BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. PG/AM/AO-17/2013

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

In respect of:

Lucky Holdings Private Limited (PAN – AAACL8149G)
(Merged entity of Sagar Fintrade Pvt. Ltd. - PAN AADCS9405K)

In the matter of:

Dealings of Sanjay Dangi and other entities in various scrips

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BACKGROUND

1. Securities and Exchange Board of India (**SEBI**) received a reference from the Income Tax Department (**ITD**), containing certain findings in the matter of Murli Industries Limited (**MIL**). It was stated in the said reference that ten entities were holding substantial shares of MIL and the affairs of the ten companies were being looked after by Mr. Amit Raja, Chartered Accountant, who happened to be their auditor. The ITD had found certain documents suggesting manipulation in the share price of MIL. The reference stated that the following ten private limited companies were found to be dummy companies incorporated by MIL which had together cornered a large part of the shareholding of MIL.

i. Ambaji Papers Private Limited (**Ambaji**)
ii. Inco Infrastructures Private Limited (**Inco**)
iii. Kanhaiya Mining And Minerals Private Limited (**Kanhaiya**)
iv. Krishnum Investments Private Limited (**Krishnum**)
v. Lakhi Packaging Private Limited (**Lakhi**)
vi. Ramji Agri Business Private Limited (**Ramji**)
vii. Ramkrishna Fabrication and Machineries Private Limited (**Ramkrishna**)
viii. Runicha Alloys And Steel Private Limited (**Runicha**)
ix. Simple Mining And Power Private Limited (**Simple**)
x. Taitan Management Services Private Limited (**Taitan**)

2. The reference made by the ITD stated that none of the dummy companies had proper offices and that the directors of these dummy companies were of no means to carry out huge transactions running into millions of rupees. As per the said reference, ITD conducted survey under Section 133A of the Income Tax Act, 1961 at the premises of the dummy companies and found that the companies were not traceable at their given addresses. The original documents relating to the ten dummy companies and their directors (bank statements, demat statements, correspondence from brokers, dividend vouchers, contract notes, correspondence with shareholders, tax invoices, income tax returns filed, income tax acknowledgements, copies of PAN applications, correspondence with lenders, blank pledge creation forms, etc.) were found at the premises of Mr. Amit Raja and were impounded by ITD, whereas even copies of these documents were not found in the premises of the dummy companies or their directors. Similarly, the original documents pertaining to the directors in their personal capacity (bank statements, demat statements, correspondence from brokers, dividend vouchers, contract notes, income tax returns filed,

income tax acknowledgements, copies of PAN applications, etc) were also found in the premises of Mr. Amit Raja, whereas no such documents or even their copies were found in the premises of the individual directors.

3. ITD also forwarded certain documents which indicated an agreement for manipulation of MIL share price and profit sharing between MIL promoters and Sanjay Dangi.

4. The reference received from the ITD suggested that the price of the MIL scrip was manipulated by the entities mentioned in the reference for the purpose of issuing Foreign Currency Convertible Bond (**FCCB**) at a higher price than what was the correct price. In light of the aforesaid reference and documents received from the ITD regarding the manipulation in share price of MIL and the profit sharing arrangement between MIL and Mr. Sanjay Dangi, SEBI initiated a preliminary inquiry in the matter to find as to whether there was any concentration of shareholding of the company among the ten entities and whether there was any attempt to manipulate the share prices of the company before the FCCB issue of MIL. Based on the preliminary findings of the aforesaid investigation, it appeared to SEBI that a group of entities connected to each other (**Dangi Group**) had influenced the price rise in the scrip during the 'pricing period' of FCCBs and thereafter, exited the scrip at a profit, as per the alleged agreement made with the promoters of MIL.

5. Based on the finding in MIL, it appeared that a group was operating to offer its services to promoters, SEBI examined patterns in the trading and price-volume of scrips of other companies that had issued FCCBs or in which Dangi Group had been found to have traded regularly, or both. The said

examination revealed that the Dangi Group was actively trading in the shares of many companies where there was capital raising exercise through FCCB issue, ADR/GDR issue, QIB/QIP placement, preferential allotment or loans or pledge/revocation of pledge of promoter shares. Among the several scrips in which Dangi group was trading, their role was taken up for examination in their dealings in the shares of Hubtown Ltd. (**Hubtown**) (earlier known as Ackruti City Ltd.); Welspun Corp Ltd. (earlier known as Welspun – Gujarat Stahl Rohren Ltd.) (**WCL**), Brushman (India) Ltd. (**BIL**) and RPG Transmission Ltd. (**RPG**).

6. In view of the above findings in various scrips and noticing that such operations were possibly continuing in the market to the detriment of the investing public, SEBI vide ad-interim ex-parte order dated December 2, 2010, (**interim Order**) (available on SEBI website www.sebi.gov.in) issued directions against, *inter alia*, Mr. Sanjay Dangi, his associates & promoter entities of 4 companies i.e. MIL, Hubtown, WCL & BIL. In the said interim Order, 10 Dangi entities and 14 Ashika entities were restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities in any manner whatsoever, till further directions.

7. The entities were grouped as Ashika entities since they were all clients of broker Ashika Stock Broking Ltd. (**ASBL**). Apart from these clients, five entities belonging to Dangi group i.e. Amit Business Ltd. (**ABL**), Mentor Capital Ltd. (**MCL**), Ivory Consultants Pvt. Ltd. (**ICPL**), Sunil Dangi & Goldflag Trading Co. Pvt. Ltd. (**GTCPL**) had also traded through ASBL. In the aforesaid interim Order, ASBL was also directed not to buy, sell or deal in the securities in own/proprietary account in any manner till further directions and also not to take/deal with fresh/new clients with immediate effect till further orders.

8. Further, certain promoter/promoter related entities of MIL, Hubtown, WCL and BIL mentioned therein were directed not to buy, sell or deal in the securities of their own companies and their listed group companies, in any manner whatsoever, till further directions. The aforesaid four companies and their respective promoters were directed to ensure that the shareholding of the promoters/promoter group in the said companies was not altered in any manner till further directions. The stock brokers namely, Sanchay Fincom Limited, Sanchay Finvest Limited and ASBL were directed not to buy, sell or deal in the securities in their own/proprietary account in any manner till further directions in this regard. They were further directed not to take/deal with fresh/new clients with immediate effect until further orders.

9. The interim Order mentioned about the trading activity of primarily Dangi Group in five scrips, i.e., MIL, Hubtown, WCL, BIL and RPG. It was observed that among Dangi entities, two entities, i.e., Ashok Finstock Ltd. (**AFL**) & MCL were two major entities which traded in all the five scrips and were alleged to be creating artificial volume as well as price manipulation. It was prima facie observed in the interim Order that the Dangi Group along with the promoters of various companies had indulged in fraudulent and unfair trade practices relating to securities market. It was also observed that the Dangi Group and Ashika Group entities came together in a coordinated manner for execution of fraudulent schemes in the securities market. At the relevant point of time, prior to the pricing of a forthcoming issue of securities, they were found dealing in shares of companies concerned in order to artificially increase volumes and price or even to maintain the prices and favour the promoters in the desired manner.

10. It was observed that on February 06, 2007, MIL successfully completed the offer and allotment of Zero Coupon Unsecured FCCBs for USD 23 Million, with a conversion price of ₹ 565 per share. As per the announcement made by MIL, the bonds would have a maturity period of five years and one day and shall be convertible. In view of the prima facie finding that certain dummy companies were incorporated to deal in the scrip of MIL and the reference from ITD pointing out to possible manipulation by Dangi/ Ashika group entities for influencing the FCCB pricing, SEBI conducted detailed investigations in respect of dealings in the scrip of MIL.

11. From the bank statements of Ramji, Runicha, Ambaji, Kanhaiya and Inco it was observed that these companies had availed loans from SICOM Limited (**SICOM**) to make the payments to MIL for conversion of the share warrants allotted to them. The loans were provided to these companies against, *inter alia*, comfort letter of MIL and post dated cheques towards principal and interest from Shri Nandlal Maloo (promoter/ MD of MIL). From the information furnished by the dummy companies, MIL, bank transaction counterparties of dummy companies, etc., it was observed that many customers of MIL had given huge unsecured loans to the dummy companies immediately after their incorporation and even before these companies had set up any business infrastructure. Further, it was observed that when the five dummy companies which took loans from SICOM had to repay their loans, they received the necessary funds as unsecured loans from ANG Financial Consultants Private Limited (**ANG**) (earlier known as Madhulika Leasehold Private Limited), which in turn had received the necessary funds from MIL. On the same day as loan was extended to the five dummy companies, ANG had received the same amount from MIL. However, ANG repaid MIL in installments using the money paid

by the dummy companies as repayment for their loans. Thus, it appeared that MIL had used ANG as a conduit to provide funds to the five dummy companies to repay their loans to SICOM.

12. It was observed that for the bank account of one of the directors of Krishnum, i.e., Kamalkishore Bhattad held with State Bank of India (Nagpur), for the purpose of residence proof, a letter dated November 01, 2001 from Murli Agro Products Limited (now MIL) was submitted. It was also observed that the residence of Kamalkishore Bhattad was in the same building as the office of MIL. It was further observed that for the same bank account, the introducer was Mrs. Shanta Bajranglal Maloo, who has the same address as Mr. Bajranglal Maloo (one of the promoters of MIL).

13. It was observed from the depository (CDSL) account of Kamalkishore Bhattad maintained with Motilal Oswal Securities Limited that his address was '101, Jai Bhavani Society, Wardhaman Nagar, Nagpur', which was also the address of MIL and the email id provided was maloo@nagpur.dot.net.in. For the same account, the phone number provided by Kamalkishore Bhattad was 2768912, which was registered in the name of Mr. Bajranglal Bankatlal Maloo, C/o Nandlal Enterprises. In the account of Kamalkishore Bhattad with IL&FS Securities Services Limited, the address mentioned was 'Jai Bhawani Society, Central Avenue, Wardhman Nagar, Nagpur 440008' and the phone numbers mentioned were 2738634 and 9373118357. In the Income Tax returns, the address furnished by Kamalkishore Bhattad was '201, 202 Jai Bhawani Society, C A Road, Wardhaman Nagar, Nagpur'. Further, it was observed from Kamalkishore Bhattad's bank account statement that in May-June 2010 that Kamalkishore Bhattad received Rs. 4,80,000/- each from Nihal Gilts Private Limited and Raghav Finvest Private Limited, both being promoters of MIL.

14. It was observed from the demat account opening forms of the promoters of MIL that for the accounts held with ICICI the email id furnished by Mahesh Maloo, Lalchand Maloo HUF, Murli S Maloo, Bajranglal Maloo HUF, Nandlal Maloo HUF, Sunilkumar Sobhagmal Maloo, Lalchand Bankatlal Maloo and Bajranglal Bankatlal Maloo was also maloo@nagpur.dot.net.in.

15. It was observed that in the bank account opening form of Taitan, the address of one of its directors, i.e., Poonamchand Bhattad was mentioned as '102, Jai Bhawani Society, Wardhaman Nagar, Nagpur' (address of MIL being '101, Jai Bhawani Society, Wardhaman Nagar, Nagpur') and his phone number was 2738634 (same phone number as mentioned in Kamalkishore Bhattad's account with IL&FS Securities Services Limited). It was observed that Poonamchand Bhattad was also a director of Ambaji. It was further observed that the address in the driving license (issued in March 2004) of Lalit Loya, who was a director of Krishnum and Ramji, was 'C/o M/s. Murli Agro Products Limited, MIDC, Dhurkheda Tah, Umrer'. The connection between the dummy companies arising out of common contact details was as follows:

Common Telephone Number			
1	3096334	Kamalkishore Bhattad - (R) – Director of Krishnum	IDBI Bank a/c opening form of Krishnum
		Shivshakti Dhoot - (R) – Director of Kanhaiya, Inco and Simple	IDBI Bank a/c opening form of Kanhaiya
		Nilesh Jain - (R) – Director of Ramkrishna, Runicha and Taitan	IDBI Bank a/c opening form of Ramkrishna
		Inco - (O)	IDBI Bank a/c opening form; Guiness Securities a/c opening form
		Taitan - (O)	IDBI Bank a/c opening form
2	2732955 (Phone Number of Mr. Harish D Jasani)	Sukhram Prajapat (O)	IDBI Bank a/c opening form
		Sanjay Lute - (O) – Director of Inco	IDBI Bank a/c opening form
		Umardan Khariya - (O) - Director of Ramji	IDBI Bank a/c opening form
		Lalit Loya - (O) - Director of Krishnum and Ramji	IDBI Bank a/c opening form
3	9370422232 (Phone Number of Mr. Amit Raja CA)	Krishnum	Guiness Securities a/c opening form
		Simple	Guiness Securities a/c opening form
		Taitan	Guiness Securities a/c opening form
		Lakhi	Guiness Securities a/c opening form

4	2778910 (Phone Number of Mr. Amit Raja CA)	Krishnum	IDBI demat a/c opening form
		Simple	IDBI Bank a/c opening form; IDBI Demat a/c opening form
		Lalit Loya - (R)	IDBI Bank a/c opening form of Runicha
		Kanhaiya	Guiness Securities a/c opening form; IDBI Demat a/c opening form
		Taitan	IDBI Demat a/c opening form
		Lakhi	IDBI Demat a/c opening form
		Ambaji - (O)	Guiness Securities a/c opening form; IDBI Demat a/c opening form
		Runicha	IDBI Demat a/c opening form
		Ramji	Guiness Securities a/c opening form; IDBI Demat a/c opening form
Common Address			
1	C/o M/s. Murli Agro Products Limited, MIDC, Dhurkheda Tah, Umrer	Lalit Loya	Address in Driving Licence
2	Plot 142, East Wardhaman Nagar, Behind Akash Apartment, Nagpur – 8 (Address of Amit Raja CA)	Ramji	IDBI Demat a/c opening form
		Runicha	IDBI Demat a/c opening form
		Lakhi	IDBI Demat a/c opening form
		Taitan	IDBI Demat a/c opening form
		Kanhaiya	IDBI Demat a/c opening form; Guiness Securities a/c opening form
		Inco	IDBI Bank a/c opening form; Guiness Securities a/c opening form
		Simple	IDBI Demat a/c opening form
		Krishnum	IDBI Demat a/c opening form
3	c/o Vidya Amar Fulzale, Ambedkar Square, bypass Road, Umrer, Nagpur 441203	Ramji	IDBI Demat a/c opening form; Guiness Securities a/c opening form
		Runicha	IDBI Demat a/c opening form
		Krishnum	Guiness Securities a/c opening form
4	2nd Floor, Bind Apartment, Gandhi X Ray, Gandi Putla, Nagpur -8 (Address of late Deepti Raja, wife of Amit Raja CA)	Kamalkishore Bhattad	IDBI Bank a/c opening form of Krishnum
		Krishnum	Fortis a/c opening form; IDBI demat a/c opening form
Common e-mail address			
1	ar.nagpur@gmail.com (e-mail address of Amit Raja CA)	Krishnum	Guiness Securities a/c opening form; ROC Filings
		Simple	Guiness Securities a/c opening form; ROC Filings
		Taitan	Guiness Securities a/c opening form; ROC Filings
		Lakhi	Guiness Securities a/c opening form; ROC Filings

16. It was observed that all the dummy companies had used the services of Bhagwati Commercial and Financial Services Private Limited (promoters/directors of Bhagwati Commercial & Financial Services Pvt. Ltd. were Jayantilal V Raja, Lata J Raja and Deepti A Raja) for accounting consultancy and ROC work. It was also observed that Mr. Amit Raja, CA, was the auditor of the dummy companies since the incorporation of each of the companies.

17. It was observed that the 10 dummy companies had a common auditor, common consultant (which incidentally was run by the family members of Mr. Amit Raja, CA), bank accounts in the same branch of IDBI Bank Ltd., demat accounts with the same DP (Guiness Securities), trading accounts with the same broker, off market transfers by directors of dummy companies with the same counterparties and a large number of common shareholders.

18. The common phone number and email id shared by the promoters of MIL and some of the directors of dummy companies indicated that the promoters of MIL were known well to the directors. The only income for the various dummy companies and their directors appeared to be the dividend paid by MIL as seen from their respective bank statements. It was also observed that none of the dummy companies had invested in any scrip other than MIL since their incorporation. It was observed that all the 10 dummy companies were incorporated during the same time period (April – May, 2005). It was also observed that four dummy companies, namely, Krishnum, Lakhi, Simple and Taitan had actively traded in the scrip of MIL. The dummy companies incorporated with a capital of not more than a couple of lakhs of rupees had invested in the warrants of MIL in which a payment close to Rs 5 Crore was required to convert the warrants. Yet no business activity was undertaken by any of these companies to generate income.

19. During investigation it was observed that customers of MIL (corporate entities not based in Nagpur, but clients of MIL) had paid lakhs of rupees as either advance or share application money to one or more of the dummy companies immediately after their incorporation. The offices of these dummy companies were set up at the residences of their respective directors and

the companies had no infrastructure or business deals in place. The amounts thus received by the dummy companies were used either to pay for share warrants of MIL or to pay off unsecured loans. Therefore, on examining the end use of these funds, it appeared that clients of MIL had funded the dummy companies to purchase the share warrants of MIL.

20. It was also observed from the bank statements of dummy companies that a number of companies had invested in them as shareholders. The information obtained from MCA website during investigation indicated that all these companies (shareholders of dummy companies) were based out of Kolkata (registered office being in Kolkata) and had common directors.

21. In order to conduct a thorough investigation and in order to ascertain the exact role played by the various entities including the ten dummy companies and their shareholders, vide summons, details/information was sought from Sagar Fintrade Private Limited (**SFPL**) by the SEBI Investigating Authority (**IA**). It was alleged that despite duly receiving summons dated September 06, 2011; September 22, 2011; October 12, 2011; November 01, 2011 & December 22, 2011 SFPL failed to submit complete details/information as required vide the aforesaid summonses, thereby violating the provisions of Section 11C(2) and 11C(3) of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

22. The undersigned was appointed as the Adjudicating Officer vide order dated March 30, 2012 and the said appointment was conveyed vide proceedings of the Whole Time Member dated April 11, 2012 to inquire and adjudge under Section 15A(a) of the SEBI Act, 1992 alleged violations of provisions of Section 11C(2) & 11C(3) of SEBI Act, 1992 committed by SFPL.

SHOW CAUSE NOTICE, HEARING & REPLY

23. Show Cause Notice (**SCN**) in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (**Adjudication Rules**) was issued to SFPL on January 04, 2013, calling upon it to show cause as to why an inquiry should not be held against it under Rule 4(3) of the Adjudication Rules for the alleged violations.

24. The aforesaid SCN was duly delivered by Speed Post on January 09, 2013. It was observed that vide letter dated January 15, 2013, Lucky Holdings Private Limited (**LHPL**) submitted its reply and *inter alia* made the following submissions:

- SFPL had been merged and amalgamated with LHPL, pursuant to scheme of amalgamation sanctioned by the Hon'ble High Courts at Calcutta and Cuttack by orders passed on March 16, 2011 and June 24, 2011. Subsequently appropriate orders have also been passed for dissolution without winding up of SFPL.
- Upon amalgamation, all assets, rights, duties, entitlements, obligations and liabilities of SFPL stood transferred to and vested with LHPL.
- As the transactions pertained to a period prior to change of management of SHPL, an extension of six weeks may be granted to them, to enable them to give appropriate reply.

Alongwith this letter LHPL also enclosed copies of the orders from the abovementioned Hon'ble High Courts.

25. A reply dated January 19, 2013 was also received from SFPL enclosing three letters and copies of bank statements and other

documents comprising the information sought for vide the various summonses.

26. A reply dated February 11, 2013 was received from LHPL wherein it has been submitted that there was a change in management of SFPL in 2009 and in 2011, SFPL merged with LHPL in terms of the orders of the Hon'ble High Courts of Calcutta & Orissa (Cuttack). It has been submitted that SFPL could not respond to the summons properly and timely as it was preoccupied with Search & Seizure proceedings. It has also been submitted that as the present management was not responsible for the alleged violations, no proceedings may be initiated against them.

27. Thereafter, an opportunity of personal hearing was granted to LHPL vide Notice of Inquiry dated February 07, 2013 and LHPL was advised to attend the hearing on February 22, 2013. This Notice of Inquiry was duly delivered by Speed Post on February 11, 2013.

28. On February 22, 2013, Mr. Ajay Choudhury, Advocate and Mr. Pramod Kumar Chauhan appeared for hearing on behalf of LHPL and stated as under:

- *"The Group which has taken over Sagar Fintrade Pvt. Ltd. in or about 8th April, 2009 has absolutely no connection or association with the transaction as such transaction took place during a period prior to change in management.*
- *The summons and notices that were received by Sagar Fintrade Pvt. Ltd. after the Company had undergone change in management were replied to and documents furnished to SEBI. However, in view of an ongoing Income Tax proceedings, all relevant and required information and documents could not be*

furnished as the Company was essentially pre-occupied with the ongoing proceedings and many of such documents were not readily available to the Company.

- *Subsequently, the Company (since merged with Lucky Holdings Pvt. Ltd.) has provided all relevant documents and information as available with the Company on assuming control of Sagar Fintrade Pvt. Ltd. pursuant to a change in management in April 2009. The Company has provided all information as available from the records and would endeavour to assist SEBI in every possible manner.*
- *The delay in providing all possible required information to SEBI occasioned due to circumstances wholly beyond the reasonable control of the Company and its officers. There has been no wilful or deliberate neglect or withholding of any information or documents that was in the domain of the Company.*
- *As the delay was inadvertent, no adverse inference should be drawn against the Company or its officers and they ought to be reasonably excused. It is reiterated that the Company has provided all possible assistance and information as available with the Company to SEBI and would continue to provide all possible assistance as is reasonable feasible.*
- *The Company has also provided the names and addresses of the erstwhile directors of Sagar Fintrade Pvt. Ltd. (pre-change in management) who may be of more valuable assistance to SEBI in its ongoing investigation and inquiry.*
- *The Company urges the Hon'ble Adjudicating Officer to kindly assess and view the reply and documents that has been submitted in response to the Notices and Summons that would establish the complete innocence of the Company in relation to the transactions under investigation as also reasonably establish the bonafide conduct of the Company throughout."*

29. With respect to reply dated January 19, 2013 received from SFPL, the representative of LHPL submitted as under:

- *"The letter dated January 19, 2013 alongwith its enclosures were taken inspection during the hearing and on inspection it is submitted that the said letter was not issued by the Noticee, i.e., Lucky Holdings Pvt. Ltd. nor was the same issued under the instructions or advice of the Noticee. The Noticee disowns the letter dated January 19, 2013 completely and does not wish to offer any comment on the veracity of the contents of the said letter. It is also submitted that the email id sagarfintradepvtltd@gmail.com is also not created or authorised to be created by the Noticee and thus the attachment and letter sent through the above stated email id is also disowned. It is submitted that on the dissolution without winding up of Sagar Fintrade Pvt. Ltd. pursuant to Order passed by the Hon'ble Calcutta High Court on September 04, 2012 which has also been duly filed in the Office of the Registrar of Companies, West Bengal, Sagar Fintrade Pvt. Ltd. lost all its identity and existence as the merger stood culminated by the Order of September 04, 2012 and accordingly no letter could have been issued by Sagar Fintrade Pvt. Ltd.*
- *It is respectfully prayed that a copy of the letter dated January 19, 2013 and the email referred to above could be handed over to the Noticee for the Noticee to take appropriate proceedings therefor as may be necessary and legally expedient.*
- *It is confirmed that the replies issued during the period 2011 in response to summons received from SEBI were issued on our instruction, advice and knowledge. All such replies form part of the Show Cause Notice dated January 04, 2013 issued by SEBI."*

ISSUES FOR CONSIDERATION

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

A. Whether SFPL has violated provisions of Section 11C(2) and 11C(3) of the SEBI Act, 1992?

B. Whether SFPL is liable for monetary penalty under Section 15A(a) of the SEBI Act, 1992?

C. What quantum of monetary penalty should be imposed on SFPL/LHPL taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

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

ISSUE 1: Whether SFPL has violated provisions of Section 11C(2) and 11C(3) of the SEBI Act, 1992?

32. The provisions of Section 11C(2) and 11C(3) of the SEBI Act, 1992 read as under:

Section 11C(2) and Section 11C(3) of the SEBI Act, 1992

11C(2): *Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of,*

or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

11C(3): *The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.*

33. In view of the submissions made by LHPL during the course of hearing, disowning the letter dated January 19, 2013 sent by SFPL, I am not considering the said letter and the enclosures submitted therewith. Further, in view of the merger I am considering these proceedings against LHPL as it is the entity into which SFPL has merged/amalgamated.

34. From the material available on record, I note that summons dated September 06, 2011, was issued to SFPL by the IA asking it to furnish certain information by September 14, 2011. Vide letter dated September 14, 2011, SFPL submitted partial information and *inter alia*, stated that it had paid ₹ 40,00,000 as share application money to Ramji. SFPL also requested for 30 days time to submit certain other information. Thereafter, another summons dated September 22, 2011 was sent to SFPL asking it to furnish the information by September 30, 2011. I also note that vide letter dated September 22, 2011, SFPL was informed by the IA that the Hon'ble Securities Appellate Tribunal (**SAT**) vide its order dated July 11, 2011 had asked SEBI to complete investigation by December 31, 2011 and in order to comply with the directions of SAT, information was required from various entities within the timeline stated in the summons.

35. Thereafter, summons dated October 12, 2011 was sent to SFPL asking it to furnish the information by October 20, 2011 and the said summons was duly delivered to SFPL by Speed Post. I note that vide letter dated October 15, 2011, (received by SEBI on October 31, 2011) as additional response to summons dated September 06, 2011, SFPL submitted that it had also invested ₹ 28,50,000 in Krishnum. It also submitted detail of investment in Krishnum & Ramji, bank statement of IDBI Bank account, annual report for years ended March 31, 2006 & March 31, 2009 and detail of investment as on March 31, 2006.

36. Another summons dated November 01, 2011 was also issued to SFPL asking it to submit the desired information by November 08, 2011. This summon was duly delivered on November 03, 2011. However, no response was received to the said summons.

37. Thereafter, another summons dated December 22, 2011 was issued to SFPL asking it to submit information by December 28, 2011. This summons was also duly delivered and vide letter dated nil received on January 16, 2012, SFPL submitted only the list of its shareholders as on December 31, 2009. I further note that all the summonses clearly stated that in case of default by SFPL, SEBI will initiate adjudication proceedings against SFPL under Section 15A of SEBI Act and may also launch prosecution under section 11C (6) of SEBI Act.

38. A table depicting summons issued and response of SFPL thereto is as follows:

Serial No.	Date of Summons	Nature of Information Sought	Response of SFPL (in brief)
1.	September 06, 2011	Details of promoters/directors and key officials of SFPL; details of bank accounts (including account statements) of SFPL and its promoters/directors for 01/04/2005 to 31/12/2009; details of shareholders of SFPL on quarterly basis for 01/04/2005 to 31/12/2009; details of loans availed by SFPL and/or its promoters; relation/connection and also financial dealings between SFPL, its promoters/directors and MIL / dummy companies / promoters of MIL/ certain Dangi group entities and Ashika group entities; etc.	Partial reply vide letter dated September 14, 2011. SFPL did not furnish bank account statements, shareholder details, etc. Partial reply vide letter dated October 15, 2011 (received by SEBI on October 31, 2011). SFPL furnished reply only about source of funds for investing in the dummy companies and list of other companies in which it had invested. Details of investments and copy of bank statements for the required period not provided.
2.	September 22, 2011	Details of bank accounts (including account statements) of SFPL and its promoters / directors for 01/04/2005 to 31/12/2009; details of shareholders of SFPL on quarterly basis for 01/04/2005 to 31/12/2009; details of investments made in all private limited companies in the given format; rationale for investing / becoming a shareholder in Ramji; etc.	Summons delivered. No reply received.
3.	October 12, 2011	Details of bank accounts (including account statements) of SFPL and its promoters / directors for 01/04/2005 to 31/12/2009; details of shareholders of SFPL on quarterly basis for 01/04/2005 to 31/12/2009; connection with certain Kolkata based entities (shareholders of dummy companies); details regarding investment in Ramji; etc.	Summons delivered. No reply received.
4.	November 01, 2011	Details of bank accounts (including account statements) of SFPL and its promoters / directors for 01/04/2005 to 31/12/2009; details of shareholders of SFPL on quarterly basis for 01/04/2005 to 31/12/2009; connection with certain Kolkata based entities (shareholders of dummy companies); details regarding investment in Ramji; list of investments in other private limited companies; etc.	Summons delivered. No reply received.
5.	December 22, 2011	Details of bank accounts (including account statements) of SFPL and its promoters / directors for 01/04/2005 to 31/12/2009; details of shareholders of SFPL on quarterly basis for 01/04/2005 to 31/12/2009; connection with certain Kolkata based entities (shareholders of dummy companies); details regarding investment in Ramji and Krishnum; etc.	Partial reply vide letter dated nil, received by SEBI on January 16, 2012 SFPL only submitted a list of its shareholders as on 31/12/2009.

39. It is observed that all the summonses were issued after the date of merger i.e. June 2011. However, neither SFPL (original entity) nor LHPL (merged entity) brought the fact of change of management and merger to the notice of the IA. Consequent to the merger/amalgamation, all the assets, rights, duties, entitlements, obligations and liabilities of SFPL are now vested with LHPL and the Adjudication Proceedings are accordingly proceeded with.

40. I note that LHPL has neither denied nor disputed the receipt of the aforesaid summonses dated September 06, 2011; September 22, 2011, October 12, 2011, November 01, 2011 and December 22, 2011 issued to it. However, I note that SFPL failed to submit complete information as required vide the aforesaid summonses. For instance, I note that vide summons dated September 06, 2011, SFPL was asked to submit details of all bank accounts alongwith bank statements of those accounts and details of its shareholders on a quarterly basis from April 01, 2005 to December 31, 2009. However, SFPL vide letter dated September 14, 2011, *inter alia*, requested for 30 days time for compliance with the summons and had only mentioned the name of the Bank, branch and account number of SFPL. But it neither submitted the bank statements nor gave the details of its shareholders for the required period.

41. Subsequently, vide summons dated September 22, 2011, SFPL was, *inter alia*, asked to submit details of all bank accounts alongwith bank statements of those accounts and details of its shareholders on a quarterly basis; details about its investments in Ramji including rationale for investment, and also details of SFPL's shareholding in other private limited companies, in the given format. However, as no reply was received, one more summons dated October 12, 2011 was sent to SFPL asking

information, *inter alia*, regarding bank accounts alongwith bank statements and details of its shareholders for the required period; details about its investments in Ramji including rationale for investment in Ramji, as also information regarding basis of investment, who approached SFPL regarding investment in Ramji, return on the investment, connection with promoters/Directors of Ramji, details of its shareholding in other private limited companies; familiarity/connection with certain entities; etc.

42. I note that vide letter dated October 15, 2011 (received by SEBI on October 31, 2011) SFPL submitted partial information in response to summons dated September 06, 2011 and further informed that it had also invested ₹28,50,000 in Krishnum. I am of the considered opinion that such delayed submission of information definitely hampers the investigation process as it precludes the IA from carrying out further and deeper investigation because of paucity of time. Even then, SFPL did not furnish bank statements for the required period and details of shareholders on a quarterly basis as required vide summons dated September 06, 2011. It also did not submit information regarding rationale for investing in Ramji and list of all private limited companies in which it was a shareholder during the period from April 01, 2005 to December 31, 2009.

43. Since no reply was received from SFPL in response to summons dated October 12, 2011, the information was again sought vide summons dated November 01, 2011. There was no response to this summons also. Thereafter, another summons dated December 22, 2011 was issued asking for various information/documents. However, vide letter dated nil, received on January 16, 2012, SFPL submitted only the list of its shareholders as on December 31, 2009.

44. SFPL did not furnish the required bank statements and details of shareholders on a quarterly basis; rationale for investment in Ramji and Krishnum; who approached SFPL for investment in Ramji and Krishnum; etc. Further, SFPL did not submit the names of other private limited companies in which it had made investments and also about its connections with certain other entities. Had such information been provided, the IA would have been in a better position to ascertain the nature of the companies in which SFPL was investing and whether there were any relation between SFPL and other entities who were also shareholders of dummy companies.

45. In regard to the summonses issued by the IA, I observe that the information sought would have enabled the IA to draw precise conclusions in the matter. I now proceed to discuss, as to how essential and important the information was in the instant matter which was not provided by SFPL. In view of the prima facie finding that certain dummy companies were incorporated to deal in the scrip of MIL and the reference from ITD pointing out to possible manipulation by Dangi/Ashika group entities for influencing the FCCB pricing, the IA was conducting detailed investigations in respect of dealings in the scrip of MIL. Since, as per SFPL's own admission it had invested in two of the aforesaid ten dummy companies (paid ₹ 28,50,000/- and ₹ 40,00,000/- as share application money to Krishnum and Ramji respectively), it was imperative that SFPL provided detailed information regarding these investments in Ramji and Krishnum, in other private limited companies, connections with other entities, etc. on time. Had the information with regard to the rationale for investing and who approached SFPL for the investment, etc. been provided, then the IA would have been in a better position to ascertain the exact role played by the various entities including the dummy companies and SFPL and the

same would have helped in examination of possible violations of the provisions of SEBI Act and Rules and Regulations made thereunder. Further, since SFPL had indicated sale of investments as source of funds, the information with regard to its shareholders, its investments in other private limited companies and detailed bank account statements of SFPL were also significant so as to match the fund flow with the corresponding securities flow, which is inherent and one of the most vital part of the whole investigative process. In this context, it can be said beyond doubt that the information which was not provided by the SFPL was relevant and caused hindrance to the whole investigation process.

46. I note that LHPL vide its reply dated February 11, 2013 and also during the course of personal hearing has, *inter alia*, submitted that SFPL had undergone a change in management in April 2009 pursuant to which new directors were appointed and thereafter in June 2011 SFPL had merged with LHPL. LHPL also submitted that the details called for in the summonses relate to a period which was prior to the change of management in SFPL. I am of the view that a change in management would not absolve SFPL from complying with SEBI summonses. LHPL further submitted that time it was preoccupied with an Income Tax proceeding and that it had provided all documents/information which was available from record. As already observed, the fact of merger of SFPL into LHPL, which happened before the issue of summonses, was not informed to the IA at the relevant time. Also, the fact that there was an Income Tax proceeding during the time SEBI summonses were issued cannot be accepted as a plausible reason for not submitting complete details/information in response to SEBI summonses. Despite receiving the five summonses SFPL did not bother to furnish detailed information as required by the IA

which hampered the investigation process to a great extent, as discussed above. Also, keeping in mind the ample time and repeated opportunities given to SFPL by the IA, information such as details of shareholders, bank account statements for the relevant period, details of investments in Ramji and Krishnum, details of investment in other private limited companies, etc. as required vide the summonses could have been easily submitted by SFPL. Hence, I find that SFPL has failed to comply with summons dated September 06, 2011, September 22, 2011, October 12, 2011, November 01, 2011 and December 22, 2011 thereby violating Section 11C(2) & 11C(3) of the SEBI Act, 1992. Admittedly, SFPL has merged into LHPL who has taken it over with all the obligations and liabilities of SFPL. Thus, LHPL would be legally liable for the consequences of any proceedings against SFPL.

47. I note that alongwith reply to the SCN dated February 11, 2013; LHPL has also enclosed certain annexures containing information/documents in reference to the SEBI summonses. I also note that LHPL has attempted to submit certain information for the first time such as SFPL's bank account statements, shareholder lists, annual reports etc. However, I am of the considered opinion that these documents/information ought to have been submitted during the stage of the investigation in compliance with the summons dated September 06, 2011, September 22, 2011, October 12, 2011, November 01, 2011 and December 22, 2011. This also shows that required information was not submitted on time.

48. At this juncture, I refer to the observations of the SAT in *M/s. Bubna Stock Broking Services Limited v. SEBI*, Appeal No. 41/2009, wherein it was *inter alia* held that "*.....All these details had been asked for which were necessary for carrying*

out further investigations. Incomplete information furnished by the appellant amounts to non furnishing of information within the meaning of section 15A(a) of the Act and it thwarted the investigations. This is, indeed, a serious matter.....". I also refer to the observations of the Securities Appellate Tribunal in the matter of *DKG Buildcon Private Limited v. The Adjudicating & Enquiry Officer, Securities and Exchange Board of India*, Appeal No. 106/2006, wherein it was, *inter alia*, held "*.....It is of utmost importance that every person from whom information is sought should fully co-operate with the investigating officer and promptly produce all documents, records, information as may be necessary for the investigations. If persons are allowed to flout the summons issued to them during the course of the investigations, the Board as the watchdog of the securities market will not be able to perform its duties in protecting the interests of the investors and safeguarding the integrity of the securities market.....*".

49. From the forgoing paragraphs it is observed that SFPL failed to provide the required documents and information to the IA. The said details which were sought vide the summons dated September 06, 2011, September 22, 2011, October 12, 2011, November 01, 2011 and December 22, 2011 were relevant and important in the whole Investigating Process. Thereby, it is established that SFPL has violated the provisions of Section 11C(2) & 11C(3) of the SEBI Act, 1992.

ISSUE 2: Whether SFPL is liable for monetary penalty under Section 15A(a) of the SEBI Act, 1992?

50. The provisions of Section 15A(a) of the SEBI Act, 1992 read as under:

Penalty for failure to furnish information, return, etc.:

Section 15A *If any person, who is required under this Act or any rules or regulations made there under,—*

(a) *to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less*

51. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)*, the Hon'ble Supreme Court of India has held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant*".

52. As already observed, SFPL failed to comply with the summons dated September 06, 2011, September 22, 2011, October 12, 2011, November 01, 2011 and December 22, 2011. Therefore, I find that SFPL is liable for monetary penalty under Section 15A(a) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on SFPL/LHPL taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

53. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992, which reads as under:

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

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a)*the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

(b)*the amount of loss caused to an investor or group of investors as a result of the default;*

(c)*the repetitive nature of the default."*

54. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. I note that not submitting complete details to the summons despite having the same appears to be a deliberate action/strategy on the part of SFPL to not co-operate with the regulatory mechanism. I also note that such non cooperation and default definitely compromises the regulatory framework and acts as an impediment to the functioning of the investigation process of SEBI. Further, any delay or hurdle in investigation due to non cooperation by any entity is detrimental to the interest of investors in securities market. I note that SFPL has failed to comply with summons dated September 06, 2011 and subsequent summonses dated September 22, 2011, October 12, 2011, November 01, 2011 and December 22, 2011 therefore the default of SFPL is repetitive in nature.

55. From the forgoing paragraphs it is now established that SFPL, failed to provide necessary information/documents to the IA in response to the summons dated September 06, 2011, September 22, 2011, October 12, 2011, November 01, 2011 and December 22, 2011. Consequent to merger, all the rights and obligations of SFPL are now vested in LHPL. Considering

the facts and circumstances of the case, I find that imposing a penalty of ₹ 5,00,000/- (Rupees Five Lakhs only) on Lucky Holdings Private Limited would be commensurate with the violation of Section 11C(2) & 11C(3) of the SEBI Act, 1992 committed by SFPL.

ORDER

56. In terms of the provisions of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 5,00,000/- (Rupees Five Lakhs only) under Section 15A(a) of SEBI Act, 1992 on Lucky Holdings Private Limited for the violations as mentioned above.

57. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to the Division Chief, Investigation Department (IVD – ID8), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

58. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to LHPL and also to Securities and Exchange Board of India.

Date: February 28, 2013 **Piyoosh Gupta**
Place: Mumbai **Adjudicating Officer**