

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Sl. No.	Name of the Noticee	PAN
1	Esteem Bio Organic Food Processing Ltd.	AAACE1925D
2	Jai Kumar	CSQPK1236G
3	Brij Kishore Sabharwal	AAXPS6830P
4	Goldline International Finvest Ltd.	AACCG6377M
5	Satendra Kumar & its Proprietorship firm viz. Nisha Traders, Bright Securities	AWWPK8525E
6	Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, A One Furniture	AIJPD7329J
7	Ram Prakash & its Proprietorship firm viz. Khan Enterprise	AXFPR4439L
8	Aavia Softech Pvt. Ltd.	AAKCA4089N
9	Mayfair Infosolution Pvt. Ltd.	AAFCA3716M
10	Avisha Credit capital Pvt. Ltd.	AAACA5715D
11	Nikky Printing Press Pvt. Ltd.	AADCN5292K
12	Neel Kanth Trading Co.	-
13	Ace Consultant	ABGPK4707P
14	Amsons Apparels Pvt. Ltd.	AAFCA3887K
15	Gracious Software Pvt. Ltd.	AADCG0392F

(The entities mentioned above are individually known by their respective name or Noticee no. and collectively referred to as "Noticees")

In the matter of Esteem Bio Organic Food Processing Limited

Background:

1. The present proceedings are arising out of a show cause notice dated August 14, 2017 (hereinafter referred to as "SCN") alleging *inter alia* that a scheme was devised in the Initial Public Offer (hereinafter referred to as "IPO") of equity shares of Esteem Bio Organic Food

Processing Limited (hereinafter referred to as “Esteem Bio/Company”), wherein the applicants of the IPO were funded by entities connected with the *Company* itself and subsequently the IPO proceeds were not utilized towards the objects of raising funds and instead were allegedly transferred to few of the entities who had funded the applicants of the IPO. Before conducting the investigation in the IPO of the *Company*, a common *ex-parte ad interim* order dated June 29, 2015 was issued *inter alia* against the *Company* and to three other companies who were seen to have followed a common *modus operandi* in deploying a fraudulent scheme with respect to their respective IPOs.

2. The brief facts related to the IPO and the scheme allegedly deployed by the *Company* and other *Notices*, as noted from the SCN, are as under:

- i. The *Company* came out with an IPO by offering 45,00,000 equity shares (30.20% of the post issue size) of INR 10 each at an issue price of INR 25, to raise INR 11.25 Crore. The equity shares of the *Company* were listed on SME segment of BSE Ltd. (“BSE”) on January 07, 2013.
- ii. The *Company* had disclosed in the Prospectus that the funds so raised in the IPO shall be utilized in the following manner:

Table 1: Proposed Utilization

Sr. no.	Particulars	Amount (INR in Lakh)
1	Setting up of Shade Net Cultivation facility	380.00
2	Development of Farm land for transition to Organic Farming	565.00
3	Procurement of farm tools and equipments	30.00
4	Brand Building and General Corporate purposes	80.00
5	Issue Expenses	70.00
	Total	1125.00

- iii. During the investigation conducted by SEBI, the *Company* was asked to provide the details of the utilization of the IPO proceeds. The *Company*, vide its letter dated December 25, 2015, submitted the following details of utilization of the IPO proceeds, as on March 31, 2015:

Table 2: Utilization of the IPO Proceeds (as per letter dated December 25, 2015 of Company)

Sr. No.	Particulars	Utilized as on 31/03/2015 (INR in Lakh)
1.	Setting up of shade Net cultivation facility	375.00

Sr. No.	Particulars	Utilized as on 31/03/2015 (INR in Lakh)
2.	Development of farm land for transition to organic farming	564.49
3.	Procurement of farm tools and equipments	29.06
4.	Brand Build and General Corporate Purpose	30.00
5.	Issue Expenses	31.28
6.	Investment in short term, advances	99.67
	Total	1129.50

- iv. The *Company* was asked to furnish details of the utilization of funds raised through the issuance of securities with supporting documents to substantiate the utilization of funds as per its claim however, it did not provide the supporting documents.
- v. The IPO of the *Company* was subscribed 1.06 times and it had received 512 applications for 47,88,000 equity shares (including market maker application for 750000 shares). Out of the said applications, 29 applications for 1,74,000 shares were rejected due to various reasons. After rejection of such applications, total valid applications remained 483 for 46,14,000 shares, which was 1.03 times of the offer size. Finally, out of those valid applications, the *Company* allotted 45,18,000 shares to 470 applicants. The *Company*, was able to raise an amount of INR 11.29 Crore from 470 applicants. The details of applications received, shares allotted etc., are tabulated herein below:

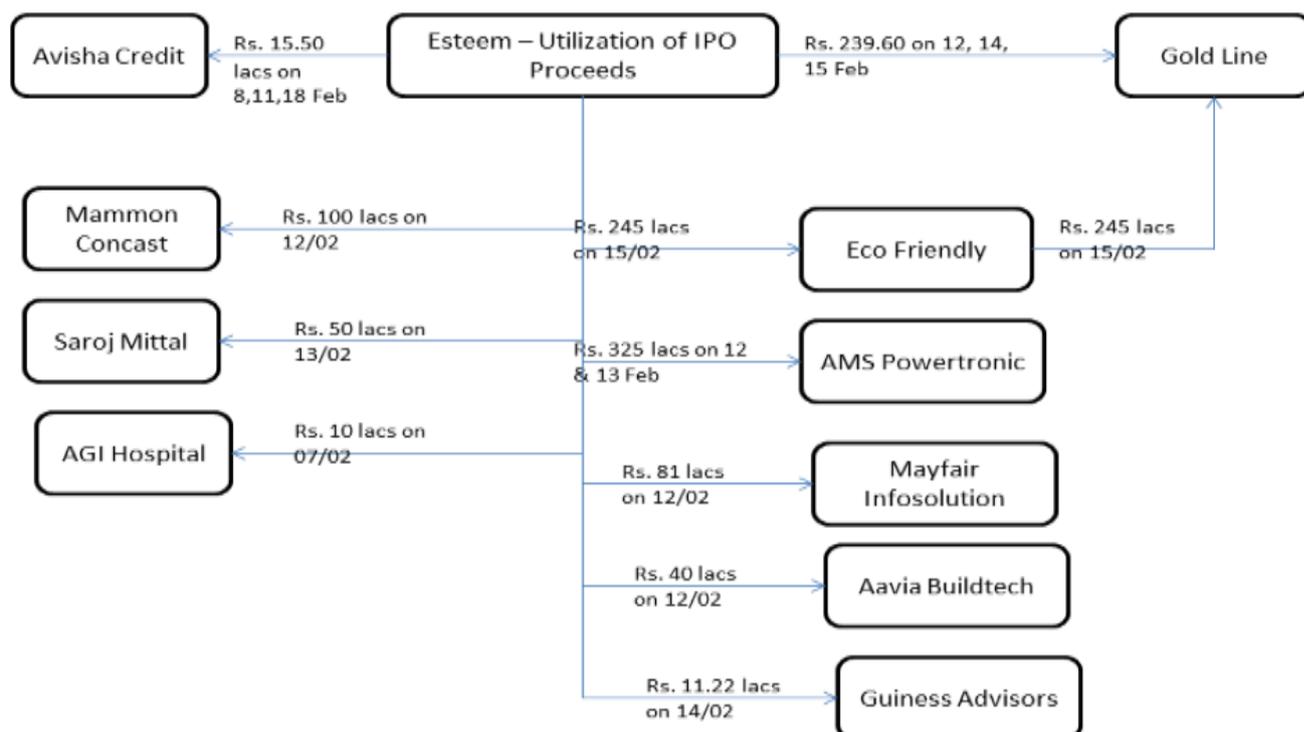
Table 3: Break up of applications

Class of applicant	No. of applications	No. of shares applied	No. of shares allotted	No. of Allottees whom shares allotted	No. of shares Application rejected
Market Maker	1	7,50,000	7,50,000	1	0
HNI	32	11,64,000	11,46,000	32	0
RII	479	28,74,000	26,22,000	437	1,74,000
Total	512	47,88,000	45,18,000	470	1,74,000

- vi. It was also noticed during the investigation that certain entities had provided funds to several IPO applicants to enable them to make application under the IPO of the *Company*. Such entities were further noticed to be connected with the *Company* itself, based on various factors like fund transactions, common directorship in companies, etc. For the sake of convenience of reference, the said entities are hereinafter referred to as “**funding group entities**”.
- vii. The investigation further revealed that applications of 270 Retail Individual Investors (RIIs) were funded by the funding group entities, out of which 238 applicants were allotted 14,28,000 shares. Similarly, in HNI category also, 60,000 shares allotted to one HNI were funded by the funding group entity. Further, in the market maker

category, the application for 7,50,000 shares were funded by the funding group entities. In total, out of 45,18,000 shares allotted under the IPO, 23,34,000 shares allotted to 240 applicants (238 RIIs,+ 1 Market maker+ 1 HNI), were funded by the funding group entities, which comes to 51.66% of the total shares allotted under the IPO.

viii. It was further unearthed in the investigation that out of the total IPO proceeds of INR 11.29 Crore (approx.), the *Company* had transferred an amount of INR 11 Crore (approx.) to various entities. The details of such transfers are depicted in the following pictorial representation:



ix. The details of funding by the funding group entities and the amounts of money received by such entities and *inter se* fund transactions amongst such entities are narrated as follows:

Table 4: Details of Fund Transactions

Sr. No.	Name	Bank A/c no.	Funding by funding group entity	Details of funds movement by funding group entity
1	Goldline International Finvest Ltd. ("Goldline")	ICICI Bank – 66300512044 ⁹	<ul style="list-style-type: none"> Goldline had issued 42 cheques of INR 1.50 Lakh each to the <i>Company</i> on behalf of 42 non ASBA allottees. Also 8 non ASBA applicants directly received INR 1.50 Lakh each from 	<ul style="list-style-type: none"> It had received INR 239.60 Lakh from the <i>Company</i> from IPO proceeds, and INR 245 Lakh from Eco Friendly Food Processing Ltd.

Sr. No.	Name	Bank A/c no.	Funding by funding group entity	Details of funds movement by funding group entity
	(Notice no. 4)		<p>Goldline to make application in the IPO. (37 allottees got allotment)</p> <ul style="list-style-type: none"> It had also funded INR 187.50 Lakh to Guinness Securities Ltd and INR 15 Lakh to Mr. Sanjeev Agarwal to make ASBA application. 	<p>("ECO") which was in fact received by ECO from the <i>Company</i>.</p> <ul style="list-style-type: none"> It had received INR 206 Lakh from Mayfair Infosolution Pvt. Ltd. (Notice no. 9) on various dates.
2	<p>Satendra Kumar</p> <p><u>Proprietorship Firm</u></p> <ul style="list-style-type: none"> Nisha Traders Bright Securities <p>(Notice no. 5)</p>	<p>Yes Bank - 01368390000 2254</p> <p>Yes Bank - 01368390000 2195</p>	<ul style="list-style-type: none"> Nisha Traders had issued 39 cheques of INR 1.50 Lakh each to the <i>Company</i> on behalf of 39 Non ASBA retail investors.(38 allottees got allotment). Bright Securities had fund movement with Nisha Traders, Magnum Industrial, N V Sales Corporation, A One Furniture (Proprietorship firms of Notice no. 6), Goldline and AMS Powertronic Pvt. Ltd. 	<ul style="list-style-type: none"> It had received INR 37 Lakh from Bright Securities and INR 13.50 Lakh from Magnum Industrial Corporation.
3	<p>Madhukar Dubey</p> <p><u>Proprietorship Firm</u></p> <ul style="list-style-type: none"> N V Sales Corporation A One Furniture <p>(Notice no. 6)</p>	<p>Dhanlakshmi Bank – 01910670000 1580</p> <p>Yes Bank – 01368390000 2266</p>	<ul style="list-style-type: none"> N.V. Sales Corporation had issued 16 cheques of INR 1.50 Lakh each to the <i>Company</i> on behalf of 16 Non ASBA retail investors. (9 allottees got allotment) A One Furniture had issued 20 cheques of INR 1.50 Lakh each to the <i>Company</i> on behalf of 20 Non ASBA retail investors. (20 allottees got allotment) 	<ul style="list-style-type: none"> It had received INR 10.60 Lakh from Khan Enterprises (Proprietorship firm of Notice no. 7) It had received INR 16.50 Lakh from Magnum Industrial Corporation and INR 15 Lakh from Sumit Kumar.
4	<p>Ram Prakash</p> <p><u>Proprietorship Firm</u></p> <ul style="list-style-type: none"> Khan Enterprise <p>(Notice no. 7)</p>	<p>Tamilnad Mercantile Bank – 21115005080 0272</p>	<ul style="list-style-type: none"> Khan Enterprise had issued 19 cheques of INR 1.50 Lakh each to the <i>Company</i> on behalf of 19 Non ASBA retail investors. (18 allottees got allotment) 	<ul style="list-style-type: none"> It had received INR 22.40 Lakh from Shiv Traders & INR 5 Lakh from Garg Traders & Suppliers. Shiv Traders (TMB - 211150050800237) had received INR 81.50 Lakh from ECO, INR 67 Lakh from the <i>Company</i> in October and December, 2012.
5	<p>Aavia Softech Pvt. Ltd.</p> <p>(Notice no. 8)</p>	<p>Axis Bank - :9120200240 45250</p>	<ul style="list-style-type: none"> Aavia Softech Pvt Ltd had issued 10 cheques of INR 1.50 Lakh each to the <i>Company</i> on behalf of 10 Non ASBA retail investors. (9 allottees got allotment) 	<ul style="list-style-type: none"> It had received INR 15 Lakh from Mayfair Infosolution Pvt. Ltd. (Notice no.9), and INR 80 Lakh from ECO. It also had fund movement with Goldline, the <i>Company</i> and other connected entities.

Sr. No.	Name	Bank A/c no.	Funding by funding group entity	Details of funds movement by funding group entity
6	Mayfair Infosolution Pvt. Ltd. (Notice no. 9)	Axis Bank – 912020004121565	<ul style="list-style-type: none"> It had given INR 1.50 Lakh each to 23 Non ASBA applicants who had made application in the IPO of the <i>Company</i>. (20 allottees got allotment) 	<ul style="list-style-type: none"> Aavia Softech (Notice no.8) has received INR 15 Lakh & Gracious Software Pvt. Ltd. (Notice no. 15) received INR 63 Lakh from Mayfair Infosolution (Notice no.9).
7	Avisha Credit Capital Ltd. (Notice no. 10)	HDFC Bank – 05982740000567	<ul style="list-style-type: none"> It had given INR 1.50 Lakh each to 3 Non ASBA applicants who had made application in the IPO of Esteem.(3 allottees got allotment) 	<ul style="list-style-type: none"> It had received INR 15.50 Lakh from IPO proceeds of the <i>Company</i>. Further, it had fund movement with ECO, Goldline, Mayfair Infosolution (Notice no. 9).
8	Nikky Printing Press Pvt. Ltd. (Notice no. 11)	Axis Bank – 911020034143910	<ul style="list-style-type: none"> It had issued 30 cheques of INR 1.50 Lakh each to the <i>Company</i> on behalf of 30 non ASBA allottees. (25 allottees got allotment) 	<ul style="list-style-type: none"> It had received INR 45 Lakh from Mayfair Infosolution (Notice no. 9) and also had fund movement with Godline, AMS Powertronic, Madhukar Dubey (Notice no. 6).
9	Neel Kanth Trading Co. (Notice no. 12)	Dhanlakshmi Bank – 019106700000717	<ul style="list-style-type: none"> It had issued 14 cheques of INR 1.50 Lakh each to the <i>Company</i> on behalf of 14 non ASBA allottees. (14 allottees got allotment) 	<ul style="list-style-type: none"> It had fund movement with AMS Powertronic Pvt. Ltd.
10	Ace Consultant (Notice no. 13)	HDFC Bank - 03142000000740	<ul style="list-style-type: none"> Ace Consultant had funded INR 1.50 Lakh to 1 Non ASBA entities. (1 allottees got allotment) 	-
11	Amsons Apparels Pvt Ltd. (Notice no. 14)	Axis Bank - 912020014964077	<ul style="list-style-type: none"> It had issued 3 cheques of Rs. 1.50 Lakh each to the <i>Company</i> on behalf of 3 non ASBA allottees. (2 allottees got allotment) 	<ul style="list-style-type: none"> It had received INR 5.00 Lakh from Core Capital Services Pvt. Ltd. Further, it had fund movement with AMS Powertronic Pvt. Ltd., Goldline, Madhukar Dubey (Notice no. 6).
12	Gracious Software Pvt Ltd. (Notice no. 15)	Axis Bank - 912020015006932	<ul style="list-style-type: none"> It had issued 42 cheques of INR 1.50 Lakh each to the <i>Company</i> on behalf of 42 non ASBA allottees. (42 allottees got allotment) 	<ul style="list-style-type: none"> It had received INR 63 Lakh from Mayfair Infosolution Pvt Ltd. Further, it had fund movement with Goldline.

- x. A summary of the amounts funded by various funding group entities, no. of allottees who got allotment of shares due to such act of funding made on their behalf by the respective funding entities etc., are presented in the table herein below:

Table 5

Sr. No.	Funding Entity	Amount funded (Rs. in lacs)	No. of allottees got allotment	Received back from IPO proceeds of Esteem (Rs. in lacs)	No. of shares allotted
1	Goldline International Finvest Ltd. (Notice no. 4)	277.50	39(2 ASBA)	484.60	10,32,000
2	Satendra Kumar & Proprietorship firm (Notice no. 5)	58.50	38	-	2,28,000
3	Madhukar Dubey & Proprietorship firm (Notice no. 6)	54.00	29	-	1,74,000
4	Ram Prakash & Proprietorship firm (Notice no. 7)	28.50	18	-	1,08,000
5	Aavia Softech Pvt. Ltd. (Notice no. 8)	15.00	9	40	54,000
6	Mayfair Infosolution Pvt. Ltd. (Notice no. 9)	34.50	20	81	1,20,000
7	Avisha Credit capital Pvt. Ltd. (Notice no. 10)	4.50	3	15.50	18,000
8	Nikky Printing Press Pvt. Ltd. (Notice no. 11)	45.00	25	-	1,50,000
9	M/S. Neel Kanth Trading Co. (Notice no. 12)	21.00	14	-	84,000
10	ISF Securities Ltd. (Ace Consultant- Notice no. 13)	1.50	1	-	6,000
11	Amsons Apparels Pvt. Ltd. (Notice no. 14)	4.50	2	-	12,000
12	Gracious Software Pvt. Ltd. (Notice no. 15)	63.00	42	-	2,52,000
13	Indirect Funding				96000
	Total	607.50	240	621.10	23,34,000

3. Thus, based on the aforesaid details, the SCN alleges that the *Company* and its Directors had devised and planted a scheme with the help of the funding group entities to achieve the threshold of minimum applications (90%) of the offer size required for listing of its scrip on the SME segment of BSE, as has been envisaged under Regulation 14(1) of SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009, (ICDR Regulations) (hereinafter referred to as “**ICDR Regulations**”)

4. As the *Company* and its connected entities had allegedly acted in concert to fund to the tune of 51.66% of the total allotted shares, the achievement of compliance with Regulation 14(1) of the ICDR Regulations was allegedly done under a fraudulent scheme, under which certain funds from the IPO proceeds were transferred to few of the funding group entities post-IPO (apparently to compensate them for the funding of IPO applications done by them) The

said act of devising such a scheme to ensure listing of securities with the help of the funding group entities has been alleged to be in violation of Sections 12A(a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act, 1992”) read with Regulation 3 (a), (b), (c) and (d) and 4(1) of SEBI (Prohibition of Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations”).

5. I note that the SCN was served on *Notices nos. 1, 2, 3, 4, 9, 10, 12, 13* through SPAD and *Notice nos. 5, 6, 7, 8, 11, 14* and *15*, through affixation. It is noted that the *Notices nos. 1, 3, 4, 10* and *15* had sought inspection of the documents which was granted to them. Later on, opportunity of personal hearing to the *Notices* was granted on June 18, 2019 which was rescheduled to July 02, 2019. However, as inspection of documents was sought by few more *Notices*, the personal hearing was again rescheduled to August 06, 2019. It is noted from the records that the hearing notice was served upon on various *Notices* through substituted mode of service, viz., Newspaper publication, with the following details:

Table 6

Sr. No.	Name of the Noticee	Hearing on 06.08.2019
4	Goldline International Finvest Ltd.	Times Day/Hindustan Times and Nav Bharat Times Delhi Edition – 31.07.2019
5	Satendra Kumar & its Proprietorship firm viz. Nisha Traders, Bright Securities	-do-
6	Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, A One Furniture	Hindustan Times and Nav Bharat Times Ghazaibad Edition – 31.07.2019
7	Ram Prakash & its Proprietorship firm viz. Khan Enterprise	Times Day/Hindustan Times and Nav Bharat Times Delhi Edition – 31.07.2019
8	Aavia Softech Pvt. Ltd.	-do-
9	Mayfair Infosolution Pvt. Ltd.	-do-
10	Avisha Credit capital Pvt. Ltd.	-do-
11	Nikky Printing Press Pvt. Ltd.	-do-
12	Neel Kanth Trading Co.	-do-
13	Ace Consultant	-do-
14	Amsons Apparels Pvt. Ltd.	-do-
15	Gracious Software Pvt. Ltd.	-do-

6. On the said date, i.e., August 06, 2019, only *Noticee no. 13* appeared through authorized representative and he was heard, while adjournment requests were received from *Noticee nos. 1, 3, 4, 10* and *15*. Accordingly, the *Noticee no. 1, 3, 4, 10* and *15* were provided with another opportunity of personal hearing on November 14, 2019. On the said date only, *Noticee no. 3* appeared on his behalf as well as on behalf of the *Company* (*Noticee no.1*) also and inter alia informed that *Noticee no. 2* has expired.

7. The *Company* i.e. *Noticee no. 1*, vide its letter dated October 06, 2017 and *Noticee no. 3* vide his letter dated June 13, 2019, have sought copy of the entire investigation report and all other material collected by SEBI during the investigation and to support their request for such documents, reliance has been placed by them on the judgment of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Price Waterhouse (Civil Appeal no. 6003-6004/2012)*. Further, vide letter dated November 25, 2019, *Noticee no. 1 and 3* have filed a written reply to the SCN and also vide letter dated March 09, 2020, a post hearing written submission has been filed by them. The following key submissions have been made in the said letters:

- i. In compliance with the Regulation 106P of SEBI ICDR Regulations, 2009, the IPO of Esteem Bio was 100% underwritten. The said fact reflects that the charges of arranging funds for subscription to the IPO cannot be sustained. In support, the copy of the underwriting agreement has been filed.
- ii. The transactions with various entities including *Noticee no. 4* (Goldline International Finvest Ltd.) which have formed the basis of allegations in the SCN, were in commercial nature. The *Company* has no control on the transactions executed by other entities. *Noticee no. 4* is having business dealing in securities and corporate loans etc.
- iii. The IPO of the *Company* was launched in compliance with the applicable laws. Guinness Corporate Advisors Pvt. Ltd. was appointed as Lead Manager and Cameo Corporate Services Ltd. was appointed as the RTA.
- iv. The SCN has been issued after 4 years of the closure of the issue and due to the said delay, the charges should be dropped.
- v. There is no finding in the SCN to the effect that investigation conducted by SEBI was hampered due to lack of information. For certain other entities, proceedings initiated by passing of interim orders have been dropped by SEBI.
- vi. The charges of violating Section 12 A(a), (b), (c) of SEBI Act, 1992 and Regulation 3 (a), (b), (c) and (d) and 4(1) of PFUTP Regulations are not made out as no

transaction in securities in the secondary market segment of capital market has been done.

- vii. The investigation conducted by SEBI has picked up selected financial transactions and financial transactions of third parties like Goldline have formed basis of making allegations. The case deserves re-investigation for appreciation of correct facts, as has been done in certain other cases.
- viii. IPO proceeds were utilized towards the stated objects and land development agreements for an amount of INR 5.66 Crore have been executed by the *Company*.
- ix. Apart from the above, the *Company* had spent INR 29.00 Lakh (approx.) towards expenses of IPO. The details of the said amount spent are: INR 2.66 (approx.) Lakh to BSE; INR 2.88 Lakh to SAP Printer Solutions Pvt. Ltd.; INR 20.00 Lakh (approx.) to Guinness Corporate Advisor (Merchant Banker); INR 1.23 Lakh to NSDL and CDSL; and INR 1.24 Lakh (approx.) to Innovative Communication. Also, INR 58.00 Lakh has been paid to Cameo Corporate Services.
- x. The *Company* has also extended an amount of INR 4.40 Crore in short term loans to various entities.

8. *Noticee no. 10* (Avisha Credit Capital Limited), vide its letter dated September 11, 2017, while denying the allegations, has submitted that it is a Non- Banking Financial Company (hereinafter referred to as 'Avisha') and in its normal course of business, it had provided funds to needy people, who in turn have discretion to utilize such funds as per their requirement. The *Noticee no. 10*, vide its letter dated June 12, 2019, has sought copy of entire investigation report, all other material collected by SEBI during the course of investigation, and also has sought cross examination of persons whose statement were recorded by SEBI during the investigation. Further, vide letter dated July 29, 2019, the *Noticee no. 10* sought time to file additional reply and has also sought certain documents. The said documents were already provided to the *Noticee* vide SEBI's letter dated July 25, 2019, however, so far no further reply has been filed by the *Noticee no. 10*.

9. *Noticee no. 13* (Ace Consultants) vide its written reply dated October 03, 2017 and through a post-hearing written submission vide letter dated August 19, 2019 has advanced the following submissions:

- i. Ms. Sunita Khemka the proprietor of the *Noticee* firm has association in the field of financial and capital market as consultant for over 25 years and has been dealing regularly in securities.

- ii. Ms. Sunita was a Designated Director in SEBI registered Stock Broker ISF Securities Ltd (hereinafter referred to as “ISF”) and she, along with her husband hold 51% stake in ISF Securities Ltd. The stake in ISF was purchased in January 2012 (46.87%) and January 2014 (4.13%). The appointment as Designated Directors and Dominant Promoters of ISF has been done with the approval of BSE and NSE.
- iii. The SCN has alleged connection based on directorship of *Noticee no. 3* (Brij Kishore Sabharwal) in ISF. *Noticee no. 3* was Director of ISF before ISF was acquired by Ms. Sunita and her husband. However, in order to maintain existing retail clients of ISF, *Noticee no. 3* continued to be a Director of ISF even after change in control and *Noticee no. 3* resigned from the directorship of ISF on March 21, 2014. The relationship with the *Noticee no. 3* was purely professional.
- iv. The SCN alleges that *Noticee no. 13* (Ace Consultants) being a funding group entity has funded Ms. Sunita Khemka for subscription to the IPO of the *Company*. The said allegation is baseless as Ms. Sunita herself is the proprietor as well as signatory of the bank account of *Noticee no. 13* and being a proprietorship firm, *Noticee no. 13* could not have applied for the shares under the IPO.
- v. The application under IPO was only for 6000 shares for a small amount of INR 1.50 Lakh, which cannot be said to have made under instructions of anyone else, particularly in the absence of any evidence.
- vi. Ms. Sunita had also applied under the IPO of another company viz., Eco Friendly Food Processing Park Ltd. (“ECO”). The said application in the IPO was rejected and the refund amount of INR 1.50 Lakh was utilized towards application of IPO of Esteem Bio.
- vii. In ECO also, *Noticee no. 3* (Brij Kishore Sabharwal), is one of the Directors. As her application for shares of ECO was rejected, the same shows that Ms. Sunita does not have any connection (except professional) with the *Noticee no. 3*.
- viii. There is no direct connection with *Noticee no. 4* (Goldline International Finvest Ltd.). It has taken loan of INR 50.00 Lakh from *Noticee no. 4*, which was a RBI registered NBFC, during FY 2012-13. The said loan has been repaid during FY 2014-15 with interest of INR 5.81 Lakh (approx.).
- ix. There is no allegation of receipt of IPO proceeds by Ace Consultants.
- x. For an act to be termed as ‘fraudulent’, inducement or misrepresentation needs to be present, as held by Hon’ble Supreme Court in the matter of *Ram Chandra Singh Vs. Savitri Devi and Ors. [2003 8 SCC 319]*. By the investment of INR 1.50 Lakh, there is

no inducement caused to anyone nor any false statement has been alleged to be made.

- xi. Similarly, to prove an act to be manipulative, a mere single act is not sufficient and series of acts reflecting the manipulative intent is required, as has been held by Hon'ble SAT in the matter of *Sterlite Industries (India) Ltd. Vs. SEBI*.
- xii. The evidence to prove the allegation of 'fraud' requires stronger evidence as has been observed by Hon'ble Supreme Court in the matter of *Bank of India Vs. Degala Surya Narayan (AIR 1999 SC 2407)*

10. *Noticee no. 15* (Gracious Software Limited), vide its letter dated June 12, 2019, has made identical requests for copies of documents, as have been made by other *Noticees*. Further, vide letter dated July 29, 2019, the *Noticee no. 15* sought time to file written reply to the SCN, however, so far, no reply has been filed by the *Noticee no. 15*.

Consideration of Issues and findings

11. Before addressing the contentions raised on merits of the case by various *Noticees*, I observe that a technical ground raised by certain *Noticees* needs consideration first. It is noted that few of the *Noticees* have made a request to provide all the documents collected during investigation and a copy of the entire investigation report etc. At the outset, it is observed that the *Noticees* have made a very generic request seeking all the documents pertaining to the present proceedings without specifying as to which document they need to defend their case on merit. Insofar as the copy of investigation report and alleged non-compliance of principles of natural justice is concerned, I refer to the observations made by the Hon'ble SAT in the case of *Reliance Commodities Ltd Vs. National Commodity & Derivatives Exchange Ltd. (Date of decision: July 23, 2019)*. The relevant portion of the said observations are under:

"2. Having heard the learned counsel for the parties and having perused the list of documents so required for inspection we are of the opinion that the documents sought for is nothing but a roving and fishing enquiry. We accordingly do not find any merit in the submission of the learned counsel for the appellant that these documents are essential for the purpose of filing an appropriate reply.

3. However, we are of the opinion that if any document is relied by the respondent while disposing of the matter such document should be made available to the appellant....."

12. Similar observations have also been made by Hon'ble SAT in the matter of *Shruti Vora Vs. SEBI (Date of decision: February 12, 2020)*. In the said matter, the appellant therein had challenged the rejection of her request to inspect all the documents collected during the

investigation. While rejecting the said challenge, Hon'ble SAT *inter alia* held : "...A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO." (emphasis supplied). Therefore, applying the ratio of the aforesaid orders in the present case, I observe that the demand of the *Notices* to provide them with the copy of investigation report and other material collected during the investigation is devoid of merit and has to be rejected since in the extant case, all the documents that have been relied upon in the SCN to make the allegations against the *Notices* have already been furnished to them along with the SCN itself. Moreover, as per the materials before me, no statement of any person has been recorded during the investigation, hence, the question of providing a copy of any statement does not arise. I find the SCN containing all the findings of Investigation relevant to the *Notices* based on which the allegation have been made therein and in support of those allegations all the relevant facts and documents have already been conveyed to the *Notices* through the SCN and its Annexures. Therefore, the demand of the *Notices* for a copy of Investigation Report and all documents etc., are found to *sans* any merit, hence rejected.

13. Moving on further, it is observed that adequate opportunities of personal hearing have been provided to all the *Notices*, however, the *Noticee nos. 4 to 9, 11, 12, 14 and 15* have neither filed any reply to the charges made in the SCN nor have availed the opportunities of personal hearing granted to them. I am therefore, of the view that as the said *Notices* have chosen not to respond to the SCN, it would be appropriate to proceed in the matter, based on materials available on record.

14. I have carefully perused the SCN along with its annexure as well as the submissions made by the various *Notices*. Based on these the records and submissions, I observe that in order to adjudge the charges levelled against the *Notices* in the SCN, the following issues needs to be addressed:

Issue I: Whether the Noticee nos. 4 to 15 enjoy connection with the Company and the Company through its connected entities/Notices devised a scheme to ensure the successful subscription of its IPO?

Issue II: Whether the proceeds of IPO have been utilized by the Company in terms of the Objects stated in the Prospectus?

15. Before adverting to the specific facts of the case, it is deemed appropriate to first refer to the provisions of SEBI Act, 1992 and regulations, which have been either alleged to be violated

by the *Notices* or are otherwise relevant for the present proceedings. The said provisions are reproduced hereunder for ready reference:

SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder.

SEBI (PFUTP) Regulations, 2003

Prohibition of certain dealings in securities

Regulation 3. No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

Prohibition of manipulative, fraudulent and unfair trade practices

Regulation 4 (1)

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

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

Minimum Subscription

14. (1) the minimum subscription to be received in an issue shall not be less than ninety percent of the offer through offer document:

Provided that in the case of an initial public offer, the minimum subscription to be received shall be subject to allotment of minimum number of specified securities, as prescribed in sub-clause (b) of clause (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957.

16. It is observed that the *Notices* in the matter have been alleged to be connected with the **Company** and fund transfer from the *Company* to the funding entities, both directly and indirectly, forms the primary basis for establishing connection amongst majority of the entities (*Notices*) apart from other attending factors such as common addresses, common directorship in companies etc., to corroborate such connections amongst the *Notices*. The said details of connections amongst various *Notices* as have been narrated in the SCN, are highlighted herein below:

Table 7: Details of connections

Sr. no.	Particulars	Connection - Fund Movement
1	Goldline International Finvest Ltd. (Goldline) (<i>Notice no. 4</i>)	<ul style="list-style-type: none">• Goldline had received IPO proceeds of INR 239.60 Lakh from Esteem Bio (<i>Company</i>).• Esteem Bio(<i>Company</i>)had transferred INR 245.00 Lakh to Eco Friendly Food Processing Ltd. ("ECO"), which was in turn transferred by ECO to Goldline.• Goldline had fund movement with Mayfair Infosolution Pvt. Ltd., Guinness Securities Ltd. and Sanjeev Agarwal.• Goldline had also fund movement with the entities who had funded to IPO allottees viz. AMS Powertronic Pvt. Ltd, Bright Securities, Columbia Sales.
2	Satendra Kumar	<ul style="list-style-type: none">• Nisha Traders had received funds from Magnum Industrial and Bright

Sr. no.	Particulars	Connection - Fund Movement
	<p><u>Proprietorship Firm</u></p> <p>Bright Securities</p> <ul style="list-style-type: none"> • A R Enterprise • Nisha Traders <p>(Notice no. 5)</p>	<p>Securities.</p> <ul style="list-style-type: none"> • Bright Securities had fund movement with Nisha Traders, Magnum Industrial, N V Sales Corporation, A One Furniture, Goldline and AMS Powertronic Pvt. Ltd. • Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. • Proprietorship firm of Sumit Kumar, Madhukar Dubey and Satendra Kumar were having common address.
3	<p>Madhukar Dubey</p> <p><u>Proprietorship Firm</u></p> <ul style="list-style-type: none"> • Alliance Traders • N V Sales Corporation • A One Furniture • Magnum Industrial <p>(Notice no. 6)</p>	<ul style="list-style-type: none"> • N V Sales Corporation had fund movement with Khan Enterprises, AMS Powertronic Pvt. Ltd. • A One Furniture had received funds from Magnum Industrial. • Alliance Traders had received funds from AMS Powertronic Pvt. Ltd., Mayfair Infosolution Pvt. Ltd., A One Furniture, N V Sales Corporation, Nisha Traders. • Magnum Industrial had received funds from ECO and A One Furniture. • Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi-110092. • Proprietorship firm of Sumit Kumar, Madhukar Dubey and Satendra Kumar were having common address.
4	<p>Ram Prakash</p> <p><u>Proprietorship Firm</u></p> <ul style="list-style-type: none"> • Khan Enterprises • Aggrawal Traders <p>(Notice no. 7)</p>	<ul style="list-style-type: none"> • Khan Enterprise had fund movement with Shiv Traders and Garg Traders & Suppliers. • Aggrawal Traders had received funds from the Goldline. • Ram Prakash is the common Director in following companies (as per MCA Database); <ul style="list-style-type: none"> i. Aavia Buildtech Pvt. Ltd. ii. Aavia Softech Pvt. Ltd.
5	<p>Aavia Softech Pvt. Ltd. (Notice no. 8)</p>	<ul style="list-style-type: none"> • It had fund movement with Mayfair Infosolution Pvt. Ltd., ECO, Goldline and Esteem Bio. • Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. have common address: 1/2486, Gali No. 26, Ramnagar, Modern Shahdra, East Delhi - 110032. (MCA Website)

Sr. no.	Particulars	Connection - Fund Movement
		<ul style="list-style-type: none"> Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. have common Director: 1) Kamal Singhal 2) Ramprakash Mr. Ramprakash is the proprietor of M/s. Khan Enterprise and M/s. Aggrawal Traders.
6	Mayfair Infosolution Pvt. Ltd. (Notice no. 9)	<ul style="list-style-type: none"> It had received IPO proceeds of INR 81.00 Lakh from the <i>Company</i>. It had fund movement with Aavia Softech Pvt. Ltd, Goldline, Esteem, AMS Powertronic Pvt. Ltd and Gracious Software Pvt. Ltd. Director Name :1) Sumit Kumar 2) Vinay Kumar Mayfair is connected with AMS Powertronic Pvt. Ltd., Nikky Printing Press Pvt. Ltd., through common Directors.
7	Avisha Credit Capital Ltd. (Notice no. 10)	<ul style="list-style-type: none"> It had received IPO proceeds of INR 15.50 Lakh from the <i>Company</i>. Further, it had fund movement with ECO, Goldline, ISF Securities Ltd., and Mayfair Infosolution.
8	Nikky Printing Press Pvt. Ltd. (Notice no. 11)	<ul style="list-style-type: none"> It had fund movement with Goldline, Mayfair Infosolution, AMS Powertronic and Madhukar Dubey. Director Name: 1) Sumit Kumar 2) Vinay Kumar Nikky Printing Press Pvt. Ltd. is connected with Mayfair Infosolution Pvt. Ltd, AMS Powertronic Pvt. Ltd., through common Directors.
9	Neel Kanth Trading Co. (Notice no. 12)	<ul style="list-style-type: none"> It had fund movement with AMS Powertronic Pvt. Ltd.
10	Ace Consultant (Notice no. 13)	<ul style="list-style-type: none"> It had fund movement with the ISF Securities Ltd and Goldline. Common Address with ISF Securities Ltd. Till March 2014, Brij Kishore Sabharwal (Director of Eco & Esteem Bio) was the director in ISF Securities Ltd.
11	Amsons Apparels Pvt. Ltd. (Notice no. 14)	<ul style="list-style-type: none"> It had fund movement with AMS Powertronic Pvt. Ltd., Goldline, Madhukar Dubey and Mayfair Infosolution Pvt. Ltd.
12	Gracious Software Pvt. Ltd. (Notice no. 15)	<ul style="list-style-type: none"> It had fund movement with Goldline and Mayfair Infosolution Pvt. Ltd.
13	Aavia Buildtech Pvt. Ltd.	<ul style="list-style-type: none"> It had received IPO proceeds of INR 40.00 Lakh from the <i>Company</i>. Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd., were having common address: 1/2486, Gali No. 26, Ramnagar, Modern Shahdra, East Delhi - 110032. Aavia Buildtech Pvt. Ltd. and Aavia Softech Pvt. Ltd. have common Directors: 1)

Sr. no.	Particulars	Connection - Fund Movement
		Kamal Singhal 2) Ramprakash. <ul style="list-style-type: none"> • Mr. Ramprakash is the proprietor of M/s. Khan Enterprise and Ms/. Aggrawal Traders.
14	Shiv Traders	<ul style="list-style-type: none"> • Shiv Traders had fund movement with Mayfair Infosolution Pvt. Ltd., Khan Enterprise, Neelkanth Trading, AMS Powertronic Pvt. Ltd., Aavia Buildtech Pvt. Ltd., Esteem Bio.
15	AMS Powertronic Pvt. Ltd.	<ul style="list-style-type: none"> • It had received INR 325.00 Lakh from the IPO proceeds of Esteem Bio. • It had fund movement with Mayfair Infosolution Pvt. Ltd., Goldline, Amsons Apparels Pvt. Ltd., N V Sales Corporation, Aavia Softech Pvt. Ltd., Nisha Traders, Shiv Traders, ECO, Aggarwal Traders, Madhukar Dubey, Esteem Bio. • Director Name: 1) Sumit Kumar 2) Vinay Kumar • Sumit Kumar is the common Director in AMS Powertronic Pvt. Ltd., Nikky Printing Press Pvt. Ltd. & Mayfair Infosolution Pvt. Ltd.

17. From the aforesaid tabular representation, as far as the IPO subscriptions are concerned, I note that the SCN makes allegations of connections that were being enjoyed by various *Notices* amongst themselves and largely the said allegations have been premised on fund transactions that were executed between various entities. For illustration, the *Notice no. 1* has been alleged to have transferred INR 239.60 Lakh from the IPO proceeds, to the *Notice no. 4* (Goldline). Further, it has also been alleged that an amount of INR 245 Lakh was transferred by the *Notice no. 1* to another company viz., Eco Friendly Food Processing Ltd., which in turn transferred the said amount to *Notice no. 4*. I note that similar to the above said allegation, *Notice no. 10* (Avisha Credit Capital Pvt. Ltd.) has also been charged for having received an amount of INR 15.50 Lakh from the IPO proceeds of the *Notice no. 1*. Further, the *Notice no. 15* also faces allegation of connection based on fund transfers with *Notice no. 4* and *Notice no. 9*.

18. It is observed that despite categorically imputing the allegation of connection based on fund movements and other factors, none of the *Notices* has been able to discharge the onus successfully by demonstrating that such transactions were not due to the alleged collusive nexus between them, but on account of some *bonafide* commercial reason. As noted above that many of the *Notices* have till date preferred to remain silent and have not filed any reply to the SCN. The *Notices* who have responded to the allegations made in the SCN, are also found to have made only various bald assertions and their denial of having any connection with the *Company* or with other entities has not been backed by any credible supportive evidences, so as to inspire

confidence in any of their explanations to counter the allegations of connections made against them in the SCN.

19. On a careful perusal of the replies filed by the *Notices*, it is observed that the *Notice no. 1* has simply tried to shrug off the allegations of connections with other entities by claiming that the fund transactions alleged in the SCN, took place out of commercial dealings, however, no verifiable documents such as balance sheets, invoices, TDS certificate, agreement/contract etc., have been produced before me to support such a tall claim of having transferred huge sums of money, viz : INR 239.60 Lakh from the IPO proceeds directly and INR 245 Lakhs indirectly (through ECO), to the *Notice no. 4* as a matter of so called commercial transactions. Similarly, *Notice no. 10*, which has claimed to be an NBFC has also made a bald and superfluous statement stating that it had provided funds to needy people, who had their own discretion to utilize such funds (in the manner they wanted). I note that the said assertions of the *Notice no. 10* have not been supported by any independently verifiable piece of evidence to lay credence on the arguments so advanced by it that it financed the needy people. No documents corroborating such loans & advances made by it to the needy people, such as the copies of applications made by such people to it for financial support, the purpose of such advances made, the subsequent recoveries of such advances with interest etc. have been made available to me to verify and get satisfied with their explanation. I would rather say that the said *Notice* being a NBFC appears to have acted in unprofessional manner, as no documents pertaining to said fund transfers, like nature of loan, rate of interest, period of loan, copy of agreement, copy of ITR etc., pertaining to the purported loan/advances extended in pursuance of its non-banking financial activities were furnished during the proceedings. Further, the reply of the *Notice no. 10* is conspicuously silent on the allegation that it had received INR 15.50 Lakh from the IPO proceeds of the *Company (Notice no. 1)*. There is no doubt that had such transactions were entered into in due course of its genuine NBFC business transactions, the *Notice no. 10* would have certainly been able to substantiate its claim through its records, but it clearly has failed miserably to do so and therefore, I have no hesitation in rejecting the submissions of the *Notice* in defense of its funding the IPO application as it has failed to disprove or controvert the allegations of its connection with the *Notice no. 1*, as well as with other *Notices* like *Notice no. 4* etc.

20. As regards the *Notice no. 13*, the SCN has proceeded to allege that the *Notice no. 13* had fund movements with the *Notice no. 4* and another company, namely ISF Securities (“ISF”). It

has further been alleged that the *Noticee no. 3* (Mr. Brij Kishore Sabharwal), who was a common Director of *Noticee no. 1* as well as of ECO, was also a Director of ISF. Hence *Noticee no. 13* is allegedly connected with the *Company* through *Noticee no. 3*.

21. As per the submissions made before me and the documents filed, Ace Consultant is a proprietorship firm of Ms. Sunita Khemka. While referring to the submissions of the *Noticee no. 13*, I find that it has not denied its connection with the *Noticee no. 3*. It has been explained that the said Ms. Sunita Khemka (prop. of *Noticee no. 13*) along with her family members owned majority shareholding of ISF and further she was one of the Designated Director of ISF. It has further been stated that *Noticee no. 3* remained as a Director of ISF for some time after the family members of the Ms. Sunita Khemka acquired the said company. It has however been contended that there was no personal or collusive nexus with the *Noticee no. 3* (Mr. Brij Kishore Sabharwal), who eventually left the Board of ISF. Insofar as the transactions with Goldline (*Noticee no. 4*) is concerned, the *Noticee no. 13* has vehemently argued that it had received an amount of INR 50.00 Lakh from *Noticee no. 4* (Goldline International) and the said amount was repaid to it along with interest @ 9%. In support of her contentions, the *Noticee no. 13* has submitted copy of bank account statement showing the relevant transaction entries, copy of Income Tax Returns and balance sheets etc. A perusal of the said documents reflects that the *Noticee no. 13* had received INR 25 Lakh each on January 15 and 17, 2013 from the *Noticee no. 4* and has also transferred back INR 15 Lakh each on March 03, 2014 and March 07, 2014. Similarly, through three separate transactions executed on June 25, 2014, July 08, 2014 and July 17, 2014, the *Noticee no. 13* has transferred back another sum of INR 25 Lakh to the *Noticee no. 4* and finally on July 26, 2014, an amount of INR 81, 917 has been transferred to the *Noticee no. 4*.

22. It is noted that apart from showing the payment of interest on the said amount, the *Noticee no. 13* has also credibly demonstrated before me that the said transactions were genuine loan transactions between *Noticee no. 4* and *Noticee no. 13*, as found to have been corroborated from various other documents, viz:- the Income Tax Returns and the balance sheets. It is noted that in the Income Tax Return of Ms. Sunita Khemka, M/s. Ace Consultant has been shown as her proprietorship firm and in the balance sheet filed along with it, certain amounts have been shown as unsecured loans, and the said amounts are way higher than the amount transferred by *Noticee no. 4* to *Noticee no.13*. Further, the detailed balance sheets of two years (as on March 31, 2013 and as on March 31, 2014), also mention about the loans taken from Goldline, which in the subsequent year (March 31, 2014), gets reduced from INR 50, 92,465 to INR 25,22,492,

apparently, due to the payments of INR 30 Lakh made till March 07, 2014, as noted in the previous paragraph. Therefore, when all the documents are considered holistically, in my view the *Noticee no. 13* has succeeded in discharging the allegations that its financial transactions with the *Noticee no. 4* (Goldline International) were loan transactions, as have been corroborated by verifiable documentary evidence produced by the *Noticee no. 13* before me. Under the circumstances, I am persuaded by the aforesaid documentary evidences that the allegations of dubious funds transaction with *Noticee no.4* stands adequately clarified or defended by the *Noticee no.13*.

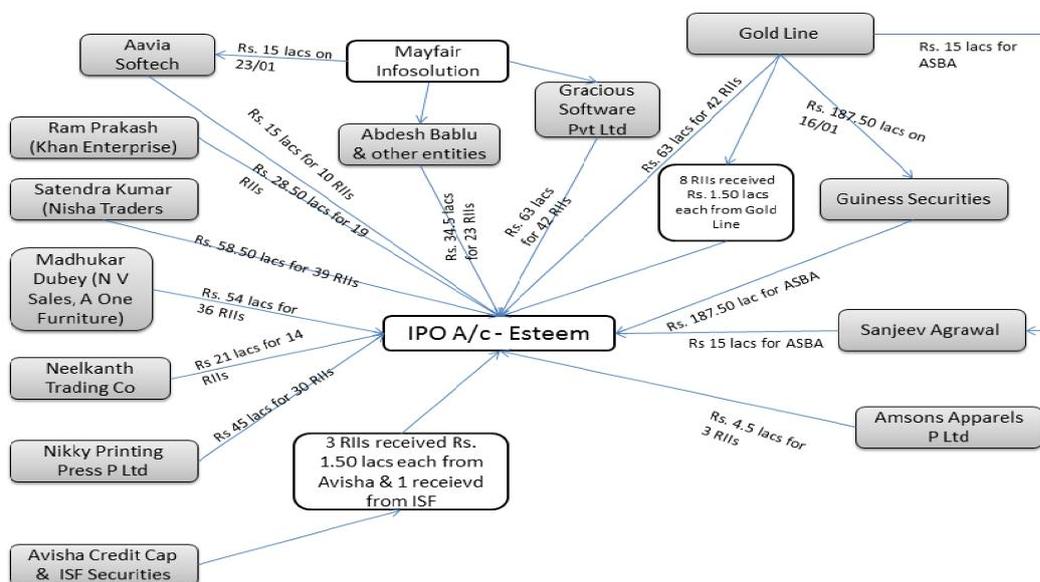
23. I further note that apart from its financial transactions with *Noticee no. 4*, the SCN alleges that the *Noticee no. 13* had fund transfers with ISF and also shared its address with ISF. I note that the natural person (Ms. Sunita Khemka) behind the *Noticee no. 13* (as a proprietor of the firm), was admittedly also a Director and a majority shareholder in ISF in which *Noticee no. 3* was also a Director. Undoubtedly, proprietorship of a firm is inseparable cannot be taken away from the proprietor of such firm, who in the present case also happened to be a Director and shareholder in ISF, hence the connection between *Noticee no.13* (a proprietorship firm of Ms. Sunita Khemka) and *Noticee no. 3* (Mr. Brij Kishore Sabharwal) is inevitably clear and settled. It has been contended before me that in the initial transition days of acquisition of ISF by Ms. Sunita Khemka and her family, it was thought proper to let *Noticee no. 3* continue for a while as a Director of ISF to retain retail clients of the said company and the *Noticee no. 3* eventually ceased to be Director of ISF w.e.f March 21, 2014. I find such an explanation is completely baseless offering no justification of continuation of *Noticee no.3* as a Director of a company acquired by the proprietor of *Noticee no.13* since the services of *Noticee no. 3* could have been availed in any other form also to retain retail clients, instead of allowing him to continue as a Director of the *Company*. Irrespective of the aforesaid, in my view a close connection between *Noticee no.3* and *Noticee no.13*, is now established beyond doubt.

24. The details of connections amongst the rest of the *Notices* have already been enumerated in the Table no.7 above and in the absence of any plausible explanation offered by such persons/*Notices*, I am constrained to conclude that the allegations that these entities were enjoying a close connection amongst themselves stand vindicated based on the common factors indicated in the Table no. 7, more particularly in the light of the fact that basis of such alleged connections has been derived from tangible factual supports like common directorships, common addresses and fund movements etc., observed amongst these *Notices*.

25. I note that as per the regulatory framework prevailing at the relevant point of time when the *Company* came out with its IPO, in order to apply for the equity shares of the *Company* under its IPO, the prospective investors were given option either to file application along with payment of consideration by cheque or to avail the facility of ASBA i.e., - Application Supported by Blocked Amount, which entails blocking of the amount of consideration in the account of applicant till allotment of shares by the *Company*.

26. As noted earlier, the SCN has alleged that various funding group entities had funded large number of applicants under the IPO of the *Company* and based on the support of such funding, shares were allotted by the *Company* to such applicants. The SCN also enumerates the details of such funding in a graphical representation, which is reproduced herein below:

RII: Retail Individual Investor



27. I observe that in majority of such cases, the funding group entities are seen to be transferring money directly to the IPO account of the *Company* on behalf of multiple investors. For an illustration, *Noticee no. 4*, Satendra Kumar through his proprietorship firm viz., Nisha Traders, had transferred INR 58.50 Lakh to the *Company's* account on behalf of 39 investors (IPO applicants). Similarly, *Noticee no. 15* has been noticed to have transferred INR 63 Lakh to the *Company* on behalf of 42 IPO applicants. I note that entities like *Noticee no. 4* (Goldline) have not only transferred funds directly to the IPO account of the *Company* (e.g. INR 63 Lakh paid on behalf of 42 investors) but also had provided funds to certain other entities, who in turn

have used such funds to finance the IPO applications either in ASBA mode or paid application amount directly to the *Company* by way of cheque on behalf of IPO applicants, out of the funds so received from the *Noticee no. 4*.

28. I note that neither the ultimate recipient of the funds, i.e., the *Company*, nor the transferor of the funds, i.e., the funding group entities on behalf of various IPO applicants, have furnished any justification for such fund movements in their accounts on behalf of the applications filed by large number of third party unrelated applicants. It is pertinent to mention here that the *Company* has allotted shares to those applicants whose applications were supported by cheques issued by various third- party funding group entities (and not by the applicants themselves) which was grossly against the norms governing the issue of shares under IPO.

29. Having found that the *Noticees* have prima facie enjoyed *inter se* connections amongst themselves as alleged in the SCN, I note that the other connected leg of the allegation pertaining to the funding of IPO applicants by the funding group entities and their direct and indirect funds movements with the *Company* indicating that the *Company*, out of the IPO proceeds so received by it in the IPO, has transferred huge amounts of money to many of the funding group entities also stands on solid factual evidence. I have already placed a graphical representation at para 2 (viii) of this order showing the transfer of funds from the IPO proceeds of the *Company* to various entities which included funds transfers to certain funding group entities.

30. Curiously, I find that the *Company* has offered no justification whatsoever to provide an insight as to why did it accept cheques directly from various third parties on behalf of large number of individual IPO applicants, who even apparently were not related to those third party funding entities. It is observed that the *Company* has evaded this aspect by claiming that transactions executed by other parties should not be used to attribute misdeed on the part of the *Company* as it has no control on such third parties. I find such an explanation to be casual, evasive and irresponsible, as the third party funding transactions that have been imputed here have in fact led to allotment of huge number of shares under its IPO. I note that both the transferor and transferee of funds were under an obligation to furnish justification supported by documentary evidence so as to show that the transactions were genuine commercial transactions. However, there is a clear failure on the part of the *Company* as well as the funding group entities in defeating the allegations of SCN. In view thereof, I find the *Company* has miserably failed to demonstrate as to why it accepted the payments directly from third party

funding group entities (instead of from the applicants). When the payment for applications was made on behalf of RIIs by third party entities, not only the *Company* accepted such applications, but also proceeded to allot shares to such RIIs under its IPO. The *Company* therefore ought to explain its misconduct and irregularities with justification to defend the *bonafide* of such transactions, but it has not been able to explain the rational of such transactions before me.

31. I note that most of the funding group entities have remained absent from the proceedings of the present matter and even all of those who participated, have not been able to justify their fund transactions. For illustration, as pointed out earlier in this order I find that when the *Noticee no. 10* was confronted with the charges of funding 3 entities(applicants/investors) to the tune of INR 4.5 Lakh for their IPO applications, it has made a shallow statement that it has provided funds to some needy persons, in pursuance of its business activity of non-banking financial company. It has further been argued by them that the recipient of the funds had their discretion to utilize such funds (over which it had no control). However, as I have observed before, the *Noticee no.10* has neither furnished any particulars of such advances having been made to such needy people who applied for shares of the *Company* under its IPO nor has provided any documentary evidence so as to substantiate its claim of having transacted with those people in course of its activities as a NBFC.

32. Insofar as the *Noticee no. 13* (Ace Consultant) is concerned, I note that it faces the allegation of having funded one ASBA applicant, who was eventually allotted shares under the IPO of the *Company*. In this regard, the *Noticee no. 13* has argued that the allegations do not have merit as it was the proprietor of the *Noticee no. 13* itself, viz., Ms. Sunita Khemka, whose application has been alleged to have been funded by the *Noticee no. 13* (her proprietorship firm). I further observe that the *Noticee no. 13* has filed various documents like copy of bank account statements, income tax returns etc., in its support to justify the movement of fund on behalf of its proprietor.

33. I have carefully perused the allegations against the *Noticee no. 13* and its submissions to counter the said allegations. At the outset, it is noted that the *Noticee no. 13* is facing a limited allegation of having funded one ASBA applicant and there is no charge levelled against the *Noticee no. 13* to have received the funds from the IPO proceeds of the *Company* or to have funded other IPO applicants. Further, in order to verify the claim of the *Noticee no. 13*, I have perused the annexure to the SCN containing details of IPO allottees who got funding from the funding group entities. In the said list, the name of Ms. Sunita Khemka, proprietor of *Noticee no.*

13 finds mention at Serial no. 225, who was allotted 6000 shares of the *Company* with the financial backing of Ace Consultant and ISF Securities. In this connection, as has already been observed by me while adjudging the allegations of connections shared by *Noticee no.13* with other *Noticees*, the three entities, viz., ISF Securities, Ace Consultants and Ms. Sunita Khemka are certainly and admittedly connected with each other since, Ms. Sunita Khemka is the proprietor of Ace Consultant and shareholder Designated-Director of ISF Securities.

34. Be that as it may, for the purpose of allegation under reference, I have to evaluate the transaction based on which allegations have been made against the *Noticee no. 13* that it had transferred INR 1.50 Lakh to Ms. Sunita Khemka, who utilized the said amount for making application under IPO and got the allotment of shares of the *Company*. It is an obvious fact that the *Noticee no. 13*, being the proprietorship firm of the individual, Ms. Khemka has transferred funds for making IPO application in her name. As per extant legal framework; the proprietor and the proprietorship firm are considered one and the same, undistinguishable from each other for all legal, taxation and practical purposes. Further, there is no provision to enable a proprietorship firm to be an IPO applicant in exclusion of its proprietor. In the present case, the *Noticee no. 13* has filed copy of ITR of Ms. Sunita Khemka for 2 years wherein the details of the *Noticee no. 13*, as proprietorship firm of Ms. Sunita Khemka, have been duly captured, which in the absence of any other contradictory evidence, have to be accepted. Therefore, as the allegations against *Noticee no. 13* are limited to funding the IPO application of its own proprietor, the said charges are not maintainable in view of the factual support and legal framework, as discussed above.

35. Adverting to the allegation against the *Company* and the other *Noticees*, it is noted in the SCN that the *Company* has with the help of its connected entities, funded large number of IPO applications and has effected subsequent allotments of shares to those investors. As can be seen from the narrative of the SCN, out of 450 retail applicants, applications of as many as 270 applicants were funded by the funding group entities and out of the said applications, a total number of 238 applicants got allotment of 14,28,000 shares from the *Company* under its IPO. Another set of 96000 shares were also funded indirectly. Further, the market maker category also was fully funded since one market maker, who was allotted 7,50,000 shares was also funded by *Noticee no. 4* (Goldline) and similarly, in the HNI category, out of total 11,46,000 shares allotted, application of one HNI for 60,000 shares was funded by the *Noticee no. 4*. Thus, in total, out of 45,18,000 shares allotted by the *Company* under its IPO, the allotment of 23,34,000 shares

was funded by the funding group entities, which comes to 51.66% of the total shares allotted, while all the funding group entities have been found to be directly/indirectly connected with the *Company* itself.

36. As the *Company* and its connected entities were the major financial source behind the IPO applications of a huge chunk of 51.66% of the total shares allotted, it is apparent that but for the aforesaid financial support/funding made by the *Company* and its connected entities, and only due to the concerted efforts made by them in funding such large number of applicants, the quantum of application of the IPO of the *Company* was able to cross the mandatory and regulatory threshold of 90% of the shares offered, in terms of Regulation 14(1) of ICDR Regulations. Thus, if the *Noticees* had not by their covert act of providing funding to the large number of IPO applicants played their respective roles in the scheme that involved such a concerted effort by all the connected entities, the *Company* would have miserably failed to achieve the requisite minimum applications of 90% of the shares offered under its IPO. Consequently, the *Company* would have been forced to drop the issue of its equity shares and would have been statutorily liable to refund the rest of the money collected from the other non-funded subscribers/applicants and the IPO would have been declared as a failed IPO. Hence, without the support from a pre-conceived scheme and the players (all the connected entities) who participated in the said scheme to make the IPO a success story, the issuance of equity shares of the *Noticee no. 1* would not have seen the listing platform on the SME segment of the stock exchange.

37. It has strongly been contended on behalf of the *Company* that the charge of providing funding in order to achieve the minimum applications of 90% has not been made based on any evidence available on record and annexed with the SCN. The *Company* has argued that the charges of ensuring subscription through funding of the IPO applicants are erroneous for the reason that the IPO was 100% underwritten. The *Company* has also furnished the copy of the Underwriting Agreement in support of the said contention.

38. At this stage, I observe that there was no need for the *Company* to even refer to the underwriting agreement, had the *Company* and/or the other *Noticees* were able to show an *iota* of *bonafide* in their transactions thereby successfully controverting the allegations of funding the IPO applicants who were allotted shares by the *Company*. The details of funding made by the *funding* group entities need no further discussion in this order, as the same have already been

elaborated earlier and have been found to be uncontested by any of the submissions of the *Notices*.

39. Without *prejudice* to the above, in order to deal with the argument pertaining to the Underwriting Agreement, its relevant clauses are reproduced hereunder:

“2. Underwriting

On the basis of representations and warranties contained in this Agreement and subject to its terms and conditions, the Underwriter hereby agrees to underwrite and/ or procure subscription for the Equity Shares in the manner and on the terms and conditions contained in Section 5 of this Agreement.

.....

5. Issue

5.1 Notwithstanding anything contained elsewhere or otherwise in this Agreement, the Company agrees that the maximum number of Equity Shares in the Issue that the Underwriter have to underwrite is 45,00,000 Equity Shares, which is allocated as under:

<i>Name of the Underwriter</i>	<i>No. of Shares Underwritten</i>
<i>GMBPL</i>	<i>37,50,000</i>
<i>GSL</i>	<i>7,50,000</i>

5.2 In the issue, Underwriter shall only be responsible for ensuring completion of the subscription in respect of such applicants, including ensuring full payment of the issue Price in respect of the Equity Shares for which such applications are made, in the manner set forth in this Section.

5.2.1 The default in full and timely payment of the Issue Price in respect of the Equity Shares for which the applicant has placed a application and received allocation in respect of such application; or

5.2.2 The withdrawal of a applicant, in respect of which an allocation of Equity Shares has been made, by the applicant prior to allotment of the Equity Shares subscribed by such applicant;

5.3 The Underwriter shall be liable to discharge its underwriting obligations as follow:

The Underwriter will be required for themselves, to the extent of applications procured by them, to make good any default by such applicants.”(underlines supplied)

40. The *Company* has sought to draw strength from the aforesaid Underwriting Agreement by contending that based on such an agreement alone, the charges of the SCN would fail. I have carefully perused the contents and have gone through the aforesaid relevant clauses of the Underwriting Agreement. As can be deciphered from the afore stated clauses, the agreement casts limited obligation on the underwriter, only to such applications which would have been procured by it (the underwriter) and the said liability is further restricted only to those cases, where the applicant would default in the payment or withdraws his application. The clauses of

the agreement nowhere provide for any omnibus provision which could support the contention of the *Notices* that by virtue of Underwriting Agreement being in place, the underwriter was under contractual obligation to subscribe to the entire unsubscribed portion of the IPO, so as to cross the minimum threshold of 90% of the offer size of the IPO. Therefore, the *Company* has not been able to demonstrate as to how the Underwriting Agreement can lead to an absolute *prima facie* presumption that there was no necessity on the part of the *Company* to conceive any plan or scheme to arrange funding for its IPO applicants as alleged in the SCN, so as to absolve it from the charges of arranging funds with the connivance of connected funded group entities. Even after considering that the aforesaid clauses of the Underwriting Agreement did provide some comfort to the *Company* in the matter of subscribing against the defaults in making payment by some of the applicants, the unassailable facts remain that the *Company* and its connected entities were indeed involved in providing funding to as much as 51.66% of the total shares allotted and in the absence of such efforts made by the *Company* and its connected entities in an organized manner, the IPO of the *Company* was bound to fail.

41. In view of the aforesaid discussions, I observe that on a holistic assessment of the financial transactions that have taken place between the *Company* and various funding group entities as highlighted above, that have neither been disputed nor could be substantiated with any tangible justifiable reasons by the *Notices* and additionally looking at the non-response of large number of *Notices* to the SCN, the preponderance in all probabilities that emerges is unabashedly tilted in support of the allegation of the SCN that the *Company* and its connected entities have indeed acted upon a pre-mediated scheme to fund large number of IPO applicants in order to garner the statutory minimum number of applications so as to make the IPO successful. Thus, as far as the first issue for consideration is concerned, I am clear that the same has to be answered affirmatively against the *Notices* and in favour of the allegations made in the SCN. I shall now deal with the second issue to cover the next set of allegations that the after completion of the IPO process, the *Company* transferred the IPO proceeds to various funding group entities in deviation from the objects of IPO prospectus.

Issue II: Whether the proceeds of IPO have been utilized by the Company in terms of the Objects stated in the Prospectus?

42. It is noted from the SCN that the *Company* had raised an amount of INR 11.29 Crore (approx.) by allotting 30.20% of its post issue capital. The shares were allotted at the issue price of INR 25 per share and the said shares got listed on the BSE-SME segment after the process

of IPO was over. During the investigation conducted by SEBI, the *Company* was asked to provide the details of utilisation of the IPO proceeds and in response thereto, the *Company* vide its letter dated December 25, 2015, furnished the break-up of the utilisation of IPO proceeds, as on March 31, 2015. The said details are already captured under Table 2 of the present order and are not being repeated herein for brevity.

43. As can be noted from the details of the Table 2, the *Company* had claimed to have utilised INR 3.75 Crore *towards* setting up of a Shade Net Cultivation facility; INR 5.64 Crore towards development of farm land; INR 99.67 Lakh towards investment in short term advances and another set of amounts towards certain other expenses like Brand building etc.

44. I note that on the basis of *prima facie* observations recorded in the course of investigation the *Noticee Company* was categorically pointed out to the fact that it has transferred the IPO proceeds to the funding group entities as a pay back to those entities which helped the *Company* in achieving the minimum subscription threshold of 90% to ensure a successful listing of its securities. In the aforesaid context, it goes without saying that the *Company* was under obligation to counter the charges made in the SCN with cogent reasons and supporting documents so as to substantiate the trail of funds out of the IPO proceeds, justifying the utilisation of IPO proceeds on the lines as stated under the object clause of the Prospectus. However, the *Company* has not been able to provide a complete picture of the utilisation of the entire amount of IPO proceeds in any of its replies.

45. It is observed that, the *Company* had, during the investigation, filed certain details of utilisations such as: (i) INR 3.75 Crore towards setting up of shade Net cultivation facility; (ii) INR 5.64 Crore towards development of farm land; (iii) INR 29 Lakh towards purchase of tools etc; (iv) INR 30 Lakh towards Brand building; (v) INR 31.28 Lakh towards Issue expenses; (vi) and INR 99.67 Lakh claimed to have been invested in short term loans On the other hand contrary to the aforesaid claims made during the investigation., as noted in the SCN, the *Company* was found to have actually transferred almost the entire proceeds so raised in the IPO to different entities soon after the completion of the IPO . Further out of the said transfers, as much as INR 5.80 Crore has also been transferred to a few of the funding group entities. The *Company* has offered no explanation or subsequently no reasoning to explain as to why in its submission made during the investigation were subsequently found to be not supported by any verifiable evidence and instead the same is found to be a false claim on the face of the actual funds transfers that have taken place in its accounts post IPO exercise.

46. In so far as the expenses claimed to have been incurred towards one of the stated objects of the Prospectus viz., development of farm land for transition to organic farming is concerned, it is noted from the Prospectus that the *Company* had stated to have taken a land admeasuring 295.80 Acres in the year 2008, on a lease for the period of 99 years which commenced from 01.03.1933. The *Company* has claimed to have paid INR 5.60 Crore to 4 different firms for the purpose of development of portions of the afore stated piece of land, by executing exactly identical agreements with each of such four entities. It is noted from the records that apart from the agreements, the *Company* has also filed copies of bank account statements, invoices, ledger to justify the above noted payment of INR 5.60 crore etc. The details of said agreements with respective funds transfer with the 4 entities are tabulated as under:

Table 8: Details of land development agreements

Sr. no.	Name of the entity	Amount (in INR)	Supporting documents	Dates of transactions
1.	Raj Marketing India	1,84,41,000	Copy of agreement; Copy of invoices; Ledger of the said company in the books of accounts of the <i>Company</i> , bank account statement	50 Lakh on 12.10.2012 15 Lakh on 20.10.2012 60 Lakh on January 15, 2013
2.	Garg Traders and Supplies	60.00 Lakh	-do-	60 Lakh on 15.01.2013
3.	S.P. Enterprises	1.00 Crore	-do-	40 Lakh on 19.12.2012 60 Lakh on 15.01.2013
4.	Shiv Traders	2.16 Crore	-do-	17 Lakh on 05.10.2012 50 Lakh on 08.10.2012 50 Lakh on 12.10.2012 39 Lakh on 15.10.2012 60 Lakh on 15.01.2013
Total		5.60 Crore (approx.)		

47. A bare perusal of the aforesaid agreements produced by the *Company* shows that those are actually un-notarized agreements which were executed on the letter head of the *Company* and not even on a stamp paper. Strangely enough, the *Company* had decided to part with such an amount constituting more than 50% of the money raised from the public through certain agreements recorded on a plain and un-stamped and un-notarized piece of paper which renders their documents ab initio unenforceable in law. It is also seen that the contents of all the four agreements are identically worded. The *Company* did not pay heed to get these agreements registered/notarized, so as to safeguard its interest in case of any future dispute/default from the counter party. Again, from those agreements, it is not clear as to who is the executant on behalf of the second parties, viz., Raj Marketing, S P Enterprises etc. There is also no witness to those agreements meaning thereby, these agreements do not possess any qualities to be called as valid and lawfully enforceable documents.

48. Another factual contradiction/discrepancy noticed in the submissions of the *Noticee Company*, is the dates mentioned in those unenforceable agreements. For illustration, the agreement with Raj Marketing India Limited, proprietorship firm based in Ghaziabad is meant for development of 97.34 acres of land, and it carries date of execution as April 02, 2012. It may be recalled here that the *Company* came out with its IPO only in January, 2013. Thus, after raising money through the IPO in January, 2013, a document which was purportedly executed almost 9 months prior to the IPO has been shown in support of the *Company's* claim of having utilized the IPO proceeds (raised 9 months after the date of execution of the said document) for the aforesaid object of IPO. I observe that the said agreement, if was really executed prior to the IPO, should have been mentioned in the disclosures made by the *Company* in its IPO prospectus. However, the Prospectus filed by the *Company* does not contain any detail of such an agreement having been executed by the *Company*. The aforesaid observation assumes crucial significance in the calling the *Company's* bluffs as the purpose behind executing the said invalid agreements, i.e., to meet the object of land development of farm land for transition to organic farming, is in fact the major object disclosed in the Prospectus. The *Company's* claim of deploying the aforesaid amount of INR 5.60 crores to meet the above noted object of IPO through those invalid unenforceable agreements with the 4 entities, is clearly found to be a false, fictitious and concocted claim, without any substance.

49. It is further pertinent to mention here that the *Company* in its Prospectus had stated as: “*The Company has so far not entered into any technical or financial collaboration agreement*”. Further, in yet

another disclosure, the *Company* had stated that it has not entered into any agreement with suppliers of soil bed etc. The said clause reads thus: “*We have not entered into any agreement with the suppliers for supply of soil bed, shade net cultivation etc. for the Project, we have also not entered into any contract with contractors as specified in the Objects of the Issue. Any delay in entering into such agreements may delay the implementation schedule, which may also lead to increase in prices of the equipment and machineries in future affecting our costs, revenue and profitability.*”

50. I find that the Prospectus contains a reference to the quotation given by Raj Marketing for Land Development at the rate of INR 127 per Sq. Meter, however, the agreement referred to above, which has been supposedly executed 9 months before the IPO, has been executed for Land development (total consideration of INR 1,84,18,000 for 97.34 Acres/393,920 Sq. Meters) at the rate of INR 46.75 per Sq. Meter. Thus, in a short span of time, the price for land development has been shown to have increased multi fold in the IPO documents.

51. Further, as can be easily deciphered from the dates of fund transfers mentioned in the table above, except for few transactions amounting to INR 2.40 Crore, all the remaining fund transactions were executed by the *Company* in the pre-IPO period. For illustration, the *Company* has projected to have paid INR 2.16 Crore to Shiv Traders out of the IPO proceeds for land development, however, out of the said amount, all the transactions (mentioned in serial no. 4 of the table), except for one transaction of INR 60 Lakh, were executed during October, 2012. Thus, the *Company* has clearly attempted to claim its pre-IPO transactions with those entities for its explanations for utilization of proceeds of IPO which creates an incongruous and contradictory situation that can hardly justify the utilization of IPO proceeds.

52. After noting the above said factual contradictions, I further note that although the *Company* has claimed to have executed the agreements of large values, they are not supported by any documents pertaining to Board level processes, approval by the Board of Directors, Board resolutions, document in nature of authorization in favour of the executant of the agreement, disclosures to stock exchange etc. Similarly, the execution of these agreements is also not found to be supported by any statutory documents nor the *Company* has demonstrated crucial compliances like approval of layout/Land development plan from local authorities, incorporating such amounts of transfers in the balance sheets, profits/losses arising out of such agreements as required to be mentioned in *Company's* book of accounts, deduction of tax at source from the payments made to those vendors, TDS certificates issued by it etc.

53. I also note that notwithstanding the fact that the so called agreements have been signed by the *Company* on its letter head, these agreements undoubtedly deal with complex work of development of large tracts of land parcels owned by an incorporated entity. However, from a perusal of those agreements, it is noted that no fixed time frame has been laid down for completion of the work of development of those vast portion of land. The *Company* has also not been able to produce before me even the least minimum evidence like possible photograph of the Land etc., so as to demonstrate the development carried out/or being carried out on the said land by the said developer, ever since those agreements were executed. The *Company* had come out with the IPO in the early part of 2013 and yet it appears that the project has not yet even commenced till date, leave alone the completion of the same. It is also observed that each of the four agreements has been executed with respect to development of a small piece of land, out of the entire land admeasuring 295.80 Acres, owned by the *Company*. However, surprisingly enough, none of these agreements mentions any details with respect to the exact identification of those small parcel of land assigned to each of the 4 vendors entities and basic information such as survey numbers etc., are also conspicuously missing in those agreements.

54. To sum up, I note that the *Company* has attempted to justify its huge financial transactions involving development of farm land for transition to organic farming, aggregating to almost half of the IPO proceeds, by producing unverifiable documents like unregistered/un-notarized self-generated agreements recorded on its letter heads, self-generated invoices etc. which have no legal sanctity nor are they enforceable in a court of law. Moreover, the *Company* has not been able to furnish any statutory documents like approved development plan, payment of land revenue/property tax, audited balance sheets showing the aforesaid transactions pertaining to land development, evidence of deduction of TDS from payment made to the counter parties/contractors etc., in support of its claim that those transfers of large sums of amounts were indeed meant for the land development of farm land for transition to organic farming. The *Company* has not been able to show any corresponding revenue earned out of such agreements and payments made to various parties or any latest status report with respect to the development of the said land even after 7 years of executing those so called agreements. Moreover, the *Company* has not even identified the respective portions of land, the development of which was entrusted to those 4 entities under those fabricated agreements. Thus, I find that the claim of the *Company* that it has spent INR 5.60 Crore towards one of the most important stated objects, of its IPO i.e. development of land for organic farming, is grossly misleading,

lacking any genuineness as the *Company* has not been able to produce even elementary evidentiary material and basic documentary support which could have substantiated the rationale behind transfer of such large sums of amounts out of IPO proceeds to various entities. Instead, the explanations offered by the *Company* to justify these transfers of funds to those entities are replete with contradictions, hence cannot hold any value.

55. In the light of the observations recorded above, I am constrained to hold that the aforesaid invalid agreements cannot provide any respite to the *Company* in defending such a serious charge made in the SCN about non-utilization or rather wrongful utilization of IPO proceeds in deviation from the stated objects as per the prospectus of IPO. As already observed earlier, the so called agreements executed by the *Company* on its internal letter head in an un-notarized form suffer from serious infirmities hence *prima facie* do not appear to be genuine, hence, in my view, *the Company* has not been able to justify the transfer of INR 5.60 Crore out of the IPO proceeds.

56. Moving on to the next claim of the *Company*, I find the *Company*, in its reply, has claimed to have extended an amount of INR 4.40 Crore as ‘short term loans’ to 4 entities with following details:

Table 9: Details of advances extended by the Company

Sr. no.	Name of the entity	Amount (in INR)	Documents
1)	GDR Finance and Leasing Pvt. Ltd.	2,80,68,000	Ledger account, bank account statements and Form 26 AS
2)	AGI Hospitalities Pvt. Ltd.	10,00,000	-do-
3)	Mammon Concast Pvt. Ltd.	10,00,00,00	-do-
4)	Saroj Mittal	50,00,000	Ledger account and bank account statements
Total		4,40,68,000	

57. In this regard, I observe that out of the 4 entities, the *Company* had transferred funds to 3 entities in the year 2013 itself, immediately after receipt of funds from the IPO. Ironically even

after passage of 7 years, the *Company* is still claiming these advances as “short term”, which is nothing but in contradiction with the disclosures made in the IPO Prospectus, and also falls far short of being termed as a short term loan transaction from any perspective. There is no second view that a company which raises funds from the public by offering its securities, is obligated to disclose the true objects of such issuance and also to adhere to the said stated objects. In the present case, the *Company* had not disclosed in the objects of IPO any intention to extend short term loans to any entity however, in deviation from the stated objects it has gone ahead in advancing short-term loans of such large amounts to those four entities. The information submitted by the *Company* during investigation had only stated about Investment in short term advances for an amount of INR 99.67 Lakh, which is not the same as advancing short term loans and admittedly the amount of such loans is INR 4.40 Crore which is far higher than the amount of INR 99.67 Lakh, as noted above. Thus, the transfer of IPO proceeds amounting to INR 4.40 Crore towards short term loans is certainly an act done by the *Company* outside the declared objects of IPO behind the back of the public shareholders. Further, the *Company* has also not bothered to provide any details on the recovery status of those so called short term loans which have remained outstanding for recovery even after 7 years of advancing them to those four entities. In sum, the *Company* has failed to satisfy me on utilization of the said amount of INR 4.40 Crore towards the stated objects of IPO as disclosed in the prospectus.

58. I also note that the *Company* has not mentioned anything about spending of even a single rupee on the stated IPO objects like ‘Setting up of Shade Net Cultivation facility’, ‘Procurement of farm tools and equipment’s’ and ‘brand building’. I note that the *Company* in its Prospectus, had claimed that it had a plan to spend INR 3.80 Crore, INR 30.00 Lakh and 80.00 Lakh, respectively, for the aforesaid objects. Not only in the Prospectus, even in the communication addressed to SEBI during the investigation, the *Company* had asserted to have already spent INR 3.75 Crore, INR 29.06 Lakh and 30.00 Lakh respectively on the above said three objects. However, from the records filed during the present proceedings before me, the *Company* has not furnished details of any such expenditure having been incurred under the aforesaid three heads. Thus, the claim of the *Company* with respect to the utilization of IPO proceeds on the above stated objects also is found to be false, evasive and misleading.

59. Having found that the *Company* has not been able to demonstrate appropriate utilization of the IPO proceeds on the lines of the stated objects in the prospectus, the *Company* has to be confronted with the allegations of having transferred/diverted the IPO proceeds to various

entities including the funding group entities who have funded the IPO applications of large number of applicants. The *Company* could have easily confronted the said charges with strong evidence to the contrary by showing that the utilization of the funds from the IPO proceeds has actually been made for the right purposes and declared objects as per IPO documents, but as recorded in detail above, none of the claims of the *Company* about utilization of IPO proceeds was found to be true and duly substantiated with any verifiable evidence and the explanation offered by the *Company* were found to be rather specious, manipulative and baseless. Under the circumstances, it becomes clear that the *Company* has fraudulently diverted the IPO proceeds towards some other inexplicable purposes which were never disclosed to the public shareholders in the IPO documents. Therefore, in this context it becomes crucial to discuss in detail the fund transfers made by the *Company* to various funding group entities, which would again contradict and demolish the claim of the *Company* about utilization of IPO proceeds as per the stated objects.

60. As discussed in the previous paragraphs, the *Company* in its written replies has stated that an amount of INR 5.60 Crore has been utilised towards land development agreements, apart from advancing short term loans of INR 4.40 Crore. Thus, as per the *Company's* replies the total amount of IPO proceeds utilised towards the land development agreements and short term loans aggregates to INR 10 Crore. However, it is seen from the records that the *Company* has not provided any details with respect to the transfer of INR 4.84 Crore made to *the Noticee no. 4* (Goldline) and also with respect to various other amounts which were transferred immediately after receiving in the IPO proceeds. Even if the aforesaid submissions of the *Company* are taken on their face value, the amounts of funds transfers as per the claim of the *Company* in the submissions at the stage of investigation and the amounts of funds transfer as per the explanation offered by the *Company* during the present proceedings do not reconcile at all. I note that even during the present proceedings, the *Company* has not been able to furnish any information whatsoever with respect to the expenses incurred towards setting up of net cultivation facility, purchase of tools, brand building etc., towards which, the *Company* had claimed to have spent INR 4.34 Crore, as on March 31, 2015 during the investigation proceedings. It is thus clear that the *Noticee no. 1 (Company)* has not come out with clean hands and has tried to mislead SEBI by coming out with different contradictory explanations and claims at different stages of the proceedings about the utilisation of IPO proceeds while none of

the submissions made at different points of time have any strength to rebut the allegations made in the SCN.

61. Against the aforesaid deficiencies and inconsistencies noted in the explanations and submissions made by the *Company* with respect to the utilisation of IPO proceeds, it may be relevant here to mention that out of the total amount of INR 11.25 Crore raised in the IPO, the *Company* had transferred a total of INR 4.84 Crore to Goldline, i.e. the *Noticee no. 4* (INR 2.39 Crore were transferred directly and INR 2.45 Crore were transferred indirectly through ECO). The *Company* has simply termed the said transaction with *Noticee no. 4* (Goldline) to be a commercial transaction without even attempting to provide any details of those commercial transaction involving such a huge sum of public money and the *Company* has not even claimed if the above amounts transferred to Goldline were in compliance with any of the stated objects of IPO. It is observed that the said amount of INR 4.84 Crore constituted around 43% of the total amount raised by the *Company* but the *Company* has not been able to provide any justification for transferring such huge amounts to *Noticee no.4*. Similarly, the *Company* has also not been able to furnish the any supporting details for various other fund transfers like transfer of INR 3.25 Crore to an entity called AMS Powertronics; INR 40 Lakh to another entity viz., Aviva Buildtech; INR 81 Lakh to *Noticee no. 9* and transfer of INR 15.50 Lakh to *Noticee no. 10* etc. It is pertinent to mention here that all these transactions took place immediately after the receipt of IPO proceeds and within a short span of 11 days after the IPO exercise was over, the *Company* had transferred approximately INR 11.00 Crore to various entities, details of which have been enumerated in the pictorial representation under para 2 (viii) of this order. Thus, the gross inability of the *Company* to furnish any supporting details to substantiate the transfer of funds to various entities coupled with the evasive & misleading explanations offered by it from time to time as pointed out in previous paragraphs speak volumes of the unscrupulous misconduct of the *Company* and does not inspire confidence in any of the submissions made by the *Company*.

62. In terms of the charges made in the SCN, the *Company* had transferred INR 4.84 Crore to the *Noticee no.4* (Goldline); INR 81 Lakh to *Noticee no. 9* (Mayfair Infosolutions); and INR 15.50 Lakh to the *Noticee no. 10* (Avisha Credit Capital), all of whom are called the funding group entities, out of the proceeds of the IPO. Thus, in total the *Company* had transferred INR 5.80 Crore to the aforesaid 3 funding group entities, all of which were found to be involved in providing funds to a large number of retail IPO applicants so as to ensure that the minimum

mandatory subscription level is achieved thereby ensuring a successful listing of the equity scrip of the *Company*.

63. The *Company* has contended that the transfer of funds made to the above stated four *Notices* including *Notice no. 4* were arising out of commercial transactions. However, as already noted and discussed at length while dealing with the aspects of connection between various entities, no details with respect to the business for which such funds transfers were effected, have been provided by the *Notice no. 1*. I, find it beyond acceptance that the *Company* would enter into so called commercial transactions with four incorporated entities and transferred funds to them involving large sums of money out of the IPO proceeds in the range of INR 15.50 Lakh to INR 4.84 Crore and when asked about the details of such fund transfer, there would be no answer either from the *Company* or from the receiving entities (*Notice nos. 4, 9* etc.). Moreover, the *Company* which was under a serious statutory obligation to utilize such funds in the interest of investors by deploying such funds towards the stated objects of IPO but it has palpably offered no reasoned explanation to justify the purpose of such transfers of funds.

64. It is also pertinent to mention here that all the funds out of IPO proceeds were transferred out to various entities immediately after the completion of the IPO within a span of 11 days, however, despite the fact that more than 7 years have elapsed by now, the *Company* has even not been able to provide any basic information as to what was the purpose of such fund transfers, how were they ultimately utilized, whether any revenues have been generated out of those funds transfers or whether any recovery has been effected out of the funds so transferred 7 years ago etc., leave alone producing any documentary evidence to substantiate the purpose & objectives of those funds transfers. These unexplained transfers of IPO proceeds compounded by the fact that no satisfactory explanation is forthcoming from any of the notices to justify these funds transfers further strengthen the preponderance of probabilities that the *Notices* have skillfully devised & successfully implemented the scheme of funding, both directly and indirectly, almost half of IPO subscriptions by a large number of IPO applicants in collusion with other funding *Notices*.

65. I observe that the *Company* while requesting for a re-investigation of the matter has contended that during the investigation by SEBI, only a selected financial dealings have been picked up as it was constrained to furnish all the financial transactions to the investigating officer for some reasons. The *Company* has further claimed that, if it was provided with sufficient opportunity to furnish explanation about utilizations of the IPO proceeds during the

investigation, the outcome of the investigation would have been different. In this regard, I note that the issues involved in the present proceedings pertain to the year 2013 and the *Company* is now requesting for a re-investigation primarily on the ground that during the investigation, for some constraining circumstances, they were not able to provide complete information and in the absence of the same, the investigating authority has picked up some selected transactions and entries, while proposing initiation of the present proceedings. I have considered the request of the *Noticee Company* and observe that the *Company* has neither explained as to what were the constraining factors that prevented it from submitting all the information during the investigation nor has it explained to me what further details or information it wants to furnish now (which it could not furnish earlier) which will mitigate all its hardships and exonerate it from the allegations made in the SCN. The proceedings before me is a quasi-judicial proceedings and the *Company* is free to furnish any additional information or evidence as it wishes to give to defend itself against the allegations levelled in the SCN, for which there is no need for having another fresh round of investigation by SEBI.

66. In order to grant a fair trial to the *Company* before arriving at final conclusion, the *Company* was afforded repeated opportunities to submit all such documents and information which it failed to furnish to the Investigation Authority. I believe the *Company* has also availed the opportunities and has put up its best possible defense to rebut the charges made in the SCN. The *Company* and *Noticee no. 2* have appeared before me for personal hearing and also have filed their written replies including documents such as agreements of bank account statements etc., which they claimed to have failed to furnish at the time of investigations. Therefore, the grievances of the *Noticees* about having been not given a fair trial do not exist anymore and my findings and observations in this order are not only based on the allegations made in the SCN but also after taking into cognizance all the submissions, both oral & written made by the *Noticees* and various information including copies of banks statements furnished by the *Company* & other *Noticees*. In my view, the *Company* and the other *Noticees* whoever have responded to the SCN, have provided all the information that they wanted to furnish out of their own volition during the present proceedings, and none of the *Noticees* has expressed any constraint or handicaps now for furnishing information to me. Under the circumstances, no *bonafide* reason for permitting a re-investigation into the matter subsists. In view of the above, the *Company's* grievance of bias or prejudice, if any, has been fully taken care of to ensure free and fair trial of the present proceedings. However, the fact remains that despite affording adequate

opportunities to all the *Notices*, and in spite of various factual submissions and documents submitted by the *Notices* in their defense, neither the *Company* nor any other *Notices* could come up with any tangible material or verifiable evidence (which they were deprived of furnishing during the investigation) to justify the huge sums of fund transfers made out of IPO proceeds in flagrant violation of the stated objects of the IPO as per the prospectus.

67. To sum up the present matter, it is found that the *Company*, working under a pre-conceived scheme to pursue a common objective with other *Notices*, first ensured that financial support is provided to the IPO applications of as many as 240 investors who were ultimately allotted 23,34,000 shares from the IPO of the *Company*. As seen and discussed earlier in this order, immediately after the successful completion of the IPO which garnered support of 51.66% of the applications with the collusion and support of the funding group entities, the *Company* has transferred INR 5.80 Crore (approx.) that constituted around 51% of the total IPO proceeds, to various funding group entities. All the *Notices*, while playing their respective roles in the scheme, have ensured that the IPO sails through and crosses the mandatory statutory threshold of achieving 90% of the shares offered under the IPO which could be made possible only by their concerted action of funding the applications to the extent of 51.66% the shares allotted under the IPO but for which, the IPO would have certainly failed to meet the mandatory mark in terms of Regulation 14(1) of ICDR Regulations. Consequently, the application received under IPO and would have miserably fallen short of the pre-condition of 90% of offer size and the *Company* would have been under obligation to repay the rest of the subscription money raised by it from the non-funded applicants under the IPO. The scheme that the *Company* had crafted and implemented in coordination with other *Notices*, especially the funding group *Notices* to fraudulently ensure success of its IPO programme, is self-evident and explains why the *Company* had to transfer bulk of the IPO proceeds to a few of the funding group entities immediately after completion of the IPO and why the *Company* failed to deploy the IPO proceeds towards the objects of IPO thereby betraying the faith and trust of those genuine investors who had subscribed to its shares under the IPO relying in the misleading disclosures made by the *Company*. It also amply explains as to why the *Company* and other *Notices* have not been able to produce any concrete reasons and tangible evidence to justify the transfers of such huge sums of money out of IPO proceeds to a number of entities including to certain funding group *Notices* and despite their bald & superfluous claims of having utilized the IPO proceeds for the declared objects, why none of the *Notices* has been able to substantiate

such claims with even a shred of supporting evidence till the conclusion of the present proceedings. Eventually such specious claims about utilization of IPO proceeds remained far away from the actual utilization those IPO proceeds and till date, the objects of IPO have remained as unfulfilled promises to the innocent public shareholders who whole heartedly supported the *Company's* SME listing with the expectation of a good performance from the *Company*.

68. Keeping in view the aforesaid detailed factual analysis of the matter and my findings as well as observations based on those facts supported by documentary evidence, it is clear to me that the *Company* and other *Notices* have worked as per the aforesaid manipulative scheme in order to get the shares of the *Company* successfully listed on the SME segment of BSE. Finally, the funds so raised in the IPO were also fraudulently diverted by transferring them to numerous entities including certain funding group entities who had funded the IPO applications of large number of applicants, in a glaring display of breach of trust of the genuine public shareholders who never came to know that the funds raised by the *Company* from them have actually been utilized for purposes other than the objects/purposes declared by the *Company* in its IPO documents. Thus, I am satisfied that the SCN has been successfully brought home the charges against the *Noticee no. 1* and the funding group entities, viz: *Noticee nos. 4 to 12, 14 and 15*, who with their active connivance with *Noticee no.1* at their respective ends, have contributed their part in fructifying the said scheme. In view thereof, I am convinced beyond doubt to hold that the *Noticee nos. 1, 4 to 12, 14 and 15* have violated Section 12 A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

69. Insofar as degree of proof to establish the charges is concerned, I note that for proceedings like the present one, the degree of proof is of preponderance of probabilities, which as elaborated above, is totally in support of the charges made in the SCN. It may be relevant to refer and rely upon the observations of the Hon'ble Delhi High Court that: "*Clearly, given the manner in which fraudulent acts are undertaken under deceit and camouflage, if done with the affairs of a company/trust etc., the standards of proof required to prove such fraudulent conduct would necessarily be less stringent.*" [SEBI Vs. CRB Capital Markets Ltd. (date of decision: December 05, 2019)]

70. Insofar as *Noticee nos. 2 and 3* are concerned, it is noted that both of them have been arraigned as *Notices* by virtue of their directorship with the *Company* during the IPO process of the *Company*. It is noted that *Noticee no. 2* has since expired and copy of the death certificate has

also been furnished in this connection, hence, the proceedings in the present matter against the *Noticee no. 2* stands abated and therefore no direction needs to be issued.

71. The *Noticee no. 3* has not disputed his directorship with the *Company* nor has claimed to be unaware/ignorant of the charges made against the *Company*. It is also important to mention that in the present proceeding; it is *Noticee no. 3* who has represented the *Company* before me.

72. I may state here that behind an artificial juristic person like the *Noticee Company* in the present proceedings, it is the minds and wisdom of certain natural persons who are at the helm of the affairs of such corporate entity which actuate the *Company* into its actions. All the deeds and misdeeds executed in the name of the *Company* are actually attributable to these natural persons, i.e., the Directors of the *Company* who have superintendence and control over all the activities of a company. In the present case, the fraudulent scheme that was devised which led to achievement of the compliance with the Regulation 14 (1) of ICDR by way of funding the applications of large number of share applicants under the IPO of the *Company* to the extent of 51.66% its shares subscriptions and the way the funds raised in the IPO were diverted to various entities including funding group entities without utilizing the same for the objects of the IPO it can be said to be the handiwork of the Directors of the *Company* who managed the affairs of the *Company* during the relevant period of time. .

73. I note that various judicial pronouncements have deliberated on the role and liabilities of directors for the violations committed by the *Company*. One such case has been decided by the Hon'ble Supreme Court in the matter of *N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152*, wherein it was observed that: “33. *Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.*”

74. In my view the facts and circumstances of the present case leave no room for doubt that the fraudulent scheme through which the *Company* got its IPO successfully funded, subscribed and listed as well as the proceeds of IPO got diverted for objects other than the stated objects

of the IPO, was actually conceived and implemented by the natural person such as, *Noticee no. 3* in the present case, who managed the affairs of the *Company* at the given point of time. Therefore, *Noticee no. 3* being at the helm of affairs of the *Company* during the relevant period, has to be held liable for being involved (as a Director of the *Company*), in the said scheme that ensured the listing of the securities of the *Company* in the BSE-SME segment, Thus, *Noticee no. 3* is equally liable alongwith the *Company*, for the violations of provisions of law, as already have been held above, to have been violated by the *Company*.

75. I may add here that the purpose of putting a statutory threshold of achieving subscription of at least 90% of shares being offered under IPO, is apparently to restrict the entry of issuers who may not have the competence enough to garner interest of adequate number of investors and by keeping this mandatory requirement, the interest of investors in the proposed to be listed companies, is sought to be protected. However, certain entities, as noted in the present case, by resorting to devious means, have been able to cross the said threshold of 90% and have accordingly projected an artificial compliance of the said statutory requirement to the general public at large. Such deceitful acts on the part of a yet to be listed company is not acceptable as it carries dangerous potential to create artificial inducement to the gullible shareholders of the said *Company* as well as to the general investors of the securities market, who are unaware of such dubious schemes conceived by the Directors to somehow get their companies listed on a stock exchange by short changing the interest of the investors, who would easily fall prey to such schemes and invest in the securities of the *Company* by relying upon the misleading IPO documents.

76. As the fraudulent scheme employed by the *Company* now stands exposed establishing the fact that the *Company* in the ordinary course of its IPO exercise, had practically failed to achieve the mandatory threshold subscription limit of 90% of shares offered under the IPO, it is essential that the shareholders of the *Company* are given an opportunity to exit from the *Company*, by its Promoters.

Directions:

77. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 11(1), 11(4), and 11 B read with Section 19 of the Securities and Exchange Board of India Act, 1992, pass the following directions:

- i. *Noticee no. 3* (promoter of the *Company*) is directed to make a public offer through a merchant banker to acquire shares of the *Company* from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order.
- ii. BSE is directed to facilitate valuation of shares to be purchased as directed at (i) above, and compulsorily delist the *Company*, if the public shareholding reduces below the minimum level in view of aforesaid purchase.
- iii. The *Noticee no. 1* is hereby restrained from accessing the securities market by issuing prospectus, offer document or advertisement soliciting money from the public in any manner for a period of 8 years.
- iv. *Noticee no. 3* is hereby restrained from holding post of director, any managerial position or associating himself in any capacity with any listed public company and with any public company which intends to raise money from the public, or with any intermediary registered with SEBI for a period of 3 years.
- v. The *Noticees*, as mentioned below are hereby restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever manner, for the period specified in their respective columns:

Table 10

Sr. No.	Name of Entity	Debarred vide interim order	Period of debarment
1	Esteem Bio Organic Food Processing Ltd.	Yes	Till date of this order
3	Brij Kishore Sabharwal	Yes	Till date of this order
4	Goldline International Finvest Ltd.	Yes	Till date of this order
5	Satendra Kumar & its Proprietorship firm viz. Nisha Traders, Bright Securities	Yes	Till date of this order
6	Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, A One Furniture	Yes	Till date of this order
7	Ram Prakash & its Proprietorship firm viz. Khan Enterprise	Yes	Till date of this order
8	Aavia Softech Pvt. Ltd.	No	1 Year
9	Mayfair Infosolution Pvt. Ltd.	Yes	Till date of this order
10	Avisha Credit capital Pvt. Ltd.	Yes	Till date of this order
11	Nikky Printing Press Pvt. Ltd.	No	1 Year

12	Neel Kanth Trading Co.	No	1 Year
14	Amsons Apparels Pvt. Ltd.	No	1 Year
15	Gracious Software Pvt. Ltd.	No	1 Year

- vi. Obligation of the debarred *Notices*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order in respect of pending transactions, if any. Further, all open positions, if any, of the aforesaid debarred *Notices* in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
- vii. It is further clarified that during the period of the aforesaid restraint, the existing holding of securities, including the units of mutual funds shall remain under freeze.
- viii. The proceedings against *Noticee no. 2* are abated and against *Noticee no. 13* are dropped without any directions.
78. The Order shall come into force with the immediate effect.
79. A copy of this order shall be forwarded to the *Notices*, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

Date: December 22, 2020
Place: Mumbai

-Sd-
S. K. MOHANTY
WHOLE TIME MEMBER