BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/BM/DS/2022-23/16088-16092]

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

In respect of

HPC Biosciences Limited PAN: AABCH6762Q Office No. 109, First Floor Plot No. 22, Pooja Complex, Veer Savarkar Block, Delhi – 110092 Email id: hpcbiosci@yahoo.com	**Mr. Tarun Chauhan** PAN: AGXPC3049G 314, Dhaka Village, Kingsway Camp, New Delhi - 110009
Ms. Madhu Anand PAN: AXTPA8813F T-48, New Moti Nagar, Karol Bagh, New Delhi – 110005	**Ms. Sakshi Saxena** PAN: BLRPS4522G B-18, Ashoka Niketan, New Delhi - 110092
Mr. Arun Kumar Gupta PAN: AAKPG5996K 151, State Bank Colony, New Delhi – 110009	

In the matter of
HPC Biosciences Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter being referred to as "**SEBI**") initiated adjudication proceedings under section 15HB of SEBI Act, 1992 against HPC Biosciences Limited (hereinafter referred to as "**Noticee 1**"/ "**the Company**"/ "**HPC**") and its directors, namely, Mr. Tarun Chauhan (hereinafter

referred to as "**Noticee 2**"), Ms. Madhu Anand (hereinafter referred to as "**Noticee 3**"), and erstwhile directors, namely Ms. Sakshi Saxena (hereinafter referred to as "**Noticee 4**") and Mr. Arun Kumar Gupta (hereinafter referred to as "**Noticee 5**") (Noticees 1, 2, 3, 4 and 5 are hereinafter collectively referred to as "**Noticees**"), for the alleged violations of section 56(1), 56(3), 60 read with section 67 of the Companies Act, 1956 and regulations 4(2)(d) & (e), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**SEBI ICDR Regulations, 2009**")

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide Order dated September 20, 2021, the undersigned was appointed as the Adjudicating Officer (**"AO"**) under Section 19 read with Section 15-I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to enquire into and adjudge under the provisions of Section 15HB of the SEBI Act, 1992, the aforesaid alleged violations committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common Show Cause Notice with SPAD reference no.s SEBI/EAD/EAD-3/BM/DS/35556/2021 and SEBI/EAD/EAD-3/BM/DS/35558-35561/2021 dated December 02, 2021 (hereinafter referred to as "**SCN**") was issued by the undersigned to the Noticees via Speed Post Acknowledgement Due (SPAD) and digitally signed e-mail under the provisions of Rule 4(1) of the Adjudication Rules read with section 15-I of the SEBI Act, calling upon the Noticees to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15HB of SEBI Act, 1992, for the aforesaid alleged violations.

4. The allegations levelled against the Noticees are as under:
   a. During the inspection of one merchant banker – Guiness Corporate Advisors Private Limited, it was observed that the Company/ HPC was listed on BSE SME (Small and Medium Enterprise) segment on March 19, 2013, and Guiness Corporate Advisors Private Limited acted as merchant banker for the public issue of the Company.

   b. While examining, it was observed that HPC issued shares in preferential allotment to 191 entities in four tranches during December, 2012 to January, 2013. Thereafter, HPC issued bonus shares in the ratio of 1:1. Consequent to the preferential allotments and bonus issue, the share capital of HPC increased manifold.

   c. E-forms and documents filed by HPC with ROC – Delhi, accessed from Ministry of Corporate Affairs (MCA) Website were examined by SEBI. The Prospectus dated January 17, 2013 filed by HPC with BSE was also examined by SEBI. The allotment of shares made by the company in the FY 2012-13 before filing of the said Prospectus are as under:

Table 1

Date of Allotment of Shares	No. of Allottees	No. of Equity Shares Allotted
December 28, 2012	49	12,53,800
December 30, 2012	48	12,36,200
January 02, 2013	49	9,42,500
January 03, 2013	45	5,17,500
Total	**191**	**39,50,000**

   d. HPC allotted equity shares on four days with nil or one day's gap, to a cumulative of 191 persons in Financial Year (FY) 2012-13.

e. It was observed from the list of allottees provided in the Prospectus that the shares were allotted to different persons in each tranche, and not to the same set of persons.

f. Thereafter, HPC filed prospectus with BSE Small and Medium Enterprises (SME) segment on January 13, 2013 and the shares were listed on the BSE SME Platform on March 19, 2013.

g. As per first proviso to section 67(3) of Companies Act, 1956, 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.

h. However, HPC allotted equity shares through preferential placement to 191 different persons in four tranches in FY 2012-13.

i. In terms of section 67(3) of Companies Act, 1956, any issue to “50 persons or more” is a public issue. Hence, the preferential allotment of shares was construed as deemed public issue and it was alleged that HPC/ Noticee 1 and its directors (Noticees 2, 3) and erstwhile directors (Noticees 4 and 5) who were part of the management of the Company and were in-charge of day to day affairs and business affairs at the time of preferential allotment of equity shares, have violated section 67(3) of Companies Act, 1956 and consequently sections 56 (1), 56(3) and 60 of Companies Act, 1956.

j. In respect of the deemed public issue, it was alleged that Noticees did not comply with following provisions of SEBI ICDR Regulations, 2009:

Regulation no. of SEBI ICDR Regulations, 2009	Provisions
4(2)(d), (e)	To apply for listing of specified securities on one or more recognized stock exchange and to enter into an agreement with Depositories to issue securities in Dematerialized mode
5	To appoint merchant banker and other intermediaries
6	To file draft offer document with SEBI and the designated stock exchange and RoC
7	To obtain in-principle approval from the recognized stock exchanges on which the specified securities are to be listed
25	To satisfy conditions of Chapter III – Provisions as to Public Issue of Companies Act, 1956 as on date of filing draft offer document with Board and on date of registering it with ROC
26	To satisfy the conditions of initial public offer and offer for sale
36, 37	To ensure Lock-in of specified securities held by promoters and persons other than promoters
46	To keep the public issue open for the specified period
47	To issue pre issue advertisement for public issue
57	To adhere to the manner of disclosures in the offer documents
59	Prohibition of payment of incentives to applicants

k. In view of the above, Noticees were alleged to have violated provisions of sections 56(1), 56(3), 60 read with section 67 of the Companies Act, 1956 and regulations 4(2)(d) & (e), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of SEBI ICDR Regulations, 2009.

5. Submissions made by Noticee 4 vide mail dated December 17, 2021 are reproduced hereunder:

a. Notice 4 submitted that she joined the company HPC Biosciences Limited at very early stage of her career as a trainee for internship purposes for Company

Secretary Training purposes. She was a student and a CS Trainee at that point in time and was pursuing my graduation in law and Company Secretary course from ICSI. She was introduced in the company with reference from one of her father's friend.

b. *She was working under Mr. Vijay Jindal and Mr. Ashok Marwah and rest of the staff of the Company. The office of the company was situated at 511, Kailash Building, 26 KG Marg, Connaught Place and at least 25 people were working there at that point in time.*

c. *During the course of her training, she was offered the post of Directorship as an Independent Director in the Company. Since she was unaware of the practices conducted in the company, she agreed to take up the Directorship of HPC Biosciences Ltd as an Independent Director.*

d. *During the course of her training, when she figured out about the shell companies operating from the same office and the nature of business of the hoax companies, she immediately resigned from the post of Independent Director of HPC Biosciences Limited.*

e. *Her immediate resignation raised a concern amongst the members and therefore she had to resign under protest and the same was not accepted by HPC Biosciences. Later in the year, the company accepted her resignation as her name was not appearing in the list of Directors afterwards.*

f. *She has not signed on any documents related to the HPC Biosciences as she was part of the company for a very short period. Only after receiving the show cause notice in the instant matter, she realized that during her tenure as independent director, her signatures were forged by the company.*

6. After receiving submissions from Noticee 4 and as no submissions were received from Noticees 1 to 3 and 5 till January 10, 2022, in the interest of natural justice, the Noticees were given an opportunity of hearing through Hearing Notice dated

January 10, 2022 and they were advised to appear through video-conferencing before the undersigned on January 18, 2022 at the time mentioned therein.

7. Noticee 1, 2, 3 and 5 did not appear for the hearing scheduled on January 18, 2022. Noticee 4, vide mail dated January 17, 2022 requested for adjournment for 20 days citing health reasons.

8. Submissions were received from Noticee 1 on behalf of Noticees 1, 2 and 3 on January 19, 2022 vide letter dated January 17, 2022. They are reproduced below:
   a. *Noticee referred to section 67(3) of Companies Act, 1956, first proviso to section 67(3) inserted by Companies (Amendment) Act, 2000 and contended that there is a wrong notion that any allotment of shares by any unlisted public company to 50 or more persons in a financial year between 2000 and 2013 is in violation of section 67(3) and 73 of Companies Act, 1956. He further submitted that main thrust in section 67 for determination of question as to whether there is a public issue or not, is offer or invitation. When there is an offer or invitation to subscribe for the shares, section 67 is triggered. There are three important ingredients in section 67 to treat a private placement as a public offer –*
      - *There has to be an offer or invitation*
      - *Such offer/ invitation has to be made by the company*
      - *It has to be made to 50 or more persons*

      If any one of these three conditions is not satisfied, such 'private placement' cannot be regarded as 'public offer' by way of deeming fiction under the first proviso to section 67(3). When there is no offer or invitation, section 67 is not attracted.

b. *If the offer or invitation has been made by a company, it has to be in writing as a company is a juristic person which cannot communicate verbally. In the cases of such unlisted companies where there were no written communication or document to offer the shares or to invite the public to subscribe to the shares of the company, section 67 has no applicability.*

c. *It was also submitted that the company has made preferential allotment from December 28, 2012 to January 03, 2013 after complying with the provisions of section 81(1A) of Companies Act, 1956. In this regard, copies of Form 23 (for registration of resolutions and agreements) for preferential allotment on December 30, 2012 and Form 2 (return of allotment) filed by the company with ROC for all the four preferential allotments were submitted.*

d. *Noticees 1 also submitted that BSE Limited vetted the equity capital issues history of the Company and no mention of violation of section 67(3) was flagged after asking for details regarding preferential allotment.*

e. *A copy of Prospectus was filed with ROC Delhi and SEBI at the time of IPO and no objection was raised by both the authorities at that time.*

f. *Noticees 1 also referred to Hon'ble Supreme Court's judgement in Sahara India Real Estate Corporation Limited and Others vs SEBI and contended that the same ration cannot be invariably applied to each and every allotment of shares to 50 persons or more in a year by any unlisted public company.*

g. *It was also submitted that various companies which could not afford the cost of raising funds through public, make private placement to friends and relatives of the promoters. Such companies pass a special resolution under section 81(1A) of Companies Act, 1956 stating that the company is permitted to offer shares to persons other than but including the existing shareholders and the resolution specifies the number of shares, the premium and also other relevant details. In this way, there is no offer or invitation to attract section 67 of Companies Act, 1956.*

h. *Noticee 1 submitted that the Company allotted equity shares to 191 persons on a continuous basis from December 28, 2012 to January 03, 2013 on four instances through preferential allotment. It was also submitted that each allotment did not exceed 50 and in total, 191 persons were issued shares through preferential allotment.*

9. In the interest of natural justice, the Noticees were provided another opportunity of hearing vide Hearing Notice dated February 22, 2022. The Noticees were advised to appear before the undersigned on March 02, 2022.

10. Vide letter dated March 01, 2022, Noticee 1, on behalf of Noticee 1, 2 and 3 requested for one month's time for submitting their detailed response. It was also submitted that the SCN was issued after a gap of 9 years from the preferential issue of equity shares, for which no reasons have been specified in the SCN and it has caused great prejudice to the Noticee 1. In this regard, various judgements of Hon'ble SAT, including the cases of Ashok Shivlal Rupani & Others (Appeal No. 417 of 2018), Garware Polyester Limited and Others (Appeals No. 187-192 of 2021) and Shriram Insight Share Brokers Ltd (Appeal No. 559 of 2020) were cited.

11. Noticee 4, vide mail dated March 01, 2022, reiterated her submissions made earlier vide mail dated December 17, 2021. She also made additional submissions as given below:
   a. *She was unaware about the practices of the Company, and hence she agreed to take up independent directorship of HPC. She did not receive any sitting professional fees in this regard, as she was undergraduate student. She offered to produce her account statements, if required.*
   b. *When she figured out about the shell companies operating from the same office and the nature of business of the hoax companies, she immediately*

resigned from the post of Independent Director of HPC Biosciences. The date of resignation was 13/07/2015 and she enclosed a copy of her Resignation letter, DIR-12, MGT-14 and a copy of HPC's acknowledgment of her resignation on July 13, 2015 as evidence to this submission.

c. *She was with the Company for a brief period, while she was completing her Company Secretaries training. Hence, there was no involvement in the day to day affairs of the company and she did not attend or participate in any board meetings relating to the preferential allotment of shares or the initial public offer.*
d. *Noticee 4 or her family members did not have financial interest whatsoever in the company as preferential allottee, Pre-IPO transferee, IPO allottee or otherwise. Further, there was no financial transaction on her part or any of her family members or relatives with the company or its promoters or directors.*
e. *She has not been part of any board meeting/ AGM/EGM of the company and records can be called out from the company which can prove that she was never part of the business and management.*

12. Noticee 5, vide letter dated March 01, 2022, submitted his response to the SCN that :
    a. *He was not a director in the Company since November, 2013 and has no link with past and present directors. He was working as part time accountant since 1987. He never drew director's remuneration or any other benefit from HPC, never applied, purchased or held any shares in HPC and that he has no knowledge of the case.*

13. Noticee 4 appeared for the hearing scheduled on March 02, 2022 and Noticees 1, 2, 3 and 5 did not appear for the hearing. Noticee 4 reiterated her submissions made vide mail dated March 01, 2022. She was asked by the undersigned to

submit documentary evidence in support of her submission that she was independent director of the Company and was not involved in day to day affairs of the Company and was also not involved in the process of preferential allotments made by the Company in 2012-13. Noticee 4 sought time till April 04, 2022 to make additional submissions and submit documentary evidence as required, which was granted by the undersigned.

14. In the interest of natural justice, Noticees 1, 2, 3 and 5 were given last and final opportunity of hearing on March 16, 2022 vide mail dated March 04, 2022.

15. Noticee1 made additional submissions on behalf of Noticees 1, 2 and 3 vide letter dated March 15, 2022, which are reproduced below:

   a. *Post issuance of shares through preferential issue, Noticee 1 had come out with the Initial Public Offer ("IPO") of shares. On successful completion of IPO, shares of HPC got listed on 19.03.2013 at BSE under SME segment. As on Quarter ending 30.09.2021, public holding is around 12.46 crore shares (around 78% of total paid up capital) which is held by 646 public shareholders. Hence any adverse directions issued against Noticees could cause and result into great harm, loss and damage to the present public shareholders of HPC. Consequently great prejudice would be caused to the innocent investors of our company. Shareholding Pattern for Quarter ended September 30, 2021 was enclosed in this regard.*

   b. *Noticee 1 reiterated its submissions regarding non-applicability of section 67 of Companies Act, 1956. In this regard, it was submitted that HPC did not circulate any document, material or pamphlet so as to make any offer or invitations to any subscriber of the shares or issue any advertisement or any sort of written communication. Preferential issue was done before the IPO of the Company and investors who had invested in the preferential issue were* *close references. Thus, the preferential issues cannot be treated as public offer.*

c. *With regard to compliance requirements and disclosures made by HPC on issuance of shares on preferential basis, it was stated that it had made due compliance of statutory provisions of law for the IPO which got listed at BSE-SME segment on 19.03.2013. At the relevant time, HPC had appointed Guiness Corporate Advisors Private Limited (formerly known as Guiness Merchant Bankers Pvt.Ltd.) ("Guiness") as lead manager to carry out all Manager legal procedure and compliances for purpose of IPO. The Lead Manager of the company has carried our proper due diligence in respect of the IPO of the company and it did not mention about any alleged violation of Section 67(3) of Companies Act, 1956 or any other sections of Companies Act, 1956. A copy of MoU between HPC and lead manager was enclosed in this regard.*

d. *A copy of prospectus was also enclosed with the submissions. Datewise details of allotment of shares on preferential basis along with name of allottees and extract of due diligence certificate dated January 17, 2013 issued by the lead merchant bankers was referred to in the prospectus and it was submitted that no adverse observations about non-compliances on issuance of preferential shares by HPC is disclosed in the prospectus wherein Lead Manager is duty bound to disclose such violation or non-compliances of issuer company.*

e. *Noticee 1 referred to and enclosed adjudication order dated December 04, 2019 passed by SEBI in respect of Guiness Corporate Advisors Pvt Ltd and submitted that , if the issuance of preferential shares was in non-compliance of any statutory provision of law, the same ought to have been disclosed in the prospectus by the Lead Merchant Banker viz. Guiness and non-disclosure, if any, would have triggered non-compliances on the part of Lead Manager* *viz. Guiness. Since there are no adverse findings made against Lead Manager; necessarily Ld, Investigation Officers and Ld. Adjudicating officer of SEBI had not found any adversity on issuance of Preferential shares by Noticees 1, 2 and 3. In view thereof, the present proceedings as initiated against them should be dropped and they may be discharged at the earliest.*

f. *Noticee 1 also referred to and enclosed SEBI Whole time Member's order dated September 06, 2017 in respect of HPC and submitted that SEBI had conducted investigation interalia into the alleged price manipulation in scrip of HPC wherein role of shareholders who were allotted shares on preferential basis ("Preferential Allottees") were also looked and examined systematically into. Also, no adverse findings were observed against those Preferential Allottees of HPC.*

g. *Noticee 1 referred to and enclosed Statutory Audit Report of HPC for the financial year ended March 31, 2013, wherein unqualified audit report was issued by the statutory auditor, which confirms that no adverse findings were made on audit of books of accounts and other relevant records.*

h. *Noticee 1 also referred to and enclosed Secretarial Audit report for financial year ended March 31, 2015 and submitted that the report was unqualified as no adverse findings were made against HPC.*

i. *Noticee 1 summarised that no adverse findings were made against HPC by SEBI, BSE, Lead Merchant Banker, statutory auditor and secretarial auditor, and requested to be exonerated and to dispose of the SCN.*

16. Noticee 5 appeared for the hearing on the scheduled time on March 16, 2022. He reiterated his submissions made vide letter dated March 01, 2022 and requested time till March 31 to submit documentary evidence in support of his submissions, which was granted by the undersigned.

17. It was noted that Noticees 1, 2 and 3 did not appear for the hearing. Thereafter, Noticee 1 on behalf of Noticees 1, 2 and 3 communicated via mail on the same day that their legal counsel was not available for their hearing and requested for one more opportunity to appear before the authority.

18. Considering their request, another opportunity of hearing was granted to Noticees 1, 2 and 3 on March 21, 2022. Noticee 2 appeared on behalf of himself and Noticee 1 for the hearing. He informed that Noticee 3 does not want opportunity of hearing. Noticee 2 reiterated submissions already made by the Company vide letter dated January 17, 2022 and March 15, 2022. Noticee 2 was asked to submit a copy of documents through which the applicants applied in the preferential issue of shares of HPC in FY 2012-13 The Noticee sought time till April 20, 2022 for submitting the required documents and for making additional submissions, which was granted by the Adjudicating Officer. It was clarified by the AO that no further request for extension of time will be entertained which was agreed to by the Noticee and that it was the final hearing and no further hearing shall be granted in the instant matter.

19. Meanwhile, Noticee 5, vide mail dated March 17, 2022, reiterated his previous submissions made vide mail dated March 01, 2022 and submitted a copy of Form 32 in regard to his appointment and cessation as independent non-executive director in HPC, in support of his submissions.

20. Noticee 4, made additional submissions vide mail dated April 01, 2022. She reiterated her previous submissions vide mail dated March 01, 2022. Additional submissions are reproduced as below.

    a. *Noticee 4 referred to and enclosed a copy of minutes book of directors' meeting for the financial year ended March 31, 2013 and submitted that in her capacity as an Independent Director, she never attended any meetings of*

Board of Directors of the company held during the Financial Year 2012-13 as evident from minutes of Directors Meetings of the Company.

b. *She also submitted that she did not attend and leave of absence was granted to her for the Board meetings dated 07.01.2013 and 17.01.2013 wherein major decision making in relation to IPO approval was granted and wherein approval of draft prospectus investment in equity shares in other companies etc. was resolved.*

c. *Noticee 4 also referred to and enclosed a copy of minutes book of extraordinary general meeting (EGM) for the financial year ended March 31, 2013 and submitted that she never attended any of the EGMs held during financial year 2012-13, as is evident from the minutes book.*

d. *She also submitted that it is quite evident from the minutes book for directors' meeting and EGM meeting that she was not part of day to day management of the Company and did not make any decision making on behalf of management of the Company. All the decisions in relation to issuance of IPO and Prospectus were made in her absence.*

e. *She further submitted that with respect to the signing of the prospectus, please refer to the minutes of meeting held on 22.02.2013, the Directors authorized to approve and sign the prospectus were Mr. Tarun Chauhan/Ms. Madhu Anand, Director. Also as evident from the Minutes of the Meeting dated 17.01.2013 wherein draft of prospectus was presented for approval by the chairman before the board of directors and Tarun Chauhan and /or Ms. Madhu Anand were duly authorized to file draft prospectus with BSE Ltd. and other applicable authorities. In both the above meetings, she was not presented and leave of absence was duly granted.*

f. *She submitted that Section 149(12) of the Companies Act, 2013 which provides that an independent director shall be held liable, only in respect of such omission or commission by a company which had occurred with his* *knowledge, attributable through Board process and with his consent, connivance or where he had not acted diligently. Similar provisions are contained in section 27(2) of the SEBI Act, regulation 25(5) of SEBI (LODR) Regulations, 2015 and Master Circular dated July 1, 2015 of RBI on Wilful Defaulters. Ministry of Corporate Affairs have also from time to time issued circulars to emphasize that nonexecutive directors and Independent Directors should not be prosecuted unless there's adequate proof that they had knowledge through Board process or that the acts of omission or commission were committed by the company with their consent, connivance or negligence.*

g. She further referred to various case laws including Hon'ble Supreme Court's judgement in In SEBI vs. Gaurav Varshney, Hon'ble SAT's judgement in Rahul H. Shah v. Securities Exchange Board of India and submitted that Independent Directors who were not involved into the day to day affairs of the company could not be held liable or prosecuted. The aforementioned judicial pronouncements of SEBI, SAT and higher courts clearly show that if a nonexecutive or independent director is able to satisfy the concerned authority/ court that the alleged violation has been committed by the company without his knowledge, consent, connivance or negligence, he shall not be held liable. Hence, the liability of a non-executive or independent director will depend on the facts of each case, the determinant factor being the role one plays in the alleged violation and not merely designation or status one holds.

21. Noticee 1, on behalf of Noticees 1 and 2, vide mail dated April 18, 2022, submitted a copy of application forms which contained the name, PAN, other personal details and details of number of shares applied for, their face value, amount paid and mode of payment and payment details.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

22. After perusal of the material available on record, I have the following issues for consideration.

    ISSUE I: Whether Noticees have violated section 56(1), 56(3), 60 read with section 67 of the Companies Act, 1956 and regulations 4(2)(d) & (e), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of SEBI ICDR Regulations, 2009?

    ISSUE II: Does the violations, if any, on part of the Noticees attract penalty under Section 15HB of the SEBI Act, 1992?

    ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

23. Before moving forward it is pertinent to refer to the relevant provisions of Companies Act, 1956 and SEBI ICDR Regulations, 2009 which read as under:

    <u>Companies Act, 1956</u>

    Section 56(1) and 56(3): Matters to be stated and Reports to be set out in Prospectus

    (1) Every prospectus issued –

    (a) by or on behalf of a company, or

    (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company,

    shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule ; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

    (3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a memorandum containing such

salient features of a prospectus as may be prescribed which complies with the requirements of this section: Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him

Provided further that this sub-section shall not apply if it is shown that the form of application was issued either –

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or

(b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to fifty thousand rupees.

Section 60: Registration of Prospectus

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto –

(a) any consent to the issue of the prospectus required by section 58 from any person as an expert ; and

(b) in the case of a prospectus issued generally, also –

(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement

signed by those persons setting out the adjustments and giving the reasons therefor.

(2) Every prospectus to which sub-section (1) applies shall, on the face of it, -

(a) state that a copy has been delivered for registration as required by this section ; and

(b) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.

(3) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and subsections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.

(4) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration; and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.

(5) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to 1fifty thousand rupees. sign the prospectus depending on the circumstances of each case [Circular No. 5(59)-CLVI/65, dated 1st December, 1965].

Section 67: Construction of References to Offering Shares or Debentures to the public, etc.

(1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances –

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation ; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation :

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more :

Provided further that nothing contained in the first proviso shall apply to the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).

(3A) Notwithstanding anything contained in sub-section (3), the Securities and Exchange Board of India shall, in consultation with the Reserve Bank of India, by notification in the Official Gazette, specify the guidelines in respect of offer or invitation made to the public by a public financial institution specified under section 4A or non-banking financial company referred to in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934).

(4) Without prejudice to the generality of sub-section (3), a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded in the manner set forth in that sub-section.

(5) The provisions of this Act relating to private companies shall be construed in accordance with the provisions contained in sub- sections (1) to (4).

SEBI ICDR REGULATIONS, 2009

***Regulations 4(2)(d) and 4(2)(e)**: No issuer shall make a public issue or rights issue of specified securities:*

(d) unless it has made an application to one or more recognised stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:

Provided that in case of an initial public offer, the issuer shall make an application for listing of the specified securities in at least one recognised stock exchange having nationwide trading terminals

(e) unless it has entered into an agreement with a depository for dematerialisation of specified securities already issued or proposed to be issued.

Regulation 5: Appointment of merchant banker and other intermediaries.

(1) The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in

consultation with the lead merchant banker, to carry out the obligations relating to the issue.

(2)The issuer shall, in consultation with the lead merchant banker, appoint only those intermediaries which are registered with the Board.

(3)Where the issue is managed by more than one merchant banker, the rights, obligations and responsibilities, relating inter alia to disclosures, allotment, refund and underwriting obligations, if any, of each merchant banker shall be predetermined and disclosed in the offer document as specified in Schedule I.

Provided that where any of the merchant bankers is an associate of the issuer, it shall declare itself as a marketing lead manager and its role shall be limited to marketing of the issue.

(4)The lead merchant banker shall, only after independently assessing the capability of other intermediaries to carry out their obligations, advise the issuer on their appointment.

(5)The issuer shall enter into an agreement with the lead merchant banker in the format specified in Schedule II and with other intermediaries as required under the respective regulations applicable to the intermediary concerned:

Provided that such agreements may include such other clauses as the issuer and the intermediary may deem fit without diminishing or limiting in any way the liabilities and obligations of the merchant bankers, other intermediaries and the issuer under the Act, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder or any statutory modification or statutory enactment thereof:

Provided further that in case of ASBA process, the issuer shall take cognisance of the deemed agreement of the issuer with Self Certified Syndicate Banks.

(6)An issuer shall, in case of an issue made through the book building process, appoint syndicate members and in the case of any other issue, appoint bankers to issue, at all mandatory collection centres as specified in Schedule III and such other collection centres as it may deem fit.

(7)The issuer shall appoint a registrar which has connectivity with all the depositories:

Provided that if issuer itself is a registrar to an issue registered with the Board, then another registrar to an issue shall be appointed as registrar to the issue:

Provided further that the lead merchant banker shall not act as a registrar to the issue in which it is also handling the post issue responsibilities.

Explanation: For the purpose of this regulation, in case of a book built issue, the lead merchant banker appointed by the issuer shall act as the lead book runner.

Regulation 6: Filing of offer document.

(1)No issuer shall make,

(a)a public issue; or

(b)a rights issue, where the aggregate value of the specified securities offered is fifty lakh rupees or more,

unless a draft offer document, along with fees as specified in Schedule IV, has been filed with the Board through the lead merchant banker, at least thirty days prior to registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be.

(2)The Board may specify changes or issue observations, if any, on the draft offer document within thirty days from the later of the following dates:

(a) the date of receipt of the draft offer document under sub-regulation (1); or

(b) the date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or

(c) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or

(d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.

(3) If the Board specifies changes or issues observations on the draft offer document, the issuer and lead merchant banker shall carry out such changes in the draft offer document and comply with the observations issued by the Board before registering the prospectus, red-herring prospectus or shelf prospectus, as the case may be, with the Registrar of Companies or filing the letter of offer with the designated stock exchange.

(4) The issuer shall, simultaneously while registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange or before the opening of the issue, file a copy thereof with the Board through the lead merchant banker.

(5) The lead merchant banker shall, while filing the offer document with the Board in terms of sub-regulation(1) and sub-regulation (4),file a copy of such document with the recognised stock exchanges where the specified securities are proposed to be listed.

(6) The offer document filed with the Board under this regulation shall also be furnished to the Board in a soft copy in the manner specified in Schedule V.

Regulation 7: Security Deposit

(1) The issuer shall deposit, before the opening of subscription list, and keep deposited with the stock exchange(s), an amount calculated at the rate of one per cent. of the amount of securities offered for subscription to the public.

(2)The amount specified in sub-regulation (1) shall be deposited in the manner specified by Board and/or stock exchange(s).

(3)The amount specified in sub-regulation (1) shall be refundable or forfeitable in the manner specified by the Board.

Regulation 25 (Chapter III – Provisions as to Public Issue) :

Unless otherwise provided in this Chapter, an issuer making a public issue shall satisfy the conditions of this Chapter as on the date of filing draft offer document with the Board and also as on the date of registering the offer document with the Registrar of Companies.

Regulation 26: Conditions for initial public offer

(1) An issuer may make an initial public offer, if:

(a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets:

Provided that if more than fifty per cent. of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project;

Provided further that the limit of fifty per cent. on monetary assets shall not be applicable in case the public offer is made entirely through an offer for sale.]

(b) it has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years.

(c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each);

(d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;

(e) if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

(2) An issuer not satisfying the condition stipulated in sub-regulation (1) may make an initial public offer if the issue is made through the book-building process and the issuer undertakes to allot, at least seventy five percent of the net offer to public, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

(3) An issuer may make an initial public offer of convertible debt instruments without making a prior public issue of its equity shares and listing thereof.

(4) An issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.

(5) No issuer shall make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person with anyoption to receive equity shares

Provided that the provisions of this sub-regulation shall not apply to:

(a) a public issue made during the currency of convertible debt instruments which were issued through an earlier initial public offer, if the conversion price of such convertible debt instruments was determined and disclosed in the prospectus of the earlier issue of convertible debt instruments;

(b) outstanding options granted to employees pursuant to an employee stock option scheme framed in accordance with the relevant Guidance Note or Accounting Standards, if any, issued by the Institute of Chartered Accountants of India in this regard.

(c) fully paid-up outstanding convertible securities which are required to be converted on or before the date of filing of the red herring prospectus (in case of book-built issues) or the prospectus (in case of fixed price issues), as the case may be.

(6) Subject to provisions of the Companies Act, 1956 and these regulations, equity shares may be offered for sale to public if such equity shares have been held by the sellers for a period of at least one year prior to the filing of draft offer document with the Board in accordance with sub-regulation (1) of regulation 6:

Provided that in case equity shares received on conversion or exchange of fully paid-up compulsorily convertible securities including depository receipts are being offered for sale, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period referred in this sub-regulation:

Provided further that the requirement of holding equity shares for a period of one year shall not apply:

(a) in case of an offer for sale of specified securities of a government company or statutory authority or corporation or any special purpose vehicle set up and controlled by any one or more of them, which is engaged in infrastructure sector;

(b) if the specified securities offered for sale were acquired pursuant to any scheme approved by a High Court under sections 391-394 of the Companies Act, 1956, in lieu of business and invested capital which had been in existence for a period of more than one year prior to such approval

(7) No issuer shall make an initial public offer, unless as on the date of registering prospectus or red herring prospectus with the Registrar of Companies, the issuer has obtained grading for the initial public offer from at least one credit rating agency registered with the Board.

Regulation 36: Lock-in of specified securities held by promoters

In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated hereunder:

(a) minimum promoters' contribution including contribution made by alternative investment funds, referred to in proviso to clause (a) of sub-regulation (1) of regulation 32, shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;

(b) promoters' holding in excess of minimum promoters' contribution shall be locked

-in for a period of one year:

Provided that excess promoters' contribution as provided in proviso to clause (b) of regulation 34 shall not be subject to lock-in.

Regulation 37: Lock-in of specified securities held by persons other than promoters

In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year:

Provided that nothing contained in this regulation shall apply to:

(a) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII

(b) equity shares held by a venture capital fund or alternative investment fund of category I or a foreign venture capital investor:

Provided that such equity shares shall be locked in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

Regulation 46: Period of subscription

(1) Except as otherwise provided in these regulations a public issue shall be kept open for at least three working days but not more than ten working days including the days for which the issue is kept open in case of revision in price band.

(2) In case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the red herring prospectus shall be extended for a minimum period of three working days:

Provided that the total bidding period shall not exceed ten working days.

Regulation 47: Pre-issue advertisement for public issue

(1) Subject to the provisions of section 66 of the Companies Act, 1956, the issuer shall, after registering the red herring prospectus (in case of a book built issue) or prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue advertisement in one English national daily newspaper with wide circulation, Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.

(2) The pre-issue advertisement shall be in the format and shall contain the disclosures specified in Part A of Schedule XIII.

Regulation 57**: **Manner of disclosures in the offer document

(1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

(2) Without prejudice to the generality of sub-regulation (1):

(a) the red-herring prospectus, shelf prospectus and prospectus shall contain:

(i) the disclosures specified in Schedule II of the Companies Act, 1956; and

(ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.

(b)the letter of offer shall contain disclosures as specified in Part E of Schedule VIII

Provided that in the case of a further public offer or a rights issue, the offer document

shall be deemed to be in compliance with the provisions of this regulation, if suitable references are made to the updated disclosures in the offer document referred to in regulation 51A of these regulations.

Regulation 59: Prohibition on payment of incentives

No person connected with the issue shall offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application for allotment of specified securities:

Provided that nothing contained in this regulation shall apply to fees or commission for services rendered in relation to the issue.

FINDINGS

24. Before dealing with the merits of the case, I find it appropriate to delve into the sequence of events that has led to the passing of the current adjudication order. While carrying out inspection of Guiness Corporate Advisors Private Limited on August 21-28, 2014, SEBI noticed certain violations relating to issue of securities

by HPC. The Inspection report was submitted on February 16, 2015. Thereafter, examination in the matter of HPC Biosciences Limited of violation of SEBI (ICDR) Regulations, 2009 was recommended by the competent authority on September 2, 2015 and the case was assigned to the concerned office having administrative jurisdiction over the area in which registered office of HPC was located. SEBI had also conducted investigation to examine substantial price increase in the scrip of HPC. Based on the investigation conducted, ex-parte ad-interim order dated June 29, 2015 and confirmatory order dated August 25, 2016 were passed against HPC and three other entities. Examination report in the matter of HPC Biosciences Limited of violation of SEBI (ICDR) Regulations, 2009 was completed in October, 2017. Thereafter, it was decided to advise the Company to give an option to the investors to get refund in terms of SEBI Circulars CIR/CFD/DIL/3/18/2015 dated December 31, 2015 and CFD/DIL3/CIR/P/2016/53 dated May 03, 2016. The Circular allows companies to avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to investors.

25. SEBI had sent various letters between December, 2017 and April, 2019 to the Noticee 1 from time to time advising them to file the certificate from an independent peer reviewed Chartered Accountant/ independent peer reviewed practicing Company Secretary certifying compliance of SEBI Circulars CIR/CFD/DIL/3/18/2015 dated December 31, 2015 and CFD/DIL3/CIR/P/2016/53 dated May 03, 2016 with SEBI. HPC, vide letter dated March 29, 2019 had confirmed allotment of the equity shares was made to 191 persons during the period December 28, 2012 to January 03, 2013. The letter did not mention regarding adherence to the said Circulars. Thereafter, SEBI again sent letter dated April 23, 2019 to the Noticees, advising compliance of the said Circulars to avoid

penal action by SEBI. No response was received in this regard. Consequently, liability and violation of directors of HPC were recommended for examination on March 16, 2020. Meanwhile, the Whole Time Member, SEBI passed directions against Noticees 1, 2 and 3 vide order dated December 22, 2020. Finally, adjudication proceedings under section 15HB of SEBI Act, 1992 were approved against HPC (Noticee 1) and it's directors Noticees 2 and 3 and erstwhile directors, Noticees 4 and 5 and appointment of undersigned as Adjudicating Officer was communicated vide Communiqué dated September 20, 2021. Common SCN was issued on December 02, 2021.

26. Taking the aforesaid into account, I find that investigation is an exhaustive and time consuming process, which requires detailed analysis of facts and law especially considering that there are multiple stakeholders involved in the present matter apart from the Noticees. In this regard, I also find it relevant to rely on certain orders passed by the Hon'ble SAT:

   a. In M/s. Adamina Traders Private Limited vs. SEBI (Appeal No. 331 and 366 of 2020) dated December 15, 2021, the trades concerned in the appeal took place in 2013, and the show cause notice was issued by the adjudicating officer in 2018. The appellants raised an argument of inordinate delay in issuance of the show cause notice. Dismissing the aforesaid contention, the Hon'ble SAT held the following:
   "We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected. Further, nothing has been shown as to how this delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside."

   b. Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019 decided on March 17, 2020) held that, *"The record would show that all* *the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same".*

27. All relevant information relied on for crystallizing the allegations against the Noticees has been provided to the Noticees. I note that there was no delay the way it has been argued by Noticee 1 and it has also not specified what prejudice has been caused to it, so the contentions of Noticee 1 in this regard are without merits.

28. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, I record my findings hereunder:

ISSUE I. Whether Noticees have violated section 56(1), 56(3), 60 read with section 67 of the Companies Act, 1956 and regulations 4(2)(d) & (e), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of SEBI ICDR Regulations, 2009?

<u>Noticee 1 – HPC Biosciences Limited</u>

29. It is an admitted fact that the Noticee 1 had allotted 3950000 Equity Shares of ₹10/- each to 191 allottees during the period from December 28, 2012 to January 03, 2013. The said allotments were made in 4 different tranches, wherein the number of allottees in each individual allotment was 45-49 persons.

30. Noticee 1 in its reply submitted that all the above said allotments were made on the basis of Special Resolution passed in EGM held on December 28, 2012, December 30, 2012, January 02, 2013 and January 03, 2013 (i.e. on the same day on which preferential allotments were made), wherein members of the Noticee 1 authorized Board of Directors to offer, issue and allot on private placement basis as equity shares as given below.

Date of EGM and Date of issue of equity shares	No. of equity shares	Face value per equity share (Rs.)	No. of allottees
December 28, 2012	1253800	10	49
December 30, 2012	1236200	10	48
January 02, 2013	942500	10	49
January 03, 2013	517500	10	45
TOTAL	3950000		191

31. It is the case of the Noticees 1, 2 and 3 that each allotment was separately authorised by its Board of Directors and was made to less than 50 persons, so that it was not falling under proviso of section 67(3)of Companies Act, 1956, which states that conditions contained in the provisions of sections 67(3)(a) and (b) for considering an offer as a private offer shall not apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more.

32. Noticee 1 also submitted that the shares were issued to known persons and separate special resolutions were passed for each of the four preferential issue of equity shares, wherein number of shares to be allotted and other details are specified. It also enclosed the copy of application forms for the said allotments vide mail dated April 18, 2022 which contained the name of the allottees and other details

33. Section 67(3) of the Companies Act, states two categories of invitations/offers which would not be treated as invitations/offers, “to the public”. In terms of Section 67(3), no offer or invitation shall be treated as made to the public, if the offer or invitation can properly be regarded, in all circumstances – (a) as not being calculated to result, directly or indirectly, in the shares becoming available for

subscription or purchase by persons other than those receiving the offer or invitation; or (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

34. In this regard, I note that Hon'ble Supreme Court held in the Sahara Order that even the issue which satisfies the requirements of sections 67(3)(a) and (b) would be treated as an issue to the public if it is made to fifty or more persons. The following observations of the Hon'ble Supreme Court made in the Sahara Order in this regard are noteworthy.

".....Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange."

".... after the amendment to the Companies Act, 1956 on 13.12.2000, every private placement made to fifty or more persons becomes an offer intended for the public and attracts the listing requirements under Section 73(1). Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange."

35. A reading of Section 67(3) along with the Sahara Order makes it clear that if an offer is made to the public by inviting subscription publicly, then it is a public offer irrespective of number of allottees, and has to follow all requirements prescribed for public offers. If an offer is made to pre-identified persons only and persons other than such identified persons cannot apply for the offer, then it is a private offer. However, if a private offer is made to 50 or more persons, then it is deemed to be a public offer in terms of first proviso to Section 67(3) and consequently, all requirements prescribed for public offers have to be followed.

36. On the contention of Noticees 1, 2 and 3 that each allotment was made to less than 50 persons, was distinct and separate and all provisions relating to allotment of shares as per section 81(1A) of the Companies Act, 1956 had been complied with separately for each separate Board meetings and each allotment, I note that the allotments were made on 4 days with nil or one day's gap, and in almost all instance to 45 - 49 persons i.e. just below the number 50, so as to be seen to be in compliance with the stipulation in Section 67(3) of Companies Act, 1956. While on the face of it, each allotment is to less than 50 persons, the manner of allotments was made in such a way as to circumvent the requirement to make a public offer. Taken together, the allotments of 3950000 shares were made to 191 persons over a period of 7 days. Further on perusal of the copy of the application form submitted by Noticee vide mail dated April 18, 2022, it was observed that the application form did not mention "**private and not for circulation**". There was no condition in the form stating that to whom it is intended or restricting other persons from subscribing the issue. The pre-ponderance of probability suggests that the manner of allotment was engineered so as to show compliance to the limit of less than 50 persons in one offer. In substance, however, it is clear that such offer and allotments were part of a single exercise and therefore, the offer has to rightly be regarded as a

single offer, even if it is done in multiple tranches authorized by separate Board Resolutions.

37. In this regard, it is important to mention that Hon'ble SAT in the case of Neesa Technologies Limited (Appeal 311 of 2016) vide Order dated April 28, 2017 upheld Ld. Whole Time Member's Order dated June 02, 2016 and noted that *"the impugned order has considered all these contentions made by the appellant before the Ld. WTM of SEBI. It is held in the impugned order that various Sections of Companies Act, 1956 is violated because the company issued the securities to more than 49 persons and hence it is a public issue and the provisions of Section 56 were not followed. In terms of Section 67(3) of the Companies Act any issue to "50 persons or more" is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning."*

38. In view of the above, the said allotments of Equity Shares made by Noticee 1 during December 28, 2012 to January 03, 2013 is established to be public offer/issue in terms of Section 67 of Companies Act, 1956 and would attract the provisions of the public issue norms prescribed in Companies Act, 1956. Noticee 1 has admittedly not filed any prospectus, circulated any abridged prospectus or made any listing application to Stock Exchange regarding the said allotments or made any other compliances relating to public issue under Companies' Act, 1956. Thus, it is established that it did not comply with any of the public issue requirements specified in SEBI ICDR Regulations, 2009. Hence, Noticee 1 is in violation of provisions of section 56(1), 56(3), 60 read with section 67 of the Companies Act,

1956 and regulations 4(2)(d) & (e), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of SEBI ICDR Regulations, 2009.

Noticees 2 and 3

39. Noticees 2 and 3 are promoters of Noticee 1/ HPC. They were and still are directors in the Company. As per the details of directors in the Propectus of the Company dated January 17, 2013, Noticee 2 was executive and whole time director of the Company and Noticee 3 was non-executive non-independent director of the Company. Also, as per the aforesaid prospectus, Noticee 3 "*was well associated with day to day affairs of this company. She predominantly responsible of agriculture operation & logistics supply chain management division of company".* As per latest annual report available, for the financial year ended March 31, 2021, Noticee 2 is Whole time director of the Company and Noticee 3 is non-executive non-independent director of the Company. Noticee 3 also holds 21.87% of total equity shares in HPC as on March 31, 2021. From the copy minutes of EGM submitted before the undersigned it is observed that EGMs were held on the dates of preferential allotment available I find that Noticee 2 and 3 proposed and seconded the special resolution for preferential allotment of equity shares. Further from copy of the minutes of the Board meeting it is observed that meetings were held on the dates when preferential issuance were made and Noticee 3 chaired the meeting. Further Noticee 2 was also available in those Board Meetings.

40. In view of the above, I note that Noticees 2 and 3, being directors of the Company, were actively involved and responsible for the preferential allotment of shares by the Company (Noticee 1) which were made in tranches.

41. Therefore, Noticees 2 and 3 are in violation of provisions of section 56(1), 56(3), 60 read with section 67 of Companies Act, 1956 and regulations 4(2)(d) & (e), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of SEBI ICDR Regulations, 2009.

Noticees 4 and 5

42. As per the Prospectus dated January 17, 2013 and the Annual Report for financial year ended March 31, 2013, Noticee 4 and 5 were independent directors of the Company (Noticee 1) at the time of preferential allotment of shares.

43. Noticee 4 submitted that she was not aware of the affairs of the Company in regard to the preferential allotment of shares, and that she was a CS trainee who was interning at HPC, and she accepted the directors' proposition to become independent director in the Company since they were known acquaintances of her father. She also submitted that she never received any remuneration or fees for being an independent director and also did not attend any of the meetings of the Company. She has submitted minutes-book for Board Meetings and EGMs of the Company held in 2012-13 in support of her submissions that she did not attend any of the meetings of the Company. She submitted that she resigned from the directorship of the Company on July 13, 2015. She also submitted a copy of Form DIR-12 and MGT-14 and acknowledged resignation letter in this regard. She further submitted that she or her immediate relatives had no financial interest and did not enter into any financial transactions with the Company.

44. From the copy of minutes of EGM and Board Meetings submitted by Noticee 4, I find that she was not present in any of the EGMs and leave of absence was granted to her for the Board Meetings wherein resolutions related to preferential allotment of equity shares were taken up. There is no evidence available to establish that Noticee 4 was involved in the preferential issue made by Noticee 1 –the company

or was aware that the allotment was made in tranches to the allotteses as described in the previous paragraphs.

45. Furthermore, I take recourse to the Order of Hon'ble SAT in Sayanti Sen v SEBI on August 09, 2019 (Appeal 163 of 2018), wherein it was emphasized that where the Company is the offender, vicarious liability of the Directors cannot be imputed automatically.

46. Hence, charges against Noticee 4 do not stand established.

47. Noticee 5 submitted that he was appointed as additional and independent director of the Company from October 01, 2011 to October 04, 2013. He submitted a copy of Form 32 in regard to his appointment and cessation as director of the Company. He submitted that he is working as book keeping accountant for various firms. He further submitted that he has never drawn director's remuneration or any other benefit from the company and that he has never applied or purchased or held any share of the company.

48. From the copy of minutes of EGM and Board Meetings held in FY 2012-13, I find that Noticee 5 was present in all the meetings wherein resolutions in regard to preferential allotment of equity shares were passed, i.e. Board Meetings dated December 28, 2012, December 29, 2012, January 01, 2013 and January 02, 2013 and also EGMs held on December 28, 2012, December 30, 2012, January 02, 2013 and January 03, 2013. Hence, he was very much aware and involved in the preferential allotment of shares which were made in four tranches to less than 50 persons.

49. Hon'ble SAT in Sayanti Sen v SEBI on August 09, 2019 (Appeal 163 of 2018), referred to Hon'ble Supreme Court's decision in SEBI vs. Gaurav Varshney, (2016) 14 SCC 430 and held that, "*the Supreme Court held that a company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company . Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status."*

50. Hence, Noticee 5, being erstwhile director of the Company, and involved in and aware of the preferential allotment of equity shares by the Company, is in violation of provisions of section 56(1), 56(3), 60 read with section 67 of the Companies Act, 1956 and regulations 4(2)(d) & (e), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of SEBI ICDR Regulations, 2009.

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under Section 15HB of the SEBI Act, 1992?

51. Since it is established that Noticees 1, 2, 3 and 5 failed to comply with the provisions of section 56(1), 56(3), 60 read with section 67 of Companies Act, 1956 and regulations 4(2)(d) & (e), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of SEBI

ICDR Regulations, 2009 by failing to file prospectus and apply for listing in respect of the allotments made by HPC from December 28, 2012 to January 03, 2013, I am of the view that it warrants imposition of penalty under section 15HB of the SEBI Act, 1992 on Noticees 1, 2, 3 and 5, the text of which is reproduced as under:

<u>SEBI Act, 1992</u>

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

52. While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the factors relevant as stipulated in Section 15J of the SEBI Act, which reads as under:

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

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 investor/+s as a result of the default;

(c) the repetitive nature of the default.

53. I note that the SEBI Circular dated December 31, 2015 provides that " *companies may avoid penal action if they provide the investors with an option to surrender the*

securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to the investors" in respect of cases " i*nvolving issuance of securities to more than 49 persons but upto 200 persons in a financial year*". I also note that SEBI had sent various letters between December, 2017 and April, 2019 to the Noticee 1 from time to time advising them to file the certificate from an independent peer reviewed Chartered Accountant/ independent peer reviewed practicing Company Secretary certifying compliance of SEBI Circulars CIR/CFD/DIL/3/18/2015 dated December 31, 2015 read with CFD/DIL3/CIR/P/2016/53 dated May 03, 2016 with SEBI. However no action was taken by the Company.

54. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticees 1, 2, 3 and 5. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by Noticees 1, 2, 3 and 5. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to Noticees 1, 2, 3 and 5 or the extent of loss suffered by the investors as a result of the default cannot be computed.

55. Further, with respect to repetitive nature of default, the orders that have been passed against Noticees 1, 2, 3 and 5 have been tabulated below. Hence the default is repetitive in nature.

Noticee	**Order Details**	**Violations**
HPC Biosciences Limited (Noticee 1)	Adjudication Order in the matter of HPC	Regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act, 1992

Noticee	Order Details	Violations
	Biosciences Limited dated February 25, 2022	Regulation 57(1) of SEBI ICDR Regulations, 2009
		Section 11(3) and 11C(3) of the SEBI Act, 1992
		Clause 45 and 46 of the listing agreement for SMEs read with section 21 of the SCRA Act, 1956
Tarun Chauhan (Noticee 2)		Regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations read with section12A(a), (b) and (c) of the SEBI Act, 1992
		Regulation 57(1) of SEBI ICDR Regulations, 2009
		Section 11(3) and 11C(3) of the SEBI Act, 1992
Madhu Anand (Noticee 3)		Regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the SEBI PFUTP Regulations, 2003 read with section 12A(a), (b) and (c) of the SEBI Act, 1992
		Regulation 57(1) of SEBI ICDR Regulations, 2009
Arun Kumar Gupta (Noticee 5)		Regulations 3(a), (b), (c), (d), 4(1), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the SEBI PFUTP Regulations, 2003 read with section 12A(a), (b) and (c) of the SEBI Act, 1992
		Regulation 57(1) of SEBI ICDR Regulations, 2009

ORDER

56. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee 1, 2 3 and 5 and also the factors mentioned in Section 15J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty as follows:

S. No.	Noticee	Violation	Penal Provisions	Penalty (Rs.)

1.	HPC Biosciences Limited	Section 56(1), 56(3), 60, read with section 67 of Companies Act, 1956 and regulations 4(2)(d) & (e), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of SEBI ICDR Regulations, 2009	Section 15HB of SEBI Act, 1992	₹10,00,000 (Rupees ten lakhs only)
2.	Tarun Chauhan			₹10,00,000 (Rupees ten lakhs only)
3.	Madhu Anand			₹10,00,000 (Rupees ten lakhs only)
4.	Arun Kumar Gupta			₹10,00,000 (Rupees ten lakhs only)

57. Noticees as mentioned at para 56 shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

58. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

59. 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 of Noticees.

60. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and Securities and Exchange Board of India.

Place: Mumbai **BARNALI MUKHERJEE**
Date: April 22, 2022 **ADJUDICATING OFFICER**