BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/RM/2021-22/13282-13285]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I (2) OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

1. **Baba Nanak Financial Services (PAN: AAACB5459P)** having address at - 302, Dhaka Chambers, 2068/39 Naiwala, Karol Bagh, New Delhi-110005
2. **Goodpoint Impex Pvt. Ltd. (PAN: AAFCG0606G)** having address at - Loco Colony 6, Sardar Near Sukunta Pathagar Burdwan Bardhaman, West Bengal-713101
3. **Meghna Srivastava (PAN: AADTA6297J)** having address at 15 / 96, Civil Lines, Kanpur, Uttar Pradesh – 208001
4. **Shivsathi Mercantile Pvt. Ltd. (PAN: AASCS6284R)** having address at - Loco Colony 6, Sardar Near Sukunta Pathagar Burdwan Bardhaman, West Bengal-713101

In the matter of Delta Leasing & Finance Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings against Baba Nanak Financial Services (**Noticee 1),** Goodpoint Impex Pvt. Ltd. **(Noticee 2),** Meghna Srivastava **(Noticee 3),** and Shivsathi Mercantile Pvt. Ltd. **(Noticee 4)** for the alleged violations of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000, SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated

October 3, 2013, and Regulation 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**)**.** Noticees 1 to 4 are collectively referred to as **'Noticees'**.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') *vide* order dated December 21, 2020 to inquire into and adjudge under Section 15HA of the SEBI Act and 23H of SC(R)A,the aforesaid alleged violations against the Noticees. The appointment of the AO was communicated *vide* order dated January 13, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/ST/2021/11411 dated June 02, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') and Rule 4(1) of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **'SCR Adjudication Rules**'), to show cause as to why an inquiry should not be held and penalty not be imposed against Noticees in terms of Section 15HA of the SEBI Act and 23H of SC(R)A, for the aforesaid alleged violations.

4. The allegations levelled against the Noticees in the SCN are summarized as below:

5. Delta Leasing & Finance Ltd. (DLFL) was incorporated in November 1983 and was listed on DSE on June 27, 1984 and at BSE on April 18, 2013. As per the website of DLFL, the company is engaged in investments and providing loan & advances and other related activities. Address details of DLFL are as under:

Table 1

Registered Office Address	55, F.I.E, Patparganj Industrial Area, New Delhi– 110092
Corporate Office Address	104, Mukund House, Azadpur, New Delhi-110033

6. The details of the management of the company during the investigation period are as under: - ***(Source – Annual report (Delta) 2013-14***)

Table 2

Name	**PAN**	**Designation**
Subodh Kumar Khandelwal	AALPK3774C	Chairman & Managing Director
Meera Mishra	AJBPM5839R	Executive Director
Seema Khandelwal	ANSPK6624M	Executive Director
Renu Jindal	ADDPJ7206K	Independent Director
Pawan Kumar Poddar	AAGPP6784N	Independent Director
Uttam Kumar Srivastava	BTIPS4267B	Independent Director

7. An investigation was conducted into the trading activities of in the scrip of DLFL from January 1, 2013 to December 31, 2014. Examination of off market data obtained from the Depositories has revealed that promoter entities have transferred substantial quantity of shares to several entities during the investigation period.

8. The off market transactions executed during the investigation period were carried out electronically in dematerialized form by transfer from the account of a Beneficial Owner (Transferor or Source Client) to the account of another beneficial owner (Transferee or the Target Client) through Delivery Instruction Slips (DIS).

9. A “spot delivery contract” is defined in SCRA to mean a contract which provides for actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality. An off-market transaction is in the nature of a spot delivery contract in terms of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013.

10. On analysis of the off market transactions between the Source clients, Noticees-1, 2, 3 and 4 and the corresponding Target clients, Mr. Sunil Singh and Ms. Sapna, as given in the table below, it was observed that the transactions were not settled within the time frame stipulated in Section 2(i)(a) of SCRA, 1956, in as much as the consideration for off market transfer of shares were paid by the target clients first and the shares have been transferred by the Source clients after a much delay beyond the time frame stipulated in the said provisions.

S.No.	**Name of Source client**	**Target Client**	**Total no. of transactions**	**Qty of shares transferred**		**Total Consideration amount received (Rs.)**		**Date of transfer of shares**	**Delay/ Range of Delay(no. of days)**
				Total qty	**Qty. in delayed cases**	**Total Consideration as per DIS**	**Total Consideration in delayed cases as per reply from target clients**		
1.	BABA NANAK FINANCIAL SERVICES LIMITED	Sunil Singh	2	5,000 12,650	5,000 12,650	Not Mentioned	15,10,000	15.02.2014 16.04.2014	63 days to 94 days
2.	GOODPOINT IMPEX PRIVATE LIMITED	Sunil Singh	1	21000	21,000	Not Mentioned	19,85,550	07.08.2014	2 days
3.	MEGHNA SHRIVASTAVA	Sapna	1	13000	13000	Not Mentioned	Not Mentioned		476 days
4.	SHIVSATHI MERCANTILE PRIVATE LIMITED	Sunil Singh	1	2500	2500	Not Mentioned	5,59,025	25.06.2014	6 days

11. It is seen from the above table that the target client Noticee-1 transferred 5,000 and 12,650 shares to Mr. Sunil Singh on 15.02.2014 and 16.04.2014 respectively with a delay of 63 days to 94 days range after the payment received. The Noticee-2 transferred 21,000 shares on 07.08.2014 with a delay of 2 days from the date of receipt of payment from Mr. Sunil Singh. Similarly, there is a delay of 467 days in the case of Noticee-3 from the date of receipt of payment from Ms. Sapna and transfer of 13,000 shares. In the case of Noticee-4, 2,500 shares were transferred on 25.06.2014 to Mr. Sunil Singh after 6 days from the receipt of funds in respect of the transaction. Hence, these transactions were not settled as per the time frame stipulated in Section 2(i)(a) of SCRA, 1956 and the delay continued till the date of investigation.

12. In light of the above, Noticee-1,2,3 and 4 were alleged to have violated Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013.

13. SEBI Master circular CIR/MRD/DP/13/2013 dated April 15, 2013, stipulates that Section12 of the Depositories Act and Reg.58 of SEBI (Depositories and participants) Regulations, 1996 along with the relevant bye-laws of the Depositories clearly enumerate the manner of creating pledge and that any procedure followed other than as specified under the said provisions of law shall not be treated as pledge.

14. On examination of the DIS slips of the following Source Clients, it was observed that the reasons for transfers stated was “Loan of Shares or return of loan of shares”:

S No.	Source client particulars	Target Client Particulars	Date of transfer	Summons date of source client	Reply date of source client	Summons date of target client	Reply date of target client	Reply of target clients
1	Baba Nanak Financial Services	SUNIL SINGH 10113199	15.02.2014	30.10.2019	08.11.2019	23.10.2019	N.A	Denied as loan transaction

	Limited 10183205	SUNIL SINGH 10113199	16.04.2014	30.10.2019	08.11.2019	23.10.2019	N.A	Denied as loan transaction
2	GOODPOINT IMPEX PRIVATE LIMITED 10012290	SUNIL SINGH 10113199	07.08.2014	30.10.2019	13.12.2019	23.10.2019	N.A	Denied as loan transaction
3	SAPNA 00030356	MEGHNA SRIVASTAVA 21358418	25.08.2014	22.10.2019	N.A	30.10.2019	05.11.2019	Denied as loan transaction
4	SHIVSATHI MERCANTILE PRIVATE LIMITED 10012281	SUNIL SINGH 10113199	25.06.2014	30.10.2019	13.12.2019	23.10.2019	N.A	Denied as loan transaction

15. It is seen from the table above, Noticee-1, had transferred shares on 15.02.2014 and 16.04.2014 to Mr. Sunil Singh. Noticee-2 and 4 transferred shares on 07.08.2014 and 25.06.2014 to Mr. Sunil Singh and one Ms. Sapna transferred shares to Noticee-3 on 25.08.2014. However, the reply of the source clients stated them as loan transactions.

16. In the instant case, all the above clients by incorrectly stated their off market transfer of shares as Loan transactions in the DIS whereas they were not loan transactions but were sale/purchase transactions. Hence, it was alleged that the said clients have committed an act of deceit by giving a false reason of Loan / return of loan in DIS for transfer of shares in order to evade or avoid regulatory compliance stipulated in Sec.2(i)(a) SCRA, 1956 in violation of Regulation 4(1) of SEBI PFUTP Regulations, 2003.

17. In view of the above, Noticees-1 to 4 were alleged to have violated Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013 and Regulation 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The relevant clauses of SC(R)A, SEBI Notifications and PFUTP Regulations are reproduced as under:

SC(R)A:-

2 (i) *In this Act, unless the context otherwise requires,— spot delivery contract" means a contract which provides for,-*

(a) *actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;*

13- *If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognized stock exchange or recognized stock exchanges in such State or States or area or through or with such member shall be illegal.*

16- *If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.*

18- *Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.*

SEBI Notification G.S.R 219(E) dated March 2, 2000-

"In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992, (See [1992] 75 Comp Cas (St.) 216.) and Notification No. 183(E), dated 1st March, 2000, (See page 53 supra.) issued under section 29A of the said Act, Adjudication Order in the matter of Pithampur Steels Ltd., Page 8 of 22 the Securities and Exchange Board of India (hereinafter referred to as "the Board") being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992), and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange.

Provided that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognized stock exchange shall be entered into in accordance with-

***(a)** the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the directions issued by the Securities and Exchange Board of India under the said Acts;*

***(b)** the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934), or the Banking Regulation Act, 1949 (10 of 1949) or*

the Foreign Exchange Regulation Act, 1973 (46 of 1973), by the Reserve Bank of India;

(c) *the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956)*

SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013-
In exercise of the powers conferred by subsection (2) of section 28 and sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India notification number S.O. 573(E), dated the 30th July, 1992 issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as 'the Board') hereby rescinds the notification number S.O.184(E), dated the 1 st March, 2000, except as respects things done or omitted to be done before such rescission, and declares that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than a contract falling under any one or more of the following, namely:-
(a) *spot delivery contract;*
(b) *contracts for sale or purchase of securities or contracts in derivatives, as are permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange;*
(c) *contracts for pre-emption including right of first refusal, or tag-along or dragalong rights contained in shareholders agreements or articles of association of companies or other body corporate;*
(d) *contracts in shareholders agreements or articles of association of companies or other body corporate, for purchase or sale of securities pursuant to exercise of an option contained therein to buy or sell the securities, where-*

(i) the title and ownership of the underlying securities is held continuously by the selling party to such contract for a minimum period of one year from the date of entering into the contract;

(ii) the price or consideration payable for the sale or purchase of the underlying securities pursuant to exercise of any option contained therein, is in compliance with all the laws for the time being in force as applicable; and

(iii) the contract is settled by way of actual delivery of the underlying securities:

Provided that the contracts specified in clauses (a) to (d) above, shall be in accordance with the provisions of the Foreign Exchange Management Act, 1999 and rules or regulations made thereunder:

Provided further that nothing contained in this notification shall affect or validate any contract which has been entered into prior to the date of this notification.

Explanation.- It is hereby clarified that the contracts mentioned in clauses (c) and (d) above shall be valid notwithstanding anything contained in section 18 A read with clause (d) of sub-section (1) of section 23 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956):

Provided also that any contract for sale or purchase of government securities, gold related securities, money market securities, contracts in currency derivatives, interest rate derivatives and ready forward contracts in debt securities entered into on the recognized stock exchange shall be entered into in accordance with, —

(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992(15 of 1992) or the directions issued by the Securities and Exchange Board of India under the said Acts;

(b) the rules made or guidelines or directions issued, under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulations Act, 1949 (10 of 1949) or the Foreign Exchange Management Act, 1999 (42 of 1999), by the Reserve Bank of India;

(c) the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

PFUTP Regulations-

4- Prohibition of manipulative, fraudulent and unfair trade practices:

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

Explanation.– For the removal of doubts, it is clarified that any act of diversion, Misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

18. The aforesaid alleged violations, if established, make the Noticees-1 to 4 liable for monetary penalty under Section 15HA of the SEBI Act and 23H of SC(R)A, which read as under:

SEBI Act:

Penalty for fraudulent and unfair trade practices:

15HA- *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees*

but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

SC(R)A:

Penalty for contravention where no separate penalty has been provided-

23H- *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognized stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

19. SCN was served to the Noticees through Speed Post Acknowledgement (SPAD) at their respective addresses except to the Noticees 2 and 4. SCN was also served to all the Noticees through the email addresses obtained from the depositories where the Noticees have their demat accounts including to the Noticees 2 and 4. In response to the SCN, Noticee 1 filed reply to the SCN vide letter dated June 25, 2021, and Noticee 2, 3 and 4 did not submit any reply.

20. In the interest of justice, an opportunity of personal hearing was provided to the Noticees through video conferencing on August 12, 2021. However, Noticees did not avail the opportunity of hearing provided. Further, Noticee 2, 3 and 4 did not submit any reply to the SCN.

21. The key submissions of the Noticee-1 are summarized as below:

22. Noticee-1 submitted thet the SCN issued by SEBI is illegal and issued without jurisdiction apart from being not in terms of law and barred by limitation. The noticee company is neither an intermediary nor a person associated with the Securities Market or with the promoters of the referred listed company. Therefore,

the inquiry against the present noticee is unwarranted and misconceived apart from being initiated without application of mind and hence without jurisdiction and hence liable to be withdrawn forthwith.

23. Noticee-1 submitted that the noticee company is RBI registered NBFC incorporated under the Companies Act, 1956 and is in the business of providing Loans and trading of shares. The Company is not a SEBI registered intermediary.

24. Noticee-1 submitted that 17,650 equity shares of Delta Leasing and Finance Ltd. were purchased by the noticee company total amounting to Rs. 13.85 lacs during the Financial year 2013-14 in its normal course of business out of business funds available with it.

25. The Noticee Company or any of the Promoter, Director or officer is not connected nor having any business connection or otherwise with the company under investigation or its promoters or Directors. The shares dealt were neither received nor transferred to any alleged promoter entity.

26. That the equity shares were acquired in the normal course of business of the company out of its available business funds. The Company is having net worth of Rs. 2.35 Cr as on 31.03.2013 and payment was made out of running credit balance and transaction limit available with the Broker Vivek Financial Focus Limited.

27. Shares were provided on loan and settled as sale against the payment received earlier from Mr. Sunil Singh by the noticee company on 13.12.2013 Rs. 5,10,000/- and on 11.01.2014 Rs. 10,00,000/- from Alfa Finsec Prop. Mr. Sunil Singh and the transaction has aíready been settled with the same party hence nothing is outstanding as on date.

28. That the settlement of outstanding amount from a party against the shares taken on loan on a later date is purely commercial decision taken in normal course of business. Mere settling the shares taken on loan against the payment made earlier can not be viewed as fraudulent or unfair trade practice. At the most the transaction is subject to provisions of the Contract Act and any gain or loss arisen out of such transaction is business gain/loss of the company governed by The Income Tax Act.

29. That PFUTP regulation were framed to regulate manipulation, fraudulent or unfair trade practice made by market intermediaries and for the transaction which was done dishonestly or in bad faith and not the bona-fide transactions. Nothing is brought on record nor provided to the noticee in support of the allegation of fraudulent transaction. You are requested to provide the documents/evidence in support of the allegation before initiating any enquiry or other proceedings against the noticee. Mere roving and fishing enquiry against the noticee for the bona fide transaction is not warranted apart from being illegal.

30. That "spot delivery contract" referred to in SCRA is defined in relation to regulate the transactions amongst the market intermediaries and not among the beneficial owners of the securities. Off market dealing of securities, taken/given on loan among beneficial owners and use of securities for settlement of outstanding dues are the normal trade practices and are not subject to rigors of SEBI regulations. There is nothing on record which could show that the present transaction executed among the beneficial owners is manipulative in nature by any stretch of imagination and hence not subjected to SCRA provisions.

31. That the SEBI Master circular CIR/MRD/DP/13/2013 dated April 15, 2013, stipulates that Section 12 of the Depositories Act and Reg. 58 of SEBI (Depositories and participants) Regulations, 1996 along with the relevant byelaws of the Depositories definitely enumerate the manner of creating pledge

and that any procedure followed other than specified under the said provisions of law shall not be treated as pledge. Kindly note that the referred provisions of law govern the transactions among market intermediaries and depository participants. The transactions among private parties are subject to provisions of the Indian Contract Act, 1872. Giving/taking shares on loan by transferring them through transfer of ownership title and settled against the payment at any point of time among the beneficial owners as their normal trade transaction cannot be subjected to rigors of referred regulations.

32. Noticee-1 submitted that the Shares were given as loan but settled against the payment received earlier is the fact which is narrated by the noticee in its reply dated 08.11.2019 and is being reiterated here. There is nothing untrue or false disclosure made by the noticee at any point of time. Section 2(i)(a) of SCRA, 1956 is not applicable on the parties in present transaction as none of the party is market intermediary. There is no instance of evading or avoiding regulatory compliance as alleged. Mere alleging without material evidence against the noticee is nothing but harassment by the authorities and misuse of powers against the noticee for the reasons best known to them.

33. I note that, through the SCN and the hearing notices, the Noticees 2, 3, and 4 were advised to furnish their reply, if any, within stipulated time, failing which, it shall be presumed that the Noticees have no reply to submit and the matter will be proceeded on the basis of the material available on record. Further, vide emails dated August 13, 2021 Noticees 2, 3 and 4 were again informed that, since they have not availed the opportunity of hearing provided to them and they have also not filed any reply to the SCN, the matter would be proceeded further on the basis of evidence available on record in terms of sub-rule (7) of rule (4) of the Adjudication Rules.

34. As sufficient opportunity was given to the Noticees 2, 3 and 4 to submit reply and appear for hearing and no response was received from them, the adjudication proceedings against the Noticees 2, 3 and 4 are undertaken ex-parte on the basis of material available on record.

35. As the inquiry in the matter is complete, I now proceed to decide the matter on the basis of SCN issued, replies received and material placed on record.

CONSIDERATION OF ISSUES AND FINDINGS

36. The issues that arise for consideration in the instant matter are:

Issue No. I	Whether the Noticee 1 to 4 violated Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000, SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013, and Regulation 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003?
Issue No. II	If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of the SEBI Act and 23H of SC(R)A?
Issue No. III	If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I Whether the Noticee 1 to 4 violated Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000, SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013, and Regulation 4(1) of SEBI (Prohibition of Fraudulent and

Unfair Trade Practices relating to Securities Market) Regulations, 2003?

37. Before going into the merits of the case, I note the contention of the Noticee-1 that the present proceedings are barred by limitation. In this regard, I note that present notice has been issued after 7 years from the date of transactions executed. As seen from the material before me, I note that investigation in the matter began in April 2019 and was completed in October 2020. SCN was issued on June 02, 2021. Hence, I note there is no delay in completion of investigation and initiation of proceedings. Further, no limitation is prescribed in SEBI Act or Regulations for issuance of SCN or for completion of the Adjudication proceedings.

Noticee 1

38. The first allegation against the Noticees is based on delay in settlement of off-market trades. In respect of Noticee 1, the delay in delivery of shares sold is alleged to be 63 days to 94 days. Noticee-1 received payment of Rs. 5,10,000/- on December 13, 2013 and Rs. 10,00,000/- on January 11, 2014 from Sunil Singh. However, it transferred 5,000 shares and 12,650 shares of DLFL to Sunil Singh on February 15, 2014 and April 16, 2014 after a delay of 63 days to 94 days.

39. In this regard, Noticee-1 has submitted that the aforesaid transaction among beneficial owners was a commercial decision in normal course of business wherein shares were provided on loan and were settled as sale against the payment received earlier. Further, Noticee-1 submitted that the said off market transactions were not subjected to SEBI regulations and SCRA and the transactions among private parties are subject to provisions of the Indian Contract Act, 1872. The submission by the Noticee that the shares were provided as loan is vague and unclear. The provisions of Section 13 of SCRA read with

Section 18(1) of SCRA make it clear that every contract in securities must be executed on stock exchange unless it is a spot delivery contract. In this regard I place reliance on the order of Hon'ble SAT in the case of ***Bhanuben Jaisukhlal Shah v. SEBI*** (Appeal No. 271 decided on March 5, 2010). Hence, the submission by the Noticee that shares were on loan and subject to provisions of Indian Contract Act is not acceptable.

40. Noticee-1 has also contended that present proceedings are illegal and issued without jurisdiction since, the noticee company is neither an intermediary nor a person associated with the Securities Market or with the promoters of the referred listed company. As noted above, this contention of the Noticee has no basis as any contract in securities which is not carried out on stock exchange mechanism has to confirm to the requirments of spot contract under SCRA in terms of Section 13 and 18 of SCRA read with SEBI Notification G.S.R. 219(E) dated March 2, 2000, SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013.

41. As Noticee 1 failed to settle the sale of 17,650 shares of DLFL to Sunil Singh within the timelines stipulated in Section 2(i) of SCRA, it is established that the Noticee 1 violated provisions of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013

Noticee 2, 3 and 4

42. In respect of Noticee 2 and 4, as per the SCN there is a delay of 2 days and 6 days respectively in settling the sale transactions of 21000 shares and 2500 shares of DLFL respectively.

43. In this regard, I note that Section 16 of the SCRA as well as the SEBI Notification S.O. 184(E) dated March 01, 2000 issued in terms of Section 16, emphasises

legislative intent to prevent undesirable speculation in securities, by ensuring that parties to off-market dealings in shares comply with Section 2 (i) of the SCRA which in turn required a spot delivery contract to provide for "*actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day".* As per Section 2 (i), it is important to note that the reference to payment of price and delivery of securities is from the date of contract. Further, the duration of 'same day or next day' does not include *"the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality*". Thus, unavoidable procedural delays due to the process involved in receiving payment for, and transferring shares on account of contract for off-market transaction in shares, have been excluded from the computation of same day or next day in Section 2 (i).

44. I note that SEBI has earlier in the case of *Amol Sadashiv Solaskar* also passed an order dated 08.05.2017 absolving the Noticee therein, of liability for belated payment in respect of 15000 shares transferred off-market to the said Noticee in the light of the total facts and circumstances of that case. It was observed that "*Although the impugned transaction does not fulfill the spot delivery contract norms in as much as the consideration did not pass within the time limit for the same, it cannot further be equated with any undesirable speculation that is sought to be prohibited by Section 16 of SCRA as well as by the Notification dated 01st March, 2000. There is no charge that the impugned transaction is a result of excessive or undesirable speculation or that it had any market wide adverse impact*."

45. Considering the aforesaid, I am of the view that a delay of 2 days and 6 days in settling of transactions in case of Noticees 2 and 4 can be accounted for as procedural delay and cannot be equated with undesirable speculation. Hence, in

case of Noticees 2 and 4, I am of the view that violation of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000, SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013 by the Noticees is not established.

46. In respect of Noticee 3, as per SCN the alleged delay in settling transactions is 467 days in respect of sale of 13000 shares. Shares were transferred on 25.08.2014 by Noticee 4 against payment received on 14.05.2013. Noticee 3 thus failed to settle the transactions for more than one year after receipt of payment. Thus, there is a clear failure by Noticee 3 to settle transactions within the timelines stipulated in Section 2(i) of SCRA for spot trades, and with such lengthy time taken to settle the trade, it loses all character of a spot trade. Hence, it is established that the Noticee 3 violated provisions of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013

47. The second allegation in the SCN pertains to alleged violation of Regulation 4(1) of PFUTP Regulations, 2003 due to incorrect statement by Noticees in the DIS slip that transactions were loan transactions whereas they were sale/purchase transactions. In this regard Noticee-1, contended that nothing is brought on record to support allegation of fraudulent transaction or allegation that transactions entered by Noticee-1 is manipulative in nature.

48. Regulation 4(1) of PFUTP Regulations states that "*no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets".* The issue to be examined here is whether an incorrect reason given in the DIS slip by a transferor amounts to manipulative, fraudulent or unfair trade practice. The Noticees stated that the transactions were for loan whereas they were outright sale and purchase transactions. As per the SCN, Noticees committed an act of deceit by giving a false reason for transfer in the DIS slip. In this regard, I refer to

judgement of Hon'ble SC in the matter of SEBI vs. Kanaiyalal Patel [CA No. 2595 of 2013] of 20.09.2017 wherein the SC held as follows:

"Market manipulation is normally regarded as an "unwarranted" interference in the operation of ordinary market forces of supply and demand and thus undermines the "integrity" and efficiency of the market."

"Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions"

49. Based on the above, incorrect entry in DIS slip does not amount to market manipulation as by itslef, it does not affect the market forces of demand and supply. A trade practice would be unfair if it is unfair to the parties involved in the transactions or otherwise affects fairness and integrity in the markets. The wrong entry for reason of sale on a DIS slip, as in this case, has not been shown to have created unfairness for the parties engaged in the transaction. It is also not demonstrated as to whether the fairness or integrity of trading in DLFL is impacted by the wrong entry.

50. As regards fraudulent trade practice, regulation 2(c) of the PFUTP Regulations defines fraud as *"any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss".* In the SC order in SEBI vs. Kanaiyalal Patel(supra), it is held that

"The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities."

51. While the act of giving wrong reason for transfer of shares in a DIS slip may be considered to be deceitful, by itself, it has not been demonstrated as to how this act could induce another person to deal in securities. There is no inference in the allegation that any person was induced to act in the manner that he did but for the inducement.

52. In view of the above, I find that violation of Regulation 4(1) of SEBI PFUTP Regulations, 2003 against Noticees on account of giving wrong reason for sale in DIS slip is not established.

Issue No. II **If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of the SEBI Act and 23H of SC(R)A? and**

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act and 23 J of SCRA read with Rule 5(2) of the Adjudication Rules?**

53. Since the violation of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000 and SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013 has been established against Noticees 1 and 3, the Noticees are liable for monetary penalty under Section 23H of SC(R)A which reads as follows

SC(R)A:

Penalty for contravention where no separate penalty has been provided-

23H- *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognized stock exchange or directions issued by the Securities and Exchange Board of India for which no separate*

penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

54. While determining the quantum of penalty under Section 23H of the SCRA, the following factors stipulated in Section 23J of the SCRA have to be given due regard :

Factors to be taken into account by the adjudicating officer

23J. *While adjudging the quantum of penalty under section 23-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.

55. I note that the material on record has not brought out any disproportionate gain made by the Noticees 1 and 3 or loss caused to investors by the Noticees on account of delay in transfer of Securities in the off market transactions. I also note that the transactions pertain to the period 2013-14 with transfer of shares having taken place Feb, April and August 2014. In view of the above, taking into consideration facts and circumstances of the case and mitigating factors, I am of the view that a penalty of Rs.50,000/- each on Noticees 1 and 3 under Section 23H of SCRA will be commensurate with the violations committed by the Noticees.

ORDER

56. After taking into consideration all the facts and circumstances of the case, in exercise of the powers conferred upon me under section 23-I of the SCRA, 1956 read with Rule 5 of the Adjudication Rules, I hereby impose the penalty of Rs.50,000/- under Section 23H of SCRA each on the Noticees **Baba Nanak Financial Services (Noticee 1) and Ms. Meghna Srivastava (Noticee 3),** for violation of Section 13, 16, 18 of SC(R)A read with SEBI Notification G.S.R. 219(E) dated March 2, 2000, SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013.

57. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

58. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action –IV of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment –Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

59. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: August 31, 2021 **MANINDER CHEEMA**

PLACE: MUMBAI **ADJUDICATING OFFICER**