make detailed submissions on the legal proceedings initiated and pending against SVDDPL and the proactive role played by KCL in expediting such legal proceedings*

(n) *The self-serving complaint filed by SVDDPL is totally contrary to the factual position.Same has been filed with ulterior motive to deflect the attention from its own default in terms of non- repaying the NCD holders.*

(o) *It is denied that KCL did not adhere to the clauses of the IM as well as the DTA as alleged.The IM for the debentures issued by SVDDPL mandated that, the issue would be on a private placement basis and the debentures shall not be issued to more than 49 persons. Admittedly, the debentures were issued by SVDDPL to KCL only and KCL subscribed to such debentures through its own funds. Further, the IM does not place any restriction on KCL regarding secondary sale of the debentures were* *concerned. Furthermore, neither SVDDPL nor the Debenture Trustee, who were primarily responsible for the compliances with the provisions of law including the provisions of Companies Act etc., place any restriction on KCL or indicate that the NCDs could not be down-sold to more than 49 persons, irrespective of the number of tranches.*

(p) *It is denied that KCL had made the alleged transfers without the knowledge of SVDDPL or the same is ultra vires as alleged. It is further denied that SVDDPLwas not aware of the transfer of NCD's in favour of Debenture holders as alleged.In contrast, SVDDPL was fully aware of the fact that, Karvy Group comprising of KCL as arranger and Karvy Private Wealth Ltd, were reaching out individually to prospective investors who wanted to invest in NCD's and that KCL was down-selling the NCD's to various investors. Additionally, SVDDPL as a company also had full access to the Beneficiary position data from the depository system through which it was aware of the secondary sale of debentures made by KCL to investors.*

(q) *With regard to observations in Para 10 of the Notice, we reiterate that, at the relevant time, we were of the bonafide belief that secondary sale of securities to less than 49 persons in tranches, would not be considered as a breach. SVDDPL and the Debenture Trustee, were required to ensure compliance with the provisions of the Companies Act 2013. Neither SVDDPL nor the Debenture Trustee, who were primarily responsible for the compliances with the provisions of Companies Act etc., place any restriction on KCL or indicate that the NCDs could not be down-sold to more than 49 persons, irrespective of number of tranches. In any event, the liability for the alleged breach (i.e. deemed public issue) rests on SVDDPL. For the failure on the part of SVDDPL in refunding the amounts (collected by it) to investors, no adverse inferences can be drawn against us, whose role was limited and restricted to arranging investors for investing in the NCDS of SVDDPL.*

(r) *With regard to observations in Para 11 of the Notice, it may be noted that the stand of SVDDPL that it was not aware about the transfer of NCD's in favour of Debenture holders, apart from the reasons stated hereinbefore,* *is also getting belied by the Form 20B (form for Annual Return) filed by SVDDPL for the financial year ending March 31, 2014 with RoC. Same adequately demonstrates that SVDDPL has been pedaling falsehoods and half-truths in order to unfairly embroil us in the alleged violations committed by it.*

(s) *Further, it is submitted that said NCDs were subscribed by KCL through its own funds in each tranche with the bonafide intention to down sell them to prospective investors identified by KCL through its intermediation. It is reiterated that KCL was of the bonafide belief that secondary sale of the debentures (in tranches not exceeding 49 investors) would not be construed as a breach. Further, it may be noted that for subscribing to the NCDs we had paid the monies from our own funds and not utilized the funds of investors as erroneously alleged. Same is adequately borne out by the trail of funds from our bank account to the bank account of SVDDPL. We categorically deny that we had transferred the funds received from the investors to SVDDPL as alleged.*

(t) *SVDDPL had received the entire amount of consideration towards allotment of NCD's from KCL. Further, KCL had inter alia identified the prospective investors and down sold the NCD's, allotted by SVDDPL to KCL. In the circumstances, the professional fees received for the bonafide services rendered in the ordinary course, was genuine and no adverse inference can be drawn based on the same.*

(u) *It is denied that we had any manipulative intent as alleged or that we have acted in connivance with SVDDPL in order to circumvent regulatory requirements as alleged .The allegations on this score are baseless and completely contrary to factual position on record. Admittedly, we are at loggerheads with SVDDPL and we have been playing a proactive role in the ongoing litigation going on against SVDDPL pertaining to the default committed by it in repayment of NCDs. Merely because KCL was identified to act as 'Debenture Holder Representative' prior to the circulation of the IM and the on-boarding of investors, it cannot be alleged* *that KCL had the manipulative intent or that KCL was conniving with SVDDPL.*

(v) It may be noted that there was nothing to be gained by us by allegedly circumventing the regulatory requirements. It is reiterated that we were merely acting as 'anangers' in the ordinary course of business, wherein we had after getting the NCD's allotted downs-old the same to various investors.

(w) It may also be appreciated that the limit of 49 investors was not sacrosanct. Admittedly, the Legislature itself had in the following year {from 1.4.2014- Refer Rule 14 of Companies (Prospectus of Securities) Rules 2014} enhanced the limit of allottees /investors to 200 (from 49), whereas in the present case (during the period 4.2.14 to 31.3.14) there were only 185 investors i.e. below 200. The issue, therefore, at this distance of time and also consequent to subsequent changes in law, has been rendered academic. At the highest, in so far as we are concerned, alleged lapse was a technical lapse and nothing beyond it.

(x) While appreciating our submissions, the issue of subsequent default committed by SVDDPL should be viewed independently. Same should not be mixed up with the events at the time of allotment of NCDs. Further, the same should not cloud the judgement of SEBI. Both are completely separate and independent events.

(y) It is denied that we had acted in a fraudulent manner as alleged or that we have violated the provisions of Regulation 3(a) of PFUTP Regulations as alleged. Admittedly, it is nobody's case that we have defrauded or cheated SVDDPL. Fact is we have paid the entire consideration amount towards the allotment of NCD's to SVDDPL. Even SVDDPL has not disputed the same. Similarly, it is nobody's case that we have defrauded or cheated the investors and not delivered the NCD's to the investor to whom we have down-sold the NCDs .Even the investors have not disputed the same. Further, all the investors had bought the NCDs out of their own volition and after being satisfied about the credentials of SVDDPL and its ability to repay. It is therefore denied that we have acted

in fraudulent manner as alleged. Further, for the alleged breach of limit of 49 investors by SVDDPL, we cannot be alleged to have acted in a fraudulent manner, merely because we had acted as 'anangers' and down-sold the NCDs to the investors.

(z) With regard to observations in Para 24 of the Notice, it is submitted that we have not acted in fraudulent manner and therefore there is no violation, as alleged. Clearly, the charge of violation of PFUTP Regulations against us is based on mere surmises and conjectures. Therefore, we are not liable for any penalty under sec 15 HA of the SEBI Act

(aa) There has been undue delay in initiation and completion of proceedings. It is well settled now that "undue delay is a mitigating factor which has to be considered while imposing a penalty under section 15J of the SEBI Act" . (Refer: Anita Jajodia vs SEBI - SAT Order dated 20.1.21). In the instant case, the impugned transactions pertain to a very old period i.e. around 7 years old.

(bb) The entire matter is offshoot of bogus/mischievous complaint filed by Sahindra Vaishno Devi Dairy Products Ltd ("SVDDPL"), which has been solely filed as a counter blast to legal proceedings (viz. Criminal proceedings under sec 138 of Negotiable Instruments Act, Winding up Petition before Bombay High Court under the Companies Act 2013 which was later merged

(cc) with the proceedings before NCLT, Mumbai under Insolvency and Bankruptcy Code 2016) spearheaded and initiated by Karvy Capital Limited (KCL) as Debenture Holders Representative along with Vistra ITCL (India) Limited - Debenture Trustee on behalf of the NCD-Holders, consequent to default by SVDDPL. Timing ofthcomplaint (March 2019) i.e. post initiation of aforesaid legal proceedings and after 6 years of the NCO issuance, eloquently speaks volumes about the ill-motives of SVDDPL. Patently, the solitary endeavor of SVVDPL is to, somehow, embroil us in the regulatory proceedings, by misusing the forum of SEBI

(dd) The whole case is of technical breach of limit of 50 persons as stipulated in sec 42 of the Companies Act 2013, to whom allotment of

NCO's could have been legally made. SEBI vide its Circular dated 31.12.15, recognizing that the limits under said sec 42 (or sec 67 of Companies Act 1956) have been breached in the past by various companies (in whatever manner and for whatever reasons) and also in view of the fact that limit was enhanced to 200 from 1.4.2014, gave an opportunity to companies to regularize their past technical breaches (of exceeding the limit of 50) by refunding the amounts with interest to the allottees. In the instant matter, SVDDPL (after admittedly receiving the allotment from various allottees and utilizing the same for its business purposes) failed to regularize the breach of sec 42 and sec 25 of the Companies Act 2013, in terms of SEBI Circular, by refunding the amounts to the allottees.

(ee) The responsibility for breach of sec 42 and sec 25 of the Companies Act 2013, is entirely of the company, which makes the issuance and not of the other entities related to raising of the money viz. Arrangers, Debenture Trustees, Merchant Bankers, Registrars etc.

(ff) At the relevant time, we had taken the allotment in our name first and thereafter down-sold the NCD's to various investors, in the ordinary course dehors sinister intent or design. It may be appreciated that at times investors, despite committing that they will invest, at the last minute change their mind. In order to avoid any such situation and also since SVDDPL was pressing for funds, we had taken the allotments in our name first (by paying the funds from our bank account) and thereafter down-sold the NCD's to various investors. Significantly, in both the financial years (2013-14 & 2014-15) the said mode of allotments and down-selling remained same.Both SVDDPL and the Debenture Trustees were aware about the same. Current spurious stand of SVDDPL that it was not aware, is totally incorrect and deliberately mischievous. Same is also belied by the Form 20 B filed by SVDDPL itself, which has been pointed out by SEBI at Para 11 ofthe SCN

(gg) wherein, in both the financial years, allotment was made to more than 50 persons but less than 200 persons. Same would also reinforce our submission that same was made in the ordinary course

(hh) *It may be noted that there is no allegation of conniving etc. for the FY 2014-15, despite mode, manner and pattern of allotments being exactly same as in FY-2013-14. Said fact also exposes the hollowness of allegation of acting "in a fraudulent manner" for the allotments pertaining to FY-2013-14*

(ii) *It is restated that the whole case is of technical breach of limit of 50 persons by SVDDPL, and the same has been erroneously given the flavour of being "fraudulent". It is well settled now that "inducement" is the essential ingredient of definition of "fraud' as contained in Regulation2(1)(c) of PFUTP Regulations. Same is absolutely missing in the instant case, making the whole allegation of violation of Regulation 3(1) legally untenable and unsustainable.{Refer Paras 53 &54 of Order passed by Supreme Court in the matter of SEBI vs Kanaiyalal B Patel- (2017) 15 SCC 1}. In any event, we submit that we have not "induced" anybody and even there is no allegation to this effect in the Notice.*

(jj) *Breach of section 42 and section 25 of the Companies Act by SVDDPL, should not be viewed with the lens of subsequent default committed by SVDDPL. Both the events are separate and independent. For the breaches on the part of SVDDPL, we cannot be unfairly roped in and alleged to have "acted in a fraudulent manner".*

CONSIDERATION OF ISSUES AND FINDINGS:

6. I have taken into consideration the facts and circumstances of the case, reply of the Noticee and the material available on record, the issues that arise for consideration in the present case are:

    (a) Whether the Noticee violated the provisions of regulations 3(a) of PFUTP Regulations, 2003?

    (b) Does the violations, if any, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act, 1992?

    (c) If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

7. Before moving forward, it is pertinent to refer to the relevant provisions of PFUTP Regulations, 2003 which read as under:

PFUTP Regulations, 2003

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;

Issue (a): Whether the Noticee violated the provisions of regulations 3(a), of PFUTP Regulations, 2003?

8. I have perused the allegations made in the SCN and considered the submissions made by the Noticee in its respective replies. Before proceeding with the consideration of issues, there is need to address the preliminary issue raised by the Noticee regarding delay of almost 7 years in initiation of the proceedings where Noticee placed reliance upon various judgments of Hon'ble SAT . In this regard, I note that SEBI received complaint with regard to issuance and defaults of Non-convertible Debentures (NCDs) issued by SVDDPL in 2017, and subsequently post examination which was completed in January 2021, SCN was issued on June 22, 2021. SEBI was required to carry detailed examination which is a long process. In this regard it is pertinent to note that ***the Hon'ble SAT in the matter of Girrajkumar Gupta HUF v/s. SEBI (Appeal no. 424/2019) dated August 11, 2021, has, inter-alia, observed that***….“*We find that the investigation started in the year 2015 which involved examining several entities in the order logs, trade logs, off market transactions and gathering evidence from the Stock Exchange. The show cause notice was issued in the October, 2017 and accordingly we find that there is no inordinate delay in the initiation of the proceedings*.” I note that in the present matter examination was completed in January 2021 and SCN has been issued on June 22, 2021.Therefore, I note that there has been no delay in issuance of SCN. Hence the argument of Noticee doesn't hold any merit.

9. Noticee raised a preliminary objection to the issuance of SCN wherein Noticee contended 1) Noticee was of the bonafide belief that secondary sale of debentures would not breach Companies act, 2) The Legislature itself had in the following year {from 1.4.2014- Refer Rule 14 of Companies (Prospectus of Securities) Rules 2014} enhanced the limit of allottees /investors to 200 from 49. 3) No restriction on second sale of Debentures by SEBI 4) Noticee used its own monies from its own fund and not utilized fund of investors to purchase NCDs. I note that the increased in limit from 49 to 200 in case of private placements was effected from April 01, 2014 whereas the period of allegation is FY 2013-14. I further note from the demat account statement of Noticee that during FY 2013-14, NCDs were allotted by SVDDPL to Noticee from February 4 to March 19, 2014 on various dates which were further down sold to the investors by Noticee from February 4, 2014 till March 31, 2014 on various dates, as per the details given in the table below:

Sl. No.	**No. of NCDs allotted by KCL to investors**	**No. of investors**	**Date of Allotment by Company to KCL**	**Dates of down selling by KCL to investors**
1	650	47	February 4, 2014	February 10 & 19, 2014
2	619	49	February 10, 2014	February 26, 2014
3	408	35	February 24, 2014	March 3, 10, 11 & 13, 2014
4	252	22	March 10, 2014	March 18 & 19, 2014
5	571	32	March 19, 2014	March 24 & 31, 2014
TOTAL	**2500**	**185**	**-**	**-**

10. On perusal of the above table, it may be noted that the said NCDs were issued by the company to Noticee during the period from February 4, 2014 till March 31, 2014 on various dates. It is important to note that Noticee has on allotment further down sold the said NCDs to various investors. Noticee *vide* its first email submitted that NCDs of the company were held in custody of the Noticee as a Debenture Holder Representative with the bonafide intention of transferring the

same to the investors who subscribed for the same and were never accounted for as investments in the books of accounts of Noticee. Noticee further *vide* email dated November 13, 2019 stated that it was the only allottee and the subsequent investors were transferees to whom the number limit does not apply. Noticee further in its reply to show cause notice contended …, *we had taken the allotment in our name first and thereafter down-sold the NCD's to various investors, in the ordinary course dehors sinister intent or design. It may be appreciated that at times investors, despite committing that they will invest, at the last minute change their mind. In order to avoid any such situation and also since SVDDPL was pressing for funds, we had taken the allotments in our name first (by paying the funds from our bank account) and thereafter down-sold the NCD's to various investors……*From the reply of Noticee it is clearly evident that Noticee was just acted as a medium between the investors and the company. It was predetermined by the Noticee and company to sell NCDs to large public. Hence the contention of Noticee that company and Debenture Trustee is primarily responsible is not acceptable.

11. Further, I note that in most of the issuance of NCDs, the funds collected by the Noticee was prior to Series Date, these funds were transferred to SVDDPL who then credited NCDs to the account of Noticee which were subsequently transferred to the ultimate investors. These sequence of transaction flows amongst SVDDPL, Noticee and investors gives credence to Noticee's initial submissions that the said NCDs were subscribed with the intention to down sell them to prospective buyers identified by KCL through its intermediation. The modus operandi used by the Noticee is as follows:

Collection of Funds from Investors by Noticee⟶	Transfer of application money by Noticee to Company⟶	Series Date⟶	Credit of securities in the account of Noticee⟶	Downselling of NCDs by Noticee to various Investors.

12. In view of the above facts, Noticee contention that it was the only allottee and subsequent investors are transferees stands refuted. It is apparent that Noticee played an integral and critical role in the whole scheme of raising monies, issuance and allotment of NCDs and the subsequent down selling to public with an intent to circumvent public issue norms.

13. I note that, "Sometimes companies adopt different modus operandi and allot shares to large no. of persons in the garb of private placement. The intention of the company can be inferred from the conduct/ deeds of it and there is no need to express/ depict the same in clear words*".* In this regard, it is pertinent to note that ***The Hon'ble Supreme Court in the matter of Sahara India Real Estate Corporation Ltd. & Ors. vs. SEBI & Anr. (2013) 1 SCC 1, inter alia, held as under: '95.*** *The maxim 'acta exterior indicant interior secreta' (external action reveals inner secrets) applies with all force in the case of Saharas, which I have already demonstrated in facts as well as on law. Conduct and actions of Saharas indicate their intention, we have to judge their so called intention from their subsequent conduct. Subsequent illegality shows that Saharas contemplated illegality*….Placing reliance upon said judgment and the facts mentioned in above para's I am of the view that the limit of 49 allottees cannot be breached or bypassed by making multiple allotments which individually may fall within the limit but cumulatively exceed 49 in number." Hence the contention of the Noticee that he was of the bonafide belief that secondary sale of debentures would not breach companies act doesn't hold any merit.

14. Here, I note that the issuance of NCDs in the year 2013-14 violated public issue norms, and would attract action for violation of provisions of 1956 Act, since the scheme adopted by the Company and Noticee have been made so as to avoid falling within the regulatory purview for norms related to public issue. Further, the intention of them can be read from the fact that, majority of the funds were collected beforehand and thus, the securities were always intended to be passed down to the retail investors.

15. I note the provisions of Section 25 of the 2013 Act which became effective from September 12, 2013. Since the issuance of NCDs by the Company pertains to the period after the aforesaid date, provisions of Section 25 are applicable to the said issuance.

The provision reads as:

Section “25”. Document containing offer of shares or debentures for also to be deemed prospectus.

(1) *Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply with the modifications specified in sub- sections (3), (4) and (5), and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of misstatements contained in the document or otherwise in respect thereof.*

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown-

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the shares or debentures had not been received by it.”

16. On perusal of the above provision I note that one of the conditions to be fulfilled to prove that the securities were allotted with a view to offer them to the public, is whether the offer of NCDs was made within six months from the date of allotment to the public. In the instant case, it can be seen from the table at para 9, that the Noticee had offered the shares to the public well within six months from date of allotment by the Company to Noticee. Hence, in terms of Section 25 of the 2013 Act, the issue of NCDs by the Company here can be termed as an 'issue of debentures, with a view of it being offered to the public' and thus, may be treated as 'deemed public issue'. Further, the Information Memorandum for the said issue is dated January 13, 2014 and hence, the allotment of NCDs took place within a period of 6 months.

17. I further note that the predetermined scheme between Noticee & the company contemplates a scenario wherein the primary allotment is made by the issuer company to a subscriber, who in turn, will offer the securities to the public at large. The subsequent transfer of securities may appear to be merely 'a transfer of securities' from the original allottee to the public at large, but in effect it is an 'offer of securities to the public' and part of a larger design to circumvent the deemed public issue norms. It is important to reiterate the fact that Noticee received money from the investors, in most of the cases, even before the series dates, which further strengthens the allegation that the NCDs were issued by the Company with a view to ultimately offer them to the public, through the intermediation of Noticee as an allottee.

18. Noticee has interalia contended that for transaction to be fraudulent, element of inducement should be there…. I find it relevant to refer to the decision of the Supreme Court in the matter of ***Securities and Exchange Board of India v. Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018)*** *wherein held that*, "Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1)(c)(7), a deceptive behavior of one depriving another of informed consent or full

participation is fraud. And Under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. I note that in the instant matter, both Noticee and SVDDPL have adopted a schematic approach to circumvent the regulatory framework for public issue which is explained in above paragraphs. Therefore, SVDDPL and Noticee have thus, acted in a fraudulent manner to avoid regulatory purview and thereby violated the provisions of Regulation 3(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

19. In light of the above scenario, I once again place reliance upon ***The Hon'ble Supreme Court judgement in the matter of Sahara India Real Estate Corporation Ltd. & Ors. vs. SEBI & Anr. (2013) 1 SCC 1, inter alia, held as under:*** **'93:** *Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts…***94**: *Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons. In view of the clear statutory mandate, the contention raised, based on Rule 19 of the SCR Rules framed under the SCR Act, has no basis. Legal obligation flows the moment the company issues the prospectus expressing the intention to offer shares or debentures to the public, that is to make an application to the recognized stock exchange, so that it can deal with the securities. A company cannot be heard to contend that it has no such intention or idea to make an application to the stock exchange. Company's option, choice, election, interest or design does not matter, it is the conduct and action that matters and that is what the law demands…***96:** *Saharas' acts and omissions have clearly violated the provisions of Section 73, their failure to list the securities offer to the public was, therefore, intentional and the plea that they*

did not want their securities listed, is not an answer, since they were legally bound to do so. The duty of listing flows from the act of issuing securities to the pubic, provided such offer is made to fifty or more than fifty persons. Hence, drawing the same analogy in the instant matter, it can be concluded that the NCDs issued by the Company, which are not listed on any of the exchanges, should have been listed on a recognized stock exchange and the Company ought to have followed the regulatory norms for public issue. Since the scheme adopted by the Company and Noticee have been made so as to avoid falling within the regulatory purview for norms related to public issue, it may be stated that the same is in violation of Regulation 3 (a) of the SEBI (PFUTP) Regulations, 2003 which states that,

'No person shall directly or indirectly buy, sell or otherwise deal in securities in a fraudulent manner;".

Hence, I believe that the Noticee has acted in a fraudulent manner and thereby has violated the provisions of PFUTP Regulations, as an allotee for the NCDs issued by the Company.

Issue (b): Does the violations, if any, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act, 1992?

20. It has been established in the foregoing paragraphs that Noticee have violated the provisions of regulations 3(a), PFUTP Regulations, 2003 and therefore, the aforesaid violations committed by the Noticee attract monetary penalty under section 15HA of the SEBI Act, 1992.

21. In this regard, reliance is placed upon the order of the ***Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } –*** wherein the Hon'ble Supreme Court of India held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…………...*"

22. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provision of section 15HA of the SEBI Act, 1992, which reads as under during the relevant period:

The SEBI Act, 1992

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

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

Issue (c): If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

23. While determining the quantum of penalty under section 15HA of the SEBI Act, 1992, it is important to consider the factors relevantly 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.*

24. In the present matter, the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and also the loss suffered by the investors as a result of the Noticee' default. The

consequences resulting from violations committed by the said Noticee are of grave nature where a predetermined scheme adopted by the Company and Noticee to avoid falling within the regulatory purview for norms related to public issue. If violations of this nature and magnitude are not dealt with a firm hand then investors will lose faith in the Indian Securities Market.

ORDER

25. After taking into consideration the facts and circumstances of the case, material/facts on record, case laws submitted by the Noticee and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the Adjudication Rules, 1995, hereby impose the following penalty on the Noticee under section 15HA of the SEBI Act, 1992, for the failure on their part to comply with the provisions of PFUTP Regulations, 2003:

Name of the Noticee	**Penalty Section**	**Penalty Amount (Rs.)**
Karvy Capital Ltd.	Section 15HA of the SEBI Act, 1992	20,00,000/-

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

26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking

on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

27. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid to the Division Chief, Enforcement Department-I, DRA-IV, SEBI. The Noticee shall provide the following details while forwarding DD/payment information:

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

28. In terms of the provision of rule 6 of the Adjudication Rules, 1995, a copies of this order are being sent to the Noticee and also to SEBI.

Place: Mumbai **PRASANTA MAHAPATRA**

Date: April 27, 2022 **ADJUDICATING OFFICER**