

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**FINAL ORDER**

**Under Sections 11(1), 11(4A), 11B(1), 11B(2), 15A(b) of the Securities and Exchange Board of India Act, 1992 and Sections 12A(2), 23A(a) of Securities Contracts (Regulation) Act, 1956 read with Rule 4(1) of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995**

**In respect of -**

<b>Noticee No.</b>	<b>Name</b>	<b>PAN</b>
1	Tilak Ventures Limited	AAACT2373C
2	Mr. Girraj Kishor Agrawal	AABPA4928N
3	Ms. Tanu Girraj Agrawal	AADPA7003J

**In the matter of Tilak Ventures Limited**

---

1. Securities and Exchange Board of India (hereinafter referred to as the “**SEBI**”) conducted an investigation into the raising of funds through preferential issue of equity shares and utilisation thereof by Tilak Ventures Limited (hereinafter referred to as the “**Noticee No. 1/ Company**”) to ascertain whether there was any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act**”), Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the “**SCRA**”), the erstwhile Listing Agreement read with provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as the “**LODR Regulations**”), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (since repealed) (hereinafter referred to as the “**ICDR Regulations**”) and SEBI (Prohibition of Fraudulent and Unfair Trade practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the “**PFUTP Regulations**”).

## SHOW CAUSE NOTICE, REPLIES AND PERSONAL HEARING:

2. On the basis of the findings of the investigation, a Show Cause Notice dated October 20, 2022 (hereinafter referred to as the “**SCN**”) was issued to the Company, Mr. Girraj Kishor Agrawal – managing director of the Company (hereinafter referred to as the “**Noticee No. 2**”) and Ms. Tanu Girraj Agrawal – director of the Company (hereinafter referred to as the “**Noticee No. 3**”) (Noticee No.1, Noticee No. 2 and Noticee No. 3 are hereinafter together referred to as the “**Noticees**”), calling upon them to show cause why appropriate directions under Sections 11B(1) read with Section 11(1) of the SEBI Act should not be issued for the violations of the provisions of the SEBI Act and PFUTP Regulations. Noticees were also called upon to show cause as to why penalty under Sections 11(4A) and 11B(2) read with Section 11(1) and Sections 15HA of the SEBI Act should not be imposed for the alleged violations of provisions of ICDR Regulations and PFUTP Regulations. Further, Noticee No. 1 was called upon to show cause as to why appropriate directions under Sections 11B(2) and 11(4A) of SEBI Act read with Section 11(1) of SEBI Act, and Section 12A(2) and 23A(a) of SCRA and Section 15A(b) of SEBI Act should not be issued for violation of Clause 43 of the listing agreement read with Section 21 of SCRA and provisions of the LODR Regulations. The Noticees were advised to file their replies within a period of 21 days from the date of receipt of the SCN.
3. The SCN was served by speed post upon Noticees on October 29, 2022. M/s Profess Law Associates, the authorised representative of Noticees (hereinafter referred to as the “**Authorised Representative**”), vide letter dated November 18, 2022 sought copy of the investigation report and four weeks’ time to submit their reply. The request of the Noticees was acceded to and a copy of the investigation report was provided to the Noticees vide email dated November 25, 2022 and Noticees were advised to file their reply by December 15, 2022. Thereafter, the Authorised Representative, vide emails dated December 19, 2022 and December 31, 2022 again sought for two weeks’ and further two weeks’ time, respectively, to submit their reply, which was acceded to.

4. Noticee No. 1 filed its reply dated January 18, 2023, and Noticees No. 2 and 3, filed their respective replies dated January 19, 2023. Subsequently, an opportunity of personal hearing was granted to the Noticees on March 09, 2023. Mr. Vinay Chauhan, Advocate and Mr. Shantibhushan Nirmal, Advocate appeared and reiterated the contents of the written replies filed by the Noticees and sought a week's time to file additional written submissions. Noticees filed post- hearing written submissions vide a common reply dated March 14, 2023.

## **LEGAL PROVISIONS:**

5. Before dealing with the issues involved and the replies of the Noticees, it would be appropriate to refer to the provisions of law which are alleged to have been violated by the Noticees and the relevant extracts thereof are reproduced hereunder:

### **Provisions of SEBI Act:**

*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;*

### **Provisions of SCRA:**

#### ***Conditions for listing***

*21. Where Securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that Stock Exchange.*

## **Provisions of ICDR Regulations, 2009:**

### ***Disclosures.***

73. (1) *The issuer shall, in addition to the disclosures required under section 173 of the Companies Act, 1956 or any other applicable law, disclose the following in the explanatory statement to the notice for the general meeting proposed for passing special resolution:*

- (a) the objects of the preferential issue;*
- (b) the proposal of the promoters, directors or key management personnel of the issuer to subscribe to the offer;*
- (c) the shareholding pattern of the issuer before and after the preferential issue;*
- (d) the time within which the preferential issue shall be completed;*
- (e) the identity of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/or who ultimately control the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any, in the issuer consequent to the preferential issue:*  
*Provided that if there is any listed company, mutual fund, bank or insurance company in the chain of ownership of the proposed allottee, no further disclosure will be necessary.*
- (f) an undertaking that the issuer shall re-compute the price of the specified securities in terms of the provision of these regulations where it is required to do so;*
- (g) an undertaking that if the amount payable on account of the re-computation of price is not paid within the time stipulated in these regulations, the specified securities shall continue to be locked-in till the time such amount is paid by the allottees;*
- (h) disclosures, similar to disclosures specified in Part G of Schedule VIII, if the issuer or any of its promoters or directors is a wilful defaulter.*

*(2) The issuer shall place a copy of the certificate of its statutory auditor before the general meeting of the shareholders, considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of these regulations.*

*(3) Where specified securities are issued on a preferential basis to promoters, their relatives, associates and related entities for consideration other than cash, the valuation of the assets in consideration for which the equity shares are issued shall be done by an independent qualified valuer, which shall be submitted to the recognised stock exchanges where the equity shares of the issuer are listed:*

*Provided that if the recognised stock exchange is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other valuer and for this purpose it may obtain any information, as deemed necessary, from the issuer.*

*(4) The special resolution shall specify the relevant date on the basis of which price of the equity shares to be allotted on conversion or exchange of convertible securities shall be calculated.*

*Explanation: For the purpose of sub-regulation (3), the term ‘valuer’ has the same meaning as is assigned to it under clause (r) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002.*

**Provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (herein after referred to as the “ICDR Regulations, 2018”):**

***Repeal and Savings.***

*301. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations 2009 shall stand rescinded.*

*(2) Notwithstanding such rescission:*

- (a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.*
- (b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Regulations and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.*

**Provisions of the PFUTP Regulations:**

***Regulation 3. Prohibition of certain dealings in securities***

*No person shall directly or indirectly –*

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing 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 there under.*

***Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices***

*(1) Without prejudice to the provisions of Regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities markets.*

*(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: —*

- (f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
- (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*
- (r) planting false or misleading news which may induce sale or purchase of securities.*

**Provisions of the LODR Regulations:**

***Statement of deviation(s) or variation(s).***

*32. (1) The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc.-*

- (a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;*
- (b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.*

*(2) The statement(s) specified in sub-regulation (1), shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.*

*(3) The statement(s) specified in sub-regulation (1), shall be placed before the audit committee for review and after such review, shall be submitted to the stock exchange(s).*

*(4) The listed entity shall furnish an explanation for the variation specified in sub-regulation (1), in the directors' report in the annual report.*

*(5) The listed entity shall prepare an annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice, certified by the*

*statutory auditors of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.*

***Repeal and Savings***

*103. (1) on and from the commencement of these regulations, all circulars stipulating or modifying the provision of the listing agreements including those specified in Schedule X shall stand rescinded.*

*(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the listing agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these Regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.*

**ALLEGATIONS AGAINST THE NOTICEES AND THEIR SUBMISSIONS:**

6. I have considered the allegations made in the SCN, Noticees' replies, and the submissions made during the personal hearing. I now proceed to determine the issues raised and consider the matter on merits, based on the material on record.
7. The specific allegations made in the SCN against each of the Noticees, submissions made by the Noticees *qua* the allegations made against them and my findings thereon are dealt in the following parts of the order.

***Misutilisation of the proceeds of preferential issue***

8. It is observed that the Company issued shares through preferential issue on two occasions, i.e., on July 21, 2010, and October 18, 2012. Vide the preferential issue dated July 21, 2010, the Company had issued 1,09,95,000 shares at ₹ 15/- per share (equity share of face value ₹ 10/- each issued at a premium of ₹ 5/- per share) to 40 entities (3 promoter group entities and 37 non-promoter entities) and raised ₹ 16,49,25,000 (hereinafter referred to as the **"first preferential issue"**). Vide the preferential issue dated October 18, 2012, the Company issued another 62,80,000 shares at ₹ 23/- per share (equity

share of face value ₹ 1/- each issued at a premium of ₹ 22/-) to 43 non-promoter entities and raised an amount of ₹ 14,44,40,000 (hereinafter referred to as the “**second preferential issue**”). The objects of the first preferential issue and the second preferential issue (collectively the ‘**two preferential issues**’), as intimated to the shareholders before the Annual General Meetings (AGMs) are stated to be –

- (a) fulfill the additional fund requirement for capital expenditure including acquisition of companies/business;*
- (b) funding long-term working capital requirements;*
- (c) marketing;*
- (d) setting up of offices abroad; and*
- (e) other approved corporate purposes.*

9. However, it is observed that the funds raised by the Company were allegedly used for disbursement of business loans, repayment of loans and share purchase, and thus, it was alleged that the Noticees deviated from the objects of the two preferential issues and misutilised the proceeds arising therefrom. It was further alleged that the Noticees failed to disclose all the requisite information pertaining to the two preferential issues as mandated under the provisions of the ICDR Regulations and thereby allegedly misled and misrepresented the objects of the two preferential issues thereby unduly influencing the shareholders of the Company.

***Carrying out NBFC activities without registration/ classification from RBI***

10. It is alleged that pursuant to the first preferential issue of shares, the Company was required to be registered as a Non-Banking Financial Company (hereinafter referred to as the “**NBFC**”) with the RBI due to its engagement in the financial business and proposed increase in the paid-up capital. However, the Company appeared to have diversified its business and ventured into travel solutions and portal activities consequent to change of its name from *Tilak Finance Limited* to *Out of City Travel Solutions Limited*. It is further alleged that in spite of being aware of the requirement of obtaining registration as an NBFC from RBI to carry on its finance business, the Company had not only failed to



inform the shareholders while seeking their approval about the necessity for obtaining the said registration but had also continued with its finance business activity of loan disbursements and share purchase. It is therefore alleged that the Company deliberately changed its name and appeared to have diversified its business only to project that no business of finance activity is being carried out by the Company and that there is no need for obtaining registration from RBI as NBFC. By not disclosing the true and correct facts to the shareholders while seeking their approval vide notices of the AGMs dated July 14, 2010 and September 28, 2012 regarding the requirement of registration as a NBFC, the Company is alleged to have committed fraud in terms of the provisions of the SEBI Act and PFUTP Regulations.

***Loans were given before shareholders' approval of preferential issue***

11. It is observed that the shareholders had approved second preferential issue in the AGM held on September 28, 2012 and that the Company had collected the subscription money for issuance of equity shares on preferential basis prior to obtaining approval of the shareholders for such issuance and used this money for giving loans before the approval of the second preferential issue. The Company is stated to have not informed the shareholders of the fact of having collected subscription money to the tune of ₹ 1.44 Crore from four subscribers of the second preferential issue, either at the time of seeking approval for the second preferential issue vide Notice of AGM dated September 28, 2012 or at the time of seeking ratification from the shareholders vide Notice of AGM dated September 28, 2017. Therefore, it is alleged that the Company misled its shareholders while seeking their approval for raising funds and denied them opportunity to take an informed decision, and thus allegedly committed fraud in terms of the provisions of the SEBI Act and PFUTP Regulations.

***Siphoning off the proceeds of the preferential issue of equity shares***

12. The Company is stated to have transferred amount of ₹ 1.40 Crore out of the proceeds of the first preferential issue to Mr. Niraj Chandra Jha and I.B. Commercial Pvt. Ltd. as business loans, which is alleged to be not the objects

of such issue as stated in the notice of AGM dated July 14, 2010. Furthermore, it is stated that the Company has not received the repayment of the said loans nor has made any efforts for recovery. Further, the Company is observed to have furnished the wrong information as regards to the addresses of the said borrowers before the Investigating Authority. Therefore, it is alleged that the amount of ₹ 1.40 Crore transferred to Mr. Niraj Chandra Jha and I.B. Commercial Pvt. Ltd. was not in the nature of loans but an act of diversion, misutilisation and siphoning off the proceeds of the amount received in the first preferential issue. Thus, the Company is alleged to have violated provisions of the SEBI Act and PFUTP Regulations.

13. The Company is stated to have transferred ₹ 2.21 Crore out of the proceeds of the first preferential issue to Anmol Finance Limited, Shri Ram Investment Co., Rockon Fintech Limited (hereinafter referred to as the “**seller companies**”) in the year 2010 for off-market purchase of securities of – Arun Fintrade Pvt. Ltd, Bhagwati Synthetic Pvt. Ltd., Minakshi Fashion Pvt. Ltd., SKM Steel Pvt. Ltd., Vinesh Silk Mills Pvt. Ltd. and Chitrakar Textiles Pvt. Ltd, which is alleged to be not the objects of such issue stated in the notice of AGM dated July 14, 2010. Furthermore, it is stated that the Company has failed to provide the Investigating Authority any supporting document such as demat statement reflecting such acquisitions or any MoU/ agreement signed between the Company and the seller companies. Thus, it is alleged that the Company, in the garb of purchase of shares through the seller companies, has siphoned off the funds received in the first preferential issue, and thereby violated provisions of the SEBI Act and PFUTP Regulations.
14. The Company is stated to have repaid loans to the tune of ₹ 1.67 Crore out of the proceeds of the first preferential issue to Shree Nath Commercial and Finance Ltd., Anmol Finance Company and Handful Investrade Pvt. Ltd., which is alleged to be not the objects of such issue stated in the notice of AGM dated July 14, 2010. Furthermore, the Company is stated to have not adduced appropriate MoU/ loan agreement with such lender/s to the satisfaction of the Investigating Authority. Further, the Company is stated to have repaid loan to

the tune of ₹ 45.57 Lakh provided to Shree Nath Commercial and Finance Ltd. out of the proceeds of the second preferential issue, which is alleged to be not the objects of the issue stated in the notice of AGM dated September 28, 2012. Furthermore, it has been stated that the Company did not provide any loan agreement/ MoU with such lender to the satisfaction of the Investigating Authority and has only submitted bank account statements and ledger. Thus, it is alleged that the Company has siphoned off the said amount in the garb of repayment of loan, thereby violating the provisions of the SEBI Act and PFUTP Regulations.

***Ratification of deviation by shareholders and Non-disclosure to the Stock Exchange regarding deviation from the objects of the preferential issues***

15. The Company is stated to have sought a ratification from shareholders for the deviation made in respect of the utilisation of the proceeds of the two preferential issues in the year 2017 (i.e., after 7 years and 5 years, respectively). It is alleged that the Company has not put forth any of the facts and information about the alleged misutilisation and diversion of proceeds of the two preferential issues before the shareholders and has allegedly suppressed/concealed the information provided to the shareholders when seeking the ratification. Further, the Company was observed to have not made the quarterly disclosures as required under Clause 43 of the Listing Agreement. The disclosure has to be made till the company has actually utilised the preferential issue proceeds for the objects of the preferential issues. By failing to make full and true disclosure of facts to the shareholders, the Company is alleged to have violated provisions of the SCRA, SEBI Act, LODR Regulations and PFUTP Regulations.

***Allegations against the Directors***

16. Mr. Girraj Kishor Agrawal (Noticee No. 2) and Mrs. Tanu Girraj Agrawal (Noticee No. 3) are stated to be fully aware of the financial transactions of the Company and are alleged to be associated with the utilisation of the proceeds of the two preferential issues. It is alleged that the fraudulent act of deviating

and misutilising the proceeds of the two preferential issues was done by the Company with the knowledge of its directors i.e. Noticee No. 2 and Noticee No. 3. It is therefore alleged that whatever violations have been committed by the Company, the same are also attributable to Noticee No. 2 and Noticee No. 3, who are responsible for the day-to-day affairs of the Company and alleged to have misutilised the proceeds of the two preferential issues.

## **REPLY OF THE NOTICEES:**

17. To the aforesaid allegations, Noticees have made the following submissions:

### *Preliminary objections:*

- i. That there is not even a single complaint from the preferential allottees or shareholders of the Company, and all the preferential allottees were informed of all the material facts prior to taking their approval and accepting their subscription monies.
- ii. That there is an inordinate delay of more than 12 years in initiating the present proceedings which has caused prejudice to the Company since the Company could not trace out various documents due to which adverse inference has been drawn by SEBI. In order to substantiate the aforesaid contention, Noticees have relied upon the following judicial pronouncements –
  - (a) *Shriram Insight Share Brokers vs. SEBI*;<sup>1</sup>
  - (b) *Morepen Laboratories Ltd. vs. SEBI*;<sup>2</sup>
  - (c) *Ashlesh Gunvantbhai Shah vs. SEBI*;<sup>3</sup>
  - (d) *Sanjay Jethalal Soni & ors. vs. SEBI*;<sup>4</sup> and
  - (e) *Ashok Shivlal Rupani & Anr. vs. SEBI*.<sup>5</sup>

---

<sup>1</sup> SAT Appeal No. 559 of 2020, dated January 04, 2022. Available at: <https://indiankanoon.org/doc/192078227/>

<sup>2</sup> SAT Appeal No. 62 of 2020, dated April 15, 2021. Available at: <https://indiankanoon.org/doc/195417908/>

<sup>3</sup> SAT Appeal No. 169 of 2019, dated July 09, 2019. Available at: <https://indiankanoon.org/doc/65112397/>

<sup>4</sup> SAT Appeal No. 102 of 2019, dated Nov. 14, 2019. Available at: <https://indiankanoon.org/doc/188739884/>

<sup>5</sup> SAT Appeal No. 417 of 2018, dated August 22, 2019. Available at: <https://indiankanoon.org/doc/33125227/>

*With respect to the alleged misutilisation of the proceeds of the two preferential issue:*

- iii. That the two preferential issues were pursuant to submission of the requisite documents and disclosures to the stock exchange and Company had received necessary approvals from the shareholders and the stock exchange.
- iv. That the Noticees have continuously disclosed all facts in respect of utilisation of the proceeds of the two preferential issues in the balance sheets, on its website and on the stock exchange which is always available in the public domain.
- v. That Regulation 73(1)(a) of the ICDR Regulations only required one ingredient, i.e., “Object of the Issue”, which has been disclosed by the Noticees and there is neither any inclusion in it nor there is any scope of giving it a wider meaning without any specific wording so as to cover the disclosure of alleged material facts. Even Regulation 163(1) of the ICDR Regulations, 2018 speaks of the same requirement.
- vi. That there was no misutilisation of funds and the funds raised were utilised as per the ‘object of the issue’ for the ‘other approved corporate purposes’, and was majorly deployed for the expansion of existing business line, i.e., lending, investment and share trading.
- vii. That there was no deviation in utilisation of proceeds of the two preferential issues in light of the fact that the proceeds were used for ‘other corporate purpose’, which was the fifth object of both the preferential issues considering Clause IIIA being “Main object” and Clause IIIB(6) and (9) of “Object incidental or ancillary to attainment of main object of the Company” (at the time of first and second preferential issue, respectively), which allows investment in shares and lending thereby forming part of business and thus falls in the category of other corporate purpose of both the issues.
- viii. That admittedly, the shareholders of the Company by a Special Resolution on September 28, 2017 have ratified and approved all acts, deed and things done by the Company in entering into and giving effect to the utilisation of the proceeds as received in the preferential issues which

was in variation to the objects as stated in the notice. In order to substantiate the aforesaid, the Noticees have relied on *Terrascopes Ventures Limited vs SEBI*.<sup>6</sup>

- ix. That the recourse taken to Regulation 301 of the ICDR Regulations, 2018, in order to allege violation of Regulation 73 of the ICDR Regulations, in the year 2010 and 2012, is totally misplaced and legally untenable.

*With respect to the allegation of carrying out NBFC activities without registration/ classification from RBI:*

- x. The name and business of the Company was changed during the FY 2011-12, and during the FY 2012-13, the Company had earned revenue from travel business (as reflected in both years' financials) and the Company had sold the travel portal business during June 2012.
- xi. That the Noticees were unable to trace the application which was rejected by RBI. Further, disclosing of alleged fact with respect to NBFC is not contemplated in any of the provisions, and therefore, the Noticees were not aware about it.
- xii. That there was no requirement of registration with the RBI after the first preferential issue as the Company had diversified its business and ventured into the travel solution and portal activities. Further, if at all the Company was required to obtain a registration, it falls within the domain of RBI and the Company has not received any notice till date from RBI in this regard.
- xiii. That from the Independent Auditors Report for the FY 2013-14, it can be seen that the Company had initiated the process for obtaining certificate of registration but the same was not received and therefore the Auditors had directly informed RBI regarding the same in compliance of Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008.
- xiv. That from the FY 2016-17 to 2019-20, it has been reported by the independent auditor in its report that though the Company's financial

---

<sup>6</sup> SAT Appeal No. 116 of 2021, dated June 06, 2022. Available at: [https://sat.gov.in/english/pdf/E2022\\_JO2021116\\_11.PDF](https://sat.gov.in/english/pdf/E2022_JO2021116_11.PDF)

assets are more than 50 percent of total assets but the income relating to the finance activities is less than 50 percent of the gross total income, and therefore, in the opinion of the auditor, the Company was not required to get registered under Section 45-IA of the Reserve Bank of India Act, 1934 (hereinafter referred to as the “**RBI Act**”) for the FY 2016-17 to 2019-20. Thus, the need to inform the shareholders did not arise.

*With respect to the allegation that loans were given before shareholders’ approval of preferential issue:*

- xv. That there is no provision which restricts the collection of subscription money to the tune of ₹ 1.44 Crore from four potential allottees of the preferential issue prior to the approval of shareholders. The Noticees made all the requisite disclosures in the notice of AGMs and the said requirement disclosing the collection of subscription money prior to shareholder approval is not contemplated in any of the provisions;
- xvi. That the Noticees were not aware of any guideline/ regulation which restricted use of funds before allotment of share and many other companies were doing the same at the time.
- xvii. The disbursement of ₹ 1.44 Crore received prior to the allotment as loan was as per the object and with a view to avoid keeping the funds idle. Out of the three borrowers, two of the borrowers were the group company.

*With respect to the alleged siphoning of the proceeds of the preferential issue of equity shares:*

*Non-recovery of outstanding loans:*

- xviii. The funds alleged to be siphoned off by the Noticees were genuine transactions and are supported by documentary evidences such as bank statements, ledger statements, agreements, confirmation of account statement of other party, etc. The alleged transactions have been verified by an independent auditor and a Certificate of Independent Auditor dated January 16, 2023 has been provided.

- xix. That the Company had given total loans of ₹ 12,50,69,944 to 23 entities under total 32 loan transactions utilising proceeds of first preferential issue and out of the same 21 entities have repaid it except for two entities i.e., Mr. Niraj Chandra Jha and I.B. Commercial. Similarly, the Company had given total loan of ₹ 9,95,42,353 to 17 entities under total 20 loan transactions utilising proceeds of first preferential issue and all have repaid. The aforesaid loans were given as per the Object Clause of the MOA, which was the business of the Company and in line with the Object Cause of the two preferential issue, i.e., 'other approved corporate purposes'.
- xx. That as regards the loan given out of the first preferential issue, Mr. Niraj Chandra Jha has failed to pay full amount of ₹ 10 Lakh, and I.B. Commercial has failed to pay 1.30 Crore, and that the Noticees have issued legal notice to both the entities in 2018 to recover the outstanding amount and the Noticees have submitted relevant documents viz. loan agreement, bank statement, legal notice, dispatch proof, ledger statement, 26AS statement, etc.

*Funds provided to Anmol Finance Company, Shri Ram Investment Company, Rockon Fintech Limited for purchase of shares:*

- xxi. That the Noticees had in the normal course of business during FY 2010-11 purchased 9,14,463 shares and sold 4,15,562 shares in off-market which includes shares purchased and sold as alleged in the SCN and all the said purchase and sale of shares are accounted and disclosed in the balance sheets for the FY 2010-11. Whereas, allegation is made in the SCN only in respect of total of 3,97,632 shares purchased at value ₹ 2,21,40,000 which is included in the total purchase of 9,14,463 shares as reflected in financials of the Company.
- xxii. That the total purchase, i.e., 9,37,54,263 is reflected at 'Purchases' under heading 'Cost of Goods Sold' at Schedule-X forming part of profit and loss account. Similarly, total sale, i.e., ₹ 6,08,93,212 is reflected at 'Sale of shares' at Schedule-VIII forming part of profit and loss account. The said total purchase and sale is also reflected at "Unquoted shares" under heading "Quantitative details in respect of trading of goods" in Annexure-A



as referred in Notes of Account forming part of the account in the Annual Report for the FY 2010-11. Further, total closing balance of ₹ 2,40,51,760 as reflected in Annexure-A of the Annual Report is reflected in “total stock in trade” in Balance Sheet as on March 31, 2011. Hence, it is apparent that the said purchase and sale are genuine and proceeds of preferential issue have not been misutilised.

- xxiii. That the amount of ₹ 1.15 Crore to Shri Ram Investment Company and the amount of ₹ 80 Lakhs to Anmol Finance Company was provided for purchasing shares of certain unlisted companies. Later the said shares were sold by the Company. Similarly, amount of ₹ 26.40 Lakhs was provided to Rockon Fintech limited for purchase of shares of Chitrakar Textiles which were later sold by the Company.
- xxiv. As regards the allegation of purchase of shares from Anmol Finance Company, Shri Ram Investment Company, and Rockon Fintech Limited (seller companies), the Noticees have submitted bank statements, confirmation of account statements reflecting share purchase, ledger statements, stock summary report maintained by the Company.
- xxv. That it is not possible for the Noticee to produce decade old loan agreement. However, the Noticee has already submitted details of the transactions substantiated by the bank account statements, board resolution, debit note/ confirmation of account with respect to proof of purchase of securities from two entities, i.e., Anmol Finance Company and Shri Ram Investment Company.
- xxvi. That the shares purchased by the Company were also sold by the Company, which can be further seen from the stock summary and its correspondent bank transactions.
- xxvii. The allegation of siphoning-off the proceeds of the first preferential issue to the tune of ₹ 2.21 Crore is denied as the said funds were utilised as per the ‘other corporate purpose’.

*Repayment of loans out of proceeds of first preferential issue:*

- xxviii. That the Noticee had taken loans from Shree Nath Commercial & Finance Ltd. of ₹ 32 Lakhs, Anmol Finance Company of ₹ 98 Lakhs and Handful Investrade Pvt. Ltd. of ₹ 2,44,40,000 and that certain portion of the loan,

i.e., ₹ 1.67 Crore was repaid using the proceeds of the first preferential issue, i.e., ₹ 12 Lakhs to Shree Nath Commercial & Finance Ltd., ₹ 12 Lakh to Anmol Finance Company and ₹ 1,43,90,000 to Handful Investrade Pvt. Ltd. To substantiate the aforesaid, the Noticees have submitted board resolution, loan agreement, bank statements, confirmation of account statements and ledger statements.

- xxix. That the alleged observation in the SCN that Handful Investrade Pvt. Ltd. did not confirm any payment made by it to the Company as loan is contrary to the reply dated October 23, 2020 of Handful Investrade Pvt. Ltd. wherein it had stated about the loans given to the Company.
- xxx. That the loan agreement dated May 10, 2010 of Shree Nath Commercial & Finance Ltd. wherein by mistake the name of Company is mentioned as “Out of City Travel Solutions Ltd.”; however, there is no dispute regarding loan given to the Company and repayment made.
- xxxi. That Shree Nath Commercial & Finance Ltd. is a group company of Noticee No. 1 with common promoters and directors, and therefore Noticee No. 2 has signed both as borrower and lender. Hence, the Noticees deny the allegation that making of loan agreement is only an afterthought.
- xxxii. That Shree Nath Commercial & Finance Ltd. and Handful Investrade Pvt. Ltd. are group companies of Noticee No. 1 and have common promoters and directors.

*Repayment of loans out of the proceeds of the second preferential issue:*

- xxxiii. That in the normal course of business and in a continuous transaction, the Company had taken loans of ₹ 1,04,57,647, on September 17, 2012 from Shree Nath Commercial & Finance Ltd. However, the loan agreement in respect of the said transaction is not available/ traceable and therefore the same cannot be produced.
- xxxiv. That the Company had made repayment of the said loan by making payment of ₹ 1 Crore on October 11, 2012 out of which ₹ 41 Lakhs was utilised from the issues proceeds and ₹ 63,57,647 from the Company's own balance fund. After repayment of ₹ 1 Crore, there remained a balance loan of ₹ 4,57,647, repayment of which was done on October 15,

2012 by making payment of ₹ 45 Lakhs from the Company's bank account out of which ₹ 4,57,647 was utilised from issue proceeds for repayment of said remaining loan and ₹ 40,42,353 was an additional loan given to Shree Nath Commercial & Finance Ltd. from Company's own balance fund. It is thus apparent that only certain portion of the said loan i.e. ₹ 45,57,647 (which is subject matter of SCN) was repaid using preferential issue proceeds of 2012 and the same has been accounted for in the books of the Company. To substantiate the aforesaid, the Noticees have submitted bank statements, confirmation of account statements and ledger statements.

- xxxv. That it is denied that there were inconsistent replies regarding the amount of loan availed and repaid to Shree Nath Commercial & finance Ltd. In fact, each reply was given in response to respective SEBI's email as per SEBI's requirements.
- xxxvi. That one cannot merely see one leg of transaction, wherein loans were repaid partly, and completely ignore the earlier corresponding entry wherein Noticees had received the loan amounts. Since, the transactions were repayment transactions, the issue of siphoning off as alleged cannot and does not arise.

*With respect to the alleged ratification of deviation by the shareholders:*

- xxxvii. That no objection has been raised by any shareholder and no complaint has been made in this regard. Utilisation of proceeds of the two preferential issues were always known to the shareholders by way of Annual Report.
- xxxviii. Since during March 2016 – March 2017, BSE had expressed apprehension with regard to utilisation of preferential allotment proceeds not being in consonance with the objects as disclosed in the Notice, Noticees had as a matter of abundant caution obtained the ratification and approval of shareholders with regard to utilisation of the preferential allotment proceeds on September 28, 2017.
- xxxix. That the resolution for ratification (Para 3E(b) of the Notice) states that *“... the ratification and approval of the shareholders be and is hereby*

*accorded to all acts, deeds and things done by the company entering into and giving effect to the utilisation of proceeds as received in the said preferential issue which is in variation to the objects as stated out in the notice of Annual General Meeting held on 14<sup>th</sup> July, 2010 and 28<sup>th</sup> September, 2012.” Thus, the contention that the Company has not stated to the shareholders that the utilisation of the proceeds of the two preferential issues had deviated from the purpose for which it was raised is misplaced.*

- xl. That it was clearly disclosed on the Explanatory Statement dated August 19, 2017 (at Item 6) that the total amount of ₹ 16,49,25,000 was actually utilised towards loans, investments and working capital, with the individual breakup of the amounts utilised towards each activity. Similarly, for the other preferential allotment, disclosure on the same lines were made at Item 7.
- xli. That the fact that ratification is sought, itself implies that there was some irregularity, which is sought to be corrected and regularized by seeking shareholders’ approval, otherwise where is the need for seeking ratification.
- xliv. That carrying on of NBFC activities without registration, as alleged, and obtaining of ratification had no nexus.

*With respect to the alleged non-disclosure to the stock exchange regarding deviation from the objects of preferential issues:*

- xlvi. The allegation pertaining to violation of Clause 43, disclosure to the exchange, does not sustain since there was no deviation from the object of the preferential issues.
- xlv. That Clause 43 of the listing agreement was not applicable as the proceeds of the two preferential issues were utilised in terms of the objects of the two preferential issues. Further, the allegation of violation of Regulation 32 of the LODR Regulations is also not maintainable as it came into effect in September 2015 and has no retrospective effect.
- xlv. That the Noticee had not made any projections with regard to (a) utilisation of funds; and (b) profitability, in the objects stated in the

Explanatory Statement to the Notice sent to the shareholders seeking approval for the preferential allotment. Therefore, the issue of disclosing any variation in the projected utilisation/ profitability and the actual utilisation/ profitability, cannot and does not arise.

- xlvi. That Regulation 73 of the ICDR Regulations did not obligate the companies to make projections. Therefore, the alleged violation of Clause 43 is legally untenable.

*With respect to the alleged violations of the FUTP Regulations:*

- xlvi. That utilisation of funds was in consonance with the objects of the two preferential issues and was falling within the overall object. Thus, in any event, based on the alleged misutilisation/ diversion, no breach of PFUTP Regulations can be alleged.
- xlvi. That it is nowhere alleged that the alleged misutilisation/ diversion/ siphoning-off has directly or indirectly resulted in manipulation of price of the securities of the Company, which is one of the main ingredient to prove in Explanation to Regulation 4(1) of the PFUTP Regulations. To substantiate the same, Noticees have relied on SEBI's Order dated September 14, 2021 in the matter of *JMD Ventures Limited*<sup>7</sup> and SEBI's Order dated July 08, 2021 in the matter of *VB Industries Ltd*<sup>8</sup>.

**CONSIDERATION OF ISSUES AND FINDINGS:**

18. Before considering the issues to be determined in the matter, it would be useful to summarise the facts for context. Noticee No. 1 was incorporated as Tilak Finance Limited on August 18, 1980, with the main objective of investing, acquiring, holding, and dealing in shares, securities, etc. Consequent to change in its business activity to travel portal solution activity, the Company changed its name to '*Out of City Travel Solutions Limited*' on December 28, 2011. Thereafter, pursuant to change in its business to financing activities, the

---

<sup>7</sup> SEBI order dated September 14, 2021. Available at: [https://www.sebi.gov.in/enforcement/orders/sep-2021/final-order-in-the-matter-of-jmd-ventures-ltd-\\_52573.html](https://www.sebi.gov.in/enforcement/orders/sep-2021/final-order-in-the-matter-of-jmd-ventures-ltd-_52573.html)

<sup>8</sup> SEBI order dated July 08, 2021. Available at: [https://www.sebi.gov.in/enforcement/orders/jul-2021/final-order-in-the-matter-of-v-b-industries-limited\\_50972.html](https://www.sebi.gov.in/enforcement/orders/jul-2021/final-order-in-the-matter-of-v-b-industries-limited_50972.html)

Company changed its name once again to Tilak Finance Limited on March 28, 2014, and subsequently, again changed its name to Tilak Ventures Limited on October 13, 2015. Presently, the Company is stated to be venturing in the business of dealing in finance, share trading, dealing in fabrics and goods trading. The Company issued shares through preferential issue on two occasions, i.e., on July 21, 2010 and October 18, 2012. As a result of the aforesaid preferential issues, there was an increase in the paid-up capital of the Company, and due to its engagement in the financial business, the Company was required to be registered as a Non-Banking Financial Company. The Company was further observed to be collecting the subscription money for issuance of equity shares on preferential basis prior to obtaining approval of the shareholders for such issuance and alleged to have misutilised and siphoned off the proceeds of the two preferential issues. Further, the Company was observed to have obtained a ratification from shareholders for the deviations made in respect of the utilisation of the proceeds of the two preferential issues in the year 2017, and alleged to have suppressed/concealed the information provided to the shareholders during ratification.

Preliminary objection

19. A preliminary objection raised by the Noticees is that there is an inordinate delay of more than 12 years in initiating the present proceedings which has caused prejudice to the Company. I find it relevant to address the delay in initiation of these proceedings. It is essential to take on record that the Hon'ble SAT has in various cases<sup>9</sup> such as *Shriram Insight Share Brokers vs. SEBI* (Appeal No. 559 of 2020), *Morepen Laboratories Ltd. vs. SEBI* (Appeal No. 62 of 2020), *Ashlesh Gunvantbhai Shah vs. SEBI* (Appeal No. 169 of 2019), *Sanjay Jethalal Soni & ors. vs. SEBI* (Appeal No. 102 of 2019) and *Ashok Shivlal Rupani & Anr. vs. SEBI* (Appeal No. 417 of 2018) held that delay in launching the proceedings by SEBI caused prejudice to the Appellant(s) therein as they were not able to raise the proper defense for want of record. At the same time, I also find it important to note that delay in issue of show-cause

---

<sup>9</sup> *Supra* note 1 to 5.

notice itself would not exonerate the defaulters under the SEBI Act and the relevant Regulations, as has been held by the Hon'ble Supreme Court in *Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari*<sup>10</sup>. On the aspect of delay and its impact on proceedings in the context of SEBI, the Hon'ble Supreme Court in its judgment in the matter of *SEBI v. Sunil Krishna Khaitan and Ors*<sup>11</sup> discussed its earlier decision in the matter of *Bhavesh Pabari* (supra) and held the following:

*“81. This Court in the judgment authored by one of us (Sanjiv Khanna, J.) in Bhavesh Pabari (supra) had examined the question of delay and laches in initiating proceedings under Chapter VI-A of the Act and the principle of law that when no limitation period is prescribed proceedings should be initiated within a reasonable time and what would be reasonable time would depend upon facts and circumstances of each case. In this regard, it was held as under:*

*“35. The Appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show-cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc. The show-cause notice in the present case had specifically referred to the respective dates of default and the date of compliance, which was made between 30-8-2011 to 29-11-2011 (delay was between 927 days to 1897 days). Only upon compliance being made that the defaults had come to notice. In the aforesaid background, and so noticing the quantum of fine/penalty imposed, we do not find good ground and reason to interfere.”*

*82. The directions given in the aforesaid quotation should not be understood as empowering the authorities/Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was*

---

<sup>10</sup> (2019) 5 SCC 90. Available at:

[https://main.sci.gov.in/supremecourt/2013/36291/36291\\_2013\\_Judgement\\_28-Feb-2019.pdf](https://main.sci.gov.in/supremecourt/2013/36291/36291_2013_Judgement_28-Feb-2019.pdf)

<sup>11</sup> Civil Appeal No. 8249 of 2013, decided on July 11, 2022. Available at:

[https://www.sebi.gov.in/enforcement/orders/jul-2022/judgment-of-the-hon-ble-supreme-court-in-civil-appeal-no-8249-of-2013-sebi-vs-sunil-krishna-khaitan-and-ors-\\_61342.html](https://www.sebi.gov.in/enforcement/orders/jul-2022/judgment-of-the-hon-ble-supreme-court-in-civil-appeal-no-8249-of-2013-sebi-vs-sunil-krishna-khaitan-and-ors-_61342.html)

*hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast Rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to inordinate delay in issuance of a show-cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the duty of the authority/officer to consider the question objectively, fairly and in a rational manner. There is public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified, should be done within reasonable time. This prevents miscarriage of justice, misuse and abuse of the power as well as ensures that the violation of the provisions are checked and penalised without delay, thereby effectuating the purpose behind the enactment.”*

20. It is pertinent to mention that in terms of the provisions of the ICDR Regulations, a company making a preferential issue is required to obtain approval of its board and shareholders, and file the same with the stock exchange for seeking in-principle approval. Such documents including notice to the shareholders are not required to be filed with SEBI. Hence, any mis-statement/ misrepresentation regarding utilization of the proceeds of the preferential issue lies before the stock exchanges for scrutiny and not before SEBI unless it specifically comes to SEBI's knowledge. In the present case, it is noted that BSE had issued a notice to the Company on March 28, 2016 whereby the trading in the shares of the Company was suspended, and subsequently, vide notice dated March 15, 2017, BSE observed that the funds raised by the Company in the two preferential issues were not utilised in accordance with approvals granted by the shareholders. Thus, the alleged misutilization of the proceeds of the two preferential issues came into light only pursuant to the notice issued by BSE in the year 2016 and thereafter, the matter was taken up for examination / investigation by SEBI.
21. In view of the aforesaid and viewing the present case in light of the above observations of the Hon'ble Supreme Court, I note that there is no dispute regarding the fact that largely the alleged fund diversion/ misutilisation took place in the period 2010-12 but the same came to the notice of SEBI only in the year 2016 when the subject matter was flagged by BSE to the Company.



Accordingly, I find it pertinent to record that the time taken for initiation of the proceedings has to be reckoned from March 28, 2016 when BSE issued a notice to the Company (as mentioned above) and not from the date(s) when the preferential issues were made.

Misutilisation of the proceeds of preferential issue

22. I note that BSE, in the year 2016-17 had issued show cause notices to the Company for ascertaining the misutilisation of proceeds of the two preferential issues. The Disciplinary Action Committee of BSE concluded that *prima facie* there was misutilisation of funds of the proceeds of the two preferential issues. Subsequently, SEBI initiated investigation in the matter. Coming to the specific nature of allegations in the present case, the crux thereof is that the funds raised in the two preferential issues by the Company were diverted for objects and to entities other than those disclosed upfront to the shareholders. It is observed that vide the first preferential issue dated July 21, 2010, the Company had issued 1,09,95,000 shares and raised ₹ 16,49,25,000 and vide the second preferential issue dated October 18, 2012, the Company issued another 62,80,000 shares and raised ₹ 14,44,40,000. Given that the amount raised by the Company is running in tens of crores rupees and that subsequently the Company has admittedly raised further funds from the shareholders, I find it appropriate that the allegations in the present SCN relating to diversion/ misutilisation and siphoning-off of the funds that were raised warrants adjudication of the allegations objectively, fairly and in a rational manner. Therefore, despite the delay in the present case, appropriate directions are required to be issued. Needless to say that delay will be considered as a mitigating factor for the purpose of issuance of any directions as envisaged in the SCN.
23. The allegation in the SCN hinges on the fact that the Company has allegedly misutilised the proceeds of the two preferential issues. I note that the stated objects of the two preferential issues were to – (a) *fulfill the additional fund requirement for capital expenditure including acquisition of companies/*

business; (b) funding long-term working capital requirements; (c) marketing; (d) setting up of offices abroad; and (e) other approved corporate purposes. However, the investigation conducted by SEBI observed that a substantial portion of proceeds of both the preferential issues was utilised for the purposes – (a) business loan; (b) repayment of loans; and (c) share purchase, which do not form part of the objects of the two preferential issues. Admittedly, the Company has utilised the proceeds of the two the second preferential issue of ₹ 16.49 Crore and ₹ 14.44 Crore for the following purposes:

**Table 1—Utilisation of the proceeds of the 2 Preferential Issues as per the company**

Purpose of utilisation	First Preferential Issue		Second Preferential Issue	
	Amount utilised (in ₹)	% to total proceeds of the issue	Amount utilised (in ₹)	% to total proceeds of the issue
Business loans	12,50,69,944	75.86	9,32,52,353	64.56
Repayment of loans	1,67,90,000	10.19	45,57,647	3.09
Share Purchase	2,21,40,000	13.42	4,51,21,941	31.23
Office expenses	25,056	0.01	1,08,059	0.07
Cash withdrawal	9,00,000	0.54	14,00,000	0.62
<b>Total</b>	<b>16,49,25,000</b>		<b>14,44,40,000</b>	

24. It is alleged that the Company has, in utilisation of the proceeds of the two preferential issues deviated from the stated objects of the issues in entirety amounting to misutilisation and the extent of such misutilisation of the proceeds of the two preferential issues is alleged to be ₹ 16.39 Crore and ₹ 14.29 Crore, respectively. Few instances of such misutilisation as noted in the SCN are provided as follows:

**Table 2: Illustrative instances of misutilisation of the proceeds of the first preferential issue**

SN	Name of entity	Amount paid (In ₹)	% to total proceeds of pref. issue	Date of payment	Purpose of payment
1	Kaul Enterprises	25,00,000	1.52	03/08/2010	Business loan
		25,00,000	1.52	31/07/2010	Business loan
2	Madhusudhan Budhia HUF	12,00,000	0.73	23/07/2010	Business loan
3	Sarika Tex (Mumbai) P. Ltd.	10,00,000	0.61	23/07/2010	Business loan
4	Anmol Finance Company	36,00,000	2.18	23/07/2010	Business loan
		12,00,000	0.73	23/07/2010	Loan Repayment
		50,00,000	3.03	23/07/2010	Share Purchase
		30,00,000	1.82	10/12/2010	Share Purchase
5	Handful Investment Pvt Co. Ltd.	1,17,00,000	7.09	23/07/2010	Business loan

**Table 3: Illustrative instances of misutilisation of the proceeds of the *second preferential issue***

SN	Name of entity	Amount paid (In ₹)	% to total proceeds of pref. issue	Date of payment	Purpose of payment
1	Kayaguru Health Solution Pvt. Ltd.	3,50,000	0.24	08/09/2012	Business Loan
2	Bonny Hotels	26,40,000	1.83	08/09/2012	Business Loan
		2,00,000	0.14	06/10/2012	
3	Five X Finance & Investment Ltd.	1,15,00,000	7.96	20/09/2012	Business Loan
		36,00,000	2.49	16/10/2012	
4	Daksh investments Advisory Ser. Ltd.	2,50,000	0.17	06/10/2012	Business Loan
5	Shree Nath Commercial & Finance Ltd.	41,00,000	2.84	11/10/2012	Loan Repayment

25. In view of the aforesaid facts, it is alleged that by utilising the proceeds of the two preferential issues towards purposes of disbursement of loans, purchase of shares, and repayment of loans, none of which was part of the stated objects or purpose of the two preferential issues, the Company has not only deviated from the stated objects of the two preferential issues but had also misutilised the proceeds to the extent of ₹ 16.39 Crore and ₹ 14.29 Crore, constituting 99.47% and 98.88% of the total proceeds of the two preferential issues respectively. It is further alleged that in the Explanatory Note attached with the respective Notices of AGMs dated July 14, 2010 and September 28, 2012 seeking approval of shareholders for issuance of preferential shares, the Company had stated only the purpose for which the preferential issues were being made but failed to state the following:

- The extent of proposed allocation of funds out of the proceeds proposed for each of the purposes;
- list of items of capital expenditure for which funds is required;
- the basis of arriving at the working capital requirement;
- list of companies which have been identified for the purpose of deployment of funds by purchase of shares;
- nature of general corporate purposes.

In view of the aforesaid facts, it is alleged that the Company has not put forth any of the alleged facts and information about the proposed allocation of funds for various purposes, basis of arriving at the working capital requirement, list of

capital expenditure proposed to be incurred, which is the basic and essential information in the matter to enable the shareholders to make an informed decision for granting approval or otherwise.

26. It is pertinent to mention that BSE had earlier issued a notice dated March 28, 2016 whereby the trading in the shares of the Company was suspended, and subsequently, vide notice dated March 15, 2017, observed that the funds raised by the Company in the two preferential issues were not utilised in accordance with approvals granted by the shareholders. The aforesaid finding of BSE was, *inter alia*, based on the reasons:
- a. that there was no provision found in MOA of the Company which enabled the Company to pursue the object of “grant interest free loan”;
  - b. that the interest free loans were not in accordance with Section 372A of the Companies Act, 1956;
  - c. that the business loans were provided without any collateral/ security and does not provide any repayment schedule; and
  - d. that the Company was carrying out activity of lending money which is permitted only to be undertaken by NBFCs that are registered with RBI.
27. With regard to the above, it has been submitted by the Company that there is not even single complaint from the preferential allottees or shareholders of the Company, and all the preferential allottees were informed of all the material facts prior to taking their approval and accepting their subscription monies and that the two preferential issues were pursuant to submission of the requisite documents and disclosures to the stock exchange and Company had received necessary approvals from the shareholders and the stock exchange. The fact that there were no complaints from the preferential allottees or shareholders may only act as a mitigating factor for the purpose of issuance of any directions as envisaged in the SCN.
28. Noticees have heavily relied on the requirements of Regulation 73(1)(a) of the ICDR Regulations to state that the said regulation only required one ingredient, i.e., “Objects of the Issue”, which has been disclosed by the Company and that there is neither any inclusion in the said regulation nor there is any scope of

giving it a wider meaning without any specific wording so as to cover the disclosure of alleged material facts. Regulation 73(1)(a) of the ICDR Regulations states the following:

***“Disclosures.***

*73. (1) The issuer shall, in addition to the disclosures required under section 173 of the Companies Act, 1956 or any other applicable law, disclose the following in the explanatory statement to the notice for the general meeting proposed for passing special resolution:*

- (a) the objects of the preferential issue;*
- (b) ...”*

29. I note that the ICDR Regulations do not specify any particular heads or the extent to which the proceeds of the preferential issues are to be utilised and the disclosure is expected to provide a true, fair and transparent information to its shareholders and potential allottees in order to enable them to make rational investment decision. Owing to the fact that Company had utilised the proceeds of the two preferential issues towards purposes of *disbursement of loans, purchase of shares, and repayment of loans* to the extent of ₹ 16.39 Crore and ₹ 14.29 Crore constituting 99.47% and 98.88% of the total proceeds of the first preferential issue and the second preferential issue, respectively, which was *not* specifically stated by the Company in its objects of the issue for the two preferential issue, it is clear that both the letter of the law and the spirit of the law may not have been complied with.
30. It is undeniable that the spirit of every disclosure made to the shareholders, lies in the quality of such disclosure, which is evaluated on the touchstone of factual accuracy, fairness and transparency. In this regard, I find it relevant to draw reference to the observations of Hon’ble Supreme Court of India in the matter of N. Narayanan vs. A.O., SEBI<sup>12</sup> in para. 28, wherein it was held that *“Companies whose securities are traded on a public market, disclosure of information about the company is crucial for the accurate pricing of the companies’ securities and also for the efficient operation of the market”*. Further, the Hon’ble Court held that *“Securities market is based on free and*

---

<sup>12</sup> Civil Appeal Nos. 4112-4113 of 2013 decided on April 26, 2013. Available at: <https://indiankanoon.org/doc/140793831/#:~:text=The%20investigation%20department%20of%20SEBI,false%20financial%20statements%20thereby%20violated>

*open access to information, the integrity of the market is predicated on the quality and the manner in which it is made available to market.”*

31. Noticees have submitted that the funds raised were utilised as per the ‘object of the issue’ towards ‘*other approved corporate purposes*’, and was majorly deployed for the expansion of existing business line, i.e., lending, investment and share trading, which allows investment in shares and lending thereby forming part of business. Through this contention, the Noticees seek to justify that almost the entire amount raised in the two preferential issues, i.e., 99.47% and 98.88% of the total proceeds of the two second preferential issues, was utilised for purposes which were not forming the major part of the ‘object of the issue’ but for the ‘other approved corporate purposes’. The pertinent question here is whether utilising almost 99% of the proceeds of the two preferential issues for purposes which was not known to the shareholders at the time when their approval was sought, has defeated that objective of disclosure, transparency and the interest of the shareholders.
32. I find that the ‘other approved corporate purposes’ was a miscellaneous blanket clause and its particulars were not known to shareholders at the time of according their approval. A reasonable person would not have known that the ‘object of the issue’ included – *disbursement of loans, purchase of shares, and repayment of loans*, for which almost 99% of the proceeds were utilised, unless the same was specifically provided in the ‘objects of the issue’. The legal requirement of seeking disclosure under the head ‘objects of the issue’ is to ensure true, fair and transparent disclosure and encourage corporate governance. Further, adequate disclosures about the utilisation of funds ensure a fair market where investors’ decisions to buy and sell shares can factor all relevant information. I find that the disclosures made by the Company for the two preferential issues, as intimated to the shareholders before the AGMs, lacked quality as well as defied the spirit of the law. I, therefore, conclude that ‘objects of the issue’ did not give a true, fair and transparent disclosure to all the shareholders of the company and in fact, also misled the preferential allottees.

33. Noticees have made a submission that the recourse taken to Regulation 301 of the ICDR Regulations, 2018, in order to allege violation of Regulation 73 of the ICDR Regulations, 2009, in respect of preferential issues made in the years 2010 and 2012, is totally misplaced and legally untenable. In this regard, I note that Regulations 301 of the ICDR Regulations, 2018 titled as “*Repeal and Savings*” saves an act or action taken under the ICDR Regulations, 2009. In the present matter, the alleged contraventions were committed during the period 2010-12 when the ICDR Regulations 2009 was in force. In view thereof, the SCN alleges the violation of regulation 73 of ICDR Regulations 2009 read with Regulation 301 of the ICDR Regulations, 2018. Considering the same, I do not find any legal infirmity with the mention of Regulation 301 of the ICDR Regulations, 2018 in the SCN and reject the contention of Noticees in this regard.
34. In view of the aforesaid findings, I find that the Company has violated Regulation 73 read with Regulation 301 of the ICDR Regulations.

*Carrying out NBFC activities without registration/ classification from the RBI*

35. It is alleged that the Company has been engaged in the business of finance activity prior to raising of the first preferential issue till the year 2010 with its paid up capital of ₹ 25,00,000. However, consequent to the first preferential issue on July 21, 2010, the paid up capital of the Company increased to ₹ 12.25 Crore by virtue of which the Company was required to obtain the certificate of registration from RBI as NBFC if it intended to continue with its finance business activity in terms of Section 45 I of the RBI Act. It is further alleged that the Company failed to disclose the aforesaid requirements to the shareholders while seeking approval for the first preferential issue.
36. On the basis of materials available on records, i.e., (a) Annual Report of the Company for the FY 2010-11; (b) letter dated June 04, 2016 from Company to BSE; and (c) Public Announcement on BSE dated January 02, 2012; the

Company is alleged to be engaged in the finance business and was aware of the requirement of obtaining a registration from RBI as a NBFC consequent on increase in its paid-up capital from ₹ 25 Lakhs to ₹ 12.25 Crore.

37. The SCN further alleged that the act of diversification of business of the Company from finance to business activity of “travel solutions and portal activity” and accordingly, changing its name from its existing (first) name of “Tilak Finance Ltd.” to a new name of “Out of city Travel Solutions Ltd.” was only to project that no business of *finance activity* is to be continued by the Company, and therefore, no registration from RBI was required. The said allegation is based on the record of auditor’s certificate dated April 14, 2014 furnished by the Company to BSE at the time of name change from Out of City Travel Solutions Ltd. to Tilak Finance Ltd., which *inter-alia* mentioned that in the period from April 01, 2013 to March 31, 2014, Company earned *nil* income from travel portal and enabled activities while all revenues was earned from finance, investments and share trading.
38. In view of the aforesaid, the SCN alleges failure on the part of the Noticees to disclose true and correct facts to the shareholders while seeking their approval of the two preferential issues thereby influencing the decision of the shareholders for granting approval.
39. Noticees have submitted that there was no requirement of registration with the RBI after the first preferential issue since the Company had diversified its business and ventured into the travel solution and portal activities and that if at all the Company was required to obtain a registration, it falls within the domain of RBI and the Company has not received any notice till date from RBI in this regard. The Noticees have further submitted that the Company had initiated the process for obtaining certificate of registration but the same was not received and therefore the Auditors had directly informed the RBI regarding the same in compliance of Non-Banking Financial Companies Auditor’s Report (Reserve Bank) Directions, 2008.



40. In this regard, I note that the Noticees have not denied that they were aware of the requirement of obtaining registration from RBI as NBFC in order to continue to carry its finance business. The need for such requirement is evident from the letter dated June 04, 2016 of the Company to BSE wherein it was, *inter alia*, stated that the following:

*“upto year 2010, authorised capital of the company was INR 25,00,000/- only and to register as NBFC with RBI, it requires capital of INR 2,00,00,000/-. So the question of registration with RBI does not arise. The company’s capital has increased pursuant to preferential issue in 2010 from INR 25,00,000/- to 12,25,00,000/- and the company was carrying on business of Finance and share trading during FY 2010-11 and in FY 2011-12 the company diversified its business and ventured its business line into travel solution and portal activities and consequently name of the company was changed from Tilak Finance Limited to Out of City Travel Solutions Limited which dispensed the requirement of registration as NBFC with RBI. But unfortunately, the business did not succeed and the company turned back to its original business of finance. In the FY 2012-13, the company intended to make application to RBI for seeking registration, but RBI was not entertaining any fresh application for registration, with the view of the same, company ventured its business line into business of textile along with finance and more than 50% revenue is been generated from textile segment and company ceased to be deemed NBFC and the requirement of registration with RBI got dismissed.”*

41. Further, I note that the Company had announced on BSE that in the meeting of Board of Directors held on January 02, 2012 it was, *inter alia*, “discussed and approved not to continue and carry on NBFC business.” I note that in terms of Section 45IA of the RBI Act, in the year 2010-11, the minimum net owned fund requirement was ₹ 2 Crore. I find that consequent to increase in the paid-up capital of the Company from ₹ 25 Lakhs to 12.25 Crore pursuant to the first preferential issue, and in light of the fact that the Company was carrying on finance business as specified in Section 45-I(a) read with Section 45-I(c) of the RBI Act, the Company was obligated to seek registration as an NBFC from RBI. Further, considering the Company’s letter to BSE dated June 04, 2014 and public announcement made on BSE dated June 02, 2012, it cannot be accepted that the Company was unaware of the requirement of obtaining registration from RBI as an NBFC to carry on finance business.

42. The contention of the Noticees that, there was no requirement of registration with the RBI after the first preferential issue since the Company had diversified its business and ventured into the travel solution and portal activities, is not accepted for the reason that such change of name and business activity appears to have been done only to project that no business of finance activity is continued by the Company and therefore, no registration from RBI is required. Such inference is also bolstered by the fact that the Company earned no income at all from the purported travel solution and portal business it decided to undertake as captured in the auditor's certificate dated April 14, 2014 furnished by the Company to BSE at the time of name change from Out of City Travel Solutions Ltd. to Tilak Finance Ltd., which *inter-alia* mentioned that in the period from April 01, 2013 to March 31, 2014, Company earned nil income from travel portal and enabled activities while all revenues was earned from finance, investments and share trading.
43. The Noticees have further contented that from the FY 2016-17 to 2019-20, though the Company's financial assets were more than 50 percent of total assets but the income relating to the finance activities is less than 50 percent of the gross total income, and therefore, in the opinion of the auditor, the Company was not required to get registered under Section 45-IA of the RBI Act. I find this contention of Noticees untenable owing to the record of auditor's certificate dated April 14, 2014 furnished by the Company to BSE at the time of name change from *Out of City Travel Solutions Ltd. to Tilak finance Ltd.*, which clearly indicates that from the period from April 01, 2013 to March 31, 2014, the Company earned *nil* income from travel portal and enabled activities while all revenues were earned from finance, investments and share trading.
44. The fact that the Company has misused the proceeds of the first preferential issue for the purpose of carrying on its finance business and the finding that the Company was aware of the requirement of obtaining registration from RBI as an NBFC for carrying on finance business, leads to the inference that Company was not only under an obligation to provide true, fair and transparent disclosure to the shareholders about such requirement but had also presented a false

picture of Company's intention of utilising the proceeds of preferential issue for the legitimate purpose. Further, I find that Company did not provide any information as to whether it has made any application to RBI for registration as NBFC and if so, its status as on date of seeking approval which would have been the basic essential information in the matter to enable the shareholders to make an informed decision for granting approval or otherwise. Thus, I find that raising funds from public with the intention to carry out the finance business activity of loan disbursement and share purchase, and without disclosing the aforesaid material information including the necessity to obtain registration from RBI, is clearly an act of misrepresentation and active concealment of material fact by the Company. This deceptive behaviour of the Company is covered within the definition of "fraud" provided under regulation 2(1)(c) of the PFUTP Regulations and is therefore, in violation of the provisions of the PFUTP Regulations as alleged in the SCN.

*Subscription money collected and loans given before shareholders' approval of preferential issue*

45. It is alleged that the Company did not inform the shareholders of the fact that it had collected subscription money to the tune of ₹ 1.44 Crore from the following four subscribers of the second preferential issue prior to obtaining approval of the shareholders:

**Table 4**

S.No.	Name of allottees	Amount received by company (₹)	Date of receipt	Name of entity	Amount given as loan (INR)	Date of loan
1	Rashmi Vinay Bhatt	29,90,000	07/09/2012	Kayaguru Health Solution P Ltd	3,50,000	08/09/2012
				Bonny Hotels	26,40,000	08/09/2012
2	Dipti M Doshi	69,00,000	20/09/2012	Five X Finance & Investment Limited	1,15,00,000	20/09/2012
3	Sujata Tripathi	23,00,000	20/09/2012			
4	Kalawati Ramlakhan Singh	23,00,000	20/09/2012			
<b>Total</b>		<b>1,44,90,000</b>		<b>Total</b>	<b>1,44,90,000</b>	

46. It is noted from the above table that the Company received ₹ 1,44,90,000 (i.e. 10.03% of amount raised through the second preferential issue) of application money before obtaining the shareholders' approval of the second preferential issue and used this application money for giving loans before the approval of the second preferential issue. Therefore, it is alleged that the Company had collected the subscription money for issuance of equity shares on preferential basis unauthorisedly prior to obtaining approval of the shareholders for such issuance. The SCN further alleged that the Company did not inform the shareholders about the fact of having collected subscription money to the tune of ₹ 1.44 Crore from four subscribers, either at the time of seeking approval for the second preferential issue vide its Notice of AGM dated September 28, 2012, or at the time of seeking ratification from the shareholders for deviation in the utilization of the proceeds of the second preferential issue vide Notice of AGM dated September 28, 2017.
47. In this regard, Noticees have submitted that there is no provision which restricts the collection of subscription money to the tune of ₹ 1.44 Crore from four potential allottees of the preferential issue prior to the approval of shareholders and that the Company made all the requisite disclosures in the notice of AGMs and utilised the proceeds for lending as per the object and with a view to avoid keeping the funds idle. I find this contention of the Noticees untenable and unsound. The requirement of seeking prior approval of shareholders for the preferential issue at the relevant point of time was provided in Section 81(1A) of the Companies Act, 1956, which read as follows:

*“(1A) Notwithstanding anything contained in sub-section (1), the further shares aforesaid may be offered to any persons [whether or not those persons include the persons referred to in clause (a) of sub-section (1)] in any manner whatsoever -*

*(a) if a special resolution to that effect is passed by the company in general meeting, or*

*(b) where no such special resolution is passed, if the votes cast (whether on a show of hands, or on a poll, as the case may be) in favour of the proposal contained in the resolution moved in that general meeting (including the casting vote, if any, of the chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting and the Central*

*Government is satisfied, on an application made by the Board of directors in this behalf, that the proposal is most beneficial to the company.”*

48. From the aforesaid, it is noted that the proposal for issuance of shares on preferential basis is subject to the approval of the shareholders. The Company sought approval of the shareholders for the second preferential issue in the AGM held on September 28, 2012. I note from para 7 of the Notice of the said AGM that approval of shareholders was sought for raising funds and allotment of shares thereof from/ to the proposed allottees. However, Noticee is observed to have collected the subscription money for issuance of preferential shares prior to obtaining approval of the shareholders. In this context, I emphasize upon the need for seeking prior approval of shareholders for raising funds through issuance of shares on a preferential basis. Under the applicable laws, shareholders are regarded as the most important component in the corporate setup and are empowered to authorize and even frame major corporate decisions. The legislations seek to ensure that the shareholders are free to exercise their rights in a democratic way and the tool through which shareholders can exercise such rights is voting rights. The management of the Company is responsible towards involvement of shareholders in the decision-making process in order to create a "check and balance" system. This ensures transparency in all the acts done by the company. Thus, the need for seeking prior approval from shareholders is of utmost importance in a company's functioning.
49. In the present matter, by collecting subscription money, to the tune of ₹ 1.44 Crore from four potential allottees in advance of the matter being considered by the shareholders, the Company has not only undermined the shareholders' supremacy in the decision making of the Company, but has also entered into a prior arrangement with the proposed preferential allottees (who could not have received the shares had the shareholders refused to grant their approval), which certainly is a deceptive and deceitful act on part of the Company.
50. Further, I find that the Company concealed the fact of having collected subscription money to the tune of ₹ 1.44 Crore from four subscribers from the

shareholders, which it could have disclosed, either at the time of seeking approval for the second preferential issue vide its Notice of AGM dated September 28, 2012, or at the time of seeking ratification from the shareholders on September 28, 2017. This act of concealment of material fact amounts to misrepresentation by the Company which has deprived the shareholders from the opportunity of taking an informed decision.

*Siphoning of the proceeds of the preferential issue of equity shares*

*A. Non-recovery of outstanding loans:*

51. I note that Company had transferred an amount of ₹ 1.40 Crore out of the proceeds of the first preferential issue to Mr. Niraj Chandra Jha and I.B. Commercial Pvt. Ltd. as the business loans in the following manner, which is alleged to be not the stated purpose in the notice of AGM dated July 14, 2010:

**Table 5**

SN	Entity name	Date of disbursal of loan	Amount given as loan (in ₹)	Interest rate charged as per the loan agreement
1	Niraj Chandra Jha	18/12/2010	10,00,000	3%
2	I.B. Commercial Pvt. Ltd.	20/12/2010	60,00,000	9%
		21/12/2010	70,00,000	

52. The SCN alleges that aforesaid amount of ₹ 1.40 Crore was not in the nature of loans and has been diverted/ siphoned off due to the following reasons:
- though the loan agreement has provided the tenure of repayment of loan as 36 months, the Company has not received any repayment of the said loan or has made any efforts for recovery and the loan amount remains outstanding even after 10 years of its disbursement;
  - The Company has not provided any documentary evidence for steps taken by it for recovery of the loan;
  - The Company was observed to be furnishing the wrong information as regards the addresses of the said borrowers before the Investigating Authority; and
  - The recovery may not be effected based on mere existence of loan agreement with the borrowers, as the terms and conditions of loan

agreement are superfluous in as much as the same does not contain clear terms of repayment, or contain any enforceability clause for enforcing repayment of loan in the event of default and further non-availability of any collateral security with the company for the loans provided.

53. The Company has submitted that it had given total loans of ₹ 12,50,69,944 to 23 entities under total 32 loan transactions utilising the proceeds of first preferential issue and out of the same, 21 entities have repaid the loans except for two entities i.e., Mr. Niraj Chandra Jha and I.B. Commercial Ltd. The Company has further submitted that it had given total loan of ₹ 9,95,42,353 to 17 entities under total 20 loan transactions and all the entities have repaid and that the aforesaid loans were given in line with the 'object cause' of the preferential issue, i.e., 'approved corporate purposes'. With regard to Mr. Niraj Chandra Jha and I.B. Commercial Ltd., the Company has stated that it has issued legal notice to both the entities in 2018 to recover the outstanding amount and as a proof has submitted relevant documents, viz. loan agreement, bank statement, legal notice, dispatch proof, ledger statement, 26AS statement, etc. Further, Noticees have also submitted a Certificate of Independent Auditor dated January 16, 2023 who has verified the transactions undertaken by the Company during the relevant period.
54. Notwithstanding the finding that the 'object clause' of the preferential issues did not specify that the proceeds from preferential issue would be used for 'business loan', I note that the amount of ₹ 1.40 Crore transferred as business loan under the loan agreement dated December 18, 2010 lacks credibility since it neither specifically provided for the payment schedule nor contained any enforceability clause for enforcing repayment of loan in the event of default. It is also necessary to take into account the following replies of the Noticees warrant consideration:
- a. With respect to transferred amount of ₹ 10 Lakh out of the proceeds of the first preferential issue to Mr. Niraj Chandra Jha, Noticees have submitted that the said loan amount was recorded in the books which is included in the total loan amount of ₹ 14,53,76,889 as reflected in Schedule forming part of Balance Sheet as on March 31, 2011 in the Annual Report of the

Company for the FY 2010-11. The Noticees further submitted that the borrower - Mr. Niraj Chandra Jha failed to make repayment of the said loan and despite legal notice dated February 05, 2018 issued to him, no amount could be recovered and as per books, the said outstanding amount was accounted as bad debt on July 01, 2018 by the Company, which was included in the total bad debts of ₹ 79,38,530 as reflected in the Cash Flow Statement for the year ended March 31, 2019 in the Annual Report for the FY 2018-19.

- b. With respect to transferred amount of ₹ 1.30 Crore out of the proceeds of the first preferential issue, to I.B. Commercial Pvt. Ltd., Noticees have submitted that the said loan amount was recorded in the books which is included in the total loan amount of ₹ 14,53,76,889 as reflected in Schedule forming part of Balance Sheet as on March 31, 2011 in the Annual Report of the Company for the FY 2010-11 and that the borrower - I.B. Commercial Pvt. Ltd. had paid interest for the period April 01, 2010 to March 31, 2011 of ₹ 3,93,589 after deducting TDS, which was received on October 04, 2011 by the Company and which is also reflected in 26AS statement of the Company. Noticees have further submitted that the aforesaid transaction has been confirmed by I.B. Commercial Pvt. Ltd. vide Confirmation of Accounts statement dated April 01, 2011, and the said outstanding amount was included in the total bad debts of ₹ 79,38,530 as reflected in the Cash Flow Statement for the year ended March 31, 2019 in the Annual Report for the FY 2018-19.

- 55. The Company was admittedly in the finance business of giving/ taking loans, however, the agreements entered between the Company and lender(s) /borrower(s) lacked essential clauses, such as, terms of repayment, repayment schedule, enforcement clause, arbitration or dispute resolution clause, etc. which a prudent lender would adopt. Such poor documentation and execution of loan agreements by a company, which was admittedly in the business of giving/ taking loans, raises a suspicion as to the genuineness of such documents.



56. On perusal of the documents provided by the Noticees, I note that the legal notices issued to the borrowers, *inter alia*, stated that appropriate legal proceedings will be initiated before the Court if the borrowers failed to comply with the demand of payment of the outstanding amount to the Company. Mr. Niraj Chandra Jha did not reply to the legal notice, whereas, I.B. Commercial Pvt. Ltd. disputed the alleged loan. I note that the Company issued legal notice to both the entities in 2018, i.e., after lapse of almost 7 years, and did not pursue appropriate legal action before any Court. Instead, the Company admittedly treated the outstanding amount as bad debt and wrote off the same in the books of the Company in the FY 2018-19.
57. There is no denying that it is upto the wisdom of the Company and its management to specify the nature of loan agreements and/ or consider taking legal action against the borrowers for non-payment of outstanding amounts and/ or treat the outstanding amount as bad debt. However, the reluctance on part of the Company to actively pursue legal action and the fact that the loan agreement did not specifically provide for important clauses, which a prudent lender would adopt, leads to the conclusion that the loan agreements provided by the Noticees cannot be relied upon for ascertaining the authenticity of the alleged transactions.
58. The Noticees have tried to substantiate their contention by providing certain other documents, such as – (a) *bank statement reflecting the amount transferred to the said borrowers and the receipt of interest amount (after TDS) by the Company*; (b) *Form 26AS statement reflecting amount deducted by I.B. Commercial Ltd.*; (c) *ledger statements*; and (d) *Annual Reports of the Company*. On perusal of the aforesaid documents, I am inclined to give the benefit of doubt to the Noticees owing to the fact that legal notice issued by the Company to Mr. Niraj Chandra Jha and I.B. Commercial Ltd. is substantiated by the dispatch receipt, the bank statements are reflecting the alleged transactions, the amount deducted by I.B. Commercial Ltd. as TDS and the ledger statement countersigned by the alleged borrowers, which to a certain extent show that the transaction between the Company and Mr. Niraj Chandra Jha and I.B. Commercial Ltd. were in the form of loan transactions.

59. In view of the above documents provided and the fact that SCN is silent on whether both Mr. Niraj Chandra Jha and I.B. Commercial Ltd. are “related party” to the Noticees, I find that as far as the transaction between the Company with Mr. Niraj Chandra Jha and I.B. Commercial Ltd. for the amount of ₹1.40 Crore is concerned, Noticees can be given the benefit of doubt with regard to the allegations of diversion and siphoning of the funds of the first preferential issue.

***B. Funds provided for purchase of shares:***

60. I note that the Company had transferred ₹ 2.21 Crore out of the proceeds of the first preferential issue to Shri Ram Investment Co., Anmol Finance Limited and Rockon Fintech Limited (seller companies) in the year 2010 for off-market purchase of securities of – Arun Fintrade Pvt. Ltd, Bhagwati Synthetic Pvt. Ltd., Minakshi Fashion Pvt. Ltd., SKM Steel Pvt. Ltd., Vinesh Silk Mills Pvt. Ltd. and Chitrakar Textiles Pvt. Ltd, which is alleged to be not the stated purpose in the Notice of AGM dated July 14, 2010:

**Table 6**

SN	Name of seller	Name of securities	Date of purchase	Mode of purchase	No. of shares purchased	Purchase price (in ₹)	Consideration paid (in ₹)	Date of Sale	Mode of sale	Quantity/ No. of shares sold
1	Shri Ram Investment Co. (AACPD05 26C)	Arun Fintrade Pvt. Ltd.	23/07/2010	Off-market	25,000	100	25,00,000	30/08/2010	Off-market	6,500
								05/09/2010	Off-market	10,000
								10/09/2010	Off-market	8,500
		Bhagwati Synthetic Pvt. Ltd.	23/07/2010	Off-market	50,000	100	50,00,000	17/09/2010	Off-market	5,00,000
	Minakshi Fashion Pvt. Ltd.	23/07/2010	Off-market	40,000	100	40,00,000	18/09/2010	Off-market	50,000	
2	Anmol Finance Limited (AHAPD8 240L)	SKM Steel Pvt. Ltd.	23/07/2010	Off-market	10,000	500	50,00,000	18/09/2010	Off-market	40,000
		Vinesh Silk Mills Pvt. Ltd.	10/12/2010	Off-market	52,632	95	30,00,000	25/09/2010	Off-market	52,632
3	Rockon Fintech Limited (AAACI41 23R)	Chtirakar Textiles Pvt. Ltd.	20/12/2010	Off-market	2,20,000	12	26,40,000	12/02/2011	Off-market	88,000
								15/03/2011	Off-market	10,000
								31/12/2015	Off-market	1,22,000
	TOTAL						2,21,40,000			

61. The SCN alleges that aforesaid amount of ₹ 2.21 Crore cannot be considered as money provided for purchase of shares for the following reasons:

- a. that the Noticee failed to submit before the Investigating Authority whether the shares acquired were in physical or demat form;
- b. that the Noticees did not prove the demat statement or share certificates nor did they provide the details of the subsequent purchasers, transfer deed, accounting of profit or loss on account of such sale;
- c. that the Noticee failed to submit particulars of the investment team, minutes of the decision of the team or minutes of the decision of the board for effecting the investment in shares; and
- d. that verification of the transaction and Holding statements of demat accounts held in the name of the Company (demat a/c nos. 1202060001074750, 1201060002379502, 1202470000565290, IN30160410399607, 1201580000667179, 1302340000244554), for the period January 01, 2010 to December 31, 2014, did not reveal any acquisition and disposal of the aforesaid shares in the name of the Company during the said period.
- e. that the Company did not provide any information or documents about whether any agreement/ MoU was signed with the said entities for purchase and sale of securities on its behalf and for the settlement of such transactions but had merely transferred several lakhs to the said three entities through bank transfers as mentioned below:

**Table 7**

SN	Date	Description	Reference no.	Debit amount (in ₹)
1	23-JUL-2010	RTGS-YESBH10204001256-SHRI RAM INVEST	000058	1,15,00,000.00
2	23-JUL-2010	RTGS-YESBH10204000774-ANMOL FINANCE L	000056	98,00,000.00
3	10-DEC-2010	RTGS-YESBH10344001087-ANMOL FINANCE C	000093	30,00,000.00
4	20-DEC-2010	RTGS-YESBH10354001204-ROCKON FINTECH	379874	1,23,00,000.00

62. The Noticees have submitted that in the normal course of business during FY 2010-11, Company had purchased 9,14,463 shares and sold 4,15,562 shares through off-market transactions which include shares purchased and sold as alleged in the SCN and all the said purchase and sale of shares were accounted and disclosed in the balance sheets for the FY 2010-11 and that the allegation is made in the SCN only in respect of total of 3,97,632 shares purchased at value of ₹ 2,21,40,000 which is included in the total purchase of

9,14,463 shares as reflected in the financials of the Company. The Noticees further submitted that the total purchase, i.e., ₹ 9,37,54,263 is reflected at 'Purchases' under heading 'Cost of Goods Sold' at Schedule-X forming part of profit and loss account and total sale, i.e., ₹ 6,08,93,212 is reflected at 'Sale of shares' at Schedule-VIII forming part of profit and loss account, and that the said total purchase and sale is also reflected at "Unquoted shares" under heading "Quantitative details in respect of trading of goods" in Annexure-A as referred in Notes of Account forming part of the accounts in financials for the FY 2010-11, and that total closing balance of ₹ 2,40,51,760 as reflected in Annexure-A of financials is reflected in "total stock in trade" in Balance Sheet as on March 31, 2011. The Noticees further submitted that the alleged transactions are genuine which are substantiated with the bank statements, confirmation of account statements reflecting share purchase, ledger statements and stock summary report maintained by the Company.

63. I note that the Noticees have provided a certificate by the independent auditor dated January 16, 2023 certifying the documents pertaining to the alleged transactions which shows the following:
- a. that the Company had purchased 1,15,000 shares from Shri Ram Investment Company for ₹ 1.15 Crore. The said shares are stated to be of Arun Fintrade Pvt. Ltd. (25,000 shares), Bhagwati Synthetic Pvt. Ltd. (50,000 shares), Minakshi Fashion Pvt. Ltd. (40,000 shares), and have been subsequently sold to Chirag Securities, Axon Infotech Limited, Vidhata securities Pvt. Ltd. and Shree Nath Commercial and Finance Ltd. for a total sum of ₹ 88,55,000;
  - b. that the Company had purchased 62,632 shares from Anmol Finance Limited for ₹ 80 Lakh. The said shares are stated to be of SKM Steel Pvt. Ltd. (10,000 shares) and Vinesh Silk Mills Pvt. Ltd. (52,632 shares), and have been subsequently sold to Chirag Securities, Crystal Corporation, Hub Real Estate Pvt. Ltd. and Krishna Developers Pvt. Ltd. for a total sum of ₹ 77,75,000; and
  - c. that the Company had purchased 2,20,000 shares from Rockon Fintech Limited for ₹ 26.40 Lakh. The said shares are stated to be of Chitrakar Textiles Pvt. Ltd., and have been subsequently sold to Chirag Securities,

Shri Ram Investment Company and Dilip Manubhai Shah for a total sum of ₹ 26,27,000.

64. Noticees have placed reliance on bank statements, confirmation of account statements reflecting share purchase, ledger statements, stock summary report maintained by the Company. For the total purchase and subsequent sale of 3,97,632 shares (1,15,000 + 62,632 + 2,20,000 shares), I note that total amount of ₹ 2.21 Crore was transferred from the bank account of the Company to bank account of seller companies and subsequently the Company received ₹ 1.92 Crore from sale of such shares. I note that the Annual Report for the FY 2010-11 refers to Notes of Account and Annexure-A reflects total purchase of 4,35,001 unquoted shares for ₹ 2,27,71,480. However, no bifurcation as to the name and quantity of securities is mentioned therein. Hence, Annual Report for the FY 2010-11 cannot be solely relied upon to ascertain the genuineness of the transactions. Noticees have submitted Confirmation of Account statement of Shri Ram Investment Company and Anmol Finance Limited to show purchase of shares and transfer of funds. On perusal, I note that the said statement was countersigned by the authorised signatory of the seller companies. Further, in case of Anmol Finance Company, Noticees have submitted a letter from Anmol Finance Company confirming sale of 10,000 shares of SKM Steel Pvt. Ltd. to the Company for ₹ 50,00,000. The Noticees have also submitted the Ledger Statement and Stock Summary Report maintained by it reflecting the alleged purchase and sale of shares. On perusal of the Ledger Statement and Stock Summary Report, I note that the transactions mentioned therein are not limited to the sale and purchase of shares of the companies alleged in the SCN, but detailed sale and purchase of shares of various other companies. This gives an indication that the Company in the normal course of business during FY 2010-11, had purchased and sold shares of various other companies. The authenticity of the documents provided by the Noticees is not alleged to have been disputed in the SCN, nor I find it contradictory with the documents available on record.
65. The allegations in the SCN that non-submission of documents such as share certificates, demat statement and agreement for purchase and sale of shares

makes the alleged transactions suspicious, needs to be further seen in light of the additional documents produced by the Noticees before me. With regard to non-submission of certain documents sought by the Investigating Authority, Noticees have submitted that the documents such as, loan agreement with the seller companies, share certificate, etc. are decade old and are not possible to be produced. In my view, the Noticees can be given the benefit of doubt for not being able to produce 10-12 years' old documents.

66. In consideration of the above, I find that the additional documents showing subsequent sale of shares, letter from Anmol Finance Company confirming sale of 10,000 shares of SKM Steel Pvt. Ltd., Ledger Statement and Stock Summary Report corroborate the submission of the Noticees that the alleged transfer of ₹ 2.21 Crore by the Company to the seller companies were utilised for the purchase of shares. Thus, for the aforesaid reasons, I find that with regard to the allegation of diversion and siphoning of ₹ 2.21 Crores out of the proceeds of the first preferential issue, benefit of doubt can be given to the Noticees.

*C. Repayment of the alleged loans out of proceeds the two preferential issues:*

67. The Company is stated to have repaid loans to the tune of ₹ 1.67 Crore out of the proceeds of the first preferential issue in the following manner to (a) Shree Nath Commercial and Finance Ltd.; (b) Anmol Finance Company; and (c) Handful Investrade Pvt. Ltd., which is alleged to be not the stated purpose in the notice of AGM dated July 14, 2010:

**Table 8**

SN	Name of entity	Amount given for loan repayment (in ₹)	%age of proceeds	Date of repayment
1	Shree Nath Commercial & Finance Ltd.	12,00,000	0.73	23/07/2010
2	Anmol Finance Company	12,00,000	0.73	23/07/2010
3	Handful Investrade Pvt. Ltd.	1,43,90,000	8.73	08/12/2010
	<b>Total</b>	<b>1,67,90,000</b>	<b>10.19</b>	

68. It is alleged in the SCN that the sum of ₹ 1.67 Crore transferred to the aforesaid three entities was not for the repayment of loans availed by the Company for the following reasons:

- a. that with regard to Shree Nath Commercial & Finance Limited and Anmol Finance Company, the Company did not furnish the copies of loan agreement/ MOU, if any, entered into with these entities for the purpose of availing loan;
- b. that the Company has submitted the following before the Investigating Authority evidencing transfer of funds to the aforesaid entities:

**Table 9**

SN	Date	Description	Reference No.	Debit amount (in ₹)
1	23/07/2010	RTGS-YESBH10204000754-SHREE NATH COMM	000057	12,00,000.00
2	23/07/2010	RTGS-YESBH10204000774-ANMOL FINANCE L	000056	98,00,000.00
3	08/12/2010	FUNDS TRF, ANDHERI(W), 001083800003556	000000000086	2,44,30,000.00*
* includes business loan of ₹ 1,00,40,000 and loan repayment of ₹ 1,43,90,000				

- c. that Handful Investrade Pvt. Ltd. vide its reply dated October 23, 2020 was observed to be not confirming any payment made by it to the Company as loan in the first place and that Handful Investrade Pvt. Ltd. has only confirmed the receipt of the entire ₹ 2,44,30,000 on December 08, 2010 as loan from the Company and had not stated or confirmed that the amount so received includes repayment of loan availed by the Company from it;
- d. that for substantiating the claim of availing loan from Shree Nath Commercial & Finance Ltd., the Company had submitted a loan agreement dated May 10, 2010 purported to have been signed between the Company in its changed name of *Out of City Travel Solutions Ltd.* as a borrower and Shree Nath Commercial & Finance Limited as lender for a loan amount of ₹ 32 Lakh, and that Shri. Girraj Kishor Agrawal the Managing Director of the Company has signed both as a borrower and also as a lender, and that the Company underwent name change from its existing Tilak Finance Ltd. to Out of the City Travel Solutions Ltd. only on December 28, 2011, whereas in the loan agreement dated May 10, 2010, the new name of the Company has been mentioned.

e. that the aforesaid clearly shows that the making of loan agreement is only an afterthought on part of the Company.

69. Further, the Company is stated to have repaid loan to the tune of ₹ 45.57 Lakh to Shree Nath Commercial & Finance Ltd. out of the proceeds of the second preferential issue as detailed below, which is alleged to be not the stated purpose in the notice of AGM dated September 28, 2012. However, the Company has not provided any loan agreement/ MoU to the satisfaction of SEBI and has only submitted bank account statements and ledger.

**Table 10**

SN	Name of entity	Amount given for loan repayment (in ₹)	Date of payment	Connection with the Company
1	Shree Nath Commercial & Finance Ltd.	41,00,000	11/10/2012	Promoter of Noticee 1
		4,57,647	15/10/2012	
	<b>Total</b>	<b>45,57,647</b>		

70. It is alleged in the SCN that the sum of ₹ 45.57 Lakh transferred to Shree Nath Commercial & Finance Ltd. was not for the repayment of loans availed by the Company for the following reasons:

- that the Company had provided inconsistent replies regarding the amount of loan availed and repaid to Shree Nath Commercial & Finance Ltd. as ₹ 1 Crore, ₹ 1.06 Crore and ₹ 45.57 lakh vide its replies dated December 22, 2018, January 22, 2020 and October 23, 2020, respectively.
- that the Company did not furnish the copies of loan agreement or MOU, if any, entered into with the said entity for the purpose of availing loan nor had it denied that it had executed any such document with the said entity.

71. With regard to the repayment of the alleged loan of ₹ 12 Lakh to Shree Nath Commercial & Finance Ltd. out of the proceeds of the first preferential issue, Noticees have submitted that the Company had taken loan of ₹ 32 Lakh from them and ₹ 12 Lakh was repaid out of the proceeds of the first preferential issue, and that in the loan agreement dated May 10, 2010 with Shree Nath Commercial & Finance Ltd., the name of Company was mentioned as “Out of City Travel Solutions Ltd.” by mistake. Noticees have further submitted that Shree Nath Commercial & Finance Ltd. is a group company of Tilak Ventures



Limited and have common promoters and directors. In this regard, I note that the loan agreement between the Company and Shree Nath Commercial & Finance Ltd. was signed on May 10, 2010 but the amount of ₹ 32 Lakh was transferred from Shree Nath Commercial & Finance Ltd. to the bank account of the Company prior to the date of the loan agreement. On perusal of the loan agreement dated May 10, 2010, I note that the agreement is silent on the amount of ₹ 32 Lakh already paid by the lender to the Company and does not provide the details of the bank transactions. Further, I note that the name of the Noticee in the loan agreement was mentioned as “Out of City Travel Solutions Ltd.”. The Company underwent name change from its existing Tilak Finance Ltd. to Out of the City Travel Solutions only on December 28, 2011. Further, I note that Shri. Girraj Kishor Agrawal, the Managing Director of the Company has signed both as a borrower and also as a lender, and the loan was given at 0% interest per annum.

72. With regard to the repayment of the alleged loan of ₹ 12 Lakh to Anmol Finance Company out of the proceeds of the first preferential issue, Noticees have submitted that the Company had taken loan of ₹ 98 Lakh from Anmol Finance and ₹ 12 Lakh was repaid out of the proceeds of the first preferential issue. In this regard, I note that the loan agreement between the Company and Anmol Finance Company was signed on July 23, 2010 but the amount of ₹ 12 Lakh was transferred from Anmol Finance Company to the bank account of the Company prior to the date of the loan agreement. On perusal of the loan agreement dated July 23, 2010, I note that the agreement is silent on the amount of ₹ 12 Lakh already paid by the lender to the Company and also does not provide the details of the bank transactions, and that the loan was given at 0% interest per annum.
73. With regard to the repayment of the alleged loan of ₹ 1,43,90,000 to Handful Investrade Pvt. Ltd. out of the proceeds of the first preferential issue, Noticees have submitted that the Company had taken loan of ₹ 2,44,40,000 from Handful Investrade Pvt. Ltd. and ₹ 1,43,90,000 was repaid out of the proceeds of the first preferential issue. In this regard, on perusal of the loan agreement

dated August 08, 2010, I note that the loan was given at 0% interest per annum to Handful Investrade Pvt. Ltd. Further, on the letter dated October 23, 2010 provided by Handful Investrade Pvt. Ltd. providing details of the payments made by it to the Company, Noticees have submitted that Handful Investrade Pvt. Ltd. has confirmed about the repayment of loan to the Company. On perusal of the aforesaid letter, I note that the reply of Handful Investrade Pvt. Ltd. only confirms the receipt of the entire ₹ 2,44,30,000 on December 08, 2010 as loan from the Company and does not confirm whether the said amount includes repayment of loan availed by the Company from it.

74. With regard to the repayment of the alleged loan of ₹ 45 Lakh to Shree Nath Commercial & Finance Ltd. out of the proceeds of the second preferential issue, Noticees have submitted that in course of business and in a continuous transaction, the Company had taken loans of ₹ 1,04,57,647, on September 17, 2012 from Shree Nath Commercial & Finance Ltd., however, the Noticees failed to produce the loan agreement in respect of the said transaction. The Noticees further submitted that the Company had made repayment of the said loan by making payment of ₹ 1 Crore on October 11, 2012 out of which ₹ 41 Lakh was utilised from the issues proceeds and ₹ 63,57,647 from the Company's own balance fund and that after re-payment of ₹ 1 Crore, there remained a balance loan of ₹ 4,57,647, repayment of which was done on October 15, 2012 by making payment of ₹ 45 Lakhs from the Company's bank account, out of which ₹ 4,57,647 was utilised from issue proceeds for repayment of said remaining loan and ₹ 40,42,353 was an additional loan given to Shree Nath Commercial & Finance Ltd. from Company's own balance fund. The Company thus submitted that only certain portion of the said loan i.e. ₹ 45,57,647 (which is subject matter of SCN) was repaid using preferential issue proceeds of 2012 and the same has been accounted for in the books of the Company. I note that Noticees have only submitted bank accounts and Confirmation of Account statement (generated by the Company itself) in order to substantiate that the amount so transferred by the Company to Shree Nath Commercial & Finance Ltd. was in the nature of loan. On perusal of the aforesaid documents, I note that no reference has been made to any agreement or MOU. Further, it is hard to believe that when the Company itself

is in practice of executing such loan agreement or MOU with its borrowing entities, mere furnishing of bank statement and Confirmation of Account statement reflecting only the transfer of funds without any remark as to the loan or repayment of loan cannot be considered as adequate evidence.

75. In light of aforesaid facts, the loan agreements entered by the Company with Shree Nath Commercial & Finance Ltd., Handful Investrade Pvt. Ltd. and Anmol Finance Company appear to be an afterthought on part of the Noticees which were provided to the Investigating Authority only when enquired. I find that in order to justify its transfer of funds to the said three entities, the Company has attempted to make such transfers appear as genuine loan transactions availed by it and in the process has fabricated the loan documents and furnished to SEBI. Thus, no reliance can be placed on the loan agreements for ascertaining the alleged transaction of repayment of loans by the Company. Further, in case of the alleged repayment from the foresaid entities including Handful Investrade Pvt. Ltd., I find that the documents available on record indicate that their transactions with the Company were not in the nature of loan transactions.
76. I now deliberate on the allegation of siphoning off of the amount of ₹ 1.67 Crore and 45 Lakh out of the proceeds of the two preferential issues. Noticees have submitted that Shree Nath Commercial & Finance Ltd. and Handful Investrade Pvt. Ltd. are group companies of Tilak Ventures Limited. Further, Noticees have submitted that manipulation of price of the securities is one of the main ingredients in Explanation to Regulation 4(1) of the PFUTP Regulations in order to prove the alleged misutilisation/ diversion/ siphoning off. To substantiate the same, Noticees have relied on – SEBI's Order dated September 14, 2022 in the matter of *JMD Ventures Limited*<sup>13</sup>; SEBI's Order dated July 08, 2021 in the matter of *VB Industries Ltd*<sup>14</sup>.
77. I note that Regulation 4(1) of the PFUTP Regulations prohibits manipulative, fraudulent or unfair trade practice relating to securities market. The term 'fraud'

---

<sup>13</sup> SEBI order dated September 14, 2021. *Supra* at 7

<sup>14</sup> SEBI order dated July 08, 2021. *Supra* at 8

has been defined in Regulation 2(1)(c) of PFUTP Regulations, and the said definition is 'inclusive'. The terms 'unfair trade practices' and 'manipulative' are not defined in the PFUTP Regulations but have been illustrated by Courts in various judgments. I note that the acts mentioned in the explanation were already covered under Regulation 4(1) as being fraudulent as well as unfair trade practice. What was earlier implicit has now been made explicit by adding 'Explanation' to Regulation 4(1) of PFUTP Regulations with effect from October 19, 2020. The aforesaid amendment, though introduced on October 19, 2020, does not make any substantive change to the ambit of Regulation 4(1). Act of large scale diversion/ misutilisation/ siphoning of funds of a listed company or any device, scheme or artifice to manipulate the books of accounts or financial statement of such company, that would directly or indirectly manipulate the price of the securities of that company, thereby inducing the investors to deal in securities or to remain invested in the securities of that company, are undoubtedly fraudulent and unfair trade practices relating to the securities market, which are covered by the rigor of Regulation 4(1) since July 17, 2003 itself i.e. the date of coming into force of PFUTP Regulations. Thus, I note that the 'Explanation' added to Regulation 4(1) merely clarifies that certain acts such as diversion of funds and/or manipulation of books of accounts or financial statements, shall always be deemed to have been manipulative, fraudulent and unfair trade practices relating to securities market and does not introduce any new prohibition.

78. With regard to the contention of the Noticees that manipulation of price of the securities is one of the main ingredient in Explanation to Regulation 4(1) of the PFUTP Regulations in order to prove the alleged misutilisation/ diversion/ siphoning off, I note that the Explanation to Regulation 4(1) of the PFUTP Regulations not only includes the price manipulation which is explicit but also covers the price manipulation which can be implied by an act or omission or conduct of the listed company. I find that an act of concealment of information related to misutilization of funds by a listed company, which if disclosed would have the potential to impact the share price of that listed company is undoubtedly fraudulent and unfair trade practice relating to securities market

and covered under Explanation to Regulation 4(1) of the PFUTP Regulations. Thus, I find the aforesaid contention of the Noticee untenable.

79. In view of the aforesaid facts as noted and that fact that Shree Nath Commercial & Finance Ltd. and Handful Investrade Pvt. Ltd. are group companies of Tilak Ventures Limited, I find that the total sum of ₹ 1.67 Crore and 45 Lakh out of the proceeds of the two preferential issues of equity shares received by Company has been siphoned off in the guise of repayment of loans availed by it from three entities viz. Shree Nath Commercial & Finance Ltd., Anmol Finance Company and Handful Investrade Pvt. Ltd.

*Ratification of deviation by the shareholders*

80. The Company is stated to have sought a ratification from shareholders for the deviation made in respect of the utilisation of the proceeds of the first and second preferential issues, in the year 2017 (i.e., after 7 years and 5 years, respectively). I note that the Company, vide letter dated May 27, 2017 to BSE, has denied any deviation and misutilisation of proceeds of both the issues and vide reply dated October 23, 2020 informed SEBI that there is no deviation in deployment of issue proceeds. However, the Company submitted that in order to avoid complication, it obtained ratification and approval of the shareholders with respect to utilization of the proceeds of the preferential issue vide Special resolution passed in 29<sup>th</sup> AGM held on September 29, 2017.
81. It is alleged in the SCN that the Company has not put forth any of the facts and information about the actual utilization of proceeds of the two preferential issues of equity shares before the shareholders and has allegedly suppressed/ concealed the information provided to the shareholders during ratification. In reply to the aforesaid allegations, Noticees have submitted that the utilisation of proceeds of the preferential issues were always known to the shareholders by way of Annual Reports, and that during March 2016 – March 2017 when BSE had expressed apprehension with regard to utilisation of the proceeds of preferential issues not being in consonance with the objects as disclosed, the

Company had sought ratification only as a matter of abundant caution. Noticees further submitted that adequate disclosures were made to the shareholders while seeking ratification and that carrying on of NBFC activities without registration and obtaining of ratification had no nexus. Noticees have also submitted that shareholders of the Company by a Special Resolution on September 28, 2017 have ratified and approved all acts, deed and things done by the Company in entering into and giving effect to the utilisation of the proceeds as received in the preferential issues which was in variation to the objects as stated in the notice and in order to substantiate the aforesaid, the Noticees have relied on the order of Hon'ble SAT in *Terrascope Ventures Limited vs SEBI*<sup>15</sup>.

82. The findings (as already discussed in the previous part of this order) that the Company had misused the proceeds of the two preferential issues for the purpose of carrying on its finance business and that the Company was aware of the requirement of obtaining registration from RBI as an NBFC for carrying on finance business, lead to the inference that Company was not only under an obligation to provide true, fair and transparent disclosure to the shareholders about such requirement but had also presented a false picture of Company's intention of utilising the proceeds of preferential issue for the legitimate purpose. Further, the Company did not provide any information as to whether it has made any application to RBI for registration as NBFC either at the time of seeking approval for the preferential issue or at the time of seeking ratification in the year 2017. Thus, I find that raising funds from public with the intention to carry on activities, i.e., finance business activity of loan disbursement and share purchase, the activity which the Company was not licenced to undertake since it did not have the NBFC registration from RBI, and not disclosing the aforesaid material information including the necessity to obtain registration from RBI at the time of ratification is clearly an act of misrepresentation and concealment of material fact by the Company. Thus, the contention of the Noticees that adequate disclosures were made at the time of seeking ratification from the shareholders is untenable.

---

<sup>15</sup> Appeal No. 116 of 2021, SAT order dated June 06, 2022. *Supra* at: 6

83. I note that even though the deviation in utilization of the proceeds of two preferential issues from the stated objects of the issues had happened in the years 2010 and 2012, the Company has stated to have taken the ratification only on August 19, 2017 (i.e. 7 years and 5 years after the first and second preferential issues, respectively). Noticees have relied on *Terrascope Ventures Limited vs SEBI*<sup>16</sup> to state that by a Special Resolution on September 28, 2017, the Company had ratified and approved all acts, deed and things done by the Company in entering into and giving effect to the utilisation of the proceeds as received in the preferential issues which was in variation to the objects as stated in the notice. In this regard, I draw reference to the notice dated August 19, 2017 issued to shareholders wherein the explanatory note attached to the said notice stated the purposes for which the proceeds have been utilised, such as, loans provided to different entities, investments and working capital requirement. However, I note that has not put forth any requisite details and information about the utilization/ misutilisation/ diversion of proceeds of preferential issue of equity shares before the shareholders. It is expected that if the Company is seeking ratification from the shareholders for the preferential issues which happened in the years 2010 and 2012, it should have disclosed full and complete information of facts and information pertaining to the utilization/ misutilisation/ diversion of proceeds of preferential issue of equity shares including information relating to carrying on finance business activities without obtaining NBFC registration from RBI. An illustrative list of information/ facts allegedly not disclosed by the company is as follows:

- a. The fact of not obtaining registration from RBI as NBFC to continue to carry on the business of finance and continuing with the finance business utilizing the proceeds of the preferential issue without the said registration.
- b. The fact of continuing only with the NBFC activities in spite of diversion to another business activity of Tour and Travel portal for which second preferential issue raised ₹ 14.44 Crore and the new business having not generated any income and therefore there being a necessity to obtain registration from RBI as NBFC to continue with its NBFC activities .

---

<sup>16</sup> *Ibid.*

- c. Execution or otherwise of the loan agreements in a legally valid and enforceable manner.
- d. The extent to which the loans disbursed out of the proceeds of the preferential issues remain outstanding and details of action taken for recovery of the outstanding loans.
- e. The fact of non-deployment of funds for other purposes such as capital expenditure, Marketing, setting up of offices abroad.
- f. Particulars of share purchases, status of the companies whose scrips had been taken whether listed or unlisted, basis of identification of such scrips, whether such acquisitions were long term acquisitions or otherwise.
- g. Details of shares sold and extent of profit or loss in such dealings.
- h. Details of loans repaid from the proceeds of preferential issues.

84. I note that the resolution passed at the AGM held on September 28, 2017 to ratify the deviation in utilisation of funds raised through the said preferential issues, *inter alia*, reads as follows “....the ratification and approval of the shareholders be and is hereby accorded to all acts, deeds and things done by the company in entering into and giving effect to the utilisation of proceeds as received in the said preferential issue which is in variation to the objects as stated out in the notice of Annual General Meeting held on 14<sup>th</sup> July, 2010 and 28<sup>th</sup> of September 2012...”. I note that the notice to the shareholders dated August 19, 2017 did not provide true, fair and transparent picture of the utilization of funds out of the proceeds of the preferential issues to the shareholders, and thus the resolution passed at the AGM held on September 28, 2017 is based on the undisclosed information, which, if appropriately disclosed, could have influenced the decision making of the shareholders. Thus, the ratio of Hon’ble SAT’s order in *Terrascopes Ventures Limited vs SEBI*<sup>17</sup> is not applicable in the present case.

85. In view of the aforesaid, I find that the Company has not put forth any of the material facts and information about the utilization/ misutilisation/ diversion of proceeds of preferential issue of equity shares before the shareholders and has

---

<sup>17</sup> *Ibid.*



suppressed/ concealed the information provided to the shareholders during ratification.

*Non-disclosure to the stock exchange regarding deviation from the objects of the two preferential issues*

86. The Company, vide notice dated August 19, 2017 of the AGM had sought a ratification from the shareholders for the deviation made in respect of the two preferential issues. Clause 43 of the erstwhile Listing Agreement (read with Regulation 32 and Regulation 103 of the LODR Regulations), *inter alia*, states that *“the company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilization of funds and/ or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the Notice for the general meeting for considering preferential issue of securities and the actual utilization of funds and/ or actual profitability”*. It is alleged in the SCN that the Company has failed to make the quarterly disclosure as required under Clause 43 of Listing Agreement read with Regulation 32 and Regulation 103 of the LODR Regulations. Noticees have submitted that since there was no deviation from the objects of the two preferential issues, Clause 43 of the Listing Agreement was not violated and that the allegation of violation of Regulation 32 of the LODR Regulations is also not maintainable as it came into effect in September 2015 and has no retrospective effect.
87. I note that that section 21 of the SCRA specifies that a listed entity is mandated to comply with the listing agreement with the stock exchange. The LODR Regulations were notified in the year 2015 and regulation 103 of the LODR Regulations saves any act done or action taken or purported to have been done or taken in respect of circulars/ listing agreements entered into between stock exchange(s) and listed entity, prior to the commencement of the LODR Regulations. The regulation also provides that any such action shall be deemed to have been done or taken under the corresponding provision of the LODR Regulations. The requirements regarding providing “statement of deviation or

variation” as provided under the Clause 43 of the Listing Agreement has been saved by Regulation 32 of the LODR Regulations. Thus, I find no merit in the contention of Noticee that invocation of Regulation 32 of the LODR Regulations is not maintainable. In view of the aforesaid, I find that the legal requirement of submitting a statement to the stock exchange in the specified manner in case of deviation or variation of the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as specified in Regulation 32 of the LODR Regulation, is applicable in the present case.

88. I note that BSE, vide its letter dated March 15, 2017 to the Company stated that it has not received any communication of quarterly disclosures with respect to the deviation of the preferential issue proceeds from the objects of the preferential issue. Given the finding that the Company deviated from the object of the issue by utilising the proceeds of the proceeds of the two preferential issues for the purpose of carrying on its finance business, the company was mandatorily required to file quarterly disclosures with the stock exchange in terms of Clause 43 of the Listing Agreement read with section 32 and 103 of the LODR Regulations. Such disclosure was required to be made till the Company actually utilised the proceeds of the preferential issues for the objects of the two preferential issues. By not submitting quarterly statement to the concerned stock exchange(s), the Company has violated Clause 43 of the Listing Agreement read with regulations 32 and 103 of the LODR Regulations. Accordingly, I also find the conduct of the Company in not complying with Clause 43 of the listing agreement to be in violation of Section 21 of the SCRA.

#### *Allegations against the Directors*

89. It is alleged in the SCN that Mr. Girraj Kishor Agrawal (Noticee No. 2) and Mrs. Tanu Girraj Agrawal (Noticee No. 3) were fully aware of the financial transactions of the Company and were alleged to be associated with the utilisation of the proceeds of the first and second preferential issues and that the fraudulent act of deviating and misutilising the proceeds of the preferential

issues was done by the Company with the knowledge of its directors i.e. Noticee No. 2 and Noticee No. 3.

90. Section 27(2) of the SEBI Act states that where a contravention under the SEBI Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. In this backdrop, the roles of Noticees No. 2 and 3, are specifically dealt with hereunder:
- a. Noticee No. 2 is the spouse of Noticee No. 3.
  - b. Noticee No. 2 and Noticee No. 3 had signed the financial statements in the Annual Reports for the FY-2009-2010, 2010-2011, 2011-2012 and 2012-2013 for the Company.
  - c. Noticee No. 2 had signed the CEO /CFO certification in the Annual Reports for the FY 2009-2010, 2010-2011, 2011-2012 and 2012-2013 while Noticee No. 3 had signed the CEO/ CFO certification for the FY 2009-2010.
  - d. Noticee No. 2 was the authorised signatory registered for the Company's bank account held with Axis Bank Ltd. (wherein proceeds of second preferential issue and repayments of most of the loan given from proceeds of the first preferential issue were received).
  - e. Noticee No. 2 had duly signed the disclosures made to the exchange such as outcome of Board Meetings, outcome of AGMs, financial results of the Company during the investigation period.
  - f. Noticee No. 2 had signed all the loan agreements signed between the company (lender) and the borrower entities, as the director/ authorised signatory of the company. Further in certain instances, he had also signed as the authorised signatory of 4 borrowers who were the group companies of Tilak Ventures Limited. Noticee No. 3 had signed as an authorised signatory of the 2 borrowers who were the group companies of Tilak Ventures Limited.

91. In view of the aforesaid facts, I note that Noticee No. 2 and Noticee No. 3 were fully aware of the financial transactions of the Company and were associated with the utilization of the proceeds of the two preferential issues dated July 21, 2010 and October 18, 2012. I find that Company's fraudulent acts and misutilisation of the preferential issue proceeds as discussed in earlier paragraphs, were at all times, in the knowledge of its directors i.e. Noticee No. 2 and Noticee No. 3. Being the directors of the Company, Noticee No. 2 and Noticee No. 3 are expected to utilise the funds for the stated objectives for which they were raised, however, they failed to do so and concealed the facts of the proposed utilization and subsequent misutilisation of the proceeds of the preferential issues from the shareholders.
92. Thus, I find that whatever violations have been committed by the Company are attributable to Noticee No. 2 (Mr. Girraj Kishor Agrawal) and Noticee No. 3 (Ms. Tanu Girraj Agrawal) who were responsible for the day-to-day affairs of the Company during the relevant time. Hence, Noticee No. 2 and Noticee No. 3, by virtue of holding such directorships and being responsible for the acts, omissions and conduct of the Company are deemed to be guilty of resorting to fraudulent and unfair trade practices.

*Violations of the provisions of PFUTP Regulations*

93. The allegation regarding contravention of the PFUTP Regulations by the Noticees is inextricably connected to a series of acts and omissions by the Company accompanying its misutilization of the proceeds of the first and second preferential issues and an attempt to conceal such misutilization. The non-disclosure of the misutilisation and siphoning off the funds raised through the preferential issues has not only hidden the true and fair view of affairs of the company from its shareholders, but has also caused information asymmetry.
94. In this context, I take special note of the fact that the Company utilised the proceeds of the two preferential issues for the purposes which were not specifically stated in the 'object of the issue'. The fact that almost 99% of the proceeds were utilised for the purpose which was not stated in the 'object of the

issue', has not only misled the investors but has also undermined principles of corporate democracy and corporate governance.

95. It is pertinent to mention that it was only when BSE had, in the year 2016-17, issued show cause notices to the Company for ascertaining the misutilization of proceeds of the two preferential issues, the Company had sought for the ratification from the shareholders. Further, The Disciplinary Action Committee of BSE concluded that *prima facie* there was misutilisation of funds of the proceeds of the preferential issues. Noticees were not observed to be proactively taking curative measures, and instead, have tried to justify their acts by submitting documents/ information which appears to be an afterthought.
96. The Company was also carrying out the activities of an NBFC without any registration from RBI. From the documents available on record, it is noted that the Company was well aware of the requirement of obtaining the registration from RBI in order to continue its finance activities, yet it continued to carry out such finance activities without obtaining RBI registration. Such conduct of the Company is clearly an act of misrepresentation and active concealment of material facts vis-à-vis its shareholders and to the public at large which has also deprived the shareholders from the opportunity of taking an informed decision.
97. The Company also concealed from the shareholders the fact of having collected subscription money to the tune of ₹ 1.44 Crore from four subscribers, which they could have disclosed either at the time of seeking approval for the second preferential issue vide its Notice of AGM dated September 28, 2012 or at the time of seeking ratification from the shareholders on September 28, 2017. This act of concealment of material fact amounts to misrepresentation by Company which has deprived the shareholders from the opportunity of taking an informed decision.
98. Further, I find that the sum of ₹ 1.67 Crore and 45 Lakh out of the proceeds of the two preferential issues, respectively, received by Company has been

siphoned off by the Noticees in the guise of repayment of loans availed by it from three entities viz. Shree Nath Commercial & Finance Ltd., Anmol Finance Company and Handful Investrade Pvt. Ltd. Also, I find that for not making true, fair and transparent disclosure to the shareholders during ratification about the utilization/ misutilisation/ diversion of proceeds of preferential issue of equity shares, provisions of the PFUTP Regulations are attracted.

99. In this regard, reference is also drawn to the Hon'ble Supreme Court's consideration of the expression "unfair trade practice". In the case of *SEBI v. Kanaiyalal Baldevbhai* (Judgment dated September 20, 2017)<sup>18</sup> the following was held by the Hon'ble Court:

Per N. V. Rammanna J:

".....

*29. Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud' ... "*

Per Ranjan Gogoi J:

*"...Coupled with the above, is the fact, the said conduct can also be construed to be an act of unfair trade practice, which though not a defined expression, has to be understood comprehensively to include any act beyond a fair conduct of business including the business in sale and purchase of securities...."*

100. The Company is alleged to have violated Regulations 3(a), (b), (c) and (d) read with Sections 12A (a), (b), (c) of the SEBI Act. In this regard, I note that Regulations 3(a) (b), (c) and (d) of the PFUTP Regulations, *inter alia*, prohibit,

---

<sup>18</sup> [https://www.sebi.gov.in/enforcement/orders/sep-2017/order-of-the-hon-ble-supreme-court-of-india-in-the-matter-of-sebi-vs-shri-kanaiyalal-baldevbhai-patel-and-other-connected-matters\\_36000.html](https://www.sebi.gov.in/enforcement/orders/sep-2017/order-of-the-hon-ble-supreme-court-of-india-in-the-matter-of-sebi-vs-shri-kanaiyalal-baldevbhai-patel-and-other-connected-matters_36000.html)

buying, selling, dealing in securities in a fraudulent manner, employment of any manipulative/ deceptive device, scheme or artifice to defraud in connection with dealing in securities, engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. The Company is also alleged to have violated Regulations 4 (1) and 4(2) (f), (k) and (r) of the PFUTP Regulations. I note that Regulation 4(2)(f) prohibits publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true; Regulation 4(2)(k) prohibits disseminating information through an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors; and Regulation 4(2)(r) prohibits planting false or misleading news which may induce sale or purchase of securities. I find that by – (a) misutilising the proceeds of the two preferential issues; (b) carrying on finance business without obtaining RBI registration, (c) receiving application money to the tune of ₹ 1,44,90,000 and using it for giving loans before the shareholders' approval for the second preferential issue; (d) transferring sum of ₹ 1.67 Crore and 45 Lakh out of the proceeds of the two preferential issue, respectively, which has been siphoned off by the Noticees in the guise of repayment of loans; and (e) not making true, fair and transparent disclosure to the shareholders during ratification about the utilization/ misutilisation/ diversion of proceeds of preferential issue of equity shares; Noticees have violated Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (f), (k) and (r) read with Sections 12A (a), (b), (c) of the SEBI Act.

101. In the preceding paragraphs, it has been found that Noticees have violated Regulation 73 read with Regulation 301 of the ICDR Regulations, Clause 43 of Listing Agreement read with Section 21 of the SCRA, Regulation 32 and Regulation 103 of the LODR Regulations and Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (f), (k) and (r) read with Sections 12A (a), (b), (c) of the SEBI Act.

102. I note that violation of provisions of PFUTP Regulations as found to have been committed by the Noticees renders them liable for imposition of monetary penalty under Section 15HA of SEBI Act. Further, violation of provisions of the ICDR Regulations, LODR Regulations, Clause 43 of Listing Agreement read

with Section 21 of the SCRA as found to have been committed by the Noticees renders them liable for imposition of monetary penalty under Section 15HB of SEBI Act. I note that for imposition of penalty under the aforesaid provisions of SEBI Act, Section 15J of the SEBI Act provides as follows:

***“Factors to be taken into account while adjudging quantum of penalty.***

*15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

*Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”*

103. I observe that the SCN does not specify the amount of disproportionate gain or unfair advantage realized by the Noticees as a result of the aforementioned violations. In light of the preceding elaboration of siphoning off and misutilisation of the proceeds of the two preferential issues, it is practically impossible to quantify the loss caused to investors who acted on the basis of the mis-statements/ misrepresentation made by the Company.

104. In the above-mentioned paragraphs, it has been found that the Company had misrepresented its business affairs and siphoned off the investors' money. Such acts by a listed entity impair market integrity and adversely affect the rights of the investors and cause harm to the securities market. Disclosures are the foundation of the securities market. The irreversibility of the damage caused due to misrepresentation and non-disclosures underscores the preventive role of compliance with the ICDR and LODR Regulations regarding timely and adequate disclosure of Company affairs in a transparent manner. The integrity of the securities market is compromised when a listed company misutilises the funds raised from its shareholders. Further, as discussed in detail in the preceding paragraphs, I find that the role of Noticees No. 2 and 3 in the fraudulent misrepresentation of affairs of the Company, has been established.



As a result, in view of the aforesaid findings of violation of the provisions of SEBI Act, SCRA, ICDR Regulations, Listing Agreement, LODR Regulations and PFUTP Regulations, I find that it is a fit case to impose monetary penalty on all the Noticees and also to issue appropriate directions against them.

105. I note that in terms of Section 15A(b) of the SEBI Act as well as Section 23A(a) of the SCRA, the monetary penalty that may be levied for the failure / violation, shall be a minimum of one lakh rupees and may extend to one lakh rupees for each day during which such failure / violation continues subject to a maximum of one crore rupees. Further, in terms of Section 15HA of the SEBI Act, the monetary penalty that may be levied for the violation, shall be a minimum of five lakh rupees and may extend to twenty-five crore rupees or three times the amount of profits made out of the fraudulent and unfair trade practices leading to the said violation, whichever is higher. In the present case, as already recorded, there has been some level of time taken in initiation of the investigation and of initiation of proceedings. Accordingly, while the violations in the instant case are serious in nature and warrant imposition of severe directions and penalties under the provisions of SEBI Act and SCRA, the time taken in initiating investigations and the proceedings has to be treated as a mitigating factor for the purpose of determination of the penalties on the Noticees.

#### **DIRECTIONS AND MONETARY PENALTIES:**

106. Having regard to the facts and circumstances of this case, in exercise of the powers conferred upon me under Section 11(1), 11(4), 11(4A), and 11B of the SEBI Act read with Section 19 of SEBI Act, I hereby issue the directions and impose the penalties as described hereunder:

- i) Noticee No. 1, Noticee No. 2 and Noticee No. 3 are restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of six months from the date of this Order.

- ii) Noticee No. 1, Noticee No. 2 and Noticee No. 3, are directed to jointly and severally bring back ₹ 2,13,47,647 to the Company, which were diverted in the guise of repayment of loans to Handful Investrade Pvt. Ltd. Shree Nath Commercial & Finance Limited, Anmol Finance Company out of the proceeds of the first and second preferential issues of equity shares made on July 21, 2010 and October 18, 2012, respectively.
- iii) Penalties are hereby imposed on the Noticees, as specified hereunder:

S.N.	Name of Noticees	Provisions under which penalty is imposed	Penalty Amount (in ₹)
1	Tilak Ventures Limited	Section 15HA of the SEBI Act	₹ 10,00,000/- (Rupees Ten Lakh)
		Section 15A(b) of the SEBI Act	₹ 2,00,000/- (Rupees Two Lakh)
		Section 23A(a) of the SCRA	₹ 2,00,000/- (Rupees Two Lakh)
2	Mr. Girraj Kishor Agrawal	Section 15HA of the SEBI Act	₹ 5,00,000/- (Rupees Five Lakh)
		Section 15A(b) of the SEBI Act	₹ 1,00,000/- (Rupees One Lakh)
		Section 23A(a) of the SCRA	₹ 1,00,000/- (Rupees One Lakh)
3	Ms. Tanu Girraj Agrawal	Section 15HA of the SEBI Act	₹ 5,00,000/- (Rupees Five Lakh)
		Section 15A(b) of the SEBI Act	₹ 1,00,000/- (Rupees One Lakh)
		Section 23A(a) of the SCRA	₹ 1,00,000/- (Rupees One Lakh)

107. The Noticees shall remit/ pay the said amount of penalties within 45 days from the date of coming into force of this order. The Noticees shall remit/ pay the said amount of penalties through online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of

any difficulties in online payment of penalties, the said Noticees may contact the support at [portalhelp@sebi.gov.in](mailto:portalhelp@sebi.gov.in).

108. The obligations of the Noticees, restrained/ prohibited by this Order, 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 coming into force of this Order, are allowed to be discharged irrespective of the restraint/ prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/ prohibition imposed by this Order.

109. This Order shall come into force with immediate effect.

110. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents of Mutual Funds to ensure necessary compliance.

**Sd/-**

**PRAMOD RAO**

**EXECUTIVE DIRECTOR**

**Date: July 27, 2023**

**Place: Mumbai**

**SECURITIES AND EXCHANGE BOARD OF INDIA**