BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: Order/SBM/JR/2021-22/12383]

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

In respect of

Shri Praveen Agarwal (PAN: ACSPA4725A)

Address
16A, Gurusaday Road, Flat No. 14A & B, Kolkata 700019

In the matter of

Mystic Electronics Ltd (earlier known as Pearl Electronics Ltd)

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated investigation into the trading/dealings in the scrip of Mystic Electronics Ltd (hereinafter referred to as '**Company'/ 'MEL'**) regarding allegations of certain entities indulging in an act of omission amounting to manipulation in the scrip price of MEL by executing the trades in the scrip above the Last Traded Price (hereinafter referred to as "**LTP**") during the period March 19, 2013 to March 31, 2015 (hereinafter referred to as the "**investigation period**"). It is alleged that ten companies/entities located at Kolkata (hereinafter referred to as 'connected e ntities' in the context of the present proceeding) had traded extensively in the scrip of MEL during the above

mentioned investigation period, which also caused substantial price movement in the scrip of MEL.

2. It is alleged that the 'connected entities' who had traded in the scrip of MEL during the investigation period were observed to be linked to the 'operators' viz. Shri Devesh Upadhyay and Shri Praveen Agarwal (hereinafter referred to as '**Noticee**'). It is noted from the investigations that the 'operators' viz. the Noticee and Shri Devesh Upadhyay were also allegedly assisted by other persons namely, Shri Deepak Patwari and Shri Jagadish Purohit. Therefore, it is alleged that the trading/dealing in the scrip of MEL during the investigation period had resulted in the violation of the provisions of Regulations 3(a) (b), (c), (d) and Regulations 4(1), 4(2)(a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") by the persons/entities, including the Noticee.

3. In view of the above reasons, adjudication proceedings have been initiated against the Noticee under the provisions of section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide Order dated July 4, 2016, the undersigned was appointed as the Adjudicating Officer under section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to inquire into and adjudge the aforementioned alleged violations leveled against the Noticee under the provisions of section 15HA of the SEBI Act. Pursuant to the transfer of the undersigned to another department of SEBI, Dr. Anitha Anoop was appointed as the Adjudicating Officer in the matter, vide an order dated March 18, 2019. Subsequently, in view of the transfer of Dr. Anitha Anoop, the undersigned was once again appointed as the Adjudicating Officer in the matter, vide communique dated November 3, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice dated December 20, 2016 (hereinafter referred to as **'SCN'**) was issued to the Noticee under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and penalty be not imposed on him under the provisions of section 15HA of the SEBI Act for his alleged violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) and (e) of the PFUTP Regulations while dealing in the shares of MEL during the above mentioned investigation period.

6. MEL was incorporated on August 2011 under the Scheme of Demerger, which was sanctioned by the Hon'ble Bombay High Court. The Electronics Division of Nouveau Global Ventures Ltd (referred to as 'Nouveau') was demerged into Mystic Electronics Ltd (earlier known as Pearl Electronics Limited) and Mukta Agriculture Ltd. As per the scheme of arrangement, 56.79 fully paid up equity shares of Rs. 10/- each of MEL were issued and allotted to the shareholders of Nouveau for every 100 fully paid up equity shares of Rs. 10/- each held by them in Nouveau. Accordingly, 1,05,36,248 equity shares of MEL were allotted to the shareholders of Nouveau. Subsequently, the shares of MEL were listed on the Bombay Stock Exchange (BSE) on March 19, 2013. It was observed that a stock split was also announced by the company during August 2014 (in the ratio of 10:1). The entire period of investigation is divided into three patches wherein during the first patch, which was the pre-split period, the scrip price of MEL witnessed an increase from Rs. 5.55 on March 19, 2013 to close at Rs. 495 on August 13, 2014. During the second patch, which was the post-split period, the scrip of MEL witnessed increase from Rs. 49.5 on August 14, 2014 to close at Rs. 64 on October 13, 2014. Thereafter, during the third patch period i.e. from October 29, 2014 to March 31, 2015, the scrip price of MEL started declining and finally closed at Rs. 8.2 on March 31, 2015.

7. It is alleged that a scheme was devised by MEL and its promoters, the 'operators', which also includes the Noticee along with the 'connected entities', by allotting the shares of the company on preferential

allotment basis to various entities. It is observed that MEL made a preferential allotment of 92,30,000 shares of Rs. 10 each to 48 entities (who were not the promoters of MEL), on June 07, 2013, at a price of Rs 60.74/- per equity share and raised an amount of Rs. 56.06 crore. The shares issued through the above preferential allotment was under lock-in period till June 06, 2014 and post the lock-in period , some of the allottees in the preferential allotment sold the shares and made profit. As per the findings of the investigation, the preferential allotment proceeds to the tune of Rs. 23 crore was transferred by MEL to the account of 'connected entities', who then traded in the scrip of MEL during the investigation period. Investigation has brought out that the 'connected entities' based at Kolkata who had predominantly traded in the scrip of MEL during the investigation period increased the scrip price of MEL by repeatedly placing the buy orders at price higher than the last traded price i.e LTP and also absorbed the sell orders that were available in the market, which was at a higher price than the LTP. Further, investigation brought out that once the scrip price of MEL reached the desired level, some of the preferential allottees exited at a higher price and made substantial gain. From the investigation report, it is observed that 14 entities (who were some of the allottees in the preferential allotment of MEL) sold 86,71,828 shares of MEL during the investigation period and allegedly made profit. Pursuant to the investigations, it is alleged that the 'connected entities', assisted by the 'operators', including the Noticee & Devesh Upadhyay have increased the scrip price of MEL by repeatedly placing the buy orders in the scrip at a price higher than the last traded price and also absorbed the sell orders in MEL that were available in the market.

8. It is alleged that the 14 allottees in the preferential allotment made by MEL subsequently exited at higher price by selling the shares and these allottees have allegedly made a profit of Rs. 33.9 crore. It is alleged that majority of the shares that were sold by the allottees were purchased by the 'connected entities'. Therefore, it is alleged that a scheme has been devised by the 'connected entities', the 'operators', including the Noticee in order to book illegitimate profit/losses for the purpose of generation of bogus LTCG. In this regard, the

concerned Department of SEBI i.e IVD had also referred the matter to the Income Tax Department for appropriate examination at their end, as deemed fit.

9. In the aforementioned matter, I note that the Noticee did not respond to the SCN. In the interest of natural justice, an opportunity of personal hearing was provided to the Noticee on July 2, 2019, vide letter dated April 30, 2019 by the then Adjudicating Officer. Although the letter/notice was duly served on the Noticee, no one appeared on the scheduled date of hearing. Thereafter, pursuant to my appointment as the Adjudicating Officer in the matter, another opportunity of personal hearing was provided to the Noticee on January 20, 2021. The Noticee vide his email dated January 20, 2021 sought for a copy of the SCN which was issued to him in the context of the proceeding and the same was accordingly sent to the Noticee. Thereafter, Noticee also sought copies of certain annexures which were also sent to the Noticee vide email dated March 5, 2021.

10. Thereafter, an opportunity of personal hearing was provided to the Noticee on April 23, 2021, vide letter/notice dated March 30, 2021. Noticee, vide his email dated April 19, 2021 sought for rescheduling the date fixed for the personal hearing to the first week of June, 2021. Thereafter, Noticee was provided with opportunity of hearing on June 4, 2021. Vide his letter dated May 29, 2021, Noticee , inter alia, mentioned the following:

- *I specifically deny all the above allegations and/ or observations made against me and submit that the same are mere conjectures and surmises. I specifically deny that I had any connection with MEL and/ or I was an operator and/ or I had any role with respect to the subject transactions. It is submitted that the allegations leveled in the SCN are vague and baseless without any cogent evidence.*
- *It is important to note that the averments and allegations made in the present SCN are the very same made by SEBI in the proceedings issued by the Whole Time Member (WTM) vide a SCN dated April 5, 2017 against several entities including me.*
- *It is a matter of record that the said proceedings before the WTM rsulted in an Order dated June 26, 2020, whereby the Learned Whole Time Member discharged me from the proceedings with no adverse order against me.*
- *It is submitted that it is not SEBI's case that I had any role in the preferential*

allotment and/ or it is also not SEBI's case that I have traded in the scrip of MEL during the relevant period. Therefore, it is clear that the allegations made in the SCN are levelled only on the basis of the purported statement(s) recorded by IT Kolkata. It is important to note that the said purported statement(s) has/ have been retracted by me and an Affidavit in this regard has been filed by me in the proceedings before the WTM.

11. Due to some personal emergency, the Authorised Representative of the Noticee could not appear on the scheduled date of hearing i.e on June 4, 2021 and requested for the hearing to be postponed to June 7, 2021. The Authorised Representative on behalf of the Noticee appeared on the scheduled date of hearing i.e June 7, 2021 and reiterated the submissions made by the Noticee vide his letter dated May 29, 2021.

12. The Noticee, vide email dated June 19, 2021 made further submissions, inter alia, stating the following:

- *It is denied that I was an operator as alleged in the SCN. It is also denied that I was connected to the company Mystic Electronics Limited (MEL) or any of the operators or any of the allegedly connected entities, mentioned in the SCN. It is denied that I had any role in the alleged increase in price of scrip of MEL and also it is denied that I had any role in allegedly providing any exit to the any of the preferential allottees.*
- *It is denied that I have admitted that I was/ am in the business of providing accommodation entries through different bogus companies, under my control. I also deny that I have provided any details of purported dummy directors and bogus entities under my control. Further it is submitted that SEBI has failed to explain or justify how and in what manner the said alleged business of accommodation entries has anything t do with the subject transactions on the Stock Exchange.*
- *It is submitted that statements relied upon by SBI are inadmissible in evidence and the reliance placed on the said statements is misplaced, on the grounds more specifically mentioned hereinbelow, each of which are taken without prejudice to the other.*

  a) It is submitted that the statements replied upon by SEBI in the SCN, were recorded by IT, Kolkata, forcefully and were not voluntary.

b) *It is submitted that the said statements recorded by IT, Kolkata has no evidentiary value even under the Income Tax Act, 1961. Therefore, question of SEBI relying on the said statements does not arise.*

c) *It is submitted that the said statements are retracted by me and therefore also cannot be relied upon.*

d) *It is submitted that since the statements replied upon by SEBI were recorded by IT, Kolkata, the burden of proving the correctness of the statements is on the IT, Kolkata and SEBI has not placed on record any material to indicate any such proof been supplied by IT, Kolkata. In the absence of any proof from IT, Kolkata, SEBI ought not have replied upon the same.*

e) *It is submitted that from a perusal of the SCN it is clear that SEBI has solely replied upon said statements purportedly provided by IT Kolkata and there is no other material replied upon against me.*

f) *It is submitted that SEBI ought not have blindly replied upon any information purportedly provided by any other authority.*

g) *It is submitted tat before replying on the said statements SEBI ought to have considered that the said statements recorded by IT, Kolkata were in a different context and were not particularly with respect to the subject transactions.*

h) *It is submitted that before relying on the said statements SEBI ought to have considered that bare perusal of the said statements clearly shows that most of the questions asked by the IT, Kolkata were leading questions which are not permissible as per the Indian Evidence Act, 1872 and the same is a well settled principle of law.*

i) *It is submitted that in any event perusal of the said statements (assuming without admitting) clearly indicate that the companies allegedly in my control traded in unquoted shares and it is SEBI's own case that the impugned trades were on the stock exchange. Therefore, also the alleged admission replied upon by SEBI is misconceived and factually incorrect.*

j) *It is submitted that in any event perusal of the said Statements (assuming without admitting) does not in any manner reveal any admission on my part that the companies allegedly in my control had actually traded in the scrip of MEL during*

the investigation period. Therefore, also the alleged admission replied upon by SEBI is misconceived.

- *It is denied any of the entities who allegedly traded in the scrip of MEL were connected to me in any manner whatsoever. It is submitted that the connection details replied upon in the SCN, appears to have been prepared by SEBI on the basis of the purported statements recorded by IT, Kolkata and in the event that the said statements are retracted by me and also independently verified by SEBI and/ or not supported by SEBI with any other corroborative evidence, the said statements deserves to be discarded and cannot be used by SEBI as a basis for levying any kind of a charge against me. It is pertinent to note that it is not even SEBI's case that I have traded in the scrip of MEL, therefore also allegations against me are without any merits.*

CONSIDERATION OF ISSUES AND EVIDENCE

13. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents made available during the course of the proceeding, including the investigation report and annexures. In the instant matter, it is alleged that the 'operators', which includes the Noticee had aided/abetted the 'connected entities' while trading/dealing in the scrip of MEL during the investigation period. As already stated, the trading in MEL by the 'connected entities' also caused substantial price rise in the scrip of MEL during the investigation period.

14. Before moving forward, it is pertinent to refer to the relevant provisions of the PFUTP Regulations allegedly violated by the Noticee, which are mentioned as

under:

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.*

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.*

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

(a) *indulging in an act which creates false or misleading appearance of trading in the securities market;*

(e) *any act or omission amounting to manipulation of the price of a scrip*

15. From the documents made available, I find that the scrip of MEL witnessed unusual fluctuation in the price and volume during the investigation period. During investigation, it was observed that during the Patch 1 period, 28,31,939 shares were traded with an average daily volume of 8,504 shares. The price of the scrip moved from Rs 5.55 and it touched a high of Rs 610/- on June 6, 2014 i.e the scrip price of MEL increased by 110 times. It was observed that 10 Kolkata based companies i.e the 'connected entities' in the context of the present proceeding had contributed to Rs 1383.15 of the Net LTP and Rs 2491.2 of the positive market LTP in the scrip of MEL during the investigation period (patch 1), which is 88% & 89% of the 'connected entities' Net LTP and positive LTP contribution. The ten Kolkata based 'connected entities' who traded in the scrip of MEL were allegedly placing repeated buy orders in the scrip of MEL at price above the LTP which caused increase in the scrip price of MEL during the investigation period. It is alleged that the 'Connected entities' viz.

Function Financial Consultants P Ltd, Helpful Investment Advisory P Ltd, Topwell Properties P Ltd, Manifold Vinimay P Ltd, Shivkhori Construction P Ltd, Amanat Suppliers P Ltd, Lagan Dealtrade P Ltd, Limestone Properties P Ltd, Comfort Dealcom P Ltd and Mankind Vintrade P Ltd were operated by S/Shri Devesh Upadhyay and the Noticee (who as already stated, have been mentioned as 'operators' in the investigation report). As discussed above, the overall financials and fundamentals of MEL did not support the sudden spurt in the scrip price of MEL. The financial results of MEL for the Financial Years ended 2013, 2014 and 2015 are as follows:

Description	Year Ended (Rs. In million)		
	31-March 2013	31-March 2014	31-March 2015
Revenue	689.19	238.99	16.94
Expenditure	-688.69	-235.83	-8.25
Net Profit	0.34	2.17	6.01
EPS (in Rs.)	0.11	0.12	0.03

16. From the above, it can be seen that the increase in the scrip price of MEL was not supported by the fundamentals as the company had registered negligible profits during the investigation period. There was also no major corporate announcements/developments that were made by the company during the investigation period other than the announcements made on financial results, preferential allotment, and the stock split. Therefore, no major corporate announcements were observed which could support such increase in the scrip price of the company during the investigation period.

17. Based on the price movement and the stock split of MEL (10:1 ratio w.e.f. August 14, 2014), the entire investigation period was divided into three patches,-

Patch I	Pre-Stock Split Price Rise	March 19, 2013 to August 13, 2014
Patch II	Post Stock Split Price Rise	August 14, 2014 to October 28, 2014
Patch III	Price Fall	October 29, 2014 to March 31, 2015

18. The price volume data in the scrip of MEL on BSE during the investigation period is as under:

Patches	Period of investigation		Open	High	Low	Close	Avg. Vol.
I – Price Rise- Pre Split	19/03/2013 – 13/08/2014	Price	5.55	610	5.55	495	8504
		Volume	1	121875	1	5138	
I – Price Rise- Post Split	14/08/2014 – 28/10/2014	Price	49.5	68.2	40.9	64	220448
		Volume	200	477250	20	31201	
III – Price Fall	29/10/2014 – 31/03/2015	Price	67.95	68	8.2	8.2	313355
		Volume	139806	4330100	1	43204	

19. As already mentioned in the preceding paras, MEL made a preferential allotment of 92,30,000 shares of Rs.10 each to 48 entities (who were not belonging to the promoter/promoter group of MEL), on June 07, 2013, at a price of Rs. 60.74/- per equity share and raised an amount of Rs. 56.06 crore. From the information provided by MEL, it is noted that MEL transferred Rs. 23 crore received through the preferential allotment to various entities, details of which are mentioned below :

Name of the entities to whom fund were transferred by MEL	Operator Name	Amount transferred (Rs. In crore)
Wonder Procon P Ltd.	Devesh Upadhyay	5
Visible Real Estate Ventures P. Ltd.	Devesh Upadhyay	5

Blossom Dealcom P Ltd.	Devesh Upadhyay	1.5
Hemlata Vinimay P Ltd.	Devesh Upadhyay	1.75
PS IT Infrastructure Services Limited	Sajjan Kedia	7.5
JMD Telefilms Industries	Jagadish Purohit	1.5
Nouveau Global Ventures	Promoter entity	0.21

20. From the records, it is observed that there were 12 promoters of MEL viz. 7 promoter entities, viz., Attribute Shares and Securities P Ltd., Forever Flourishing Finance and Investment, Golden Medows Export Limited, Kashish Multitrade P Ltd., Kasturi Overseas P Ltd., Mumbadevi Finance Invest. Co. P Ltd. and Navyug Telefilms P Ltd. and 5 individual promoters, viz., Kishan Khadaria, Asha Khadaria, Mohit Khadaria, Sushila Khadaria and Mohini Khadaria. Further, from the website of MCA, it is observed that the shares of the above mentioned promoter companies of MEL were held by some unlisted entities located at Kolkata. On perusal of the directors' details of these unlisted entities from the MCA website, it is noted that these entities were the entities of the 'operators' namely, the Noticee and Shri Devesh Upadhyay along with other persons viz. Shri Jagdish Purohit and Shri. Deepak Patwari.

21. I find from the investigation report that none of the entities mentioned in the Table at para 19 above (i.e entities who had allegedly received Rs 23 crores from MEL) had traded in the scrip of MEL during the investigation period. It is however alleged in the investigation report and in the SCN that the preferential allotment proceeds to the tune of Rs 23 crores have been transferred to the account of the 'connected entities', which in turn were used by the 'connected entities' to trade in the shares of MEL during the investigation period. In this regard, I have perused the investigation report and the annexures made available and I find that there is nothing on record, either in the investigation report and/or in the SCN, to corroborate the finding/observation that the above amount of Rs 23 crores were transferred to the account of the 'connected entities', which in turn were utilized by them to trade in the scrip of MEL during the relevant period.

22. From the investigation report, it is observed that the Noticee along with Shri

Devesh Upadhyay ('Operators') along with Shri Deepak Patwari have in their individual statements given to the office of Income Tax, Kolkata mentioned that they were in the business of providing accommodation entries through different "Bogus Companies" under their control. During the investigation period, a total of 1629 entities have traded in the scrip, out of which 90 entities were observed to be connected to the 'Operators' (which includes the Noticee).

23. As regards the issue of whether the 'connected entities' (who traded in the scrip of MEL) were controlled by the ' operators', and whether in turn, the ' operators', including the Noticee were connected to the promoters of MEL, I note from the records made available that both the investigation report and the allegations leveled in the SCN have mainly relied upon the statements given by the 'operators' (including the Noticee) before the Income Tax Authorities for arriving at the conclusion that the 'connected entities' were controlled by the 'operators'. As already mentioned, there is nothing on record to show that the preferential allotment proceeds to the tune of Rs 23 crore allegedly received by the 'connected entities' from MEL were diverted for the purpose of trading in the scrip of MEL by the 'connected entities' during the investigation period. I further note that apart from the statements given by the 'operators', including the Noticee to the Income Tax (IT) authorities, there is no other corroborating evidence linking the 'connected entities' with the 'operators' (including the Noticee). Also, based on the observations made in the investigation report and the SCN, I find that Noticee did not trade in the scrip of MEL during the investigation period.

24. I find that the connections of the 'operators' viz. the Noticee and Shri Devesh Upadhyay with the 'connected entities' is on the basis of the statement given by the 'operators' before the Income Tax Authorities and there were no other material made available to establish the connections. As per the findings of the investigation report, the 'operators' were shown to be connected to the promoters of MEL on the basis of the observation made that the 'operators' (including the Noticee) together held 24.94% stake in MEL under the public shareholding category. It is further mentioned in the investigation report that the

promoters of MEL were also the Key Managerial Personnel (KMP) of Suman Multitrade Pvt Ltd, an entity in which 83% of the share capital was held by the Noticee. The Investigation Report also mentions that Rs 23 crore transferred from MEL (from the preferential allotment proceeds) to some of the entities (mentioned in para 19 above) were controlled by the ' operators', including the Noticee. However, as already mentioned, from the material / records made available, I find that apart from the statement made by the 'operators' (including the Noticee) before the IT authorities there is nothing on record to show that the connections of the Noticee with the 'connected entities' who have traded in the scrip of MEL during the investigation period. Further, from the investigation report, there is no evidence to show that the funds received by the above entities from MEL (mentioned at para 19 above) were ultimately utilized for the purpose of trading in the scrip of MEL by the ten 'connected entities' located at Kolkata during the relevant period.

25. Therefore, from the findings/allegations made in the investigation report and in the SCN, I find that other than the statement given to the IT authorities by the 'operators', including the Noticee, no other clinching evidence has been brought out, either in the investigation report and/or in the SCN, to establish the link between the 'operators' and the 'connected entities'. In view of the same, it is difficult to sustain the allegation levelled in the SCN that the 'connected entities' were controlled by the 'operators', including the Noticee. The available evidence could show probability of some role of the 'operators', mainly on the basis of their statement given to IT authorities and their shareholding in MEL (under the public shareholders category). However, in order to establish a serious charge of fraudulent and manipulative trade by the 'operators', including the Noticee, in connivance with MEL and its promoters and the 'connected entities', there should be convincing evidence to show the connection between the 'operators' and the ten Kolkata based 'connected entities' who have actually traded in the scrip of MEL during the investigation period. The same has to be established without any element of doubt. In the facts and circumstances of the case, I am of the view that there is not sufficient evidence available on record to establish the charge of fraud on the 'operators', including the

Noticee. Further, as already mentioned, Noticee has also not traded in the scrip of MEL during the investigation period. The investigation report has also not brought out any evidence to show if there were any movement of shares (off-market) or funds between the promoters to the 'operators', including the Noticee and/or the 'connected entities'.

26. In this context, I note that, in exercise of its powers conferred under sections 11(1), 11(4) & 11 B of the SEBI Act, an order dated June 26, 2020 was passed by the Whole Time Member, SEBI in the matter of MEL and 14 entities, including the Noticee, wherein, inter alia, the following conclusions were drawn by WTM, SEBI :-

"*I note that SCN draws allegations on the basis of (i) the fund transfer by the Company to connected entities; (ii) shareholding of certain connected entities in promoter companies and (iii) shareholding of connected entities in the Company to establish the connection between the promoter directors and operators. It is therefore noted that that all three ways in which the SCN has alleged that the promoter directors are connected to the operators hinge on proving certain private companies were controlled by the operators. I, however, note that the only evidence available on record to show that such companies were actually controlled by the operators are their statements before the income tax authorities. There is no other corroborating evidence establishing the link between the operators and these companies. In view of the same, I am of the considered opinion that the allegation that the connected entities were controlled by the operators cannot be sustained as it has been solely based on the statements of the operators before the income tax authorities.*

The operators were the common link tying the companies that held shares in the promoter companies, the companies to which proceeds of the preferential allotment was transferred and top 10 connected entitles. Therefore, for the charge of fraud to be sustained against the operators and promoter directors, the connection between the operators and the connected entities has to be established. In view of the above, I hold that there is not sufficient evidence available on record to establish the charge of fraud against Noticee 1,2,3,4,5 and 6 .."

27. I observe that Noticee no. 4 which has been mentioned in the aforementioned order is also the Noticee in the context of the present adjudication proceeding. Therefore, on the basis of independent assessment of the facts and circumstances of the case, the material made available on record and the

allegations levelled in the SCN, I am also in agreement with the conclusions drawn by the WTM, SEBI against the Noticee in the above mentioned Order. In view of the same, I am not inclined to hold that Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2) (a) and 4(2) (e) of PFUTP Regulations.

ORDER

28. In view of the above observations/findings and in exercise of the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings initiated against the Noticee, vide SCN dated December 20, 2016.

29. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticee, viz. Shri Praveen Agarwal, and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: June 29 , 2021

SURESH B MENON
ADJUDICATING OFFICER