It BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/VV/JR/2019-20/6781]

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

In respect of:

ISF Securities Limited (PAN: AAACI1667E)

In the matter of Mefcom Agro Industries Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of Mefcom Agro Industries Limited (hereinafter referred to as "**Mefcom/ company**") observed that ISF Securities Limited (hereinafter referred to as "**Noticee**") had acquired more than 5% shareholding during January 1, 2006 to June 30, 2007 (hereinafter referred to as "**investigation period**") and allegedly violated regulation 7(1) read with 7(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations, 1997**") read with regulation 35(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations, 2011**") and regulations 13(1), 13(3) read with 13(5) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI vide order dated April 28, 2017 appointed Shri Jeevan Sonparote as the Adjudicating Officer under section 15 I of Securities Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**AO Rules**") to inquire into and adjudge the aforesaid allegations under section 15A(b) of the SEBI Act. Pursuant to the transfer of the case, the undersigned was appointed as the Adjudicating Officer vide order dated August 13, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice dated February 21, 2018 (hereinafter referred to as 'SCN') was issued to the Noticees under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on them under Section 15A (b) of SEBI Act for the alleged violations. The SCN returned undelivered. The erstwhile Adjudicating Officer, vide letter dated May 20, 2019 sent a copy of the SCN to the director of the Noticee and gave it an opportunity of personal hearing on June 21, 2019. The Noticee, vide letter dated May 24, 2019 informed that due to change of the registered office, it had received the copy of the SCN on May 20, 2019 and sought for adjournment of the personal hearing. The Noticee vide letter dated August 20, 2019 replied to the SCN stating, inter alia, the following:

- *ISF received the membership of NSE in 1996, and of BSE in 2008. It is pertinent to note that the membership of ISF with BSE was renewed in 2012, following a change in the deposit-based membership with BSE. As a stock broker registered with NSE, ISF used to place orders on behalf of its clients. During the Investigation Period, the following was the typical business of ISF – with respect to NSE, the trades were executed directly in the name of the clients; however, with respect to BSE, it would take orders from its clients for purchase/ sale of securities on stock market and pass them on to another SEBI-registered stock broker, M/s. Sam Global Securities Limited ("SGSL"), since ISF was not registered a stock broker with BSE at the time. Such trades at BSE were executed by SGSL, in the name of ISF. The securities were credited to the res active accounts of the clients on the same day, or upon receipt of*

due payments from them. Similarly, upon receipt of instructions of the clients, the securities were sold by the Noticee through SGSL and proceeds of the same were credited to the respective accounts of its clients. Since, during the Investigation Period the communication technology was not very developed, mostly the client would place the orders over phone or in person at the Noticee's office. Besides this, ISF also did some proprietary trading through its personal account, which was also executed by SGSL. Details of such transactions undertaken by ISF for its clients and on its proprietary account may be provided to SEBI, in case required.

- *The buy / sell orders in securities were placed on strict instructions from the clients, and ISF did not have much say in the investment decisions of such clients. Further, the Noticee did not have any control over such trades, since they were executed by SGSL; the Noticee was neither aware of nor had any knowledge of the counter parties to such trades.*
- *The Noticee held only 1.67% of the shares of Mefcom as of June 30, 2006 and 1.14% as of March 31, 2007, while the rest of the shares were held by the Noticee on behalf of its clients, including Avisha Credit Capital Limited.*
- *With respect to the above trades, the Noticee used to issue contract notes, to the aforementioned clients after execution of trades by SGSL. It is relevant to note that during the Investigation Period, it was not mandatory for the Noticee to preserve the copies of such documents issued to its clients, neither was it mandatory to record all communications with clients over phone. Therefore, the Noticee has no records of the same. Also, as stated earlier, due to change in management, the Noticee was unable to gather such information from the limited information and data provided to it by the earlier management. However, the transactions were duly reflected in the Noticee's bank account statements as well as the transactions statements. Such documents have been already provided to SEBI.*
- *Prior to 2011, the erstwhile promoters were in complete control over the affairs and transactions of the Noticee. After the aforementioned acquisition, Mr. Sunil Khemka and Ms. Sunita Khemka were appointed as directors of the Noticee in May, 2011 & July, 2011, respectively and the previous management was replaced.*
- *It is pertinent to state that the Noticee had provided all relevant details to SEBI in a timely and accurate manner and had extended full cooperation with SEBI in the above investigation. The Noticee has always acted in a bonafide manner. In fact, pursuant to the aforementioned communication with SEBI, the new management of the Noticee had decided to review its compliances and close all pending matters as a part of its clean up drive. It is relevant to note that the transactions in the scrip of Mefcom took place in 2006-07, under the control of the previous management. Therefore, the present management had no knowledge of any irregularity with respect to such transactions. Further, due to the change in registered office, the contract notes issued to clients related to such transactions were not available, making it difficult fot the new management to review the same.*
- *On May 10, 2018, the Noticee had voluntarily filed appropriate disclosures with Mefcom and BSE under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 and the SEBI (Prohibition of Insider Trading) Regulations, 1992.*
- *It is submitted that the Notice has failed to provide as to whether and how the Noticee was connected with these entities. Moreover, it is not even alleged that the Noticee*

had acted in concert with these entities which are alleged to be connected with the Mefcom group. Despite the same, it is alleged that the Noticee has violated Regulation 7(1A).

- *It is submitted that in the absence of any connection with the said entities which are connected with the Mefcom group, the Noticee's individual shareholding in Mefcom has to be taken into consideration. As elaborated in Table IV, the Noticee's shareholding in Mefcom never crossed the threshold of 15% which is required for disclosure obligations under Regulation 7(1A). In the absence of crossing such 15% threshold, the allegation of violation of Regulation 7(1A) levied upon the Noticee is unjustified.*
- *As referred above in the Investigation Report, it is submitted that contract notes were issued by the Noticee to its clients after execution of such trades. However, during the Investigation Period, it was not mandatory for a stock broker to preserve copies of such contract notes issued to its clients, therefore, the Noticee is not possession of the same. Also, as stated under paragraphs 16 and 17, there was a change in both the management of ISF and its registered office due to which, it was difficult for the present management to gather information relating to trades in Mefcom's scrip. However, the transactions are duly reflected in the bank account statements and the financial ledgers of both ISF and its clients, therefore, it cannot be assumed that trades in Mefcom's scrip were undertaken by the Noticee on its own trading account.*
- *It is further submitted that the trades in Mefcom's scrip were undertaken by the Noticee in good faith. It is relevant to note that during the Investigation Period, the Noticee was a registered stock broker of NSE, and its primary business was to offer stock braking services to its clients. Considering the presence of the Noticee in the market for over a decade and the quality of the services offered by it, the clients used to place a substantial number of their trading orders through the Noticee only. It is submitted that the Noticee, in good faith, placed the orders related to BSE with SGSL behalf of its clients, as and when instructions were received from the clients.*
- *It is pertinent to note that such trades were not executed by the Noticee. The role of the Noticee was only limited to placing orders with SGSL for securities which were purchased by the Noticee in its own name. After settlement of such orders, the shares were promptly delivered to its clients upon due receipt of payments. In fact, as on March 31, 2007, the Noticee held only 1.14% of Mefcom's scrip in its proprietary trading account. The remaining shares were held on behalf of its clients, which were duly credited as stated above. In this regard, reference is drawn to the financial ledgers detailing the transactions between ISF and its clients, which were provided to SEBI by ISF through its letter dated March 21, 2014. Also, the details of payments received from such clients are reflected in the bank account statements of ISF, which were provided to SEBI by ISF through its letters dated January 22, 2014, March 21, 2014 and June 07, 2014.*
- *It is further submitted that though the shares of Mefcom were held by the Noticee in its own name, separate trading accounts were maintained by the Noticee to segregate its own holdings from that of its clients. It is also submitted that even though the Noticee was trading on behalf of its clients, the Noticee had no role in deciding the quantity or time of such trades.*

4. After the case was transferred to the undersigned, another opportunity of personal hearing was given to the Noticee on September 18, 2019. The Noticee, vide letter dated September 17, 2019 sought for an adjournment. Another opportunity of personal hearing was given to the Noticee on October 24, 2019. Once again, the Noticee sought for a date after November 11, 2019. Acceding to the request of the Noticee another opportunity of personal hearing was given to the Noticee on December 20, 2019. The Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated August 20, 2019 and undertook to make further submissions. The Noticee, vide letter dated January 3, 2020 submitted, inter alia, the following:

   - *We have submitted that the allegations levied under the Notice against the Noticee pertain to the period 2006-07, when the Noticee was under the control of the previous management and hence, the present management did not have any knowledge of the alleged transactions. It is further submitted that while the violations alleged in the Notice pertain to the period 2006-07, the Notice was issued to the Noticee only on February 21, 2018, which in turn was received by the Noticee on July 08, 2019. It is submitted that there has been an inordinate delay of more than 12 years in the initiation of adjudication proceedings against the Noticee by SEBI.*
   - *In paragraph 18 of the Notice, it is alleged that the Noticee, along with certain other entities, has violated Regulation 7(1A) read with Regulation 7(2) of the SAST Regulations. We have submitted that in the absence of any specific allegation with regard to the connection between the Noticee and Mefcom group, the Noticee's individual shareholding in Mefcom has to be taken into consideration. We have submitted that the Noticee's shareholding in Mefcom never crossed the threshold of 15%, as is required for making disclosures under Regulation 7(1A).*
   - *It is submitted that since the Notice does not allege any connection between the Noticee and the Mefcom group, the Noticee cannot be held liable under Regulation 7(1A). It is further submitted that in the present proceedings, the Noticee cannot be held liable for any other violation that is not alleged in the Notice, as the same would unjustly enlarge the scope of the proceedings which is impermissible in law.*

5. A supplementary Show Cause Notice dated December 23, 2019 was issued to the Noticee alleging that it had violated regulation 7(1) read with 7(2) of SAST Regulations. The Noticee, vide letter dated February 4, 2020 stated, inter alia, the following:

- *It is submitted that the present Notice has been issued, after the conclusion of the first hearing, under Rule 4(1) of the Adjudication Rules. It is pertinent to highlight that the present Supplementary Notice has not only been issued with reference to the violations alleged in the Notice, but has also been issued after the conclusion of the first personal hearing in the matter related to the Notice.*
- *It is submitted that as per the above provisions, after providing an opportunity for personal hearing and after considering the relevant evidence produced by the person concerned, the adjudicating officer is required to dispose of the proceedings by passing an order. In the present matter, it is submitted that no such order has been passed by SEBI disposing of the proceedings initiated by way of the previous Notice. It is submitted that by issuing the present Supplementary Notice, without the passing an order on merits in relation to the proceedings initiated under the Notice, SEBI has disregarded its own procedure for adjudication as prescribed under the provisions of the Adjudication Rules.*
- *In paragraphs 38 to 48 of the Reply, it was submitted that the alleged trades referred in the Notice were undertaken by the Noticee on behalf of its clients. As per the Notice, it was alleged that during the Investigation Period, the Noticee's shareholding in Mefcom had crossed 5%, 10% and 14% on different occasions. It was submitted in the Reply that the shares of Mefcom were purchased by the Noticee on behalf of its clients and that such shares were delivered to the clients upon receipt of payments. In fact, the details of such clients as well as the details of such transactions have already been provided to SEBI along with the Reply. However, the same have not been considered by SEBI and the present Notice has been issued in complete disregard of the aforesaid facts.*
- *It is submitted that since the role of the Noticee was limited to placing orders with its stock broker, M/s. Sam Global Securities Limited ("SGSL") and after settlement of such orders, the shares were promptly delivered by the Noticee to its clients upon due receipt of payments In fact, as on March 31, 2007, the Noticee held only 1.14% of Mefcom's scrip in its proprietary trading account. The remaining shares were held on behalf of its clients, which were duly credited as stated above. In this regard, reference is drawn to the financial ledgers detailing the transactions between ISF and its clients, which were provided to SEBI by ISF through its letter dated March 21, 2014. Also, the details of payments received from such clients are reflected in the bank account statements of ISF, which were provided to SEBI by ISF through its letters dated January 22, 2014, March 21, 2014 and June 07, 2014.*
- *It is further submitted that though the shares of Mefcom were held by the Noticee in its own name, separate trading accounts were maintained by the Noticee to segregate its own holdings from that of its clients. It is also submitted that even though the Noticee was trading on behalf of its clients, the Noticee had no role in deciding the quantity or time of such trades. The Noticee had placed the trading orders with SGSL only after receiving strict instructions from its clients.*
- *Similarly, in the instant matter, as the trades in Mefcom's scrip were undertaken by the erstwhile management of the Noticee, the Noticee cannot be made liable for any alleged violation with respect to such trades. Therefore, the Noticee cannot be penalised for the Acts alleged in the Notice as well as the Supplementary Notice which were executed by its erstwhile management.*

- *It is relevant to state that it is only after the communication with SEBI during 2013-14, the Noticee was made aware of the alleged trades in Mefcom's scrip. It is relevant to state here that after the present management took over, the Noticee, as part of its measures to ensure compliance with all applicable securities laws, had already filed appropriate disclosures with Mefcom and BSE under the SAST Regulations and PIT Regulations on May 10, 2018. It is further submitted that the present management of the Noticee has not acquired any shares of Mefcom beyond the specified thresholds, and no such allegation has been brought against the Noticee during the tenure of the present management. It is submitted that the present management, has always acted in a bonafide manner and fully cooperated with SEBI throughout its investigation in the matter of Mefcom in 2013-14.*
- *It is further submitted that non-filing of the relevant disclosures at the time did not provide the Noticee with any disproportionate gain or unfair advantage. In fact, during the Investigation Period, the Noticee has made a loss of Rs. 1,44,51,661 while trading in Mefcom's shares. While majority of trades in Mefcom's scrip were undertaken by ISF on behalf of its clients, the Noticee has also incurred a loss of Rs.9,57,576 while trading in Mefcom's scrip on its own trading account. It is pertinent to state that even SEBI has not found any unlawful gains made by the Noticee during the Investigation Period, while trading in Mefcom's scrip.*

6. The Noticee was given another opportunity of personal hearing on January 28, 2020. The Noticee vide email dated January 24, 2020 requested for another date of personal hearing. Acceding to the request of the Noticee another opportunity of personal hearing was given to the Noticee on February 10, 2020. The Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated February 4, 2020.

CONSIDERATION OF ISSUES AND EVIDENCE

7. I have carefully perused the charges levelled against the Noticees in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

   (a) Whether the Noticees have violated the provisions of regulation 7(1) read with 7(2) of SAST Regulations, 1997 read with regulation 35(2) of SAST Regulations, 2011 and regulations 13(1), 13(3) read with 13(5) of PIT Regulations.

   (b) Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) of SEBI Act for the alleged violation?; and,

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

8. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations, 1997 and SAST Regulations, 2011.

Relevant provisions of SAST Regulations, 1997:

Acquisition of 5 per cent and more shares or voting rights of a company

7. (1) Initial Disclosures.

7 (1)Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

Explanation-For the purposes of sub-regulations (1) and (1A), the term "acquirer shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,— (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights. as the case may be.

Relevant provisions of SAST Regulations, 2011:

35. Repeal and Savings:

(2) Notwithstanding such repeal,—
(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, an adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13. *(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company 47[in Form A], the number of shares or voting rights held by such person, on becoming such holder, within 48[2 working days] of :—*
(a) the receipt of intimation of allotment of shares; or
(b) the acquisition of shares or voting rights, as the case may be.

Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A)] shall be made within two working days of :
(a) the receipts of intimation of allotment of shares, or
(b) the acquisition or sale of shares or voting rights, as the case may be.

9. I note from the documents on record that the Noticee had acquired more than 5% shareholding in Mefcom. It is further observed from the demat accounts that their holding crossed 5% ,10% and 14%as per the details given below:-

Entity	Date	No of shares held by - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares Acquired/ (disposed off) as a % of paid up capital	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Mode(*) Market / off-market	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Reg(s) under SAST 1997/ PIT 1992
ISF	2/6/06	77161	2.75	65000	2.32	142161	5.07	Market	No	No	No	7(1) r/w 7(2) of SAST,

												13(1) r/w 13(5) of PIT
ISF	12/6/06	142161	5.07	193431	6.89	335592	11.96	Market	No	No	No	13(3) r/w 13(5) of PIT
ISF	13/06/06	335592	11.96	66953	2.39	402545	14.35	Market	No	No	No	13(3) r/w 13(5) of PIT

10. It is alleged that the Noticees have not made the requisite disclosure for the change in shareholding under SAST Regulations and PIT Regulations. It is observed that on June 2, 2006, the Noticee had acquired 2.32% of the total shareholding of the company which had made its total shareholding to 5.07% of total shareholding of the company. The Noticee was to make disclosure under regulation 7(1) read with 7(2) of SAST Regulations and under regulation 13(1) of PIT Regulations for the said acquisition of shares. However, the Noticee did not make the said disclosures. Further, on June 12, 2006 and June 13, 2006 made further acquisition of shares and failed to make relevant disclosure under regulation 13(3) read with 13(5) of PIT Regulations.

11. It is observed that during the relevant period the Noticee was not a member of BSE and it was trading through broker SMC Global Securities Limited (SGSL) as a client. The Noticee had submitted that it had traded for various clients on their behalf. Its role was limited to placing orders with SGSL for securities which were purchased by the Noticee in its own name and after settlement of such orders, the shares were delivered to the clients upon due receipt of payments. In order to support this contention, the Noticee had submitted copies of ledger accounts of the clients maintained by it. It is observed that the Noticee did not submit the demat account details for the same transactions. As such, this submission cannot be accepted. Moreover, it is observed that subsequently, in May, 2018 the Noticee had made disclosures for the alleged transactions to the company and BSE.

12. The Noticee further contended that prior to 2011, the management of the Noticee were with erstwhile promoters and the current directors, viz., Mr. Sunil Khemka and Ms. Sunita Khemka joined only in May 2011 and July 2011 and did not have any knowledge of the alleged transactions. This submission of the Noticee cannot be

accepted. When a new management takes over a running concern, all the old liabilities are transferred to the new management. The new management cannot plea ignorance of the said violation. It is the responsibility of the new management to ensure that all the compliances are abided by.

13. The Noticee had further pointed out, that there has been an inordinate delay in the initiation of adjudication proceedings. In this regard, I note from the records that the involvement of the Noticees in the scrip of Mefcom came to the attention of SEBI through a media report dated October 12, 2010. I also note that multiple investigating authorities were appointed in the extant matter. Moreover, the investigation process is a detailed one which passes through various levels of analysis. This will invariably consume considerable time depending on the number of Noticees involved and the complexity of the transactions in the matter. Therefore questioning the merits of the proceedings on the sole criteria of the time it took to crystallise the extent of the violations, would defeat the ends of justice.

14. The Noticee further submitted that the undersigned had issued a Supplementary Show Cause Notice on December 23, 2019, i.e. after the conclusion of the first hearing in the matter which caused prejudice to the Noticee. It may be noted that the Adjudicating Officer can issue a supplementary show cause notice at any time before the passing of the final order if he thinks fit. It is observed that after the issuance of the supplementary show cause notice, the Noticee was given further time to submit a reply and another opportunity of personal hearing was given to it, which was availed by the Noticee.

15. Moreover, it is observed that the supplementary show cause notice was issued because the charging section at para 18 of the SCN dated February 21, 2018 was mentioned as regulation 7)1A) of SAST Regulations which ought to have been regulation 7(1) of SAST Regulations. However, the table which illustrates the change in shareholding of the Noticee at para 4 of the SCN dated February 21, 2018 was correctly mentioned as regulation 7(1) of SAST Regulations. In N Mani v Sangeetha

Theatres & Others (2004) 12 SCC 278, the Hon'ble Supreme Court clearly mentions "*It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law*".

16. The Noticee in its reply dated February 4, 2020 has stated that the supplementary SCN has been issued after an inordinate delay of 13 years. As noted above, the primary/initial SCN was issued to the Noticee on February 21, 2018 and the hearing before the present AO was held on December 20, 2019. Subsequently, for the reasons as stated above, the supplementary SCN was issued (on December 23, 2019) soon after the hearing availed by the Noticee on December 20, 2019. As such, it is illogical to say the SCN had been issued after delay of 13 years. The Noticee has also mentioned in its reply dated February 4, 2020 that the supplementary SCN has been issued in order to enlarge the scope of the proceedings under the previous Notice and, and the supplementary SCN has resulted in undue prejudice to the Noticee. In terms of the reasons given above (Para 15), it can be easily seen that there is no material enlargement in the scope of primary/previous SCN issued in the matter. A supplementary SCN cannot be treated as a second or separate SCN. As I observe from the reply of the Noticee dated February 4, 2020 submitted after issue of supplementary SCN, there is no mention of any new fact or evidence other than what had been already submitted by the Noticee vide its reply dated August 20, 2019 in response of the primary/initial SCN dated February 21, 2018. In view of this, it is wrong to say the issuing of supplementary SCN has caused undue prejudice to the Noticee. It has also been stated in the reply dated February 4, 2020 of the Noticee, that, supplementary SCN has been issued in complete disregard to the facts of the case relating to financial transactions of the Noticee under reference and the same have not been considered by SEBI. I find this submission as premature and illogical as the same has been assumed before passing of the Order by SEBI in the matter. The inquiry in the proceeding has been done with due consideration of all the submissions and evidences made by the Noticee in the matter.

17. In view of the above, the allegation of violation of regulation 7(1) read with 7(2) of SAST Regulations, 1997 read with regulation 35(2) of SAST Regulations, 2011 and regulations 13(1), 13(3) read with 13(5) of PIT Regulations by the Noticee stands established.

18. At the same time, I observe that, even after the change in management of the Noticee after the act of violation, the Noticee has responded to all the communications of SEBI during the investigation as well the Adjudication proceeding and cooperated with SEBI during the proceeding. I am also inclined to accept the submission of the Noticee that it has submitted records and documents in the proceeding on best effort basis as it has been difficult for the Noticee to recall all the records and documents since the initial SCN was issued after 12 years from the date of trades/ financial transactions of the Noticee under reference of the SCN and there was change in management of the Noticee, in between. I also observe that the Noticee has not made any unlawful gain in the matter. I note that the lapse in question is first time of such default by the Noticee. There is no material available on record that the alleged failure to make disclosure by the Noticee in this case had any impact on price of the shares of the company or to indicate deliberate concealment of any material information by the Noticee. I note that, in terms of the Order WTM/MPB/EFD-1DRA-4/101-103/2020 dated February 12, 2020 passed by WTM(MPB) for violation of PFUTP Regulations by the Noticee in the matter, the Noticee has not been issued with any penal direction. The trades/ financial transactions of the Notice under reference have not found to be fraudulent as per the aforesaid Order. Further, I observe that the trades/ financial transactions under reference of the Noticee have not been found to be impacting the market or price of the scrip significantly as per the aforesaid Order. I am not inclined to lose sight of the fact that the primary aim of the investigation in the matter was to ascertain the role of various Noticees in fraudulent manipulation of the price of the scrip of Mefcom. I further observe that, as per the aforesaid Order, certain Noticees have been directed by SEBI to make open offer in the matter within 45 days from the date of the Order. Such Noticees shall also pay along with consideration amount to

the eligible shareholders, interest at the rate of 4% per annum, from the trigger date for open offer, i.e., on June 14, 2006 on the open offer price at which they were supposed to make the open offer till the date of payment of the consideration amount to the eligible shareholders. Such direction will potentially mitigate any loss suffered by most of the shareholders or persons who would have traded in the scrip during the period of investigation.

19. In this context it is to be noted that section 15I of the SEBI Act providing for adjudication, does not direct the Adjudicating Officer to impose penalty for failure *per se* as per for the penalty provisions under section 15A. According to section 15I (2) if on inquiry the Adjudicating Officer is satisfied that the person has failed to comply with the provisions specified in the section, '*he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections'*. The expression *'may'* used in Section 15I(2) that empowers the Adjudicating Officer shows that it is not mandatory provision to mechanically impose penalties as per language of the provisions and the *'failure'* referred to in section 15A needs be considered in the light of judicial pronouncements explaining the situation.

20. It is also settled position that the words "shall be liable to" used in the context of "penalty in any statute, do not convey an absolute imperative; they are merely directory and leave it to the discretion of the Authority to impose any penalty or not. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019 for exercising discretion under section 15I(2) read with section 15J , it is noted that the provisions of section 15J has to be properly understood, and not to be mechanically applied.

ORDER

21. Considering all the facts and circumstances of the case including the aforesaid mitigating factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I am of the view that the non-

compliance in this case cannot be said to be deliberate and the consequent default is venial and not blameworthy so as to impose monetary penalty under section 15A (b) of the SEBI Act. I am, therefore, of the view that the case does not deserve imposition of any monetary penalty and accordingly, the adjudication proceedings initiated against the Noticee vide SCN dated February 21, 2018 read with supplementary SCN dated December 23, 2019 is disposed of.

22. The Noticee, as a registered intermediary, shall exercise due diligence and be careful while dealing in securities in future and shall ensure strict compliance with the applicable provisions of securities laws, failing which, such delinquency may be viewed seriously as repetitive in nature and consequently, the Noticee would be liable for penalty in such cases.

23. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date : February 14, 2020
Place : Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER