WTM/MPB/EFD-1-DRA-IV/ 104 /2020

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In Re: SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and

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

In the matter of Midvalley Entertainment Limited

In respect of:

S.No.	Name of the Entity	PAN/ Address
1.	Midvalley Entertainment Limited	AABCC3634J
2.	Datuk K Ketheeswaran	AUZPK2273Q
3.	R Chandrasegaran	AHUPC1432D
4.	Sudhir Kumar Jena	AASPS2187G
5.	K Murugavel	AKIPN9312K
6.	Vasan Chidambaram	ACEPV8596L
7.	K Ramdasan	AKTPR9734M
8.	S Madhavan	9th Floor, Gee Gee Emrald, Valluvar Kottam High Road, Nungambakkam, Chennai - 600034
9.	M Pandiyan	ARYPP5030A

BACKGROUND

1. Midvalley Entertainment Limited (hereinafter referred to as **"MVEL / the company**") engaged in the media and entertainment industry in South India. The company was incorporated on July 12, 1989 and was converted into public limited company on February 04, 2000. The company came out with an Initial Public Offer (hereinafter referred to as "**IPO**") for issue of 85,71,429 equity shares of face value Rs.10/- each at a price of Rs.70 per share, aggregating to Rs.60 crores during January, 2011. MVEL was listed on BSE Ltd. On January 27, 2011. The scrip opened at Rs.73/- and witnessed a steep price fall and closed at Rs.55.05.

2. The details of the management of the company were as follows:

Sl. No.	Name	Designation
1	Datuk K. Ketheeswaran	Non-Executive Chairman
2	Mr. R. Chandrasegaran	Non-Executive & Non-Independent Director
3	Mr. Sudhir Kumar Jena	Independent Director
4	Mr. K. Murugavel	Executive Director cum COO
5	Mr. K. Ramadasan	Independent Director
6	Mr. Vasan Chidambaram	Independent Director
7	S Madhavan	Company Secretary and Compliance Officer
8	M Pandiyan	Manager – Accounts and Finance

3. It is observed from the financial results of the company that the net sales of the company substantially decreased from Rs.18.51 crores as on April 30, 2011 to Rs.5.85 crores as on May 31, 2012.

4. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the matter of IPO of MVEL to ascertain whether

there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 (herein after referred to as "**SEBI Act**"), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (herein after referred to as "**ICDR**") and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (herein after referred to as "**PFUTP Regulations**"). Investigation was carried out for the period January 27, 2011 to February 28, 2011 (hereinafter referred to as "**Investigation Period**").

SHOW CAUSE NOTICE

5. Consequent to the completion of investigation, a common Show Cause Notice (hereinafter referred to as "**SCN**") dated March 31, 2017 was sent to MVEL, Datuk K Ketheeswaran, R Chandrasegaran, Sudhir Kumar Jena, K Murugavel, Vasan Chidambaram, K Ramdasan, S Madhavan and M Pandiyan (hereinafter jointly referred to as "**Noticees"** and individually by their respective names) in the instant matter to show cause as to why suitable actions/directions in terms of Sections 11 (1), 11(4) and 11B of the SEBI Act should not be initiated against them.

6. The allegations as set out in the SCN are as follows:

6.1 Non-disclosure/wrong disclosure in RHP/Prospectus

6.1.1 Non-disclosure of directorship of Vasan Chidambaram in two entities namely Tanmathra Creative Solutions Private Limited and UNV Media Private Limited.

6.1.2 Non-disclosure of an existing arrangement entered into with Eduexel Infotainment Limited (Eduexel) on November 15, 2010 for the purpose of acquisition of screening rights, screening arrangements along with film contents from market for supplying the same to MVEL.

6.1.3 Non-disclosure of suppliers viz., (i) Aman Tie Up Pvt. Ltd., (ii) Eduexel Infotainment Ltd., (iii) Aswin Logistics Ventures and (iv) Omni Ax's Software Ltd. to whom MVEL transferred IPO proceeds.

6.2 Eduexel is an entity connected to MVEL based on common directorship (Mr. Vasan Chidambaram is a promoter director of Eduexel and also a director of

MVEL). Eduexel is also connected to the merchant banker to the IPO, Aryaman Financial Services Ltd. based on common directorship (Mr. Shreyas Shrenik Shah).

6.3 In the RHP dated December 20, 2010 and Prospectus dated January 14, 2011 the directors, Compliance Officer and the Finance Manager have certified that all the statements in RHP and Prspectus are true and correct.

6.4 Out of Rs.60 crores of IPO proceeds, an amount of Rs.50.263 crore was siphoned off from the IPO proceeds by deviating from the objects of the issue and not utilising the IPO proceeds as per the objects stated in the prospectus.

6.5 Out of the above siphoned off amount of Rs.50.263 crores, an amount of Rs.24.7 crores was provided to 15 entities who traded in the scrip of MVEL with these funds. These entities are net buyers and have also provided exit to the allottees in the IPO. These 15 entities while buying shares of MVEL either bought shares of MVEL with the help of funds transferred from MVEL through other entities or were compensated through fund transfers from MVEL through other entities subsequent to their buy trades.

7. In view of the above, it is alleged that MVEL and its directors namely, Datuk K. Ketheeswaran, Mr. R. Chandrasegaran, Mr. Sudhir Kumar Jena, Mr. K. Murugavel, Mr. K. Ramadasan, Mr. Vasan Chidambaram, Mr. K Ramdasan and its compliance officer Mr. S Madhavan and Mr. M Pandiyan (Manager –Accounts and Finance)who were signatories to Red Herring Prospectus (RHP) and Prospectus have violated regulations 57(1), and 60 (7) (a) of SEBI (ICDR) Regulations, 2009 and Clauses 2(VIII)(E)(1)(a), 2(VIII)(B)(1)(b)(i), 2 (XVI) (B) (2) of Part A of Schedule VIII read with Regulation 57 (2) (a)(ii) of SEBI (ICDR) Regulations, 2009 and section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d), 4(1) ,4 (2) (a), (d), (e), (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

8. Based on the above, the Noticees were advised to show cause as to why suitable actions/directions in terms of Sections 11(1), 11(4) and 11B of SEBI Act should

not be initiated against them for the alleged violation of the provisions of SEBI Act, PFUTP Regulations and ICDR Regulations.

9. Service of SCN: The SCNs were sent through Speed post with acknowledgment to the Noticees. As the acknowledgment was not received from the Noticees the service was attempted through Southern Regional Office of SEBI. It is noted from the records that the SCN was served to MVEL, Sudhir Kumar Jena, K. Murugavel and M. Pandiyan. Vide letter dated July 23, 2018, MVEL acknowledged the SCN for MVEL and M.Pandiyan. For remaining noticees viz., Datuk K Ketheeswaran, R Chandrasegaran and S Madhavan the Company stated that they do not have any contact with them hence did not accept the SCN on their behalf. SCN against K Ramdasan was served through affixture at his last known address i.e. , "*52/2, Egmore High Road, Egmore, Chennai 600 008".* For the remaining unserved Noticees, the SCN was served through publication in the newspapers viz., "*The India Express*" (Chennai Edition) dated May 18, 2019 and "*Dakshina Bharat Rashtramat*" (Chennai Edition) dated May 18, 2019.

REPLY

10. Vide identical and separate letters dated August 20, 2018, K. Murugavel and M Pandian *inter alia* submitted the following:

    i) They are not a beneficiary of any of the transactions cited in the SCN.

    ii) They are neither a promoter of the Company nor held any shares in the company.

    iii) They were only employees of the Company. As employees, they followed the orders of the board of Directors of the Company.

    iv) They are not related party to any of the persons mentioned in the SCN.

HEARING

11. Vide hearing notice dated March 19, 2019, Noticees were granted an opportunity of hearing on April 03, 2019. Vide letter dated April 04, 2019, MVEL and K. Murugavel sought adjournment of the hearing on the ground that they have not received SCN. Vide letter dated April 04, 2019, M. Pandiyan also sought

adjournment of the hearing. Considering the same, vide hearing notice dated May 08, 2019, Noticees were granted an opportunity of hearing on May 28, 2019. The hearing notices were served through Speed Post with acknowledgment due. The Notices were delivered to MVEL, Sudhir Kumar Jena, K Murugavel and M Pandiyan. The remaining Noticees viz., Datuk K Ketheeswaran, R Chandrasegaran, Vasan Chidambaram, K Ramdasan and S Madhavan were notified vide publication in "The India Express" (Chennai Edn.) dated May 18, 2019 and in "Dakshina Bharat Rashtramat" (Chennai Edn.) dated May 18, 2019.

12. In response to the hearing notice, M.Pandiyan and MVEL (e-mail dated May 23, 2019) and K. Murugavel (e-mail dated May 24, 2019) stated that they have not received the SCN and sought an adjournment. There was an inadvertent error in the SCN date mentioned in the Notice and the same was clarified to the Noticees vide e-mail dated May 26, 2019. Considering the same, vide hearing notice dated June 20, 2019 through e-mail, another opportunity of hearing was granted to MVEL, M. Pandiyan and K Murugavel on July 02, 2019. In response, K Murugavel sought an adjournment of the hearing on the ground of sudden demise in his family. Vide e-mail dated July 01, 2019 MVEL sought an adjournment on the ground that their Senior Counsel is not available on July 02, 2019.

13. On July 02, 2019, M. Pandian along with his Advocate/ translator Mr. K Vijayaragavan appeared before me and made the following submissions:

    13.1. That he joined MVEL in the year 2010 and his primary duty was to do tally entry. For the same, company bank account statement was given to him. He does only accounts related work.

    13.2. That the company had plans to come out with initial public offer (IPO), for the same one merchant banker namely, Aryaman Financial Services Limited came from Mumbai and records were handed over to them. They were in contact with Mr. Madhavan.

    13.3. That he does not know anything about Red Hearing Prospectus (RHP / Prospectus). Mr. Madhavan had called him and told him to come to Chennai Airport urgently, he reached Chennai Airport and was told that all the directors

had signed RHP and Chief Financial Officer (CFO) is not available, so he has to sign the documents and thereafter he was made to sign the prospectus urgently at Chennai Airport without reading the said document. He was made to sign on behalf of CFO (because of emergency/urgency) and they stated that nothing will happen. After signing the document, he does not know anything further about it.

13.4. That even after signing the prospectus he did not read it later on. Further, he does not know that the said prospectus is going to publish or available on website. He never asked his boss to give prospectus which he had signed for his record/reading.

13.5. That in future he will not sign any document without reading.

13.6. That he had lost his job, salary was not paid to him and he is in financial loss. He is now selling readymade clothes.

13.7. That he had continued with company from 2010 till 2014, but still now he is related to MVEL and he admits that he is an employee of the Company. In 2014 he was paid Rs.58,000 / - per month, before that Rs.30,000/- per month. Nowadays he was paid Rs.5,000 /- or Rs.10,000/- towards expenses to come to the company and company had promised to him that in near future he will be paid accordingly.

13.8. That soon after the IPO, as per the bank statement he was making the entry in tally against whose name money was transferred but he does not know nor asked the purpose for which the money was used/transferred. That his mandate was to make entry in tally as per the bank statement and he should not ask any question. If the credit is received in the company, then he will ask about it.

13.9. That he does not know about the audit committee. He was informed about the board meeting but he was not allowed to take part in the board meeting. He had not made any presentation for board meeting or audit meeting.

13.10. That he was not the compliance officer of the Company.

13.11. That before IPO his designation was Account Executive, at the time of IPO his designation was Account Manager and after 2 years of IPO his designation was Deputy General Manager (accounts).

13.12. That his education qualification is M.Com.

14. M. Pandiyan was advised to submit the following information / documents by July 15, 2019:

14.1. Bank account Statements of M Pandiyan with PNB, HDFC and Corporation Bank from November 2010 to March 2011.

14.2. Appointment letter, promotion letter, education qualification proof.

Accordingly, he has submitted the above sought details vide letter dated July 15, 2019.

15. Considering the request of K Murugavel and MVEL, another opportunity of hearing was granted to them on August 08, 2019. In response, K. Murugavel sought adjournment once again on the ground of pilgrimage to Sabarimala. MVEL vide e-mail dated August 08, 2019 submitted that new Board of Directors have taken charge of MVEL and they have no knowledge about the matters relating to IPO or the utilization of the funds received out of IPO. Vide the said e-mail, MVEL requested time to collate the information from erstwhile directors. Considering the fact that sufficient number of opportunities were granted to MVEL and Murugavel, the said request was not acceded to. However, the said Noticees were given an opportunity to file written submissions within fifteen days.

16. Vide letter dated nil received on September 23, 2019, K Murugavel filed the following written submissions:

Background:

i) Prior to joining MVEL, I was fully associated with IT - Software industry as HR - Human Resource Specialist. I got referred to Midvalley through known contact for the position of HR and Operations. After joining, promoter and their representatives offered me to be a director since company was planning to

resubmit the book called DRHP for IPO. Upto this point, I was not at all aware of IPO, DRHP, or SEBI etc., rather I never heard those words since I'm from different industry as employee.

ii) My name was included as director in DRHP and I signed the book. Since I was new to this industry, I didn't know the significance and risk of signing this. I signed this as a book for submitting with SEBI all I know. Except me all members from old DRHP continued in the book resubmitted with SEBI. After joining, I was informed that business and business models were already decided and included in the existing DRHP book.

iii) Broadly my day to day activity includes resource management, basic administration, travel, statutory management related to PF, ESI, IT, Secretarial coordination and filings. Also coordinate with accounts for receipts and payments. I was authorised by the Chairman and board to sign on cheques and payments soon after I joined in 2010 as earlier director and signatory was placed out of country.

iv) Business operations of purchase, procurement, sales and other activities were directly carried out by the promoter and his representatives.

Barred by Limitation

i) At the outset and without dealing with the merits of the allegations set out in the SCN, it is submitted that SCN has been issued after period of 6 years from the date of the alleged violation. It is further, submitted that investigation period was January 27, 2011 to February 28, 2011 whilst SCN was issued on March 31, 2017.

ii) While the SEBI act does not prescribe any period of limitation in issuing a SCN, it is settled principle of law that where a statute does not prescribe any limitation period, and action under such statute must be initiated within reasonable time.

iii) For considering inordinate and unjustified delays of 6 years in issuing the SCN which runs contrary to the settled principals of limitation, it is submitted that SCN and the proceedings in this matter against the company be dropped.

Non-Disclosure in the offer document:

i. Non- Disclosure of Directorship - SCN alleges that the RHP and the prospectus did not disclose the directorship held by Mr. Vasan Chidambaram one of the directors of the company at the relevant time, in 2 entities Tanmatra Creative Solutions Private limited and UNV Media Private Limited.

ii. As mandated by SEBI ICDR regulations, the company engaged Aryaman Financial Services Limited as the book running lead manager (BRLM) The scope of the work of BRLM for the IPO include carrying out due diligence exercise in relation to the company and its directors for the purposes of complying with SEBI ICDR regulation and other applicable laws for initial public offerings in India.

iii. The due diligence process involved interaction with the directors and the senior management of the company to make necessary disclosures in the DRHP, RHP and the prospectus. Further, in connection with the IPO to MSB Legal (Advocates and legal consultants) were legal counsel to the IPO to assist the BRLM in carrying out legal due diligence, drafting of the DRHP, RHP and prospectus and advise the company and BRLM on all other legal matters as appropriate including for the purpose of issuing legal opinion related to the IPO.

iv. In a due diligence process for IPO, the primary source of information pertaining to the directors are the directors themselves, who furnish the information to the issuer company and the book running lead manager. While the regulatory framework governing such transaction does not define what constitutes due diligence, as a matter of practice, the objectives of the due diligence in respect of the Directors is to collect information about the Directors and review and examine such documents and information provided by the Directors to make such disclosures as mandated under regulatory framework in the offer document.

v. The disclosure of directorship of the directors of the Company in the RHP and the prospectus was also based on the information certification and undertaking

provided by the Directors at the time of filing the RHP and the prospectus respectively.

vi. It is pertinent to note that the alleged violation namely non-disclosure of directorship of Vasan Chidambaram in Tanmathra creative solutions Private Limited is of such nature that the Company and the BRLM would have to rely only on the information provided by the Director and independent procurement of documents/information related to such item at the relevant time was extremely difficult in the absence of central repository of information of this nature when the disclosures are made in January 2011. The inability to view the signatory details namely the DIN number or details of directorship in other companies in the central repository maintained by the MCA was available much later than 2013, in such circumstances, it is extremely difficult for the Company to be aware of such information unless and otherwise the legal counsel engaged for the IPO who does the due diligence exercise bring to the attention of the Company or the BRLM.

vii. It is submitted that there is no malafide intention and in any event non-disclosure of directorship of a director in other Company is not a material fact which would anyway make the offer documents exaggerated or deficient or lead to any material information being suppressed to the disadvantage of the investors.

Non-Disclosure of Arrangements/Non-Disclosure of the Names Of Certain Parties with Aman Tie-Up Private Limited, Edu Exel Infotainment Limited, Aswin Logistic Ventures and Omni Ax's Software Limited:

i) The SCN alleges that the Company failed to make disclosure in the RHP/Prospectus of all the IPO in respect of the arrangement dated 15.11.2010 entered into by and between the Company and Eduexel Infotainment Limited, non-mentioning of the names of the Aman tie-up Private Limited ("Aman"}, Aswin logistic Ventures ('Aswin Logistic"), Omni Axis Software Limited ("Omni Axis") in the RHP and prospectus, who are the suppliers to the Company and SCN mentions that in the RHP the Company has provided the list of suppliers

from whom it had sought quotes and in this list the name of the aforesaid suppliers is not mentioned.

ii) In this regard, it is submitted that while the SCN mentions that the Company was required to disclose details of the names of the suppliers as mentioned above and the details of the arrangement entered with Eduexel in the prospectus however the SCN fails to specify the provision of the applicable law which require such disclosures to be made and the provisions which have been violated for the alleged failure to make disclosure of such agreement.

iii) In the light of the aforesaid the allegation of non-disclosure of Eduexel arrangement in the RHP and prospectus does not stand without prejudice to the above and in the event of the SEBI relies on the provisions of clause 2(8)(d)(5)(a) of Part A of schedule viii of SEBI ICDR regulation to allege the non-disclosure of Eduexel arrangement, then it is submitted that this clause of SEBI ICDR regulations stipulates disclosure of "The date, parties to and general nature of every other material contract not be a contract entered in the ordinary course of business carried on or intended to be carried on by the issuer or a contract entered into more than 2 years before the date of the offer document".

iv) It is evident from disclosures made in the RHP and prospectus that arrangement entered with Eduexel was an ordinary clause in the ordinary business only.

v) On page 61 of the RHP company made the following disclosures in the chapter titled object of the issue,

"Our company entered into film exhibition business in the year 2006. As on June 30, 2010, we have entered screening agreements with 46 theatres running under our banner. Our company has screening rights in these theatres, located primarily in the Sothern Peninsula."

vi) Similarly, on page 87 and 88 of the RHP the company made the following disclosures in the chapter titled ‘our business’.

"Our company has already entered into screening agreements with 46 screens and is in the process of entering into similar agreements with more such screens. We in the past have acquired territorial rights for various movies like Pirates of the Caribbean- Dead Mam's Chest, Dead or Alive and various Tamil movies such as Thambi, Erandu, Patchaikili Muthucharam, Vayabari, Naan Avanlllai, Parattai Entra Alagu Sundram, Pollathavan Dhanush etc.

We currently acquire and distribute movies in territories where we have an exhibition presence. Our aim is to distribute movies throughout southern peninsula in the same territories where our theatres are located and south east Asian countries.

Further, we have a library of 651 movies in various languages. This consist of 417 Tamil movies, 107 Telugu movies, 52 Kannada movies, and 75 Malayalam movies.

vii) In the light of the aforesaid it is submitted that the Eduexel arrangement was not a contract which was not in the ordinary course of business and therefore did not require disclosure in the RHP and the prospectus.

viii) Further it is submitted that Eduexel was executed on November 15, 2010, and therefore did not qualify the requirement of clause 2(8)(d)(5)(a) of Part-A of schedule viii of the SEBI ICDR regulations stipulating disclosures of (a contract entered into more than 2 years before the date of the offer documents . It is further submitted that arrangement with Eduexel dated November 15, 2010, which is within 2 years before the date of the offer document.

NON-DISCLOSURE OF SUPPLIERS

i) The SCN alleges that the company failed to disclose the names of Aman tie up private limited Aman, Eduexel, Aswin Logistics Ventures and Omini Axis's (OMNI)) in the RHP and the prospectus. The SCN also mentions that in the RHP company has provided the list of suppliers from whom it has sought quote and in the list name of the aforesaid suppliers is not mentioned.

ii) Further on page 17 of the RHP, the company made the following disclosures in the risk factor 13, in the section titled Risk factors.

"*We have not made definite arrangement for procurement/order placement of equipment worth Rs.2195.00 lacs (being 100% of the equipment cost). Any delay in placing the orders or delay at the supplier's end may result in time and cost overrun.*

"While, we have received estimates/quotations for the equipment, we would be placing orders for the equipment at an appropriate time as per the schedule of implementation, as the same are available at reasonably short notice; Any delay in placing the orders or delay at suppliers end in delivering the equipment may result in time overrun, which may affect our ability to meet the growing demand for our business and in turn our profitability. Further, we cannot assure you that the purchase of the equipment would occur at the estimated price only".

iii) It is submitted that in the RHP and prospectus it has been clearly disclosed by the company that it has received only quotations from the suppliers and neither was any definite agreement executed nor any orders was placed by the company for any equipment from the suppliers except entering into an agreement defining the terms of the supply which cannot be construed as an order for supply of any equipment from the suppliers. It is also submitted that the list of names of the suppliers included in the prospectus was an inclusive list and not an exhaustive list of supplier for the equipment proposed to be purchased by the company.

iv) Further as stated in the SCN company expended money to purchase the Digital Equipment as explained in the page no. 62 above as mentioned in the RHP and prospectus.

v) It is submitted that the ICDR regulations does not prevent the companies from approaching any supplier other than those mentioned in the RHP and prospectus. SEBI cannot compel a company to purchase an equipment from the vendors disclosed in the RHP when company had clearly mentioned in the page no. 17 that it had received estimated and quotations only and that they would be placing orders. If SEBI compulsion is considered as violation then

this imposition from SEBI may cause undue hardship to a company and may be interfering in the commercial decisions made by the company and may run against the companies' interest.

vi) It is submitted that the board of directors of the company pursued the comparison of quotation received from various vendors including Aman and based on its commercial wisdom approved Aman as one of its suppliers vide its board resolution dated 17. 03.2011.

Allegations of siphoning of funds received in the IPO

i) In respect to the allegations that the money raised for the object of the company to enter into screening agreement with 300 cinema theatres, company being siphoned, it is submitted that though the arrangements were entered due to the decline in the business of the company and down turn of the industry, the above arrangements were not successful and the theatre with which such screening arrangements where entered into were de-hired by the company to avoid facing themselves. It is further submitted that the company had to take such a decision to protect the interest of the investors and try to cut its losses. However, the amount of INR 17.5 lacs out of the IPO process had already been spent for the above mentioned arrangements. Company vide letters dated February 19, 2015 and March 16, 2016 has provided the copies of letters vide which the theatres were de-hired. Therefore, it is submitted that the funds raised for the company entered into screening arrangements with 300 theatres were not siphoned. (de-hiring of the theatres).

ii) With respect to the allegation that money raised for the object to renovate 100 theatre with digital screen projector and detailed sound system was siphoned since the order for supply of the aforesaid equipment was not placed with the entities that was referred to as potential suppliers in the prospectus. In the RHP and the prospectus discloses that it had received only quotations from the suppliers neither any definite arrangement nor any order was placed by the company for any equipment from the suppliers at the time of filing in the RHP and the prospectus.

iii) As stated above the ICDR regulation does not prevent the company or restrict the company's wisdom from approaching any supplier those mentioned in the RHP and prospectus. It is submitted that in the event SEBI's case is that company should be compelled to purchase equipment from the vendors disclosed on the RHP or the prospectus, when the disclosures and the risk factors manifestory mentioned that the company has only asked for quotations from the suppliers then this imposition of SEBI may cause hardship to your company and may run against what makes commercial sense to the company. It is submitted that the board of directors of the company perused the comparison of quotation received from various vendors including Aman and based on its commercial wisdom approved Aman as one of its suppliers. Vide its board resolution dated 17.03.2011.

iv) With respect to the allegation money raised for the object of acquiring screening rights from company having similar line range and business been siphoned as the company has transferred Rs.17.5 crores to Eduexel on January 25, 2011 which is 2 days before the execution of Eduexel agreement and the aggregate amount of Rs.19 crores to Eduexel by February 9, 2011 instead of the agreed advanced amount of Rs.18 crores that is Rs.1 crore more than the advanced amount.

v) Therefore, it is submitted that the funds raised for the object of acquiring screening rights were not siphoned off and were put to use as stated in the prospectus only. It is further submitted that the board of directors headed by the chairman Mr.Ketheeswaran had appointed one Mr.Sarkar, the director of the Eduexel Ltd. as the consultant to supervise the entire acquiring of the screening rights and Chairman was solely responsible for the implementation of the same. Mr.Murugiwel karunanidhi (myself) been a director and COO of the company was not involved in this process. The Chairman has also submitted to the board the invoice raised by the Eduexel. Further submitted that the chairman by the board resolution authorised the COO to issue the cheques to the above referred party Eduexel.

vi) With respect to the allegations that the money to be used for general corporate purposes was also siphoned and further it is submitted that IPO proceeds ear marked for general corporate purpose may be utilised by the company for such identified purpose for which no amount is specified.

vii) Regulation 2(a) to N(a) of SEBI ICDR regulation which was inserted in SEBI ICDR regulation vide SEBI (issue of capital and disclosure requirements) (4th amendment) regulation, 2012 with effect from October 12, 2012 stipulates as under "General corporate purposes includes such identified purposes for which no specific amount is allocated or any amount so specified towards general corporate purposes or any such purpose by whatever name called, in the draft offer document filed with the board".

viii) Provided that any issue related expenditure shall not be considered as a part of general corporate purposes merely because no specific amount has been allocated for such expense in the draft offer document filed with board.

ix) -it is alleged that it is pertinent to note that page 63 the RHP company made the following disclosures in relation to the general corporate purposes in the chapter titled Objects of the issue. " Our company intends to deploy the balance issue proceeds aggregating to Rs.379.90 Lacs, towards general corporate purposes, including but not restricted to production of movies, strategic initiatives, entering into strategic alliances, partnerships, joint ventures and acquisitions, meeting exigencies & contingencies, which our company in the ordinary course of business may not foresee, repayment of debts or any other purposes as approved by our Board of Directors.

x) "In view of the aforesaid the company transferred the amount of INR 2.703 crores to Aswin towards content advance and INR 0.56 CRORES to Omni, which was one of the vendors. The payment of these amounts to Ashwin and Omni where in line with the disclosures pertaining to general corporate purpose made in the RHP and prospectus." It is further alleged in the SCN that name of Ashwin and omni were not disclosed as vendors in the RHP and prospectus. The company had replied providing the reason that SEBI (ICDR) Regulation do not mandate disclosure of the name of every vendor of the

Company making an initial offering. Hence it is submitted that no action should be taken against me (Murugavel Karunanidhi) on these grounds since the question of disclosing the names of the vendors specifically is not mandated and does not rise.

xi) Further it is submitted that the entire disbursement of IPO fund, finalising the vendors, and overseeing the implementation was done by the Chairman Mr. Datuk Ketheeswaran along with Mr. Sarkar of eduexel. Neither the company nor myself Murugavel was involved on any decision.

Allegation of funding for trading of 15 entities in the scrip of MVEL

i) We company and Murugavel deny the violation against us made out in the Show Cause Notice that IPO process have not been siphoned off to our knowledge and we are not the party to any of the disbursement by eduexel and Aman. Murugavel has a limited source of info or access to any of the allegations pointed out by SEBI in the SCN. We were informed by the chairman that out of our commercial and for business purpose transactions money was transferred to Aman, Eduexel, Aswin and Omni.

ii) It is submitted that no gain/benefit derived or loss provided by the company by virtue of the said 15 entities trading in the scrip of the company and consequently there was no requirement for the company to indulge in such a scheme of diverting IPO proceeds for trading in this Scrip.

iii) It is pertinent to note that SCN neither establishes any connection nor any connections between the company and the 15 entities which allege purchase of shares from IPO process. It is submitted that Murugvel Karunanidhi is not a director in any of the 15 entities neither trading entities nor connected with Aman and other entities. Further submitted that Murugawel Karunanidhi have no control on the others acts or incidence hence they cannot be deemed to have been connected with the 15 or any other entity.

iv) The allegation of violation of PFUTP Regulation is a very serious charge and required high degree of proof to sustain it. Such a serious charge which have great consequences cannot be merely based on suspicion or surmise. In the present SCN it is completely assumed or presumed connection between the

company arid Murugavel without establishing any relationship between the company and 15 entities and does not provide any convincing evidence to maintain this serious charge of violating of SEBI FUTP regulations. It is further submitted that an evidentiary requirement cannot be substituted with mere suspicion and the SCN fails to discharge the burden of proof required to sustain this allegation.

v) It is submitted that the Murugavel have no authority to interfere in the operation of the company except to supervise the HR and basic admin departments. He acted merely on the authorization given.

Vide the said letter dated September 23, 2019, the Noticee sought an opportunity for inspection of documents and personal hearing thereafter. The same was granted and post inspection hearing was scheduled on November 05, 2019.

17. On November 05, 2019, K. Murugavel appeared in person before me and made the following submissions:

i. He was an HR specialist associated with an IT company before joining MEL.
ii. He was only an employee of the Company and resigned from the Company in April 2014.
iii. He was not a promoter of the Company as per the DRHP. He never held any shares of the Company.
iv. As an employee of the Company, he used to follow the orders of the Board of Directors
v. He was not a beneficiary of any of the transactions mentioned in the SCN.
vi. It is admitted that he has signed the DRHP. Though the BRLM explained to him, he could not understand the implications of the same.
vii. He was authorized to sign cheque and payments in 2010.
viii. Mr. Datuk K Keetheeswaran was running the Company and was actually in charge of everything.

The Noticee was granted time up to December 05, 2019, to provide documents to prove that Mr. Datuk K Keetheeswaran was actually running the Company and

was in charge of everything in the Company.

18. I note that no reply or written submissions have been received from MVEL till date. I also note that K Muruguavel did not file any documents as advised during the course of hearing.

CONSIDERATIONS & FINDINGS

19. I have perused the SCN, replies, oral and written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings.

(i) Whether MVEL has deviated from the objects of the issue and has not utilized the IPO proceeds as per the objects as stated in the Prospectus?

(ii) Whether non-disclosures have been made in the Prospectus?

(iii) If answer to issue No. 1 and 2 is in affirmative, who all are liable for the same and whether they have violated the provisions of SEBI Act, PFUTP Regulations and ICDR Regulations?

(iv) What directions, if any should be issued against the Noticees?

20. Before dealing with the above-mentioned issues, I deem it necessary to deal with the preliminary issue raised by K Murugavel regarding limitation.

20.1. I note that the K. Murugavel raised a contention that the instant proceedings are barred by limitation as the investigation period was January 27, 2011 to February 28, 2011 whilst SCN was issued on March 31, 2017. In this regard, I note that the investigation in the matter was commenced in 2012 and due to non-cooperation of the entities site visit was conducted thereafter summonses were issued to the entities. In view of the non-compliance with summonses, failure to furnish required information and documentary proof as sought from the Noticees, investigation has been concluded in 2016 with the material available on record. Thereafter, following the due procedures, the show cause notice was issued to the Noticees. I also note that the investigation has

commenced based on the sharp price fall post listing of the scrip and the investigation revealed the diversion of IPO of proceeds and use of the same for other purposes. The investigation period is used to detect whether any violation of securities laws including PFUTP Regulations happened during the said period. As soon as the investigation is completed, given the facts and circumstances of the case including the modus operandi of diverting the funds of IPO, I note that the SCN is issued within reasonable time.

Issue No. 1 - *Whether MVEL has deviated from the objects of the issue and has not utilized the IPO proceeds as per the objects as stated in the Prospectus?*

21. I note that the main allegation in the SCN is that MVEL has deviated from the objects of the issue and siphoned off the IPO proceeds.

22. It is noted from the Prospectus dated January 14,2011 that the following were the objects of the issue:

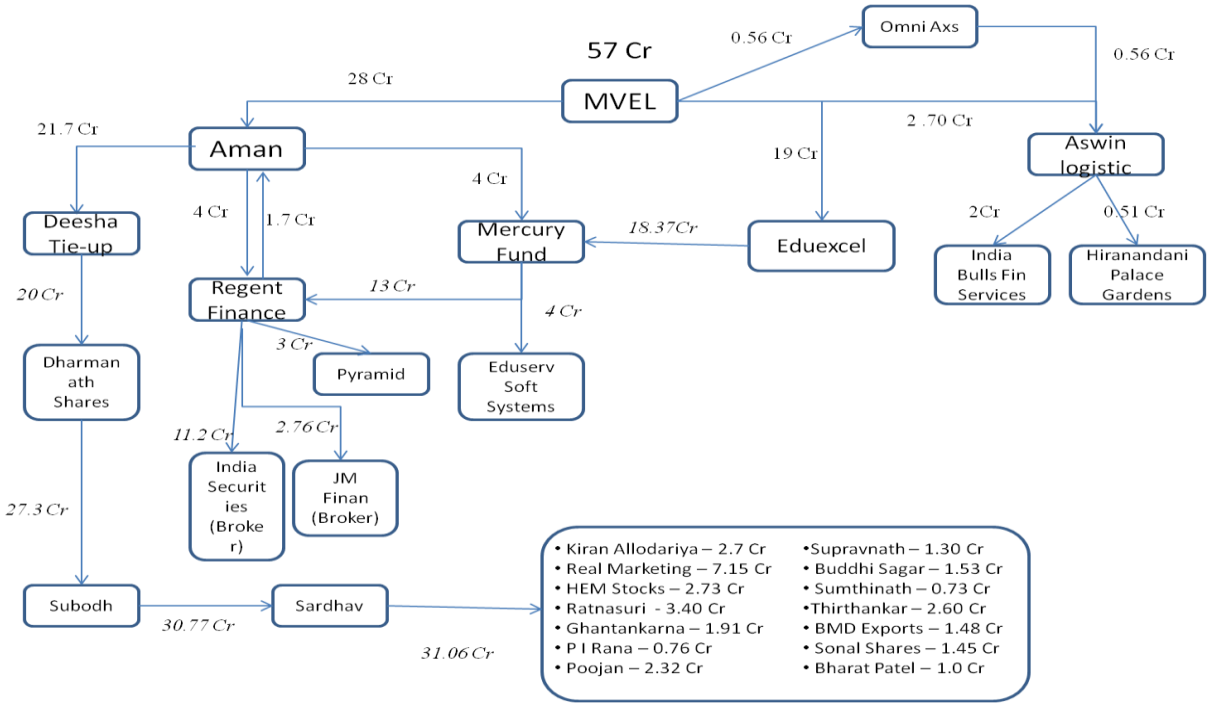
Sr. no.	Objects of the IPO	To be utilized as per RHP/ Prospectus (Rs. in cr)
1	Entering into screening agreement with 300 cinema theatres	15.00
2	Renovation and Up-gradation of cinema infrastructure with Digital Equipment and other related assets for select 100 screens	25.95
3	Acquisition of company, acquisition of screening rights of company having similar line, range and objects of business	12.00
4	To meet general Corporate Expenses	3.799
5	Meeting the IPO expenses	3.251
	Total	**60.00**

23. In order to arrive at the finding whether the company has deviated from the objects of the issue, it is pertinent to observe the money trail from MVEL's bank account to the bank accounts of various other entities and also to analyse the utilization of money raised in the IPO as submitted by the company.

24. I note from the bank statements of MVEL that out of Rs.60 Crores raised from the IPO, MVEL received Rs.57 Crores after deduction of merchant banker fees of Rs. 3 Crore in the following bank accounts:

Bank Name	Date of Receipt	Bank Account No	Amount (in Rs. cr)
Indusind Bank	January 25, 2011	0007W11639050	28
Bank of Maharastra	January 25, 2011	60061922245	18
Lakshmi Vilas Bank	January 25, 2011	0431351000002482	5
Axis bank	January 25, 2011	910020047813917	5
	January 27, 2011	910020047813917	1
Total			**57**

25. A pictorial representation of fund movement in relation to the IPO proceeds received by MVEL is as under:



26. From the Bank accounts of the MVEL, it is observed that the following major payments were made to the following entities:

Date of transaction	Entity	Amount (Rs. in cr)	Source Account No. (MVEL)	Reasons for payments as stated by MVEL
25-01-2011	Aman Tie-up Private Limited	28	IndusInd Bank (A/c no. 007W11639050)	Purchase of DCI 2K digital Cinema Projector BARCO DP 2K – 20 Cine Lens
25-01-2011	Eduexel Infotainment Limited	17.5	Bank of Maharashtra (A/c no. 60061922245)	Acquiring Screening rights
27-01/2011		0.5	Lakshmi Vilas Bank account (A/c No. 0431351000002482)	
09-02-2011		1	Axis Bank (A/c No. 910020047813917)	
25-01-2011	Aswin Logistic Ventures	2	Lakshmi Vilas Bank account (A/c No. 0431351000002482)	Content Advance
27-01-2011		0.003		
01-02-2011		0.70		
21-02-2011	Omni Ax's Software Limited	0.56	Axis Bank (A/c No. 910020047813917)	Vendor
Total		**50.263**		

Transaction between MVEL and Aman Tie-Up Pvt. Ltd. :

27. Based on Bank Statements (IndusInd Account 007W11639050) following is the transaction details between Aman Tie-Up Pvt. Ltd. and MVEL before and after IPO:

Before IPO				
Sr. No.	**Date**	**Funds from**	**Funds to**	**Amount (In Rs.)**
1	28/12/2010	Aman Tie-Up Pvt. Ltd.	MVEL	9,00,00,000
2	29/12/2010	Aman Tie-Up Pvt. Ltd.	MVEL	14,85,00,000
3	31/12/2010	Aman Tie-Up Pvt. Ltd.	MVEL	2,15,00,000
4	03/01/2011	Aman Tie-Up Pvt. Ltd.	MVEL	60,00,000
5	07/01/2011	Aman Tie-Up Pvt. Ltd.	MVEL	1,50,00,000

Total		**Aman Tie-Up Pvt. Ltd.**	**MVEL**	**28,10,00,000**
6	28/12/2010	MVEL	A.R. Enterprises	9,00,00,000
7	28/12/2010	A.R. Enterprises	Aman Tie-Up Pvt. Ltd.	9,00,00,000
8	29/12/2010	MVEL	A.R. Enterprises	14,70,00,000
9	29/12/2010	A.R. Enterprises	Aman Tie-Up Pvt. Ltd.	14,70,00,000
10	31/12/2010	MVEL	A.R. Enterprises	2,15,00,000
11	31/12/2010	A.R. Enterprises	Aman Tie-Up Pvt. Ltd.	2,15,00,000
After IPO				
12	25/01/2011	IPO Proceeds	MVEL	28,00,00,000
13	25/01/2011	MVEL	Aman Tie-Up Pvt. Ltd.	28,00,00,000

27.1. MVEL transferred funds received from Aman Tie-Up Pvt. Ltd. immediately to an entity viz., A.R. Enterprises (IndusInd Bank Ac No: 0052F20773050) which were again transferred back to Aman Tie-Up Pvt. Ltd.

27.2. It is noted from the above tables that out of the Rs. 28.1 crore that MVEL received from Aman Tie-Up Pvt. Ltd., Rs 25.85 crore were transferred back to Aman Tie-Up Pvt. Ltd. through A.R. Enterprises before the IPO itself.

27.3. Post IPO, the funds received by Aman Tie-Up Pvt. Ltd. from MVEL were eventually provided to entities (who traded in the scrip of MVEL) as follows:

27.3.1. As mentioned above, MVEL transferred an amount of Rs. 28 crores to Aman Tie up on January 25, 2011. Aman also received Rs. 1.7 crore from Regent Finance Corporation Limited.

27.3.2. Aman Tie-Up transferred Rs. 21.7Crores to Deesha Tie Up Pvt. Ltd. On January 25, 2011 and February 04, 2011; Rs. 4Cr to Regent Finance Corporation Limited January 25, 2011; Rs 4Cr to Mercury Fund Management January 25, 2011.

27.3.2.1. Deesha Tie-Up Pvt. Ltd. then transferred Rs. 20 crores to Dharmanath Shares and Services Pvt. Ltd. (Rs 3 crores on January 28, 2011; Rs 2 crores on January 31, 2011; Rs 3 crores on February

02, 2011; Rs 5Crores on February 03, 2011; Rs 2 crores on 07, 2011; Rs 2 crores on February 09, 2011; Rs 3Crores on February 11, 2011.

27.3.2.2. Dharmanath Shares and Services Pvt. Ltd transferred Rs 27.3 crores to Subodhsagar Shares and Services Pvt. Ltd. (Rs 6.5 crores on February 01,2011; Rs2 crores on February 02, 2011;Rs 2.75 crores on February 03, 2011; Rs 4.05 crores on February 04, 2011;Rs 1 crore on February 07, 2011; Rs 1 crore on February 08, 2011; Rs 2.5 crores on February 09, 2011; Rs 2.5 crores on February 10, 2011; Rs 2.75 crores on February 11, 2011; Rs 2.25 crores on February 12, 2011).

27.3.2.3. Subodhsagar Shares and Services Pvt. Ltd transferred Rs. 30.77 crores to Sardhav Investment & Finance Pvt. Ltd. (Sardhav) (Rs. 3 crores on January 31, 2011; Rs 4.05 crores on February 01, 2011; Rs 2.5 crores on February 02, 2011; Rs 2.5 crores on February 03, 2011; Rs 6.5 crores on 04, 2011; Rs 0.6 crores on February 07, 2011; Rs 1.35 crores on February 08, 2011; Rs 1.0 crores on February 09, 2011; Rs 4.57 crores on February 10, 2011; Rs 2.5 crores on February 12, 2011; Rs 2.2 crores on February 14, 2011.

27.3.2.4. Sardhav finally transferred Rs. 31.06 crores to 14 entities who have traded in the scrip of MVEL.

27.3.3. In addition, one more entity Pyramid Sales Pvt. Ltd. received Rs. 3 crore from Regent Finance Corporation Ltd. on January 31, 2011 out of the Rs. 13 crore received by Regent Finance Corporation Ltd. from Mercury Fund Management on January 27, 2011. Mercury Fund Management received Rs 17.5 Crore on January 25, 2011 from Eduexel which Eduexel had received the same day from MVEL.

27.3.4. Pyaramid Sales Pvt. Ltd. also traded in the scrip of MVEL.

27.3.5. Based on above it is observed that a minimum of Rs 24.7 Crore was diverted to these 15 entities for purchasing shares of MVEL.

Transaction between MVEL and Eduexel Infotainment Limited:

28. Eduexel received Rs 19 crore out of the IPO proceeds from three accounts of MVEL.

28.1. From the said amount, Eduexel transferred Rs.18.37Cr to Mercury Fund Management Co. Ltd. i.e. Rs.17.5 crores on January 27, 2011; Rs 0.5Cr on January 01, 2011 and Rs 0.37 crores on January 11, 2011.

28.2. Out of Rs. 18.37 crore received from Eduexel, Mercury Fund transferred Rs 13 crores to Regent Finance Corporation Pvt. Ltd. on January 27, 2011 and January 31, 2011., Rs. 4 crore to Edserve Soft Systems Ltd. on January 25, 2011 and remaining amount to an Individual viz., Acharya Mahapragya on February 11, 2011.

28.3. Regent Finance further transferred funds its received from Mercury Fund to the following:

28.3.1. India Securities Broking Private Limited (Broker) (Rs 11.2Cr on January 25, 2011 and January 27, 2011.

28.3.2. JM Financial (Broker) (Rs 2.76Cr on January 28, 2011 and January 29, 2011)

28.3.3. Pyramid Sales Pvt. Ltd. (Rs 3Cr. on January 31, 2011), which has traded in the scrip of MVEL during the investigation period

Transaction with Aswin Logistic Ventures and Omni Ax's Software Limited:

29. Rs. 2.70 crore was paid by MVEL to Aswin Logistic Ventures on January 25, 2011 and February 01, 2011 and Rs. 0.56 crore was paid to Omni Ax's Software Ltd on February 21, 2011. Omni Ax's Software Ltd. had immediately transferred the Rs. 0.56 crore received by it to Aswin Logistic Ventures. Thus, Aswin Logistic Venture received a total of Rs. 3.26 crores.

29.1. From the bank account statement of Aswin Logistic Ventures, it is observed that Aswin Logistic Ventures has drawn Demand Drafts (DD Nos. 60652 for an amount of Rs. 1.5 crores dated January 25, 2011 and DD Nos. 60676, 60677, 60678, 60679, 60680 for an amount of Rs. 9 Lac each and DD No. 60681 for an amount of Rs. 5 Lac dated February 01, 2011) in favour of

Indiabulls Housing Finance Limited, to repay the outstanding amount relating to loan of M/s Saimira Holdings and Services Private Limited

29.2. Further, six Demand Drafts (5 for an amount of Rs. 9 Lac each and 1 for an amount of Rs. 5.78 Lac – total of Rs. 50.78 Lac) were drawn in favour of Hiranandani Palace Gardens Pvt. Ltd towards sale consideration of Flat purchased by Mrs. Uma Swaminathan & Mr. Saminathan in Chennai.

30. The SCN alleges that 15 entities who traded in the scrip are net buyers and have also provided exit to the allottees in the IPO. It is also alleged that these 15 entities while buying shares of MVEL including that from allottees either bought shares of MVEL with the help of funds transferred from MVEL through other entities or were compensated through fund transfers from MVEL through other entities subsequent to their buy trades. Thus, allegedly a false appearance of demand of MVEL shares was created by these entities through their buying.

31. I note that K. Murugavel for himself and also on behalf of the Company contended that there is no connection between the Company and the 15 entities which traded in the scrip. In this regard, I note the fund trail from the Bank Statements of MVEL and Aman tie Up and the other entities that they have used multiple layers to reach the funds to the 15 entities who had traded in the scrip. Further, he has stated that no gain/benefit derived or loss provided by the company by virtue of the said 15 entities trading in the scrip of the company and consequently there was no requirement for the company to indulge in such a scheme of diverting IPO proceeds for trading in this Scrip. In this regard, I note that MVEL and the entities who aided and abetted MVEL in siphoning off of IPO proceeds {viz., (2)Aman Tie Up Pvt. Ltd., (3) Deesha Tie-Up Pvt. Ltd.,(4) Dharmanath Shares and Services Pvt. Ltd., (5) Subodhsagar Shares and Services Pvt. Ltd., (6) Mercury Fund Management Co. Ltd., (7) Regent Finance Co. Pvt. Ltd., (8) Eduexel Infotainment Limited and (9) Sardhav Investment & Finance Pvt. Ltd.} as well as the entities who eventually traded in the scrip {viz., (1)Bharat Babubhai Trivedi, (2) BMD Exports Private Limited, (3) Buddhisagar Shares And Services Pvt Ltd, (4)

Ghantakarna Shares and Services Pvt Ltd, (5) Kiranbhai Popatbhai Alodariya, (6) Poojan Tradecom Pvt Ltd, (7) Prakashbhai Ishwarbhai Rana, (8) Ratnasuri Shares and Services Pvt Ltd, (9) Real Marketing Pvt Ltd, (10) Sonal Shares Investment & Company, (11) HEM Stocks And Shares Services Pvt Ltd, (12) Sumtinath Shares And Services Pvt Ltd, (13) Suparshvanath Stock And Service, (14) Tirthankar Shares and Service Pvt Ltd. and (15) Pyramid Sales Pvt. Ltd.} with the help of funds received from MVEL created allegedly misleading appearance of trading in the securities market.

- I note that by virtue of the said transactions (1) Aman Tie Up Pvt. Ltd., (2) Deesha Tie-Up Pvt. Ltd.,(3) Dharmanath Shares and Services Pvt. Ltd., (4) Subodhsagar Shares and Services Pvt. Ltd., (5) Mercury Fund Management Co. Ltd., (6) Regent Finance Co. Pvt. Ltd., (7) Eduexel Infotainment Limited and (8) Sardhav Investment & Finance Pvt. Ltd.. have allegedly violated regulations 3 (a), (b), (c), (d), 4(1) ,4 (2) (a), (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992. In this regard, I note that adjudication proceedings have been initiated against the said entities.

32. An analysis of the objects of the IPO, proposed utilization of IPO proceeds by MVEL and actual utilization as seen from the evidence available on record and my findings are as under:

32.1. Entering into screening agreement with 300 cinema theatres:

32.1.1. I note that as per Prospectus dated January 14, 2011, MVEL mentioned its objective to add 300 screens located in B & C Class towns/ cities by June 2011 with the IPO proceeds. I note from the records that MVEL vide letter dated November 23, 2013 (sic) received by SEBI on November 26, 2012, stated that it has no films being exhibited on screens and de-hired the Theatres, but had paid Rs. 17,50,000 out of the IPO proceeds to Eduexel. I note that MVEL has not submitted any reply to

the SCN nor appeared before me to make any submissions. Further, I note that with respect to this allegation, one of the erstwhile directors of MVEL- K Murugavel has submitted that though the arrangements were entered into by MVEL, due to the decline in the business of the company and down turn of the industry, the arrangements were not successful and the theatres with which such screening arrangements where entered into were de-hired by the company to avoid losses so as to protect the interests of its investors. In this regard K Murugavel stated that Company vide letters dated February 19, 2015 and March 16, 2016 has provided the copies of letters vide which the theatres were de-hired. I have perused the letter dated February 19, 2015 wherein the Company had entered into arrangement with Eduexel for screening and the amount of Rs. 15 crores mentioned in the object of IPO included the amount involved in the arrangement with Eduexel. The Company stated further that though the arrangement was initiated during 2010, the agreement was entered into in January 27, 2011 after IPO listing. Further, SEBI has not received any letter from MVEL dated March 16, 2016. I note that no record as to the agreements (either separate or collective or batch agreements), as disclosed in the prospectus, was made available by the Noticees. The agreement dated January 27, 2011 was between the MVEL and Eduexel and it appears that Eduexel does not own any cinema theatres. Therefore, the said agreement cannot be considered as one executed for the purpose of meeting the instant objective of IPO. I note that MVEL has not provided any proof as to revenue created through this screening arrangements. This clearly shows that MVEL has not utilized the money received towards the object of entering into screening agreement with 300 cinema theatres as mentioned in the RHP/Prospectus. Rather the stand of MVEL is that it has de hired the theatres. This stand of MVEL makes it glaringly evident that MVEL did not use the IPO funds for the object for which it has come out with its IPO. I also note that MVEL has failed to highlight in the RHP/Prospectus the negotiation carried on between

MVEL and Eduexel for the purpose of screening arrangements which is one of the prime objective of the IPO. Such a disclosure was essential for the purpose of investors' investment decision irrespective of the said arrangement/agreement is materialized or not.

32.2. Renovation and Up-gradation of cinema infrastructure with Digital Equipment and other related assets for select 100 screens

32.2.1. I note that SCN alleges that as per the Prospectus dated January 14, 2011, MVEL mentioned its objective to renovate 100 theatres with digital screen projectors and DTS sound system. It also provided the details of the 3 suppliers namely Real Image Media Technologies Private Limited, GM Audio Techniques and Voltas from whom MVEL intended to purchase equipment. However, instead of placing orders to any of the above vendors, from the bank account statement, it was noted that on January 25, 2011, MVEL had transferred an amount of Rs. 28 crore to an entity called Aman Tie-up Private Limited (hereinafter referred to as Aman Tie-up) and siphoned off the IPO proceeds.

32.2.2. As regards the said allegation, K Murugavel submitted that the RHP and the prospectus disclosed that the Company had received only quotations from the suppliers neither any definite arrangement nor any order was placed by the company for any equipment from the suppliers at the time of filing the RHP and the Prospectus. It is submitted that the board of directors of the company perused the comparison of quotation received from various vendors including Aman and based on its commercial wisdom approved Aman as one of its suppliers vide its board resolution dated 17.03.2011.

32.2.3. I note that ICDR Regulations clearly mandates that any public communication including advertisement and publicity material issued by the issuer or research report made by the issuer or any intermediary concerned with the issue or their associates shall contain only factual information and shall not contain projections, estimates, conjectures, etc.

Further, Clause 2(VIII)(B)(1)(b)(i) clearly specifies that details of name of the suppliers shall be given in a tabular form. I note that though Murugavel claimed that vide its board resolution dated 17.03.2011 the Board approved Aman Tie Up as vendor for its objective of IPO, however, he has failed to submit any proof of the same. (In BSE website 17.3.2011 Board meeting purpose is shown as Quarterly results). Further, it is noted from the balance sheet dated March 31, 2009 as available on record that Aman Tie Up's total assets were about Rs. 1 lakh which includes loss of Rs. 35,362. Further, as per 'Balance sheet abstract and company's general business profile' filed by Aman Tie Up for year ended March 31, 2009, it is noted that the head "Generic names of three principle products / services of company' mentioned product description as "Construction Activity". I also note that MVEL failed to provide any documentary evidence with respect to the quotation or previous experience of Aman Tie Up for the purpose mentioned as the Objective of IPO. Further, no evidence of order placements, delivery of orders, tax receipts, etc., to prove the purchase of equipment or instruments and other evidence or proof of revenue created by the Renovation was provided. Rather from the bank accounts it is noted that money was transferred to Aman Tie Up and from there it is routed to several entities who traded in the scrip of MVEL and provided exit to the allottees in the IPO. Therefore, it is noted that the IPO proceeds were not used to renovate 100 theatres with digital screen projectors and DTS sound system as mentioned in the objects of IPO.

32.3. Acquisition of company, acquisition of screening rights from companies having similar line, range and objects of business

32.3.1. I note that as per Prospectus dated January 14, 2011, MVEL mentioned its objective to acquire screening rights from companies of similar nature with Rs.12 Crores of IPO proceeds. During the Investigation, MVEL vide its letter dated November 23, 2013, submitted

that it acquired screening rights of 51 films for a period of five years from Eduexel for a consideration of Rs.32 Crore vide an agreement dated January 27, 2011 and paid Rs.20.64 crore till November 23, 2013.

32.3.2. However, from the material on record it was seen that though the agreement between MVEL and Eduexel was dated January 27,2011, MVEL had already transferred Rs. 17.5 crore on January 25, 2011 itself i.e. 2 days before the agreement. Further, MVEL had transferred a total of Rs. 19 crore to Eduexel by February 9, 2011 instead of the agreed advance amount of Rs. 18 crore, i.e. Rs. 1 crore more than the agreed advance amount.

32.3.3. I note that MVEL has not disputed any of the said allegations. However, K.Murugavel vide his written submissions stated that the funds raised for the object of acquiring screening rights were not siphoned off and were put to use as stated in the prospectus only. It was further submitted that the board of directors headed by the Chairman Mr.Ketheeswaran had appointed one Mr.Sarkar, the director of Eduexel as the consultant to supervise the entire acquiring of the screening rights and Chairman was solely responsible for the implementation of the same. I note that regarding the acquisition of rights from Eduexel, K Murugavel contended that the Chairman has also submitted to the board the invoice raised by Eduexel. However, he failed to submit any documents to substantiate the same despite being given sufficient opportunity to furnish the proof. Though K Murugavel claimed that he was not involved in the said process, I note from his own admissions that he was authorized to issue the cheques to Eduexel. Hence, I am of the view that he cannot plead ignorance. In the absence of any evidence to show that the funds were used for the object of acquiring screening rights, the submissions given by MVEL and K Murugavel are not accepted. I also note that MVEL vide its reply to the investigation team submitted vide letter dated February 19, 2015 that it with held the payment of remaining Rs. 13 crore

(Rs. 32 crore- Rs. 19 crore) to Eduexel for acquisition of screening rights of the 51 movies because all the 51 movies are under process of completion and therefore, could not be screened and therefore, no revenue could be recognized. However, upon analysis of the list of movies provided by MVEL, it is noted that some of the movies were very old and already released more than 25-30 years ago, thus, raising suspicion on the rationale provided by MVEL that the movies are under process of completion and also on the valuation of the movies. It is also noted that MVEL's director Mr. Vasan Chidambaram is the sole promoter of Eduexel and upon further investigation into the quarterly results of December 2010, it was observed that Eduexel made a loss of Rs 0.04 crore with net sales of mere Rs 1.04 crore. Thus the financial strength of Eduexel during the time MVEL had entered into the agreement with Eduexel for acquisition of screening rights and transferred Rs. 19 crore out of the IPO proceeds nowhere suggests Eduexel to be capable of handling projects involving such large amount. It appears that Eduexel has no operations at any of the locations as correspondence to its registered office returned undelivered. As per site visit it appears to be a defunct company. In the absence of any evidence to show that the agreement entered into with Eduexel for screening rights can be implemented so as to substantiate the utilization of 19 crore extended to Eduexel, I find that the funds raised in the IPO for the object "Acquisition of company, acquisition of screening rights from companies having similar line, range and objects of business" have been siphoned off. This finding is further corroborated by the fact that as per the agreement only rights for fifteen films as mentioned in the schedule of 51 films were transferred as first lot. No further record as to whether the rights in the subsequent lots of films have been conferred to the MVEL was made available. Unless the said proof is placed on record the mere agreement to transfer the rights in respect of 51 films and actual transfer of only 15 films (as per the agreement) cannot be considered as realization of instant objective of the IPO funds raised. Therefore, in this

regard the funds transferred to Eduexel can only lead to the reasonable finding that the same has been siphoned off.

32.4. General Corporate Expenses:

32.4.1. In the prospectus dated December 20, 2010 of MVEL under the heading Objects of the IPO, it is stated that MVEL intends to deploy balance issue proceeds towards expenses inter-alia mentioning production of movies. However, from the material available on record such as bank account statements, it is noted that MVEL transferred Rs 2.7030 cr to an entity viz., Aswin Logistic Ventures on January 25, 2011, January 27, 2011 and February 01, 2011. The reason for payment as stated by MVEL in its letter dated July 16, 2013 is "Content Advance". Further, it is noted that on February 21, 2011, MVEL transferred Rs 0.560Cr to another entity Omni Ax's Software Ltd. and the same was mentioned as payment to vendor. Omni Ax's Software Ltd. subsequently transferred the said funds to Aswin Logistic Ventures. Thus Ashwin Logistic Ventures received a total of Rs. 3.263 crores.

32.4.2. As per the reply of K Murugavel, the said amount is used for General corporate expenses only. It is further submitted that IPO proceeds ear marked for general corporate purpose may be utilised by the company for such identified purpose for which no amount is specified and placed reliance on amended provisions of ICDR relating to General Corporate Purposes in 2012. I note that the fund received through the IPO for the object of use of General Corporate Purpose had been identified as disclosed in the RHP/Prospectus only. In the present case, MVEL has ear marked Rs.3.799 crores under the General Corporate Purposes for specific/identified purpose. However, I note that no evidences have been brought on record to establish that the said earmarked money was used for such identified purpose as disclosed in the RHP/Prospectus. Further, the Company transferred the funds to the entities whose name was not even identified as vendors in the RHP/Prospectus. Further, no

documentary evidence has been provided by MVEL/K Murugavel in terms of quotation or nature of goods/services delivered or previous experience of Aswin Logistic Ventures and Omni Ax's Software Limited for this purpose nor were these entities disclosed as vendors of MVEL in the RHP/Prospectus for the IPO. Further, the service/ goods for which the amount is claimed to have paid to Omni was also not mentioned. In view of this, I find that the funds were siphoned off under the pretext of General Corporate Purposes.

33. Thus, considering the findings with respect to the actual utilization of IPO proceeds by MVEL vis-a-vis the proposed utilization as mentioned in the Prospectus, I note that there was no evidence furnished by the Noticees as regards the purchase/installation of Projectors, use of screening rights, revenue generated etc. for the Objects viz., Entering into screening agreement with 300 cinema theatres, Renovation and Up-gradation of cinema infrastructure with Digital Equipment and other related assets for select 100 screens, Acquisition of company, acquisition of screening rights of company having similar line, range and objects of business and general Corporate Expenses. I note from the material available on record that out of Rs.60 crores of IPO proceeds, the company had utilized only Rs.3.00 crore towards the objects of the issue. Further, it is concluded based on the bank statements that out of Rs.60 crore raised through IPO, the funds were utilized by MVEL in the following manner:

- Total amount utilized by MVEL towards IPO objects (including acquisitions made and IPO expenses incurred) is Rs.3 crore.
- Total amount diverted by MVEL to its related / connected entities is 50.263 crore.
- Out of the abovesaid Rs.50.263 crores, Rs.24.7 crore was diverted to 15 entities through fund conduit Aman Tie Up. These entities eventually traded in the scrip of MVEL.

In the absence of any evidence furnished by the Noticees as regards the utilization

of IPO Proceeds towards the objects of the Issue coupled with the fund diversion as detailed above, it is concluded that MVEL had deviated from the objects of the issue and has not utilized the IPO proceeds as per the objects as stated in the Prospectus.

<u>Issue No. 2</u> *- **Whether non-disclosures have been made in the Prospectus?***

34. Non-disclosure of directorships of Mr. Vasan Chidambaram: As per MCA Database, as on date of filing of the Red Herring Prospectus, Vasan Chidambaram held directorship in five companies. However, his directorship in two entities namely Tanmathra Creative Solutions Private Limited and UNV Media Private Limited was not disclosed in Red Herring Prospectus dated December 20, 2010 and Prospectus dated January 14, 2011.

35. I note that as regards the non-disclosure of Mr. Vasan Chidambaram's directorship, K Murugavel submitted that the primary source of information pertaining to the directors are the directors themselves, who furnish the information to the issuer company and the book running lead manager. The disclosure of directorship of the directors of the Company in the RHP and the prospectus was also based on the information certification and undertaking provided by the Directors at the time of filing the RHP and the prospectus respectively. I also note that he has contended that the said information is not material information. The test of materiality is dealt in detail subsequently.

36. Non-disclosure of Arrangement with Eduexel Infotainment Ltd.: In the Red Herring Prospectus dated December 20, 2010 and Prospectus dated January 14, 2011 under the section Internal Risk Factors – Para 1, MVEL stated as under:

"Our Company intends to use part of the proceeds up to Rs. 1,200.00 lacs out of the total Issue proceeds for acquisitions as described in the paragraph titled "Acquisition of company, acquisition of screening rights of company having similar line, range and objects of business" on page 62 under the Section titled "Objects of the Issue" beginning on page 60 of the Prospectus. This forms approximately

20% of the Issue Proceeds. We have not yet entered into any definitive agreements to utilize the funds allocated for acquisitions. There can be no assurance that we will be able to conclude definitive agreements for such expenditures on terms anticipated by us. As on the date of the Prospectus, we have not yet identified specific acquisition targets."

37. In this regard, from the bank account statements, it is noted that payment of Rs. 19 crores were made by MVEL to Eduexel on January 25 & 27, 2011 and February 9, 2011. During investigation, MVEL submitted that aforesaid payments were made for acquiring screening rights from Eduexel and provided copy of an agreement entered into by MVEL with Eduexel. From the agreement between MVEL and Eduexel, it is noted that MVEL entered into an arrangement with Eduexel on November 15, 2010 for the purpose of acquisition of screening rights, screening arrangements along with film contents from market for supplying the same to MVEL. The said arrangement for acquiring screening rights existed between MVEL and Eduexel since November 15, 2010 was not disclosed in the RHP/ Prospectus for the IPO.

38. K Murugavel contended that in the RHP and prospectus it has been clearly disclosed by the company that it has received only quotations from the suppliers and neither was any definite agreement executed nor any orders was placed by the company for any equipment from the suppliers except entering into an agreement defining the terms of the supply which cannot be construed as an order for supply of any equipment from the suppliers. It is also submitted that the list of names of the suppliers included in the prospectus was an inclusive list and not an exhaustive list of suppliers for the equipment proposed to be purchased by the company. I do not find any merit in the said argument as there was an existing arrangement with Eduexel and nothing prohibited them to disclose the same in the RHP/Prospectus. In any case MVEL vide letter dated February 19, 2015 admitted the fact that there was existing negotiation between MVEL and Eduexcel for the purpose of acquisition of theatrical rights and therefore, it was obligatory on the part of MVEL to disclose the said arrangement/ negotiation status in the

RHP/Prospectus for the investors to take informed decision especially when the said arrangement/negotiation was for the prime objective of which MVEL came out with IPO. However, the concealment of the said information only leads the conclusion that MVEL acted fraudulently and the investors were deprived of taking an informed decision particularly since there was related party transaction. I further note and reiterate that the object of true disclosures in the RHP/Propsectus are always for the benefit of investors for taking an informed decision for investment. In the present case there was not only non-disclosures but also diversion of IPO proceeds and deviation from the objects of the IPO.

Issue No. 3 - If answer to issue Nos. 1 and 2 is in affirmative, who all are liable for the same and whether the Noticees have violated the provisions of SEBI Act, PFUTP Regulations and ICDR Regulations?

39. There are two parts to the issue. First is with respect to the liability for diversion of IPO proceeds and the resultant violation of relevant rules and regulations. The second is liability for non-disclosures made in the Prospectus and the resultant violation of relevant rules and regulations. Before proceeding further, relevant provisions of SEBI Act and PFUTP Regulations are reproduced below:-

SEBI Act

Section 12A: No person shall directly or indirectly:

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

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised

stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

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

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

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

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

40. Further, fraud has been defined under Regulation 2 (1) (c) of PFUTP Regulations which reads as under:-

"fraud" includes 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, and shall also include--

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent;

(7) deceptive behavior by a person depriving another of informed consent or full participation;

(8) a false statement made without reasonable ground for believing it to be true;

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

Diversion of IPO proceeds

Liability of MVEL:

41. It has already been held in preceding paragraphs that proceeds of the IPO were

diverted and were not utilized for the stated objects of the Issue as mentioned in the Prospectus. “Person” as defined under Section 3(42) of General Clauses Act, 1897 includes “*any company or association or body of individuals, whether incorporated or not*”. Thus, person as mentioned under Regulations 3 and 4 of PFUTP Regulations will cover within its ambit, a company also.

42. Here, I would like to refer to the matter of *SEBI* vs*. Kanaiyalal Baldev Bhai Patel* (2018) 13 SCC 753 which dealt with the definition of “fraud” as given under Regulation 2(1) (c) of PFUTP Regulations. Two Hon’ble Judges of Hon’ble Supreme Court of India, in their separate but concurring judgments in the matter of *SEBI* vs*. Kanaiyalal Baldev Bhai Patel* (2018) 13 SCC 753 dealt with the definition of “fraud” as given under Regulation 2(1) (c) of PFUTP Regulations, 2003 and held as under:

Per Hon’ble Justice N. V. Ramanna - “…26. There is no dispute as to the fact that fraud is jurisprudentially very difficult to define or cloth it with particular ingredients. A generalized meaning may be difficult to be attributed, as human ingenuity would invent ways to bypass such behaviour. It is to be noted that fraud is extensively used in various regulatory framework which mandates me to take notice of the conceptual and definitional problem it brings along. Fraud is among the most serious, costly, stigmatizing, and punitive forms of liability imposed in modern corporations and financial markets. Usually, the antifraud provisions of the security laws are not coextensive with common-law doctrines of fraud as common-law fraud doctrines are too restrictive to deal with the complexities involved in the security market, which is also portrayed by the changes brought in through the 2003 regulation to the 1995 regulation.

27. On a comparative analysis of the definition of "fraud" as existing in the 1995 regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of "fraud" under the FUTP regulation, 1995 adopts the definition of "fraud" from the Indian Contract Act, 1872 whereas the subsequent definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of "fraud" as present under the Indian Contract Act.

It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation.

28. The definition of 'fraud' under clause (c) of regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of the term "fraud"..."

Per Hon'ble Justice Ranjan Gogoi – "...5. If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. 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.

*6. The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce"..." (*Emphasis supplied*)*

43. The examination of the definition of fraud under the PFUTP Regulations envisages among other things fraud by way of "act" so as to have an "effect of inducement" on another person for dealing in securities. Further, Regulation 3 (c) of PFUTP Regulations prohibits employment of any device, scheme or artifice for fraud. In the given situation, the company came out with an IPO and stated unambiguously in its Prospectus, the purpose for which the money was being

raised from the public. As discussed in preceding paragraphs, the company within 14-15 days of receiving the IPO proceeds had diverted the said money for the purposes other than stated in the Prospectus. It goes without saying, if not for stated objects in the Prospectus, the investors would not have been induced to invest their money in the company's IPO. Thus, the company by diverting the IPO proceeds has played fraud on the innocent investors who were induced to invest in its securities and post listing continued to hold / buy the securities of the company in the belief that funds would be deployed in line with the Prospectus.

44. Regulation 4(1) of PFUTP Regulations refers to unfair trade practices in securities. It would be noteworthy to quote the observations of Hon'ble Supreme Court of India in the matter of Securities and Exchange Board of India and Ors. vs. Shri Kanaiyalal Baldevbhai Patel and Ors. (2017 SCC Online SC 1148) wherein it was *observed as follows:*

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

45. In the extant matter, considering MVEL had raised money by declaring a particular set of objects of the issue but as held in this order, the IPO proceeds were not utilized by MVEL as stated in the Prospectus but were diverted, goes on to show

that the act of diversion of IPO proceeds by the company undermines the good faith dealing between MVEL and its investors. The said act of the company does not conform to the fair and transparent principles of transactions in the stock market. In view of the same, it can be held that the aforesaid act of MVEL is an unfair trade practice.

46. Based on the aforesaid discussions, it is concluded that MVEL is liable for diversion of IPO proceeds which has led to the violation of Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act as it has significantly deviated from the Objects of the Issue and not utilising the IPO proceeds as per the objects stated in the Prospectus.

Liability of the Directors of MVEL:

47. I note that any company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors collectively being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual Directors also. The Hon'ble Supreme Court of India, while describing what is the duty of a Director of a company, held in *Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602* that *"A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially"*. Further, in cases of fraud, it is a settled position of law that the corporate veil can be lifted and the directors can be held liable for the fraud of the Company.

48. I also place reliance on the decision of Hon'ble Supreme Court (Larger Bench) in the matter of *LIC Vs. Escorts Limited* (1986 AIR 1370), wherein while discussing the doctrine of corporate veil, the Court had observed: *"90. … the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc."*

49. In the present case, I note that Datuk K. Ketheeswaran was Non executive Chairman and director of MVEL, R. Chandrasegaran was Non-Executive & Non-Independent Director of MVEL, Mr. K. Murugavel was Executive Director cum COO. Mr. Sudhir Kumar Jena, Mr. K. Ramadasan and Mr. Vasan Chidambaram were Independent Directors of the Company. Except K Murugavel and M. Pandiyan none of the Noticees have replied on merits nor availed the opportunity of personal hearing granted to them nor filed any written submissions in the extant proceedings. In this regard, the observations of Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others* Vs. *SEBI* decided on February 11, 2014 is pertinent here. The Hon'ble SAT observed as follows:

"…As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices…"

Liability of Directors in the Audit Committee

50. As per prospectus of MVEL, Sudhir Kumar Jena is the Chairman of Audit

Committee and K Murugavel, Vasan Chidambaram and K Ramadasan are Audit Committee Members. In the instant matter, MVEL had come out with an IPO and had raised and amount of Rs. 60 Crores from the market. Seen in this light, the role of the Audit Committee becomes all the more significant. As per Clause 49 II (D) 5A of the Listing Agreement, *"the role of Audit Committee includes reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document /prospectus/ notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter"*.

51. In this context, I would like to refer to the observations made by the Hon'ble SAT in the matter of *Mr. N. Narayanan* Vs. *The Adjudicating Officer* dated October 05, 2012:

"…The members of the audit committee are expected to exercise due oversight of the company's financial reporting process and to ensure that the financial statement is correct, sufficient and credible. It is also expected to conduct a meaningful review with special emphasis on major accounting entries and significant adjustments made in the accounts before putting up the statements for the approval of the Board. The board of directors of the company has entrusted the audit committee with an onerous duty to see that the financial statements are correct and complete in every respect…"

52. Taking support of aforesaid observation of Hon'ble SAT, I note that the Noticees being members of Audit Committee were responsible for reviewing the utilization / application of funds raised through the IPO. Noticees have not shown the steps taken by them to conduct a meaningful review of the utilization of IPO proceeds. The instant matter deals with the provisions of PFUTP Regulations and similar provisions under SEBI Act where the liability is on every person who has committed an act or omission which can be with deceit or with recklessness, as the definition of fraud under the PFUTP Regulations is broad enough to capture

reckless omission, the effect of which is inducement of the investors, as in this case.

53. The members of the Audit Committee were under legal obligation to review the statement of utilization of IPO proceeds. By no stretch of imagination, it can be said that any meaningful review was done by them. Nothing has been brought on record by the said Noticees to demonstrate the due diligence was exercised by them in conducting the review of utilization of IPO proceeds. In a scenario, where false statements of utilization of IPO proceeds are placed before the entities who are obligated to exercise due diligence to satisfy themselves that there are reasonable grounds to believe that such statements are true, the omission to exercise due diligence itself falls within the category of fraud, if the omission is either deliberate or reckless. One may omit to do the due diligence either when he is aware that the statement is false or he does not believe it to be true or he is so reckless and careless whether it be true or false. Regulation 2(1) (c) (5) of PFUTP Regulations in fact specifically makes such reckless representation as a category of fraud. As stated in preceding paragraphs, if the Audit Committee members would have carried out their role diligently, they would have noticed several red flags such as experience of vendors/suppliers, related party transactions and details of assets acquired etc. However, the fact of the matter is that they did not make any meaningful inquiries with respect to the utilization of IPO proceeds. Thus, it can be held that Sudhir Kumar Jena is the Chairman of Audit Committee and K Murugavel, Vasan Chidambaram and K Ramadasan have violated Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act by omitting to perform their legal duty to review the utilization of IPO proceeds, the failure of such duty amounts to an “omission” and such omission was reckless in nature. Such omission even if is without deceit but is reckless and falls within the definition of fraud under PFUTP Regulations, as fraud under PFUTP Regulations can be committed by virtue of reckless omission as well. As a result of such reckless omission, IPO proceeds were diverted by MVEL and were utilized for objects other than those mentioned in the Prospectus.

54. The Audit Committee Report is required to be seen by the Board of Directors. The duty of care and skill demanded from the Board does not obviate the need for examination by other directors for their approval. There is nothing on record that such duty of care and skill was exercised by other directors. Even a cursory examination of the affairs of fund transfer to the Companies against whom there is no material to suggest that they had the necessary experience or whether MVEL generated any revenue out of the execution of the IPO Objectives would have brought to the light the red flags relating to the entire scheme. However, the other Board Members viz., Datuk K Ketheeswaran, the Chairman of the company, R. Chandrasegaran, Non-Executive & Non-Independent Director also recklessly omitted to perform their part which resulted in the inducement of the investors who believed that IPO funds are being used for the purposes stated in the Prospectus.

55. Accordingly, Datuk K Ketheeswaran, the Chairman of the company, R. Chandrasegaran, Non-Executive & Non-Independent Director, are responsible for all the deeds / acts of the company related to diversion of IPO proceeds. It has already been discussed in preceding paragraphs how diversion of IPO proceeds tantamount to fraud. Thus, it is held that Datuk K Ketheeswaran, R. Chandrasegaran have violated Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.

Non-disclosures made in the Prospectus

56. In order to proceed further, it is relevant to reproduce the applicable provisions. They are reproduced below:

- Regulations 3 (a) (b), (c), (d) and 4(1), (2) (a), (d), (e), (f), (k) and (r) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act. Text of Regulations 4 (2) (f) and (k) of PFUTP Regulations is as follows (Rest is already reproduced above):

  PFUTP Regulations

  4. Prohibition of manipulative, fraudulent and unfair trade practices

  …

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves:-

…

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

…

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors.

…

(r) planting false or misleading news which may induce sale or purchase of securities.

…

- Regulations 57(1), 60(7)(a) and Clause (2)(IX)(B)(12) (a)(v) Part A of Schedule VIII of ICDR Regulations. Text of the Regulations is reproduced below:

ICDR Regulations

Manner of disclosures in the offer document.

57. (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

(2) Without prejudice to the generality of sub-regulation (1):

(a) the red-herring prospectus, shelf prospectus and prospectus shall contain:

(ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.

Clause 2(VIII)(B)(1)(b)(i):

(VIII) About the Issuer:

(B) Business Overview

(1) Details of the business of the issuer:

(b) Plant, machinery, technology, process, etc.:

(i) Details shall be given in a tabular form, which shall include the details of the machines required to be bought by the issuer, cost of the machines, name of the suppliers, date of placement of order and the date or expected date of supply, etc..

Clause 2 (XVI) (B) (2)

(XVI) Other Information:

(B) Declaration: (2) The signatories shall further certify that all disclosures made in the offer document are true and correct.

Public communications, publicity materials, advertisements and research reports

60(7) Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following:

(a) it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;

57. It has been alleged that no disclosures were made in respect of Aman Tie Up Pvt. Ltd, Omni Ax's Software Ltd. and Aswin Logistic Ventures as claimed to be vendors to MVEL in different capacities of providers of services. As the requirement of ICDR Regulation under Clause 2(VIII)(B)(1)(b)(i) is to provide the name of the suppliers. However, as already found, IPO funds have been siphoned off through them. There is no evidence to indicate they were in fact vendors. Therefore, it cannot be said that there is a violation of Clause 2(VIII)(B)(1)(b)(i) of ICDR Regulations.

58. It has already been held in the preceding paragraphs that disclosures were not made in respect of directorship of Vasan Chidambaram in another companies. Further, MVEL failed to disclose the arrangement between MVEL and Eduexcel for the purpose of acquisition of screening rights, screening arrangements along with film contents from market for supplying the same to MVEL even though already an arrangement was existing since 2010. In this regard, I note that a perusal of the Regulation 57 of ICDR Regulations makes it clear that the offer document is required to contain all material disclosures so as to enable the applicant to take an informed investment decision. Regulation 60(7) of ICDR Regulations makes it obligatory on the issuer not to issue any advertisement or research that is not true, fair and it should not be manipulative or deceptive or distorted.

59. The term "material" has not been defined under the ICDR Regulations. However, as understood in market parlance and also defined in Explanation to Regulation 5 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 in the same context, "material" means anything which is likely to impact an investors' investment decision. In respect of the failure to disclose the other directorships of Vasan Chidambaram, in general, the details of the directorships in other companies may have an impact on the decision making of the investors, as the directorship in a company is considered as one of the parameters for successful stewardship of the Company. Therefore, the fact that listed company has a director who has been associated with the decision making of a profit making or efficiently run companies may have an impact on the decision making of the investor. However, what matters is that which information is material depends on the facts and circumstances of the case. It would have been a different case when the listing company intent to have contract with another company as related party. However, that is not the case here. Further the listed company has any object of deployment of funds to the two companies in which the directorship of Vasan Chidambaram was not mentioned. Neither the funds were actually deployed nor

siphoned off through the other two companies. It should have also been different case if regulatory actions have been taken against any of these two companies. However, there is no such material available on record to that effect as well. Further no adverse material is available on record that in the fact and circumstances of the case, the directorship in these two companies are so material that non publication of those details would have appreciable impact on the decision making of the investors. Therefore, in the facts and circumstances of the case, the preponderance of probability of the facts of the case leads to the conclusion that the said information cannot be considered as material. However, in the extant matter, an existing arrangement with a connected party Eduexel is material one in view of its relation to MVEL by way of common directorship of Vasan Chidambaram in MVEL and Eduexel. Such concealment of material information deprives the investors to take an informed investment decision. Therefore, I find that MVEL failed to make the material disclosure in the Prospectus.

60. I note that Regulation 60(7)(a) of ICDR Regulations places the onus on the Issuer company to make true and fair disclosure in any advertisement caused to be issued by the Issuer. Such obligation envisages not only the disclosures to be true and fair but also the prime obligation of not to conceal any material disclosures. Therefore, the explicit provisions impose the obligation on the Issuer Company and in the extant matter MVEL failed to discharge its responsibility to make true, fair and complete disclosure by concealing the material information.

61. S. Madhavan who was the Company Secretary and Compliance Officer is also responsible for the non-disclosure in the Prospectus. Being a Company Secretary he is aware of his roles and responsibilities, more particularly disclosures to be made in the Prospectus including the veracity of the disclosures. He knows that investors would rely on the contents of the Prospectus before subscribing to the issue and therefore he has to do necessary due diligence to satisfy himself that the contents of the Prospectus reflect a true and complete picture of the company. In the given matter he has not shown the steps taken by him to check the veracity of the contents of the Prospectus. Further, as compliance officer reporting to the

Board, he has the responsibility to ensure that the company complies with all the legal and regulatory provisions. In the extant matter, it has been held that MVEL has failed to make true, fair and complete disclosure in its Prospectus. As discussed in previous paragraphs, one of the legal requirements in the prospectus is to publish true facts. Therefore, S. Madhavan being the Company Secretary and Compliance Officer is also liable for the aforesaid failure of MVEL.

62. M. Pandiyan who was the Manager-Accounts and Finance of MVEL and also a signatory to the RHP/Prospectus. M. Pandiyan has contended that he was not a beneficiary of the violations alleged in the SCN and claimed that he doesn't know anything about RHP/Prospectus. He was made to sign the documents as the CFO of the Company was not available and he signed the same without reading. I note that it is an admitted fact that M. Pandiyan is signatory to the RHP/Prospectus and by virtue of the same he is responsible for the misstatements in the RHP/Prospectus. I also note that he is still associated with the Company and drawing monthly remuneration. I also note that post IPO he was promoted as Deputy General Manager (Accounts). I note that M. Pandiyan has not exercised any due diligence to prevent the commission of the offence In view of the same, I find that M. Pandiyan being the Manager-Accounts and Finance is also liable for the aforesaid failure of MVEL.

63. In respect of incorrect disclosures, it is pertinent to note that Hon'ble SAT in the matter of *HSBC Securities and Capital Markets (India) Private Ltd.* vs. *SEBI* decided on February 20, 2008 observed that *" an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator"*

64. Further, Hon'ble SAT in the matter of *Brooks Laboratories Ltd.* vs. *SEBI* decided on March 21, 2018 has further held that "*Failure to disclose material information and making false/ misleading statements in the RHP/ Prospectus constitutes serious violation of the PFUTP/ ICDR Regulations. Appellants who are Chairman,*

Managing Director, Chief Executive Officer, Chief Financial Officer and Company Secretary of the Company cannot escape penal liability for the aforesaid violations by merely stating that they had relied on the merchant banker. Appellants were equally responsible to ensure that all material facts were disclosed and further ensure that false and misleading statements were not made in the RHP/ Prospectus."

65. I note that SEBI has adopted a disclosure based regulatory regime. Under this framework, issuers and intermediaries disclose relevant details about themselves, the products, the market and the regulations so that the investor can take informed investment decisions based on such disclosures. In the case of an IPO by a company, the information about the company is made available to the public/investors in the form of offer document. The public/investors make its decision based on the information provided to them in the form of disclosures in the offer document.

66. Full, fair and timely disclosures form the cornerstone of any disclosure requirement stipulated by SEBI. The guiding principle in a disclosure based regulatory regime is the need for the issuers of securities to disseminate true and complete information to the potential investors in respect of the issuer and the security being issued to enable the potential investors to make their own informed investment decisions. The same is also with a view to bring transparency in the securities market. The access to the securities market for issuers is conditional upon such disclosures. The disclosure-based regime imposes a heavier responsibility on the issuers of securities in respect of the accuracy and completeness of the information disclosed by them.

67. Prospectus is the principal medium through which the investors get information of the strength and weakness of the company, its creditworthiness, credence and confidence of Promoters and the company's prospects. The purpose of filing the offer document with SEBI is not a mere ritual or formality. Therefore, the importance of contents of the Prospectus in a disclosure regime cannot be over-emphasized.

68. Hon'ble SAT in the matter of *V. Natarajan* Vs. *SEBI*, Appeal No. 104 of 2011, has observed as follows:

"... We are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, were violated… These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities…"

69. In the extant matter by virtue of failure to make disclosure about existing arrangement with related party and directorship of one of the directors of the Company and name of the suppliers/vendors, the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making true and complete disclosures, the company and its directors and the signatories to the RHP/Prospectus have misled the investors which is detrimental to the interest of investors in securities market and the same is in violation of Regulations 3 (a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act and Regulation 57(1), 60(7)(a) and Clause 2(VIII)(E)(1)(a), 2(VIII)(B)(1)(b)(i), 2 (XVI) (B) (2) of Part A of Schedule VIII of ICDR Regulations.

***Issue No. 4* - What directions, if any should be issued against the Noticees?**

70. Hon'ble Supreme Court of India in the matter of *N Narayanan* Vs*. Adjudicating Officer, SEBI* decided on April 26, 2013 while dealing with the concept of market abuse in securities market has observed as follows:

"Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abuser.

…

A word of caution:

43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect

investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity.

…

SEBI has the duty and obligation to protect ordinary genuine investors and the SEBI is empowered to do so under the SEBI Act so as to make security market a secure and safe place to carry on the business in securities."

71. I note that Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorized to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude. Pursuant to the said objective, PFUTP Regulations and ICDR Regulations have been framed. The said Regulations apart from bringing transparency and fairness among other things aims to preserve and protect the market integrity in order to boost investor confidence in the securities market. By diverting the IPO proceeds and by failing to make true and adequate disclosures in the Prospectus, not only the investors were defrauded and misled but it has also impaired the integrity of the securities market. In view of the same and considering the violations committed by the Noticees, I find that it becomes necessary for SEBI to issue appropriate directions against them.

Order

72. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act issue the following directions:

i) MVEL, Sudhir Kumar Jena, K Murugavel, Vasan Chidambaram and K Ramdasan are hereby restrained from accessing the securities market for a period of **Seven** years from the date of this order and are further prohibited

from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of **Seven** years, from the date of this order. Further, Sudhir Kumar Jena, K Murugavel, Vasan Chidambaram and K Ramdasan are also restrained from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a Director or key managerial person, directly or indirectly, for a period of **Seven** years from the date of this order.

ii) Datuk K Keetheeshwarn and R Chandrasekharan are hereby restrained from accessing the securities market for a period of **five** years from the date of this order and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of **five** years, from the date of this order. Datuk K Keetheeshwarn and R Chandrasekharan are further restrained from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a Director or key managerial person, directly or indirectly, for a period of **five** years.

iii) S Madhavan and M Pandiyan are hereby restrained from accessing the securities market for a period of **two** years from the date of this order and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of **two** years, from the date of this order.

iv) Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the Noticees shall remain frozen.

73. The order shall come into force with immediate effect.

74. A copy of this order shall be served upon all recognized Stock Exchanges, Depositories and the Registrar and Share Transfer Agents to ensure compliance

with the above directions.

75. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies for their information and necessary action.

DATE: February 18, 2020 **MADHABI PURI BUCH**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA