WTM/SM/EFD-DRA-III/29/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of

Sl. No.	Name of the Noticee	PAN
1.	**Prakash Kumar Mohta	AGUPM2260N
2.	**Prakash Kumar Mohta HUF	AADHP6057K
3.	Bhiragacha Finance Company Pvt. Ltd.	AABCB0374J
4.	**Maitreyi Kandoi	AFSPM9902J
5.	**Pratibha Khaitan	AFNPK7949A
6.	**Moulishree Gani	AENPM6238B
7.	**Jayantika Jatia	AKWPM8544K
8.	Mr. Mahendra Kumar Agarwala	ACSPA8810C
9.	Himatsingka Chemicals Pvt Ltd.	AAACH6414N
10.	Abhishek Chemicals Pvt Ltd.	AAECA1091N
11.	Vijaypath Management Pvt Ltd.	AAACV8930F
12.	PH Trading Ltd.	AAACL4603M
13.	Agarwal Trading Co.	AAEFA6220E
14.	Universal Prime Aluminium Ltd.	AAACU3632M
15.	Bluebird Mercantile Pvt. Ltd.	AABCB0735D
16.	Vindya Agencies Pvt. Ltd.	AAACV9891P

In the matter of trading in the scrip of ECE Industries Limited

The above-mentioned entities are individually referred to by their corresponding names/numbers and collectively referred to as "*Noticees*"

********In the present proceedings the number of Noticees involved, after the disposal of Settlement Applications is 10. For the sake of convenience, the number assigned to each of the Noticee in the Show Cause Notice dated April 5, 2019 has been retained in the present Order.*

BACKGROUND

1) Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted an investigation into the trading activities in the scrip of ECE Industries Ltd, (hereinafter referred to as "**ECE/the *Company***") and the processes of buyback and delisting of its shares carried out by the *Company* during the Financial Year 2016-17 to ascertain possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**the SEBI Act**"), the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations 2003**"), the SEBI (Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as the "**Delisting Regulations 2009**") and the SEBI (Buy Back of Securities) Regulations, 1998 (hereinafter referred to as the "**Buyback Regulations 1998**") during the period from January 01, 2016 to December 30, 2016 (hereinafter referred to as the "**Investigation Period**" or "**IP**"). The shares of the *Company* are listed at the National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") and the Metropolitan Stock Exchange of India (hereinafter referred to as "**MSEI**").

2) The investigation conducted by SEBI revealed that the promoters of ECE who were acquirers under Delisting Offer viz, the *Noticees no. 1* to *7* along with related entities viz, the *Noticees no. 8* to *16* participated in a manipulative and fraudulent scheme at various stages, and played a crucial role in creating a misleading appearance of trading in the scrip of ECE to first make the *Company's* Buyback Offer successful and also thereafter, by depressing both the cutoff price under Delisting Offer as well as the market price of the scrip the promoters were helped to sail through their Delisting Offer successfully to the advantage of promoter and promoter related entities. It was noticed that certain entities enjoying connection with the promoters played a crucial role in the aforesaid fraudulent scheme. It was observed that the *Noticee no. 8* manipulated the price of the scrip of the *Company* by repeatedly placing sell orders below available buy order price and in this manner contributed to negative Last Treaded Price (hereinafter referred to as "**LTP**") in the scrip of the *Company* through first trades which also resulted in New Low Price (hereinafter referred to as "**NLP**") in the scrip. Further, the *Noticee no. 8* along with the *Noticees no. 9* and *10* were noticed to be a part of fraudulent scheme to make ECE's Buyback Offer successful as well as to depress the cutoff price for the Delisting Offer.

3) Based on the aforesaid findings during the investigation, a common Show Cause Notice dated April 5, 2019 (hereinafter referred to as "**the SCN/Notice**") was issued to the *Noticees* asking them to show cause as to why suitable directions under sections 11(1), 11(4) and 11B of the SEBI Act should not be issued against them for the violations of the relevant provisions of

the SEBI Act, the PFUTP Regulations, 2003, and the Delisting Regulations, 2009 in the scrip of ECE. I note from the records before me that the SCNs were duly served upon the *Noticees*.

4) I note that the *Noticees no. 1, 2*, *4* to *8* and *13* had applied for the settlement of the aforesaid proceedings however, from the records it is observed that the settlement applications filed by the *Noticees no. 8* and *13* were rejected on account of non-payment of settlement amount by them but in respect of the *Noticees no. 1, 2* and *4* to *7,* the settlement applications have been accepted and after payment of settlement amounts separate settlement orders have been passed in their favor on April 28, 2020. Accordingly, the present proceedings are now being adjudicated with respect to the remaining *Noticees*.

5) The findings of the investigation and allegations made, as contained in the SCN, are narrated in brief here under:

   (a) The *Company* came out with Buyback and Delisting Offer for its shares during the year 2016. It was observed that entities connected to promoters of ECE, i.e., the *Noticees no. 14* and *15*, funded the *Noticee no. 11* to purchase shares in ECE, the bulk of which was subsequently sold under the Buyback Offer of the *Company* and contributed towards making the Buyback Offer successful. It was also found that the *Noticee no. 8*, who had insignificant holding in the *Company*, had bought further shares with funding from the entities connected to the promoters of ECE and then sold his shares to make the Buyback Offer successful. It is alleged that the *Noticees no. 3, 8, 11, 14* and *15* were part of a manipulative and fraudulent scheme to make the Buyback Offer of the *Company* successful.

   (b) By repeatedly placing sell orders at the same rate within less than 60 seconds of buy orders of ECE, the *Noticee no. 11* had created a false or misleading appearance of trading to make the Buyback Offer successful. The *Noticee no. 8* indulged in creation of misleading trading in the market and manipulated the scrip price by repeatedly placing sell orders at prices below the available buy order prices and by contributing to NLP and negative LTP through first trades has created false and misleading appearance of trading.

   (c) The *Noticees no. 9* and *10* were the first two bidders in the auction through the reverse book building("**RBB**") process conducted for the delisting of shares of ECE. By virtue of funding by entities connected to the promoters of ECE, the *Noticees no. 9* and *10* purchased shares of ECE and thereafter, bid large quantities under the Delisting Offer at a price substantially lower than the prevailing market price and thereby contributed towards depressing the cut-off price for the Delisting Offer in a manipulative manner.

   (d) The *Noticees no. 8, 9* and *10* by virtue of offering their shares for sale, which were purchased with funding from promoter related entities, in the RBB process, have created a false or misleading appearance of trading to make the Delisting Offer of ECE successful. Thus,

the *Noticees no. 8, 9* and *10* alongwith the *Noticees no. 12-16* and the *Noticee no. 3* found to be part of a fraudulent scheme to depress the cut-off price under the Delisting Offer so as to make the Delisting Offer successful.

(e) The promoters of the *Company* viz, the *Noticees no. 1-7* who were acquirers under the Delisting Offer were part of a manipulative and fraudulent scheme wherein entities related to the said promoters funded purchase transactions of the *Noticees no. 8* and *11* who subsequently sold under Buyback Offer to make it successful. Further the related entities also funded the purchase transactions of the *Noticees no. 9* and *10*. Thereafter, the *Noticees no. 8*, *9, 10* offered their shares near the floor price under Delisting Offer to depress the cut-off price with an intention to make the delisting successful. Further, the *Noticee no. 8* also resorted to manipulate the scrip price during this period (i.e. December 21, 2016 to December 30, 2016) causing it to decline, thereby inducing more entities to offer their shares in Delisting Offer.

(f) In view of the aforesaid findings, the *Noticees no. 1* to *10* are alleged to have violated Sections 12A (a), (b) and (c) of the SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1) & 4(2)(a) & (e) of the PFUTP Regulations, 2003 and regulations 4(5)(a), (b), (c) of the Delisting Regulations, 2009. The *Noticee no. 11* is alleged to have violated Sections 12A (a), (b) and (c) of the SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1) & 4(2)(a) of the PFUTP Regulations, 2003 and the *Noticees no. 3* & *12* to *16* are alleged to have violated Sections 12A (a), (b) and (c) of the SEBI Act, 1992 read with regulations 3(b), (c), (d), 4(1) & 4(2)(d) of the PFUTP Regulations, 2003 and regulations 4(5)(a), (b), (c) of the Delisting Regulations, 2009

INSPECTION, REPLY, PERSONAL HEARING AND SUBMISSIONS

6) The *Noticees* vide their letters dated April 30, 2019 and May 02, 2019 requested SEBI to provide an opportunity for inspection and to allow them 3 weeks from the date on which opportunity for inspection/copies of the aforementioned documents is to be provided, to file their written replies accordingly. Subsequently, SEBI vide its letter dated June 27, 2019 granted an opportunity of inspection to the *Noticees* on July 8, 2019. On the said date, inspection was done by the *Noticees no. 1-7* through their Authorized Representative (hereinafter referred to as "**AR**") viz., Finsec Law Advisers, and by the *Noticees no. 9, 10* and *12* through their AR viz., Advocate Bimal Rajasekhar. However, Singhvi & Singhvi representing the *Noticee no. 11* vide letter dated July 3, 2019 requested for a date on or after July 14, 2019 for taking an inspection of the documents on behalf of their client. Accordingly, SEBI vide its letter dated August 8,

2019 scheduled his inspection on August 22, 2019 in this regard. Post inspection, the *Noticee no. 11* sought certain details which were also provided vide letter dated September 13, 2019. Further, the *Noticee no. 11* vide its email dated September 16, 2019 sought some other details and SEBI vide its letter dated September 17, 2019 replied to the said email.

7) The *Noticees*, viz., the *Noticees no. 3, 8* and *13-16* filed their separate written replies each dated September 14, 2020, and the *Noticees no. 9, 10* and *12* have filed their respective separate replies dated February 4, 2020 and February 26, 2020 while the *Noticee no. 11* has filed a written reply dated November 11, 2020 followed by a written submission dated November 27, 2020.

8) After completing the process of inspection as sought by the *Noticees,* SEBI vide hearing notices dated October 22, 2019 granted an opportunity of personal hearing to them on February 5, 2020. On the scheduled date, Advocate Bimal Rajasekhar appeared for *Noticees no. 9, 10* and *12* and made oral submissions. Further, the *Noticees no. 3, 8, 13-16* through their AR viz., Finsec Law Adviser appeared on September 16, 2020 and presented their case before me. On November 12, 2020, Singhvi & Singhvi representing *Noticee no. 11* appeared before me and made oral submissions in this regard.

9) The key contentions/submissions/replies of the *Noticees* are as under:

I. <u>The *Noticees* are not connected with each other</u>

9.1 The allegation with respect to the connection amongst the *Noticees* has been incorrectly made on the basis of common directors between the *Noticees.*

9.2 Except for certain financial transactions undertaken by the *Noticees* in their ordinary course of business, the SCN has failed to establish any connection between the *Noticees* and there is no other evidence relied upon in the SCN to show any direct/indirect nexus between the *Noticees*.

9.3 As an NBFC, it was usual business practice for the *Noticees no. 3, 9, 10, 11, 15* and *16* to execute financial transactions in the nature of loans and advances with various entities and similar transactions were also undertaken during the Investigation Period. In the absence of any concrete evidence showing a direct or indirect nexus between the *Noticees*, SEBI has erred in relying on *bonafide* and independent transactions undertaken by the *Noticees* as a part of their business activities to conclude that they were connected with each other.

9.4 The statement under paragraph 6 of the SCN stating that the *Noticee no. 7* was a Director of the *Noticee no. 3* and collectively held 99.75% of the share capital of the *Noticee no. 3* along with the *Noticee no. 1*, is factually incorrect, as it was the *Noticee no. 6,* who was a director of the *Noticee no. 3* during the Investigation Period.

9.5 There is no evidence to show that the *Noticee no. 8* was even aware of or had any knowledge of the fact that the *Noticee no. 15* shared another common director with ECE. The *Noticee no. 8* had no transactions with the *Noticee no. 15*, during the Investigation Period. The *Noticee no. 8*

was merely a non-executive Director of Jayantika Vincom and was not involved in the day-to-day affairs of the said company. Further, the SCN neither contains any correspondence/transaction between Mr. Basant Kumar Daga, Mr. Sakate Khaitan and the *Noticee no. 8* to show that he was connected to ECE or its promoters or promoter connected entities nor does it contain any averments with respect to Jayantika Vincom or the abovementioned common directors between Jayantika Vincom, the *Noticee no. 15* and ECE, i.e. Mr. Sakate Khaitan and Mr. Basant Kumar Daga. Also, no liability has been imputed against Jayantika Vincom, Mr. Basant Kumar Daga or Mr. Sakate Khaitan, either with respect to the trades undertaken by the *Noticee no. 8* in ECE shares or the alleged "transfer of funds" to the *Noticee no. 8* for making the Buyback Offer or the Delisting Offer successful.

9.6 The *Noticee no. 13* is a partnership firm and the *Noticee no. 8* (Mr. Mahendra Kumar Agarwala) is one of the partners of the Firm. The *Noticee no. 13* had no other connection /relationship with either the *Noticee no. 3* or the *Noticee no. 14* except for such loan transactions undertaken during the Investigation Period.

9.7 The *Noticee no. 15* is only connected to Mr. Sakate Khaitan and the *Noticee no. 5* (Pratibha Khaitan) and neither of these two directors of the *Noticee no. 15*, which is connected to ECE, was involved in its day to day affairs. The *Noticee no. 15*, being a registered NBFC, used to regularly undertake financial transactions in the form of loans/advances, however, the role of Mr. Sakate Khaitan was limited to that of participating in the policy decisions of the *Noticee no. 15*. Thus, the allegation that *Noticee no. 15* was connected to ECE through its Director, Mr. Sakate Khaitan, is erroneous and incorrect.

9.8 The *Noticee no. 5* is a Non-Executive Director of the *Noticee no. 15,* a citizen of the United Kingdom and has been residing there for the past 20 years. The SCN does not specifically impute any liability on part of the *Noticee no. 5* with respect to her role as a Director of the *Noticee no. 15* in the alleged financial transactions. In the absence of any concrete evidence to show that Mr. Sakate Khaitan and the *Noticee no. 5* were even remotely involved in the alleged "transfer of funds" referred to in the SCN, it cannot be assumed that the *Noticee no. 15* was connected to ECE.

9.9 The *Noticee no. 9* and the *Noticee no. 10* (being NBFC) had sanctioned certain short-term loans in the form of current account transactions to the *Noticee no. 12* and such transfers were made pursuant to an overdraft facility sanctioned by ICICI Bank Limited to PH Trading. The *Noticee no. 9* had sanctioned such loans to the *Noticee no. 12* even prior to the Investigation Period. The *Noticees no. 9* and *10* were neither involved nor had any role in the transactions executed between the *Noticee no. 12* and other connected entities as referred to in paragraph 6 of the SCN.

9.10 In the absence of either any transactions between the *Noticee no. 9* and the *Noticee no. 10* with ECE, its promoters or any of its connected entities or any allegation that they had received any

funds from ECE's promoters or connected entities, the allegation that they were connected to ECE and its promoters based on the funds received from the *Noticee no. 12,* is erroneous and unjustified.

9.11 The *Noticee no. 12* had received loans from the *Noticees no. 3, 14, 15* and *16* as evident from its loan documents, financial ledger and bank account statements reflecting the receipt of such loans. It is important to state that the transactions referred to in paragraph 6 of the SCN, in fact, merely refer to the loan transactions executed by the *Noticee no. 12* with such entities which were solely undertaken for business purposes and were nowhere connected to either ECE or the Delisting Offer. It is submitted that except for the above financial transactions, the *Noticee no. 12* had no other connection/relationship with the above-referred four entities.

9.12 At the time of executing such loans, the *Noticee no. 12* was not aware of any connection that may have existed between such entities and ECE. Further, the SCN neither refers to any transactions between the *Noticee no. 12* and ECE, nor does it refer to any correspondence or interaction between the *Noticee no. 12* and ECE or its promoters to suggest that the *Noticee no. 12* had colluded with the promoters of ECE to make the Delisting Offer successful by funding the *Noticees no. 9* and *10*.

9.13 As a registered NBFC, the *Noticee no. 11* had executed financial transactions in the nature of loans/short-term inter-corporate deposits with several entities, including with AUM Capital Market Pvt. Ltd. as well as with the *Noticees no. 14* and *15* however, interest on such loans and advances was charged /paid at the prevailing market rates during the Investigation Period. The *Noticee no. 11* had received loans from both the *Noticees no. 14* and *15* even prior to the Investigation Period. At the time of entering into such transactions, the *Noticee no. 11* had no knowledge of any alleged connection between such entities or their connection with ECE or its promoters.

9.14 Apart from the transaction between the *Noticee no. 11* and the *Noticee no. 15* as alleged in Annexure 3.1 of the SCN, there is no other evidence to establish a connection between the *Noticee no. 11* and ECE or its promoters, hence, the allegation that the *Noticee no. 11* is connected to ECE, based on documents enclosed in Annexure 3.1 to the SCN, is wholly unjustified and incorrect.

II. <u>The financial transactions executed by the Noticees were bonafide independent transactions and were not connected to or to make Buyback /Delisting Offer successful</u>

9.15 The *Noticees* had no role either in the Buyback Offer or any other transaction allegedly connected to the Buyback Offer. The patterns of transfer of funds by the *Noticees* as referred to in the SCN are based on false assumptions and are incorrect to the extent that *bonafide* independent transactions have been selectively extracted and correlated to allege that the *Noticees* had participated in a fraudulent scheme to make the Buyback/Delisting Offer

successful. Merely because the *Noticee*s had advanced loans to certain entities mentioned in the SCN, it cannot be assumed that the *Noticees* were aware of all transactions undertaken by such entities and were involved in an alleged fraudulent scheme. The SCN does not allege the existence of any connection/correspondence between the *Noticees no. 8* to *6* except for the financial transactions referred to in the SCN to show that the funds transferred among them were for the purpose of funding the purchase of shares of ECE.

9.16 Prior to the Delisting Offer, the *Noticee no. 3* held merely 3.51% of the equity share capital/voting rights in ECE as the promoter of ECE and did not participate in the day to day affairs of ECE. Its involvement was limited to its role as a person acting in concert in the Delisting Offer, similar to that of any other acquiring-shareholder in case of delisting of listed companies. Further, the SCN does not refer to any evidence to show that the *Noticee no. 3* was involved, even in its capacity as the promoter of ECE, in any fraudulent scheme with respect to the Buyback Offer or the Delisting Offer.

9.17 The *Noticee no. 3* had provided a loan of INR 76,00,000 to the *Noticee no. 13* in six tranches (on May 13, May 21, June 15, June 17, July 08, and August 08, 2016) and the *Noticee no. 13* repaid that amount to the *Noticee no. 3* through part payments on August 31, September 09, September 14, 2016 and January 10, 2017, and interest was also charged in respect of such loan. Though the total amount advanced by the *Noticee no. 3* to *Noticee no. 13*, as per the SCN, is INR 58,00,000 whereas an amount of INR 76,00,000 (which was the actual loan amount advanced by the *Noticee no. 3* to the *Noticee no. 13* during the Investigation Period) is alleged to have been transferred by the *Noticee no. 13* to the *Noticee no. 3* pursuant to a sale of ECE shares by the *Noticee no. 8*. It is submitted that no explanation has been provided in the SCN, regarding the difference in amounts paid and received by the *Noticee no. 3* from the *Noticee no. 13*.

9.18 As per request made on September 26, 2016, the *Noticee no. 3* paid an amount of INR 29 Lakh to the *Noticee no. 12* in two tranches i.e., September 28 and September 29, 2016 and the *Noticee no. 12* repaid an amount of INR 29.73 Lakh to the *Noticee no. 3* along with interest of INR 82,055 (before TDS) on January 09, 2017. Except for the abovementioned financial transaction, the *Noticee no. 3* had no other relationship/ connection with the *Noticee no. 12*. In the absence of any evidence to show that the *Noticee no. 3* had any knowledge of either the payments made by the *Noticee no. 12* to the *Noticees no. 9* and *10* or about the trades undertaken by them in the Delisting Offer, the allegation in the SCN that the *Noticee no. 3* had participated in a fraudulent scheme by funding the *Noticees no. 9 and 10* to make the Delisting Offer successful, is unjustified. The allegation that the *Noticee no. 3* has funded *inter alia* the *Noticee no. 8* has been made without analyzing the specific nature of the transactions undertaken by the *Noticee no. 3* with such entities.

9.19 The trades of the *Noticee no. 8* were not merely restricted to Buyback Period as the *Noticee no. 8* had acquired around 1048 shares of ECE through off-market transactions after the

closure of the Buyback Period, i.e. on August 09, 2016. The funds received by the *Noticee no. 8* from the *Noticee no. 13* were pursuant to capital introduction/capital withdrawal, which had no nexus with the financial transactions between the *Noticee no. 13* and or other entity and the trades undertaken by the *Noticee no. 8* were as a part of his usual trading activity.

9.20 The SCN fails to establish that the *Noticee no. 8* had traded in the shares of ECE only pursuant to and with the monies received from the *Noticees no. 3* and *14* through the *Noticee no. 13*. During the relevant period the *Noticee no. 8* had executed multiple trades in ECE shares with the *Noticee no. 13* and with AUM Capital Pvt. Ltd. during the Buyback Period and thereafter, on dates other than those mentioned in the SCN.

9.21 As per the SCN, the payments were received by the *Noticee no. 8* since June 15, 2016 while the *Noticee no. 8* had been making payments to the AUM Capital Pvt. Ltd. for purchase of ECE shares even prior to the said date viz., on May 27, May 30, June 03, June 06, June 09-10 and June 13-14, 2016. It is evident that the *Noticee no. 8* purchased shares of ECE even prior to the receipt of the alleged funds from the *Noticees no. 3* and 14 through the *Noticee no. 13*.

9.22 When the *Noticee no. 8* had tendered its 32,979 (7.54%) shares on the last day of the Buyback Period, ECE had already received more than 50% of the shares required for the Buyback Offer to be successful and therefore, the *Noticee no. 8*'s trades in ECE on June 24, 2016 were not relevant for the purpose of making the Buyback Offer successful.

9.23 The *Noticee no. 8* had attempted to sell his shareholding at a price above INR 170 per share through several trades in ECE shares between June 01, 2016 and June 23, 2016, however, owing to a lack of trading volume, he was unable to sell a large number of shares at a share price of beyond INR 170. Therefore, on June 24, 2016, the *Noticee no. 8* placed his sell orders at a share price of close to INR 170 on account of a lack of trading volume, and not to create a false or misleading appearance of trading, as alleged in the SCN. The *Noticee no. 8* had merely instructed its stock broker to place the orders on June 24, 2016 when the markets opened. Hence, all the trades were entered at around 9:15 a.m. on June 24, 2016 and it was a mere coincidence that ECE had placed its buy orders at the same time.

9.24 Owing to a lack of trading volume, the *Noticee no. 8* could sell only around 3232 shares between December 21-30, 2016. Therefore, the *Noticee no. 8* offered his shares for sale in the delisting process at a rate closer to the floor price of the Delisting Offer, i.e., INR 203 on the last day of the Delisting Offer in order to get the best price for his shares to ensure successful divestment of his holdings, to ensure that his offer was accepted and such an act of offering shares at a price closer to the floor price was not done in an attempt to artificially depress the cut-off price.

9.25 The *Noticee no. 8* had, in fact, attempted to place sell orders at higher prices, but due to lack of trading volume, such orders were not accepted. Therefore, the *Noticee no. 8* placed sell orders below best available prices to ensure that that his offers were accepted in total, and not with a

view to manipulate the scrip price of ECE. The SCN has merely taken into consideration that the orders were placed by the *Noticee no. 8* below buy order prices, without appreciating the order quantity placed by the *Noticee no. 8* and the demand for such shares in the market. Thus, the SCN has not only incorrectly stated that the sell order quantity of the *Noticee no. 8* was less than the buy order demand available at his order price, but also has failed to appreciate that only around 70% of his sell order quantity in the said transaction, was actually bought at a price less than the best available buy price referred to in the SCN. Out of the 208 gross trades undertaken by the *Noticee no. 8* during the period as a seller, more than 60% of the trades were undertaken at LTP or above the LTP. Further, out of 23,459 shares that contributed towards the total market negative LTP, the number of shares sold by the *Noticee no. 8* at negative LTP constituted merely 5.1%. Therefore, the allegation that the *Noticee no. 8* has manipulated the scrip price of ECE is unjustified. In this regard, the *Noticee no. 8* has highlighted the decision of SAT in *Ketan Parekh v. SEBI (Appeal No. 2 of 2005, decided on July 14, 2006)* and *SPJ Stock Brokers Private Limited v. SEBI* (*Appeal No. 52 of 2013*, *decided on September 04, 2013*) to submit that there is no connection between the *Noticee no. 8* and the counterparties as alleged and none of the facts set out in the SCN points towards any manipulative, fraudulent or deceptive conduct on part of the *Noticee no. 8*.

9.26 The *Noticee no. 8* had merely tendered around 17,695 (1% of the total shares tendered) ECE shares and the same was insignificant to make the Delisting Offer successful or to depress the cut-off price, especially when a substantial number of shares were sold by the *Noticee no. 8* on the last day of the Delisting Offer, i.e. on December 30, 2016.

9.27 As a partner of the firm, it was usual for the *Noticee no. 8* to withdraw / introduce capital into the firm and the transactions referred to in the SCN were not an one-off event. Contrary to the allegations in the SCN, it is submitted that such transactions were neither connected to the trades undertaken by the *Noticee no. 8* in ECE shares, nor had any nexus with any other financial transaction that the *Noticee no. 13* may have with any other entity;

9.28 The *Noticee no. 8* had no personal involvement in the alleged transfer of funds between the *Noticee no. 13* and any other entity. In fact, the SCN also does not refer to any correspondence/ communication between the *Noticee no. 8* and the *Noticees no. 3/14* to show that the funds transferred by the *Noticee no. 13* to him were intended for the purpose of buying ECE shares. Therefore, the SCN has incorrectly assumed that the payments received by the *Noticee no. 8* from the *Noticee no. 13* were made out of the funds received by the *Noticee no. 13* from other entities, in order to purchase ECE shares, for the purpose of making the Delisting Offer successful.

9.29 The *Noticee no. 8* undertook frequent transactions with the AUM Capital Pvt. Ltd. and with the *Noticee no. 13,* as a partner of the firm, even on the dates other than those mentioned in the SCN. Therefore, the SCN has erroneously alleged that the payments received from the *Noticee*

no. 13 were made out of funds received by the *Noticee no. 13* from other entities. For instance, the *Noticee no. 8* had also received multiple payments from the *Noticee no. 13* on February 11, 2016, March 08, 2016, August 09, 2016 and December 27, 2016. Similarly, the *Noticee no. 8* had multiple financial transactions with the AUM Capital Pvt. Ltd. on June 10, June 30, July 08, (apart from the amount of INR 8,00,000 received on this date, as stated in the SCN, an amount of INR 25,00,063 had also been received) and also September 16, 2016. Therefore, the pattern of transfer of funds mentioned in the SCN, at best, reflects a biased and selective extraction of the financial transactions executed by the *Noticee no. 8* with both the AUM Capital Pvt. Ltd. and the *Noticee no. 13* during the Investigation Period.

9.30 The SCN completely ignores the fact that the *Noticee no. 8* had also purchased certain shares and had entered into financial transactions with the *Noticee no. 13* prior to the commencement of the Investigation Period. Therefore, merely because the *Noticee no. 8* had received certain payments from the *Noticee no. 13* after the Delisting Offer was announced, its purchase of ECE shares during such period and subsequent trades in the Delisting Offer have been erroneously correlated to the payments received from the *Noticee no. 13* and in turn, to the alleged transfer of funds between the *Noticee no. 13* and other entities.

9.31 It is submitted that the *Noticee no. 8* had participated in the Delisting Offer with the sole objective of divesting its holdings, and had no involvement in any financial transactions that may have taken place between the *Noticee no. 13* and other entities. It is submitted that its offers for sale in the Delisting Offer were not only independent of the financial transactions with the *Noticee no. 13*, but were also not substantial enough to make the Delisting Offer successful or to depress the cut-off price.

9.32 The SCN does not provide any specific allegation with respect to Buyback Offer against the *Noticee nos. 9* and *10*. It is pertinent to note that the *Noticee no. 9* had sold merely around 5,000 ECE Shares (out of 91,000 ECE Shares held by it) in the Buyback Offer constituting about 1.14% of the total quantity of shares sold in the Buyback Offer and the said quantity was insignificant to make the Buyback Offer successful. Further, the *Noticee no. 10* had never traded during the Buyback Offer and no such allegation has been made in the SCN.

9.33 The *Noticees no. 9* and *10* had been trading in the scrip of ECE since 2013 and typically, such trades were placed by the *Noticees no. 9* and *10* through PKC Stock Broking Pvt. Ltd. (hereinafter referred to as "**PKC**"), a registered stock broker. The *Noticee no. 9* had purchased around 91,000 and 32,880 shares and the *Noticee no. 10* had purchased around 33,400 and 16000 shares of ECE prior to and during the Investigation Period, respectively. The *Noticee no. 9* divested its holdings in ECE as and when it required capital to make investments in the chemical and sugar industry. The *Noticee no. 9* had also sold certain shares of ECE on January 08, 2016 and May 24, 2016. Therefore, it is clear that they regularly traded in the scrip of ECE, much prior to the commencement of, or even the announcement of the Delisting Offer.

9.34 Prior to the financial transactions with the *Noticee no. 12,* the *Noticees no. 9* and *10* purchased around 82,761 shares (out of 1,15,641 shares tendered) and 33,400 shares (out of 49,400 shares tendered) and therefore, their offers for sale during the RBB were *bonafide* and not connected to any fraudulent or manipulative scheme to make the Delisting Offer successful.

9.35 Owing to a lack of trading volume and to ensure that their offer prices were accepted, the *Noticees no. 9* and *10* tendered the ECE Shares at a price closer to the floor price of INR 202.56 per share in the Delisting Offer and the same was not done in an attempt to artificially depress the cut-off price. The offer prices of the *Noticees no. 9* and *10* were higher than their average acquisition cost of such shares.

9.36 The *Noticees no. 9* and *10* purchased 32,880 and 16,000 shares, respectively in September-October 2016. Further, the *Noticees no. 9* and *10* tendered 1,15,641 and 49,400 shares, respectively in December 2016. Thus, their contribution to the total quantities of shares offered during the delisting process was insignificant to make the Delisting Offer successful. The *Noticees no. 9* and *10* did not trade in the shares with the funds either received from the *Noticee no. 12* or any other entity. For instance, an amount of INR 50,00,000 was received by the *Noticee no. 12* from the *Noticee no. 16* only on October 04, 2016 whereas the *Noticee no. 9* (on September 29, 2016 and October 03, 2016) and the *Noticee no. 10* (on September 28, 2016) had already made payments to their stock broker i.e., PKC for purchase of ECE Shares before the said date when *Noticee no. 12* received funds from the *Noticee no. 16*. The SCN has failed to consider the aforesaid transactions between the *Noticees no. 9, 10* and the *Noticee no. 12* in totality and has erroneously alleged that the payments received from the *Noticee no. 12* were made out of funds received by it (*Noticee no. 12*) from other entities.

9.37 Merely because the *Noticees no. 9* and *10* had received certain payments from the *Noticee no. 12* after the Delisting Offer was announced, their purchase of ECE Shares during such period and subsequent sale during the Delisting Offer have been erroneously correlated to the payments received from the *Noticee no. 12* and in turn, to the alleged transfer of funds between the *Noticee no. 12* and other entities. The *Noticees no. 9* and *10* had participated in the Delisting Offer with the sole objective of divesting their holdings in ECE and thus had no knowledge of any financial transactions that may have taken place between the *Noticee no. 12* and other entities.

9.38 A substantial number of shares were already purchased by the *Noticee no. 11* prior to the Buyback Period and before the loan amounts were received from the *Noticees no. 14* and *15*. Further, the SCN fails to provide any evidence to prove that the *Noticee no. 11* traded in the shares of ECE only pursuant to and with the monies received from the *Noticees no. 14* and *15*. The SCN merely relied upon a statement from the AUM Capital Pvt. Ltd. to allege that the funds received from the *Noticees no. 14* and *15* were the same funds which were transferred to the AUM Capital Pvt. Ltd. for the purchase of ECE shares. The SCN also does not allege the

existence of any connection between the *Noticee no. 11* and ECE/its promoters prior to the commencement of the Buyback Period, although the *Noticee no. 11* had received such loans from the *Noticee no. 15* even prior to the Buyback Period.

9.39 Out of 1,03,100 ECE shares bought by the *Noticee no. 11*, around 25,380 shares were bought for the purpose of day-trading only and around 6,191 shares were sold after June 14, 2016, i.e., after the last alleged trade in the Buyback Offer as per the information provided in Annexure 7 to the SCN, therefore, the *Noticee no. 11* had effectively sold only 71,529 shares in the Buyback Offer. Further, ECE would have received around 3,65,751 shares (excluding 71,529 shares allegedly tendered by the *Noticee no. 11*) which are sufficient to make the Buyback Offer successful in terms of Buyback Regulations and therefore, aforesaid trades of the *Noticee no. 11* were irrelevant for the purpose of making the Buyback Offer successful.

9.40 The *Noticee no. 11* genuinely traded in ECE shares with a view to dilute its holdings in the *Company* and never intended to sell the shares under the Buyback Offer as it had provided clear and unambiguous directions to AUM Capital to sell the shares on market. However, it appears that the shares were inadvertently sold in the Buyback Offer on account of lack of liquidity in the market.

9.41 Due to lack of trading volume, the *Noticee no. 11* was unable to execute any sell orders beyond the share price of INR 170 as evident from trade/order logs of the *Noticee no. 11*. In several instances, the sell orders were placed at a price much higher than INR 170 per share, however, owing to a lack of trading volume, the sell orders were either not executed in full or were required to be modified when placed at a price higher than INR 170 per share.

9.42 Apart from the *Noticees no. 14* and *15*, the *Noticee no. 11* had received loans from around 9 other entities during the Investigation Period. As per the SCN while the *Noticee no. 11* had purchased ECE shares worth INR 1.78 Crore during the Investigation Period, the loans received by the *Noticee no. 11* from the *Noticees no. 14* and *15* amounted to INR 95,00,000. Therefore, the allegation that the *Noticees no. 14* and *15* had transferred funds to *Noticee no. 11* to purchase ECE shares, is not tenable.

9.43 The *Noticee no. 11* had repaid on June 16, 2016 a loan of INR 20,00,000 obtained from the *Noticee no. 14* on April 22, 2016, and the interest amount was paid on July 11, 2016. Similarly, the *Noticee no. 11* repaid on June 16, 2016 and June 30, 2016 a loan of INR 75,00,000 availed from the *Noticee no. 15* on May 24, 2016 and paid the interest on July 11, 2016. The above loan transactions were *bonafide* independent transactions and such funds were not utilized by the *Noticee no. 11* while trading in ECE shares.

9.44 The *Noticee no. 11* had traded in shares of several entities on NSE and BSE including ECE shares during the Investigation Period and the loans received from the *Noticees no. 14 and 15* were used for the purpose of trading in such securities and not ECE shares. For instance, the amount of INR 30,00,000 received from the *Noticee no. 15* on June 06, 2016 was in fact used

by the *Noticee no. 11* to make a payment of INR 29.73 Lakh to AUM Capital Pvt. Ltd. towards its net obligation for purchase of shares of another listed entity, i.e., SREI Infrastructure Finance Limited, and not ECE shares.

9.45 The *Noticee no. 11* had a bank account balance of INR 15,93,254.33 as on April 22, 2016 prior to the receipt of the sanctioned loan amount from the *Noticee no. 14*. Further, another entity had also transferred an amount of INR 15,00,000 to the *Noticee no. 11* on April 22, 2016. The payment to AUM Capital Pvt. Ltd. was also made on the same day. Hence, it cannot be said that the *Noticee no. 11* did not have sufficient balance in its bank account.

9.46 In fact, contrary to the allegations in SCN, the funds received from the *Noticee no. 14* on April 22, 2016 were utilized by the *Noticee no. 11* for making payment to AUM Capital on April 27, 2016 for the purchase of shares of other listed entities, i.e., Jindal Saw Limited and Prakash Industries Limited. Further, as reflected in the bank account statements of the *Noticee no. 11*, an amount of INR 47.44 Lakh was further paid by the *Noticee no. 11* to the AUM Capital on May 04, 2016 towards the balance amount of its pay-in obligations. The SCN fails to appreciate that during the Investigation Period, the *Noticee no. 11* received payments from various entities, and it is erroneously assumed that funds received from the *Noticees no. 14* and *15* were used for making payments to AUM Capital for purchase of ECE shares. Therefore, the allegation that the *Noticee no. 11* did not have sufficient balance and the funds received from the *Noticees no. 14* and *15* were used for purchasing ECE shares in order to make the Buyback Offer successful is unjustified.

9.47 The *Noticee no. 11* had provided a loan of INR 50,00,000 each to AUM Capital on two occasions, i.e. on June 16, 2016 and on September 16, 2016. The payment of INR 50,00,000 to the *Noticee no. 11* from AUM Capital on June 30, 2016 was repayment of the loan sanctioned by the *Noticee no. 11* to AUM Capital on June 16, 2016 along with interest, which was received by the *Noticee no. 11* on July 11, 2016 as reflected in its financial ledger and bank account statements and from confirmation received from AUM Capital stating that the payment of INR 50,00,000 on June 30, 2016 was pursuant to repayment of loan.

9.48 Further, the payment of INR 45,00,000 to *Noticee no. 15* on June 30, 2016 was pursuant to repayment of loan of INR 75,00,000 received from *Noticee no. 15* whereas INR 30,00,000 was already repaid by the *Noticee no. 11* on June 16, 2016 on which the interest was paid on July 11, 2016. Hence the allegation that the *Noticee no. 11* had transferred the funds received from AUM Capital, pursuant to the sale of ECE shares, to the *Noticees no. 14* and *15*, is without any merit.

9.49 On the basis of Annexure 4 (reply of AUM Capital dated March 20, 2018) and Annexure 5 (reply dated November 03, 2017 of the *Noticee no. 11*) to the SCN, the SCN wrongly assumes that the amount transferred to AUM Capital by the *Noticee no. 11* was towards payment for the purchase of the ECE shares while no such statement as alleged in the SCN has been made by either AUM Capital or the *Noticee no. 11*. It is stated that the SCN has wrongly relied on the

said Annexures to assume that all financial transactions executed by the *Noticee no. 11* with the AUM Capital during the Buyback Period were related to the trades in ECE shares. Therefore, the allegations that the *Noticee no. 11* traded in ECE shares with the help of funds received from the *Noticee nos. 14* and *15*, in order to make the Buyback Offer successful, cannot be sustained.

9.50 The *Noticee no. 12* frequently undertook financial transactions with the *Noticees no. 9* and *10* on a regular basis and also executed loan transactions with them which were structured in the form of current account whereby funds were frequently transferred between such entities as part of the its normal business activities. Such transfers were based on a financial arrangement between the three entities, pursuant to an overdraft facility received by the *Noticee no. 12* from ICICI Bank Limited. The aforesaid transactions were undertaken even prior to the board meeting of ECE on July 26, 2016, wherein the delisting proposal was approved.

9.51 The *Noticee no. 12* was not aware about the trades undertaken by the *Noticees no. 9* and *10* in the Delisting Offer and therefore, the SCN has incorrectly assumed that the payments made by the *Noticee no. 12* to the *Noticees no. 9* and *10* were for the purpose of funding such entities to purchase ECE shares, for the purpose of making the Delisting Offer successful. It is also pertinent to state that as per the SCN, both the *Noticees no. 9* and *10* had purchased a substantial amount of ECE shares even prior to the Investigation Period, however, no specific allegation has been made in the SCN that such trades were executed pursuant to the funds received from the *Noticee no. 12*.

9.52 The payments made by the *Noticee no. 12* to the *Noticees no. 9* and *10* were neither based on the loan amounts received from the *Noticees no. 3, 14, 15* and *16* nor for the purpose of purchasing ECE shares. The SCN incorrectly assumes that the funds received from the *Noticees no. 3, 14, 15* and *16* were transferred by the *Noticee no. 12* to the *Noticees no. 9* and *10* on the ground that the bank account of the *Noticee no. 12* did not have sufficient credit balance for making such transfers to them. The SCN has failed to appreciate that the *Noticee no. 12* had an existing overdraft facility from ICICI Bank Limited since August 2014 as a result of which, lack of sufficient funds in its bank account was completely irrelevant in the present matter. Further, the SCN failed to appreciate that the ledger account of the *Noticees no. 9* and *10* in the books of the *Noticee no. 12* was almost always credit positive, i.e. the *Noticee nos. 9* and *10* were the creditors in the books of the *Noticee no. 12* and not the other way round.

9.53 As per the SCN, both the *Noticees no. 9* and *10* had purchased a substantial amount of ECE shares even prior to the Investigation Period, however, no specific allegation has been made in the SCN that such trades were executed pursuant to the funds received from the *Noticee no. 12*.

9.54 As a trading entity, it was usual for the *Noticee no. 12* to receive loans in the ordinary course of its business activities from these entities and these entities had sanctioned certain short-term

loans to the *Noticee no. 12*, at a specified interest rate for a particular period which it had duly repaid along with interest, within the due date for repayment.

9.55 Only upon receipt of the SCN, the *Noticee no. 12* came to know that certain creditors of the *Noticee no. 12* were allegedly connected to ECE and that the *Noticees no. 9* and *10* had traded in ECE shares during the same time as the Delisting Offer was announced. It is relevant to state that the SCN does not rely upon any evidence, either direct or indirect, to show that the payments made to the *Noticees no. 9* and *10* were based on the funds received from such entities. The SCN has failed to appreciate that while the *Noticee no. 12* had already made payments to the *Noticee no. 10* on September 28, 2016 and to the *Noticees no. 9* on October 03, 2016, the loan amount of INR 50,00,000 obtained by it from the *Noticee no. 14* was received by the *Noticee no. 12* only on October 04, 2016. It is also pertinent to highlight that while paragraph 56 of the SCN shows the transfer of funds back to its creditors, it does not adequately reflect the payment of interest by the *Noticee no. 12* on such loans to such entities on subsequent dates.

9.56 The *Noticee no. 13* is a partnership firm and Mr. Mahendra Kumar Agarwala (*Noticee no. 8*) is one of the partners of the firm. It regularly undertakes financial transactions in the nature of loans and advances with various entities, as a result of which it frequently receives payments from such entities. Similar transactions were also undertaken during the Investigation Period.

9.57 The *Noticee no. 13* had received loans from the *Noticees no. 3* and *14* during the Investigation Period but the loan transactions with the *Noticee no. 3*, in particular, were undertaken on dates other than those mentioned in the SCN. For instance, the payments were also received on May 13, May 21 and August 08, 2016. It is also pertinent to state that information regarding such transactions was also provided to SEBI by the *Noticee no. 8* on behalf of the *Noticee no. 13* through email dated July 27, 2018. Except for such loan transactions, the *Noticee no. 13* had no other connection with the *Noticees no. 3* and *14*.

9.58 There is no concrete evidence to suggest that each and every payment received by the *Noticee no. 13* from the *Noticees no. 3* and *14* was used by the *Noticee no. 8* for the purpose of purchasing ECE shares. The allegation that the *Noticee no. 13* was connected to ECE on the basis that it received certain payments from the *Noticees no. 3* and *14* at the same time when certain capital withdrawals were made by the *Noticee no. 8* from the partnership firm, is completely false and baseless.

9.59 The *Noticee no. 13* also executed financial transactions with its partners, including with the *Noticee no. 8*, whereby funds were paid to/transferred from the *Noticee no. 13* for the purpose of capital introduction/withdrawal. It is submitted that such transfers were executed by the *Noticee no. 8* with the *Noticee no. 13* in his capacity of being a partner of the firm which were independent of any other transaction that the firm may execute with any other entity. In fact, such transactions were frequently undertaken by the *Noticee no. 8* with the *Noticee no. 13* during the Investigation Period even on dates other than those mentioned in the SCN. For instance,

the SCN has failed to appreciate that the *Noticee no. 13* had made a payment of INR 3,50,000 to the *Noticee no. 8* on May 16, 2016. Similar payment, of INR 3,00,000 and INR 3,50,000 were also made to the *Noticee no. 8* on August 09, 2016 and December 12, 2016.

9.60 As per the SCN, the *Noticee no. 8* had purchased ECE shares even prior to the Investigation Period, however, no specific allegation has been made in the SCN that such trades were also executed pursuant to the funds received by the *Noticee no. 8* from the *Noticee nos. 3* and *14* through the *Noticee no. 13*.

9.61 The *Noticee no. 13* also received several loans from the *Noticee no. 14* during the Investigation Period for its business purpose for which interest, at the prevailing market rates, was also charged by the *Noticee no. 14* with respect to such loans advanced. The loan amounts were subsequently repaid by the *Noticee no. 13* to the *Noticee no. 14* during and after the Investigation Period and the final settlement of the loan took place on March 31, 2020. Similarly, as per the SCN, an amount of INR 49,50,000 was allegedly transferred to the *Noticee no. 13* by the *Noticee no. 14* for funding the *Noticee no. 8* to purchase ECE share. However, pursuant to sale of such shares, the *Noticee no. 13* had paid an amount of INR 33.30 Lakh to the *Noticee no. 14*. The SCN is silent as to the difference in amounts received and paid by the *Noticee no. 13* from each of the abovementioned entities.

9.62 On June 15, 2016 and September 09, 2016, the *Noticee no. 13* had also received/made payments to entities other than the *Noticees no. 3* and *14*. However, the SCN fails to appreciate that monies received from such other entities could have also been transferred to the *Noticee no. 8*, but only the transactions undertaken by *Noticee no. 13* with the *Noticees no. 3* and *14* have been cherry picked to allege that the *Noticee no. 13* was part of an alleged fraudulent scheme. The abovementioned loans were received by the *Noticee no. 13*, in good faith, in the ordinary course of its business and except for such transactions, the *Noticee no. 13* had no relationship/connection with such entities. Therefore, merely because the *Noticee no. 13* had received loans from certain entities who are also *Noticees* in the present matter, it cannot be assumed that the funds received from such entities were part of a larger transaction undertaken in order to make the Buyback and Delisting offers successful.

9.63 There is no evidence to show that the *Noticee no. 13* had "induced" the *Noticee no. 8* to trade in ECE shares in order to make the Buyback Offer successful. Further, no evidence has been relied upon to show that the loan provided by the *Noticee no. 13* to the *Noticee no. 12* had the effect of inducing the *Noticees no. 9* and *10* which had no prior connection or relationship with the *Noticee no. 13*, to deal in ECE shares to make the Delisting Offer successful.

9.64 The *Noticee no. 14* used to make investments and execute financial transactions in the nature of loans and advances with various entities including the *Noticees no. 11-13*. On April 22, 2016, a loan of INR 20,00,000/- was provided by the *Noticee no. 14* to the *Noticee no. 11*. Subsequently, the *Noticee no. 11* repaid the principal amount of INR 20,00,000 to the *Noticee no. 14* on June

21, 2016 on which the interest was paid by the *Noticee no. 11* on July 12, 2016. The *Noticee no. 14* had provided several loans to its regular client, i.e. the *Noticee no. 11* even prior to the Investigation Period as well as after the closure of the Buyback Offer which was also duly repaid by *Noticee no. 11* along with interest by November 2016.

9.65 The *Noticee no. 14* had periodically sanctioned several loans to the *Noticee no. 13* during the Investigation Period for their business purposes and had charged interest from them with respect to such loans. The above mentioned loan amounts were subsequently repaid by the *Noticee no. 13* to the *Noticee no. 14* and the final settlement of the outstanding loan took place on March 31, 2020. The *Noticee no. 14* was neither aware of, nor had any knowledge of, any trade undertaken by the *Noticee no. 8* in ECE shares during the tenure of the loans granted by it to the *Noticee no. 13* until the receipt of the SCN. The *Noticee no. 14* was also not aware of the transfer of funds by the *Noticee no. 13* to the *Noticee no. 8* or the payments made by the *Noticee no. 8* to the AUM Capital Market Pvt. Ltd. It is submitted that except for the abovementioned loans, the *Noticee no. 14* had no other connection/relationship with the *Noticee no. 13* or any of its partners;

9.66 Merely because certain payments were made pursuant to the loan provided by *Noticee no. 14* to the *Noticee no. 13* on the same dates as certain financial transactions were also executed between the *Noticee no. 13* and the *Noticee no. 8*, it cannot be assumed that the payments made to the *Noticee no. 13* by the *Noticee no. 14* was in order to fund the *Noticee no. 8* to buy ECE shares. Further, the SCN fails to appreciate the disparity in the amount paid by the *Noticee no. 14* to the *Noticee no. 13* and the amount received by the *Noticee no. 14* from the *Noticee no. 13* "pursuant to sale of shares in the Delisting Offer", as alleged in the SCN. The payments reflected in paragraph 39 of the SCN merely reflect part payment of the outstanding loan amount that was provided to the *Noticee no. 13* that was finally settled in March 31, 2020.

9.67 As requested on September 26, 2016, the *Noticee no. 14* provided a loan of INR 42,00,000 to the *Noticee no. 12*, on September 28, 2016. The principal loan amount was repaid by the *Noticee no. 12* to the *Noticee no. 14*, along with interest amount of INR 1,07,704 (post TDS), on January 09, 2017.

9.68 The *Noticee no. 14* was nowhere connected with the Delisting Offer, nor did it have any transaction with the *Noticees no. 9* and *10* or knew the fact that they had allegedly received any funds from the *Noticee no. 12*, until the issuance of the SCN. In the Delisting Offer, the ECE shares were tendered by the *Noticees no. 9* and *10* and not by the *Noticee no. 14* or even the *Noticee no. 12*.

9.69 The *Noticee no. 15* is a registered NBFC whose primary business is to execute financial transactions in the nature of loans and advances with various entities including the *Noticees*. The *Noticee no. 15* had advanced loans to various entities, including the *Noticee no. 11*. Similar loans were undertaken both prior to the Investigation Period as well as post Investigation

Period. Such loans and advances were periodically undertaken in the ordinary course of business of the *Noticee no. 15*, and interest was also charged on such loans and advances. In this respect, except for the loans and advances sanctioned to such entities, the *Noticee no. 15* had no other connection/relationship with the above referred entities, nor was aware of any other transaction undertaken by such entities;

9.70 On May 24, 2016, a loan of INR 75,00,000 was sanctioned by the *Noticee no. 15* to the *Noticee no. 11* in three tranches viz., May 24, June 01 and June 16, 2016. Subsequently, the *Noticee no. 11* repaid the principal amount of INR 75,00,000 to the *Noticee no. 15* on June 16, 2016 and June 30, 2016 alongwith the interest amount on July 12, 2016. The *Noticee no. 15* had been providing such short-term loans to the *Noticee no. 11* even prior to the Investigation Period and also after the closure of the Buyback Period and such loans were duly repaid by the *Noticee no. 11*, along with interest and settled the same by October 2016. As requested by the *Noticee no. 12* on September 26, 2016, an amount of INR 29,00,000 was paid by the *Noticee no. 15* to the *Noticee no. 12* on September 29, 2016. The said amount was repaid by the *Noticee no. 12* to the *Noticee no. 15* on January 09, 2017 on which the interest amount was received by the *Noticee no. 15* on January 09, 2017.

9.71 In support of its claim that the payments made to the *Noticee no. 12* were pursuant to loans granted by the *Noticee no. 15*, it had already provided a copy of the loan voucher to SEBI along with its reply dated May 03, 2018. However, the same was not considered or taken into account by SEBI in the Notice. Although the SCN has extracted the repayment of the principal amount by the *Noticee no. 12* to the *Noticee no. 15* as on January 09, 2017, it does not take into account the amount of interest paid by the *Noticee no. 12* to the *Noticee no. 15* on January 10, 2017.

9.72 In the absence of any evidence to show that the *Noticee no. 15* had any knowledge of either the payments made by the *Noticee no. 12* to the *Noticees no. 9* and *10* or the trades undertaken by such entities in the Delisting Offer, the allegation that the *Noticee no. 15* had funded the *Noticee nos. 9* and *10* to purchase ECE shares and to make the Delisting Offer successful, pursuant to an alleged fraudulent scheme, is unjustified;

9.73 The *Noticee no. 16*'s involvement in the alleged fraudulent scheme has been presumed merely on the basis of its connection with the *Noticees no. 4* and *7*, who are also directors of the *Noticee no. 16*. However, the SCN has failed to rely upon any evidence or correspondence between the *Noticee no. 16* or the *Noticee nos. 4* and *7* with the *Noticee no. 12* or any other entity, which had purchased and tendered the shares of ECE in the Buyback Offer or Delisting Offer, so as to establish that the *Noticee no. 16* was aware of any alleged fraudulent scheme to make the Delisting Offer successful.

9.74 As a registered NBFC, the *Noticee no. 16* used to regularly provide loans to various entities other than the *Noticee no. 12*. As requested on September 26, 2016, the *Noticee no. 16* paid an amount of INR 50,00,000 to the *Noticee no. 12* on October 04, 2016. The said amount was repaid by

the *Noticee no. 12* to the *Noticee no. 16* along with interest on January 09, 2017. It is submitted that except for the abovementioned loan sanctioned to the *Noticee no. 12* on October 04, 2016, the *Noticee no. 16* had no other connection/transaction with the *Noticee no. 12*, and beyond such transaction, the *Noticee no. 16* had no knowledge of any transaction executed by the *Noticee no. 12* with any other entity. In support, a copy of the confirmation issued by the *Noticee no. 12* to the *Noticee no. 16* was provided to SEBI by the *Noticee no. 16* vide its email dated July 26, 2018 and the same was not considered.

9.75 Further, the SCN has failed to establish that the monies paid by the *Noticee no. 16* to the *Noticee no. 12* were transferred to the *Noticees no. 9* and *10* for the purpose of purchasing ECE shares. In this regard, it should be noted that the SCN has failed to appreciate that while the transactions between the *Noticee no. 12* and *Noticees no. 9* and *10*, (as referred to in paragraph 53 of the SCN), took place from September 28, 2016 to October 03, 2016 and the last payment by the *Noticee no. 9* to PKC Stock Broking Pvt. Ltd. was made on October 03, 2016, the payment of INR 50 Lakh by the *Noticee no. 16* to the *Noticee no. 12* was made after the said period, i.e. on October 04, 2016. Although the SCN has extracted the payment of the loan amount by the *Noticee no. 16* to the *Noticee no. 12* as on October 04, 2016, it does not take into account the fact that the said payment was made after the *Noticees no. 9* and *10* had already made the payments to their stock broker.

9.76 Further, the SCN has failed to appreciate that there were multiple transactions executed between the *Noticee no. 12* and the *Noticees no. 9/10*, which were independent of the loan transaction executed between the *Noticee no. 16* and *Noticee no. 12*. As illustrated in paragraphs 53 and 56 of the SCN the *Noticee no. 12* had paid around INR 1.5 Crore to the *Noticees no. 9* and *10* between September 28, 2016 and October 03, 2016, while the amount received by the *Noticee no. 12* from the *Noticees no. 9* and *10* on January 09, 2017 was around INR 3.35 Crore. Therefore, it can be presumed that the payments referred to between the *Noticee no. 12* and the *Noticees no. 9/10* were part of multiple separate transactions, which had no nexus with the loan sanctioned by the *Noticee no. 16* to the *Noticee no. 12* on October 04, 2016.

9.77 The *Noticee no. 16* was nowhere connected with the Delisting Offer, nor did it have any transaction with the *Noticees no. 9* and *10*. In the Delisting Offer, the ECE shares were tendered by the *Noticees no. 9* and *10* and not by the *Noticee no. 16* or even the *Noticee no. 12*.

III. The Noticees have not violated any provisions of the SEBI Act, PFUTP Regulations or Delisting Regulations

9.78 The allegations in the SCN have been made against the *Noticees* in complete disregard of the facts communicated to SEBI by them vide their respective earlier replies in this regard. Further, the allegation of fraud is a grave charge and a fraudulent act cannot be imputed merely based on surmises, probabilities, conjectures and refutable evidence. In this regard, some of the

Noticees have placed reliance on the following orders of the Hon'ble Supreme Court of India and the Hon'ble SAT:

(a) *KSL & Industries v. Chairman, SEBI*, (*Appeal No. 9 of 2003*, *decided on September 30, 2003*);

(b) *SEBI and Ors. v. Kanaiyalal Baldevbhai Patel and Ors., [(2017) 15 SCC 1]*;

(c) *Hansraj Gupta v. Dehra Dun Mussoorie Electric Tramway Ltd., (AIR 1940 PC 98)*; and

(d) *Union of India v. Chaturbhai M. Patel & Co., (AIR 1976 SC 712)*

9.79 The SCN does not provide any evidence to support the existence of any fraud allegedly committed by the *Noticees* in connection with the trades in ECE shares. Regulations 3(a), (b), (c) and (d) of the PFUTP Regulations, 2003 deal with commission of fraud in connection with dealing or issue of securities. In the absence of any concrete evidence supporting the finding that the financial transactions undertaken by the *Noticees* were pursuant to a manipulative and fraudulent scheme to make the Buyback Offer and Delisting Offer successful, the *Noticee*s cannot be held liable for fraud under regulation 3 of the PFUTP Regulations, 2003.

9.80 The *Noticees* have not induced any person to deal in ECE shares and the financial transactions executed by them were pursuant to *bona fide* business transactions independent of any trades in ECE shares. In this regard, the *Noticees* have relied upon the decision of Hon'ble SAT in the case of *Price Waterhouse & Co. and Ors. v. SEBI* (*Appeal No. 06 of 2018, decided on September 09, 2019*).

9.81 Further, no evidence has been relied upon by SEBI to show that the loan provided by the *Noticees* to other entities had the effect of inducing such entities who had no prior connection or relationship with the *Noticees*, to deal in ECE shares to make the Delisting Offer successful. Therefore, the *Noticees* cannot be held liable for violation of regulation 4 of the PFUTP Regulations, 2003.

9.82 Further, in respect of charges of synchronized trades and price manipulation against the *Noticee no. 8* and charge of synchronized trades against the *Noticee no. 11*, they have submitted that the identity of the counterparty was not known to the *Noticees no. 8* and *11* at the time of placing such sell orders on an anonymous trading platform through a registered stock broker, i.e. AUM Capital. The mere fact that certain trades were executed between the *Noticees no. 8* and *11* and an unrelated counterparty within a short time gap cannot lead to the conclusion that such trades were manipulative with an intent to create a false or misleading appearance of trading. Further, in the absence of any concrete evidence showing a meeting of minds between the *Noticees no. 8* and *11* and ECE or its promoter or promoter group entities, it cannot be assumed that the *Noticees no. 8* and *11* had entered into synchronized trades with ECE in order to create a false or misleading appearance of trading.

9.83 A specific charge for synchronized trading has not been made against the *Noticees no. 8* and *11* in the SCN. Mere synchronization is not illegal unless connivance is proved on part of the *Noticees no. 8* and *11* with the counter-party to their trades, or it is proved that the trades were

an outcome of a mischievous meeting of minds between the *Noticees no. 8* and *11* and ECE or its promoters or promoter group entities. In the absence of any such evidence, the charge of synchronized trading cannot sustain. The *Noticees no. 8* and *11* had merely instructed its stock broker to place the orders on June 24, 2016 when the markets opened. Hence, all the trades were entered at around 9:15 a.m. on June 24, 2016 and it was a mere coincidence that ECE had placed its buy orders at the same time. In the light of the above, it is submitted that the allegation that the *Noticees no. 8* and *11* have created a false or misleading appearance of trading by placing sell orders within a gap of less than 60 seconds of buy orders of ECE, does not survive

9.84 In support of the aforesaid submissions with respect to charges of synchronized trades and price manipulation the above noted Noticees y have relied on the following decisions of the Hon'ble SAT:

(a) *SPJ Stock Brokers Private Limited v. SEBI, (Appeal no. 52 of 2013, decided on September 04, 2013*);

(b) *HB Stockholdings Limited v. SEBI (Appeal no. 114 of 2012*, *decided on August 27, 2013*);

(c) *Subhkam Securities Private Limited v. SEBI, (Appeal no. 73 of 2012*, *decided on July 25, 2012*); and

(d) *Ketan Parekh v. SEBI (Appeal no. 2 of 2005*, *decided on July 14, 2006*).

CONSIDERATION

10) Before I proceed to deal with the replies/submissions of the *Noticees,* as have been summarized above under different heads/categories*,* I find it necessary to recollect here the charges that have been levelled against the *Noticees.* I note from the SCN that the *Company,* as per the corporate announcements made by it pertaining to its Buyback and Delisting Offers, came out with its Buyback and Delisting Offers to its shareholders during the year 2016. The *Company* conducted buyback of its 7 Lakh equity shares through the stock exchange mechanism from open market for a maximum price of INR 170 per share during the period of April 20, 2016 to July 13, 2016. The *Company* announced closure of its Buyback Offer on July 14, 2016 after acquiring 4,37,280 shares for a total amount of INR 7.42 Crore in the Buyback Offer during April 20, 2016 to June 24, 2016. The last trade in the Buyback process was executed on June 24, 2016.

11) Pursuant to the announcement made by the *Company* on July 26, 2016 that its Board had approved the delisting of the *Company* at the floor price of INR 202.56 per share, based on the cut-off date on July 19, 2016, an auction through RBB was held from December 26, 2016 to December 30, 2016. Pursuant to the success of the Delisting Offer, the *Company* had made a public announcement of the same, and declared INR 204 as the 'exit price' for delisting and subsequently, acquired 17,09,671 shares. In this regard, I can observe from the SCN that other

than the corporate announcements pertaining to Buyback and Delisting, no other corporate announcements made the *Company* on other matters during the Investigation Period had any major impact on price and volume of the scrip of the *Company*.

12) For the purposes of easy reference, the price and volume details (at NSE) before, after and during the Investigation Period as mentioned in the SCN, are reproduced herein below:

Table 1: Price- Volume Data (NSE)

Period	Dates		Opening Price (volume) on first day of the period (INR)	Closing price (volume) on last day of the period (INR)	Low price (volume) during the period (INR)	High Price (volume) during the period (INR)	Avg. no. of (shares) traded daily during the period.
Before Investigation	**(01/10/15-31/12/15)**	**Price**	132.85	147.45	127.00 (09 Nov 15)	151.45 (31 Dec 15)	3,194
		Vol	360	1,726	181 (21 Oct 15)	37,998 (10 Nov 15)	
During Investigation	**(01/01/16-30/12/16)**	**Price**	145.05	218.75	125.05 (19 Jan 16)	376.90 (12 Aug 16)	12,828
		Vol	1,722	10,218	12 (22 Feb 16)	414,298 (25 Jan 16)	
After investigation	**(02/01/17 - 31/03/17)**	**Price**	224.00	231.45	206.30 (24 Mar 17)	284.00 (14 Feb 17)	1,772
		Vol	1,924	778	23(16 Mar 17)	8,367 (14 Feb 17)	

13) It has been alleged in the SCN that the *Noticees* have violated the provisions of Section 12A (a), (b) and (c) of the SEBI Act, 1992, regulations 3(a), (b), (c), (d) and 4(1), 4(2) (a), (d) and (e) of the PFUTP Regulations, 2003 and regulation 4(5) (a), (b) and (c) of the Delisting Regulations, 2009. In order to appreciate the charges levelled against the *Noticees*, it would be necessary at this point to refer to the above-stated relevant provisions of the SEBI Act, 1992, the PFUTP Regulations, 2003 and the Delisting Regulations, 2009 which have a bearing on the allegations made against the *Noticees*. The relevant provisions of the SEBI Act, 1992, other regulations as cited above, which are applicable to the present proceedings and as they were in force at the time of the alleged violations, are reproduced hereunder for ready reference:

THE SEBI ACT, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

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;

THE (PFUTP) REGULATIONS, 2003

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: —

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

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

(e) any act or omission amounting to manipulation of the price of a security;

THE DELISTING REGULATIONS, 2009

Delisting not permissible in certain circumstances and conditions for delisting

4. *(5) No acquirer or promoter or promoter group or their related entities shall –*

(a) employ any device, scheme or artifice to defraud any shareholder or other person; or

(b) engage in any transaction or practice that operates as a fraud or deceit upon any shareholder or other person; or

(c) engage in any act or practice that is fraudulent, deceptive or manipulative –in connection with any delisting sought or permitted or exit opportunity given or other acquisition of shares made under these regulations.

14) I have carefully considered the allegations against the *Noticees*, their replies and the materials available on record. It is a matter of record that proceedings initiated vide the SCN under adjudication have been settled *qua* some of the *Noticees* herein, viz., the *Noticees no. 1, 2, 4, 5, 6* and *7* vide settlement proceedings. I also note from the records that the roles of some these *Noticees,* as far as the allegation in the SCN is concerned, are intertwined with each other through different points of connections and a web of connected funds transactions. Therefore even though proceedings *qua* some of the *Noticees* have been settled under the provisions of the Settlement Regulations, the role of all the *Noticees* together require to be discussed and evaluated comprehensively in order to have a holistic view of the matter. I note that some of the *Noticees* have filed very voluminous and verbose replies in the matter. Therefore, while dealing with replies/submissions of the *Noticees* my utmost endeavor would be not to lose focus of the issues under consideration while giving due weightage to those voluminous and verbose replies filed by some of these *Noticees.* Towards that endeavor and in order to determine as to whether the *Noticees* have actually contravened the abovementioned provisions of the SEBI Act, the PFUTP Regulations, 2003 and the Delisting Regulations, 2009, the allegation against all the *Noticees* needs to be examined, issue wise sequentially as delineated below:

15) **Issues for consideration: -**

I. Whether the *Noticees* are connected with each other?

II. Whether the promoter of the *Company* i.e., the *Noticee no. 3* along with related entities i.e., the *Noticees no. 8-16* participated in a manipulative and fraudulent scheme at various stages, to create a misleading appearance of trading in the scrip of the *Company* so as to make its Buyback and Delisting Offer successful?

III. Whether the *Noticees no. 3* and *8-16* have violated relevant provisions of the SEBI Act, 1992, the PFUTP Regulations 2003 and the Delisting Regulations, 2009?

I. Whether the Noticees are connected with each other?

16) The SCN has alleged that the *Company* and the *Noticee*s including the promoters of the *Company* were connected with each other by virtue of common directors, fund transactions etc. The basis of allegation of connection amongst the *Noticees* are demonstrated herein below in a tabular format for better understanding:

Table-2: Connections between the *Noticees* and the *Company*

Sr No.	Noticee No.	Noticee Name	Connection
1	Noticee no. 1	Prakash Kumar Mohta	Promoter and Director of ECE Industries Ltd. Fund transaction with Mahendra Kumar Agarwala (Noticee no. 8)
2	Noticee no. 2	Prakash Kumar Mohta HUF	Prakash Kumar Mohta is Karta. (Noticee no. 1)
3	Noticee no. 3	Bhiragacha Finance Company Pvt. Ltd.	- Promoter of ECE Industries Ltd. - Prakash Kumar Mohta (Noticee no. 1) and ***Moulishree Gani** (Noticee no. 6) are its directors and collectively hold 99.75%
4	Noticee no. 4	Maitreyi Kandoi	- Promoter of ECE Industries Ltd. - Director of Vindya Agencies Pvt. Ltd. (Noticee no. 16) - Daughter of Prakash Kumar Mohta (Noticee no. 1)
5	Noticee no. 5	Pratibha Khaitan	- Promoter of ECE Industries Ltd. - Director of Bluebird Mercantile Pvt. Ltd (Noticee no. 15) - Daughter of Prakash Kumar Mohta. (Noticee no. 1)
6	Noticee no. 6	Moulishree Gani	- Promoter of ECE Industries Ltd. - Director of Bhiragacha Finance Company Private Ltd (Noticee no. 3) - Daughter of Prakash Kumar Mohta. (Noticee no. 1)
7	Noticee no. 7	Jayantika Jatia	- Promoter of ECE Industries Ltd. - Director of Vindya Agencies Pvt. Ltd. (Noticee no. 16) and Universal Prime Aluminium Ltd. (Noticee no. 14) - Daughter of Prakash Kumar Mohta (Noticee no. 1)
8	Noticee no. 8	Mahendra Kumar Agarwala	- Director of Jayantika Vincom Pvt Ltd.

			- Director of Jayantika Vincom. Basant Kumar Daga, is director of Bluebird Mercantile Pvt. Ltd. (Noticee no. 15) in which Sakate Khaitan (director of ECE industries) is also a director
9	Noticee no. 9	Himatsingka Chemicals Pvt Ltd	- Prakash Chandra Himatsingka is common director in Himatsingka Chemicals Pvt Ltd (Noticee no. 9), Abhishek Chemicals Pvt Ltd (Noticee no. 10) and Himatsingka Dealers Pvt Ltd. - Abhishek Chemicals Pvt Ltd. (Noticee no. 10) and Himatsingka Chemicals Pvt. Ltd. (Noticee no. 9) received funds from PH Trading Ltd. (Noticee no. 12) which received funds on same day from companies related to Prakash Kumar Mohta (Noticee no. 1)
10	Noticee no. 10	Abhishek Chemicals Pvt Ltd	
11	Noticee no. 11	Vijaypath Management Pvt Ltd	- Received funds from Bluebird Mercantile (Noticee no. 15) for trading in ECE industries in **#June** 2016. - Bluebird Mercantile (Noticee no. 15) share common director (Sakate Khaitan) with ECE industries Ltd.
12	Noticee no. 12	PH Trading Ltd	- Fund transactions with Bluebird Mercantile Pvt Ltd (Noticee no. 15), Universal Prime Aluminium Ltd (Noticee no. 14), Bhiragacha Finance Pvt Ltd (Noticee no. 3) and Vindya Agencies Pvt. Ltd. (Noticee no. 16) - Share common director (Prakash Chandra Himatsingka) with Himatsingka Chemicals Pvt Ltd (Noticee no. 9) and Abhishek Chemicals Ltd. (Noticee no. 10)
13	Noticee no. 13	Agarwal Trading Co.	- Fund transactions with Bhiragacha Finance Company Private Ltd. (Noticee no. 3), Mahendra Kumar Agarwala (Noticee no. 8) and Universal Prime Aluminium Ltd. (Noticee no. 14) - Mahendra Kumar Agarwala(Noticee no. 8) is partner in Agarwal Trading Co. (Noticee no. 13)
14	Noticee no. 14	Universal Prime Aluminium Ltd.	Prakash Kumar Mohta (Noticee no. 1) is its promoter and director. Basant Kumar Daga is its director.
15	Noticee no. 15	Bluebird Mercantile Pvt. Ltd.	Sakate Khaitan is common director with ECE Industries Ltd.
16	Noticee no. 16	Vindya Agencies Pvt. Ltd.	Jayantika Jatia (Noticee no. 7) is common director with Universal Prime Aluminium Ltd. (Noticee no. 14)
17		Diplomat Limited	

18		Jayantika Vincom Private Limited	Share common phone number (9831778770) with promoter Prakash Kumar Mohota. (Noticee no. 1) Prakash Kumar Mohota (Noticee no. 1) was director of Diplomat Ltd during 23 June 2008 to 27 Jan 2009
19		Mudrika Goods Private Limited	

*****Inadvertently mentioned in the SCN that Jayantika Jatia (the *Noticee no. 7*) is the Director of the *Noticee no. 3*.
Inadvertently mentioned as Jan 2016 in the SCN

17) I note from the replies that the *Noticees* have refuted the allegation of connections amongst themselves. However, as is evident from the Table-2 above and the material on record before me, the *Noticees* are connected with each other on the basis of fund transfers, common directors, immediate family members, common email address etc. For example, -

(a) The *Noticee no. 1* is promoter of the *Company* who is also Director of the *Noticees no. 3* and *14* and has fund transactions with the *Noticee no. 8*.

(b) As regards the transfer of funds between the *Noticees no. 3* and *14* and the *Noticee no. 13,* the *Noticee no. 1* has filed responses (vide email dated July 26, 2018) on behalf of the *Noticees no. 3* and *14* and the *Noticee no. 8* has filed response (vide email dated July 27, 2018) on behalf of the *Noticee no. 13* in this regard.

(c) The *Noticee no. 1* is father of the *Noticees no. 5* and *7* and the *Noticee no. 7* is common Director of the *Noticee no. 14* and *16*.

(d) The *Noticee no. 5* (daughter of the *Noticee no. 1)* is one of the promoters of the *Company* and also a Director of *Noticee no. 15*.

(e) The *Noticees no. 15, 16 and 1* (on behalf of the *Noticee no. 14*) have replied to SEBI queries through a common email ID - mudrikagoods@gmail.com and the said fact have not been disputed by any of the aforesaid *Noticees*.

18) Before I dwell upon the alleged connections amongst the *Noticees,* I would like to deal with one of the submissions of the *Noticee no. 3* regarding its directors during the Investigation period. I note from the Annual Returns filed by the *Noticee no. 3* for Financial Years ("FY") 2015-16 and 2016-17(Annexure 3.13 to the SCN) that the *Noticees no. 1* and *6* were the directors of the *Noticee no. 3* for the period from April 1, 2015 to March 31, 2017. The fact that the *Noticee no. 6* is director of the *Noticee no. 3* (and not the *Noticee no. 7*) is also evident from Annexures 3.11 and 3.12 to the SCN as reflected in Table-2 above. Further, from the shareholding pattern of the *Noticee no. 3* as provided by it, I note that the *Noticee no. 1* (karta of the *Noticee no. 2*) and the *Noticee no. 2* together hold 99.76% shareholding in the *Noticee no. 3*. This fact is also recorded in paragraph 41 of the SCN and the same has not been disputed by the *Noticees no. 1* to *3*. Also,

as per the aforesaid Annual Returns of the *Noticee no. 3*, the *Noticee no. 1* along with the *Noticee no. 2* was holding 99.75% shareholding and the *Noticee no. 6* did not have any shareholding in the *Noticee no. 3* during Investigation Period. I therefore, agree with the submission of the *Noticee no. 3* that the *Noticees no. 1* and *6* were the directors of the *Noticee no. 3* and not the *Noticee no. 7* during the Investigation period. However, the said fact does not have any bearing on the undisputed fact that the *Noticee no. 1* along with the *Noticee no. 6* was holding 99.76% shareholding in the *Noticee no. 3*.

19) From the Table-2 above, I note that the *Noticee no. 8* has fund transactions with the *Noticee no. 1* (Annexure 3.8 to the SCN) and is also admittedly a Non-Executive Director of Jayantika Vincom Private Ltd. while Jayantika Vincom Private Limited shares common phone number with the *Noticee no. 1*. I note from the SCN that since there is no trade/fund transfer alleged to have been done either by Jayantika Vincom or Mr. Sakate Khaitan or Mr. Basant Kumar Daga and therefore no liability has been imputed against them either with respect to the trades undertaken by the *Noticee no. 8* in ECE shares or the alleged "transfer of funds" to the *Noticee no. 8* in the SCN. In any case, the charges are levelled against the *Noticee no. 8* on the basis of its trades and financial transactions entered into with other *Noticees* including the promoter and related entities and therefore, for carrying out a critical analysis of the trades/financial transactions of the *Noticee no. 8* it is immaterial that no liability has been imputed against Jayantika Vincom or Mr. Sakate Khaitan or Mr. Basant Kumar Daga in this regard, hence, Noticee No.8 cannot have a case to claim of parity with the above noted entities to suggest that the allegation against him should also be dropped. Similarly, the submission of the *Noticee no. 15* that the SCN does not specifically impute any liability on part of the *Noticee no. 5* with respect to her role as a Director of the *Noticee no. 15* in the alleged financial transactions, is also of no aid to the *Noticee no. 15* to escape from the liabilities if any, that may be fastened to it for its acknowledged and undisputed financial transactions with other Noticees which have been imputed in the SCN . The contention of the *Noticees* that some other similarly placed entities have not been proceeded against and unless those other entities are proceeded against, the *Noticees,* who are similarly placed*,* cannot be proceeded against, is a self-serving argument that does not serve any purpose. It is a common knowledge that in quasi-judicial proceedings, the adjudicator is bound within the confines of the show cause notice placed before him. In the instant case, after examining the role of the certain entities, if SEBI has found that these Noticees are not worthy of being proceeded against, the same logic cannot be extended to the *Noticees* herein who have been proceeded against based on *prima facie* grounds and tangible supporting materials . In this regard, I choose to rely upon the findings of the Hon'ble SAT in the matter of *Systematix Shares & Stocks India Limited v. SEBI (2012),* wherein the Hon'ble Tribunal, *inter alia,* had the occasion to deal with a similar argument of the appellant therein contending that the Board should have proceeded

against all wrong doers and the action against the appellant and a few entities alone was discriminatory. In the said case, the Hon'ble SAT had held that *"We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful."* In the instant case as well, the Board after examining and considering the role of each of the entities, including the *Noticees* herein, their trades during the relevant period, have decided to initiate proceedings against some of the entities for reasons dealt with in details in the SCN hence these entities who have been served upon a SCN cannot demand that proceedings should also be initiated against some other entities even though there is no *prima facie* sufficient evidence against them nor the SCN has made out any case against them. The contention of the *Noticees* is bereft of the merit as none of them has been successful in showing as to how are they exactly placed similar and identical to those entities, against whom no action has been proceeded with. Be that as it may, the Board has set its criteria and exercised *intelligible differentia* while selecting cases for action and more so for the instant proceedings, and the *Noticees* herein cannot plead innocence by basing their arguments on such extraneous reasons. In this respect, I also find it appropriate to observe that though the *Noticees* have claimed parity with other entities who have not been made *Noticees* in the instant proceedings, these *Noticees* have not brought out any specific instance or the facts of any specific entity to my attention to suggest that the said instance or entity is identically or similarly placed with the Noticee but has been erroneously left out of this proceeding . Considering the foregoing, I reject this contention of the *Noticees in limine* and do not find it necessary to further deal with such a frivolous contention.

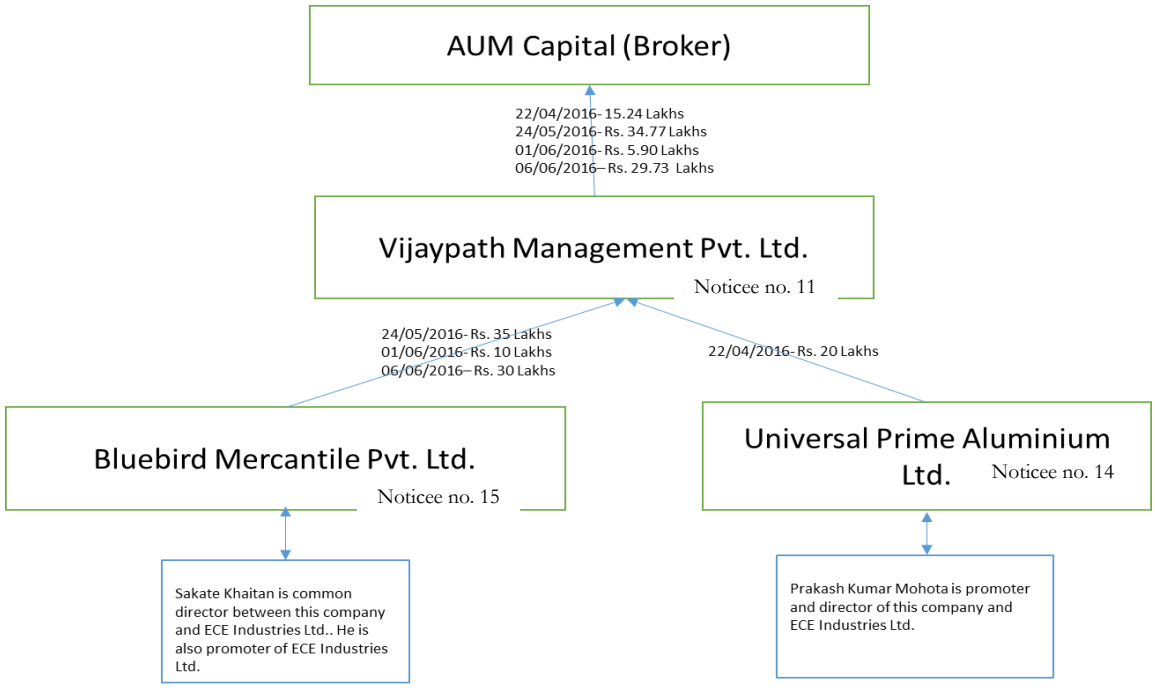
20) I find the *Noticee no. 11* has submitted that there is no reference to any transaction between the *Noticee no. 11* and the *Noticee no. 15* in June 2016 as alleged in Annexure 3.1 of the SCN and therefore, the allegation that the *Noticee no. 11* is connected to ECE, based on Annexure 3.1 to the SCN, is wholly unjustified and incorrect. In this regard, I note that though Annexure 3.1 to the SCN does not refer any transactions between the *Noticee no. 11* and the *Noticee no. 15* in June 2016, the reply of the *Noticee no. 11* dated September 14, 2020 itself states that the *Noticee no. 11* had financial transactions with the *Noticee no. 15* in June 2016. The aforesaid facts are also supported by the emails of the *Noticee no. 11* which are enclosed as Annexure 6 to the SCN. So, if there have actually been any transactions between *Noticee no. 11* and *Noticee no. 15* in June 2016, those transactions remain immutable and cannot be denied no matter they are mentioned in Annexure 3.1 or not. Therefore, having known that there were transactions between these two *Noticees,* I have to reject the aforesaid contentions of the *Noticee no. 15* on this point. Having said that, the pattern of fund transaction noticed amongst many of the *Noticees* clearly delineates connection amongst the said *Noticees*. In fact, it is not only their inter se transactions per se, but also the timing thereof as have been extensively illustrated in the SCN which indicate the role of each of these *Noticees* to

achieve the specific objective of buyback & delisting of shares in a fraudulent manner as alleged in the SCN. The alacrity with which money received from one set of *Noticees* has been transferred to the dealing stock brokers by the second set of *Noticees ,* whether it was for the buy transactions or for the sale transactions, is worth noting in the SCN. I can observe that in their defense, all such *Noticees* that were involved in funds transactions have merely stated that these transactions were part of their loan transactions or NBFC activities or their individual transactions independent of involvement of other *Noticees* in the scheme as alleged against them in the SCN. Thus, I note that the *Noticees* have not disputed the transactions amongst them to begin with, but have presented their respective justifications in a manner to color those transactions as loan transactions. Some of them have also attempted to justify the transactions by stating that such transactions were executed even before the Buyback or Delisting exercises happened and therefore, it would not be proper to allege and hold them guilty merely on the ground of such fund transactions. Having considered the same, in my view the explanations offered by the *Noticees* to dispute their alleged connections sought to be established in the SCN through their funds transactions would have deserved a benefit of doubt, had such a claim was backed by relevant documentation to justify their claim that all such transactions that have been noted in the SCN were actually commercial in nature. However what have been presented as supporting evidence are only self-generated manual journal entries in the books of the respective so called borrower/lender. I find that no document worth any credence has been submitted by the concerned *Noticees.* In the absence of any documentary proof, the claim of these *Noticees* with regard to fund transaction is at best can be held to be a bald and vague assertions not backed by any verifiable supporting evidence hence is liable to be rejected. Considering the foregoing, I do not have any hesitation in dismissing the objections raised by the *Noticees* with regard to their inter se series of fund transactions being considered as one of the basis factors that strongly indicate connection amongst such *Noticees.* I therefore uphold the allegation of connections amongst the *Noticees* as made in the SCN.

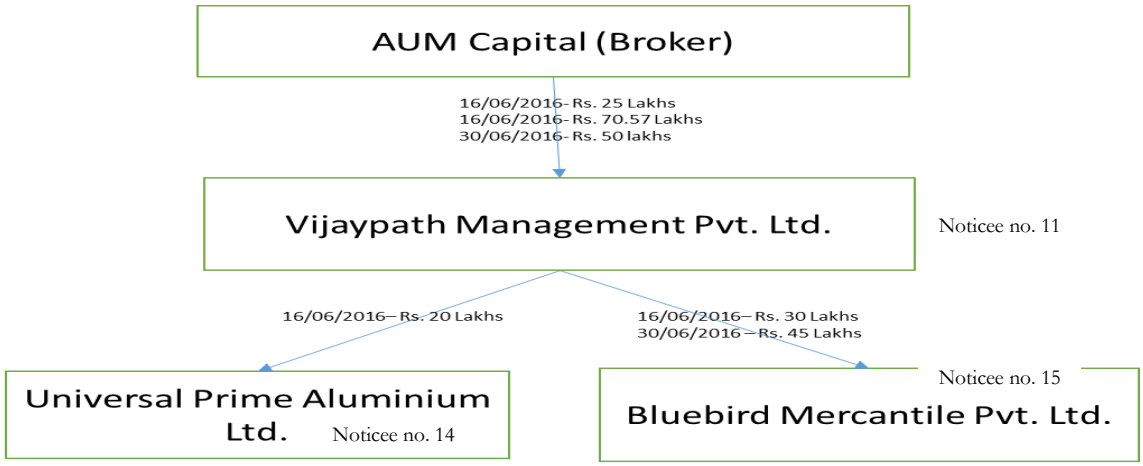
II. Whether the promoter of the *Company* i.e., *Noticee no. 3* along with related entities i.e., *Noticee no. 8-16* participated in a manipulative and fraudulent scheme at various stages, to create misleading appearance of trading in the scrip of the *Company* to make its Buyback and Delisting Offer successful?

21) I note from the SCN that the *Noticee no. 11* was not holding any shares of the *Company* before Investigation Period and has acquired 1,03,100 shares at an average acquisition cost of INR 173.52 per share during the period January 25, 2016 to June 13, 2016(approximately a period of four and half months) through its broker AUM Capital Pvt. Ltd. for a purchase value of INR 178.89 Lakh and sold those 1,03,100 shares in the market including under the Buyback offer of ECE conducted through stock exchange route for a total consideration of INR 1.81 Crore during the Investigation Period. I observe that on multiple occasions, the payments

made by the *Noticee no. 11* to its broker for purchase of shares in ECE were made out of the funds received from the *Noticees no. 14* and *15*, in the following pattern:



22) From the above pictorial diagram, I note that the *Noticee no. 11* received funds to the tune of INR 75 Lakh and INR 20 Lakh from the *Noticee no. 15* and the *Noticee no. 14,* respectively between the period April 22, 2016 to June 6, 2016, which were immediately transferred to the trading member viz, AUM Capital Pvt. Ltd during the said period. Similarly, pursuant to sale of shares of ECE as mentioned above, the *Noticee no. 11* received funds from its broker AUM Capital Pvt. Ltd and on the same day the said funds were transferred to the *Noticees no. 14* and *15* from which it had received substantial amounts of funds for purchase of those shares. The post-sale fund flow is depicted in the following diagram:



23) In this regard, I note that the *Noticee no. 11* has submitted that aforesaid fund transfers pertained to its loan transactions with AUM Capital Pvt. Ltd., the *Noticees no. 14* and *15* and they have been subsequently repaid the loans obtained from them by it alongwith interest. From a perusal of the documents and details submitted by the *Noticee no. 11* to support its aforesaid contention, I note that the same are general in nature and indicate only receipts and payment of funds between it and the above entities. Despite being involved in such high value transactions which are purportedly loans obtained by it from the aforestated three corporate entities, the *Noticee no. 11* has not furnished any loan agreement or any third-party document containing terms & conditions etc. evidencing grant of such loan as claimed, nor even the *Noticee no. 11* has explained with any cogent reasoning the circumstances that required such transactions in the form of transfer of funds and the rational for the timing those transactions during the above noted period. In the absence of the same, the *Noticee*'s claim that amount of such loans received from the above noted entities was repaid with interest by indicating some figures from its accounts, without being able to substantiate those loans in the first place with any documentary evidence, would not be sufficient to grant exoneration on merit from the charges made in the SCN. The *Noticee no. 11* further contends that the allegation is not supported by sufficient evidence that the same money which was received from the above noted entities were used for transacting in securities of the *Company* and that the volume of shares transacted vis-a-vis funds received by it are not matching. I do not find merit in the said submission. The SCN proceeds on the charge that the *Noticee no.11* was funded by promoter related entities and funds received were used for transacting shares of the *Company*. There is no dispute that funds were received by the *Noticee no. 11* and there is also no dispute that after receipt the funds, it was transferred to the account of the broker to meet the paying obligation. The *Noticee's* expectation that there should be a one-to-one matching between every tranche of funds received and every tranche of payment made to the broker is a farfetched demand when it is visibly clear that the funds received from promoter related entities and funds paid to the broker against purchase of ECE shares, all happening during the same period. It is the onus of the *Noticee no. 11* to show successfully with supporting evidence that the funds received from the two promoter related entities were not used for transacting in securities of the *Company* and were in fact utilized towards some other specific purpose other than the transacting in securities in the absence of which, considering the fungible character of money the claim of the *Noticee no. 11* will have no merit worth consideration and the allegations made in the SCN being based on strong evidence will sustain. As regard the claim of having retuned the funds so received along with interest, I find that though the vouchers produced by the *Noticee* which are primarily self-made documents, mention payment of interest but such claims have not been supported by any basic third-party documents like bank statement. For example, I note that the *Noticee no.*

11 has claimed to have paid the interest to the entities on July 11, 2016 but has failed to furnish any bank statement in support of its claim in this regard or in the form of any declaration so made in its Income Tax Return viz; TDS or Profit & Loss Account etc. so as to establish its claim payment of interest to those above noted three entities.

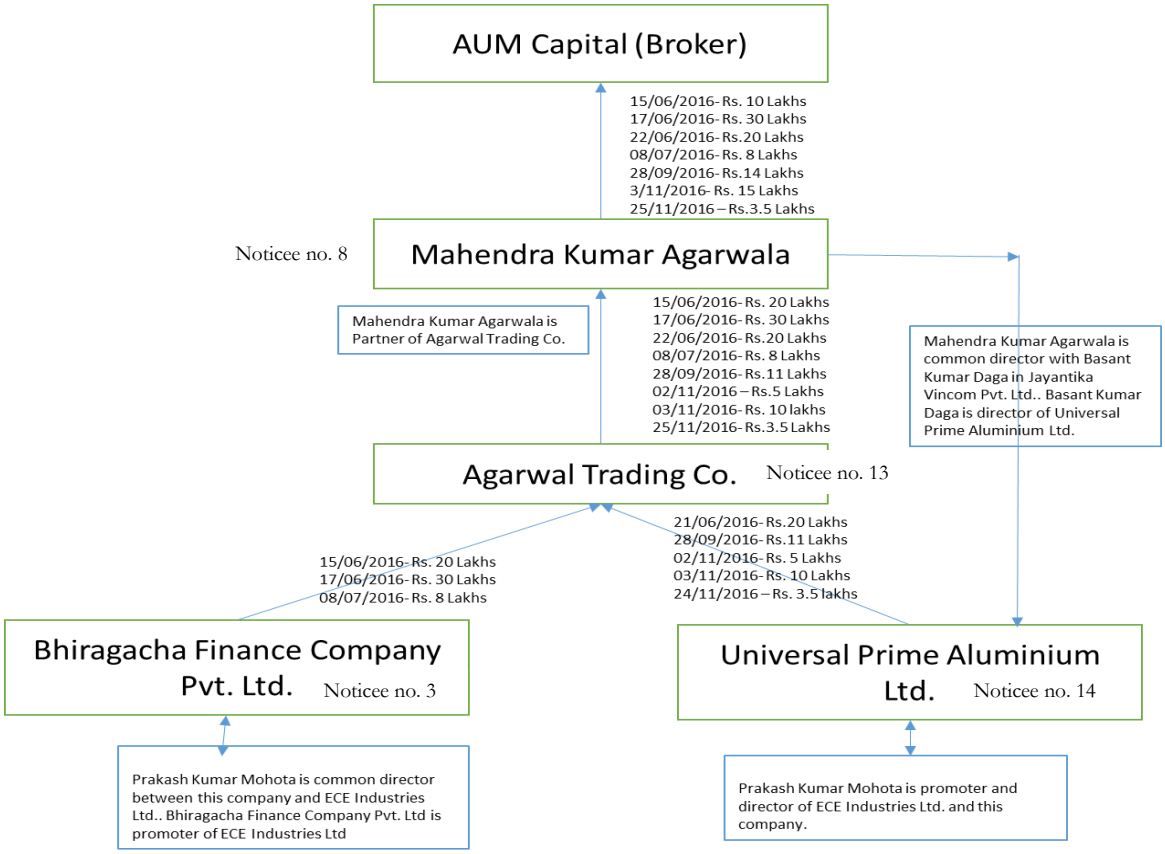
24) As discussed above that the *Noticee no. 11* has not been able to put forth any proof in support of its claim that the funds received from the *Noticees no. 14* and *15* have been used for the purchase of shares of listed entities or for purposes other than purchase of shares of the *Company*. I further note from Annexure 4 (reply of AUM Capital dated March 20, 2018) and Annexure 5 (reply dated November 03, 2017 of the *Noticee no. 11*) to the SCN, that amounts transferred to AUM Capital Pvt. Ltd. by the *Noticee no. 11* was actually towards payment for the purchase of the ECE shares. Therefore, the contentions of the *Noticee no. 11* made in this regard trying to dispute the aforesaid fact are rejected. From the perusal of bank account statements provided by the *Noticee no. 11,* I note that but for the funds so received from the two promoter related entities (the *Noticee no. 14* and the *Noticee no. 15*) the bank account of the *Noticee no. 11* did not have sufficient balance to make payment to AUM Capital Pvt. Ltd. on the aforementioned dates on which it has made those payments. Under the circumstances, in the absence of any such document produced by the *Noticee no. 11* to prove that those transactions with AUM Capital and the *Noticee no. 14* and *15* were loan transactions and considering the manner in which the funds were transferred to the *Noticee no.11* by the above stated connected entities and thereafter returned by the *Noticee no. 11* to the two promoter related entities immediately after receipt of sale consideration of ECE shares , the submissions made by the *Noticee no. 11* are not at all tenable and hence are rejected.

25) The fact that a substantial number of shares were already purchased by the *Noticee no. 11* prior to the Buyback Offer period does not have any bearing on the charge against the *Noticee no. 11*. I note from Annexure 7 to the SCN that *Noticee no. 11* had sold 90,969 shares to the *Company* during the Buyback period through the stock exchange in 46 trades between April 20, 2016 and June 14, 2016. In 29 of the said 46 trades, sell orders were placed by the *Noticee no. 11* within less than 60 seconds from the time of placement of the corresponding buy orders by ECE and at the same price being offered by ECE. Further, as claimed by the *Noticee no. 11* around 25,380 shares (out of 90,969 shares tendered in the Buyback Offer) were bought for the purpose of day-trading only. In this regard, I note from Annexure 7 to the SCN that in this case, the ultimate purchaser of 90,969 shares from the *Noticee no.11* was the *Company* itself hence, even though 25,380 shares were bought by the *Noticee no.11* for the purpose of day-trading, they were subsequently sold by the *Noticee no. 11* and the ultimate purchaser of these shares was the *Company*. In fact, from the submissions of the *Noticee no. 11*, one can infer that

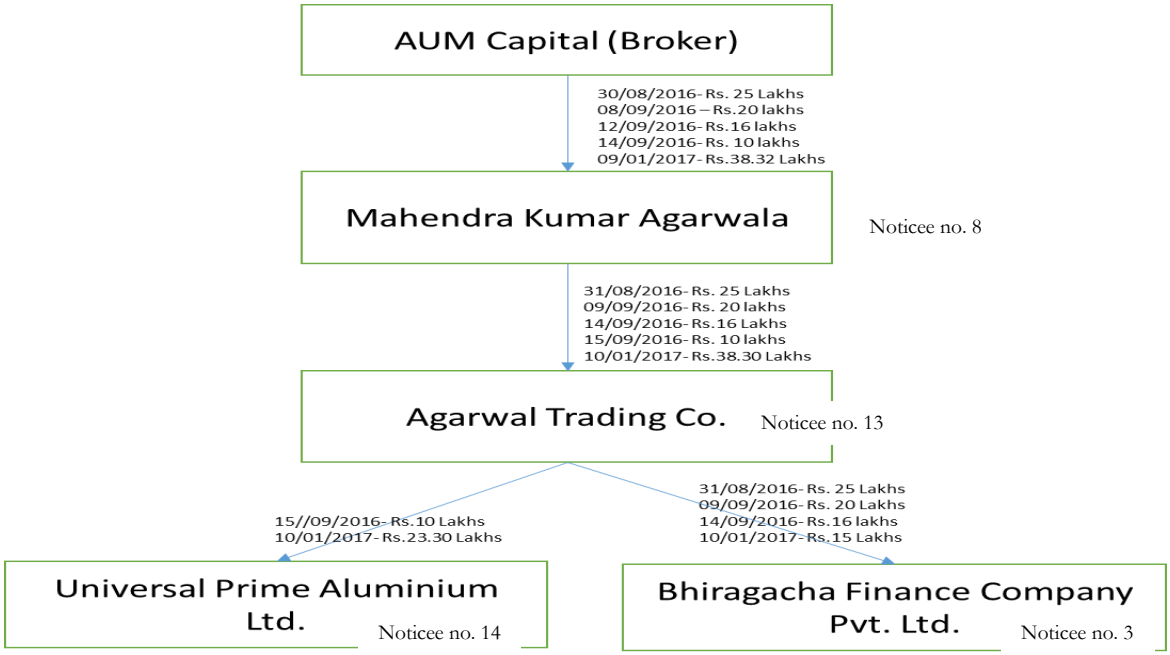
the *Noticee no. 11* bought these shares during the period April 20, 2016 to May 12, 2016 in order to sell them during the Buyback Offer of the *Company* so as to make the said Buyback Offer successful, which would imply that the *Noticee no. 11* even went to the extent of buying these shares for tendering them during the Buyback Offer. It is pertinent to note that on the one hand the *Noticee no. 11* claims that due to lack of trading volume, the *Noticee no. 11* was unable to execute any sell orders beyond the share price of INR 170 while on the other hand it was buying these shares in large quantities from the market during Buyback Offer, despite acknowledging that it would be difficult to sell the shares of the *Company* due to illiquidity of the said stock on the ground that these shares were purchased by way of its day trading activities. However predictably enough the *Noticee no. 11* off-loaded these shares again back on the trading floor to the *Company* thereby contributing its part to ensure that the *Company*'s Buyback program meets success. This shows not only contradictions in the submissions of the *Noticee no. 11* but also further brings out its active role in the Buyback Offer of ECE.

26) Besides the aforesaid, it is also noted that the last trade under the Buyback Offer took place on June 24, 2016 and not on June 14, 2016 as submitted by the *Noticee no. 11*. Therefore, around 6,191 shares sold on June 15, 2016 by the *Noticee no. 11* would also qualify as shares tendered in Buyback Offer.

27) I note from the SCN that *Noticee no. 8* was holding only 704 shares in ECE at the beginning of the year 2016 and acquired 47,644 shares at an average acquisition cost of INR 180.77 per share for a purchase value of INR 86.12 Lakh through AUM Capital Pvt. Ltd. during the period May 27, 2016 to June 24, 2016. The said purchase of shares in ECE by the *Noticee no. 8* was allegedly funded (to the tune of INR 107.5 Lakh) by the *Noticees no. 14* and *3* through the *Noticee no. 13* during the period June 2016 to November 2016 and some of those shares so acquired by the *Noticee no. 8* were subsequently sold under the Buyback Offer of the *Company*. The said transfer of funds by the *Noticee no. 13* to the *Noticee no. 8* were made out of funds received either on the same day or a day earlier from the *Noticees no. 3* and *14* as depicted in the pictorial diagram below:



28) It is observed that the *Noticee no. 8* has transferred back the funds to the tune of INR 109.30 Lakh, received from AUM Capital Pvt. Ltd. pursuant to sale of shares in the scrip during August 2016 to December 2016, to the *Noticees no. 14* and *3* through the *Noticee no. 13* during the period from August 2016 - January 2017. The details of the same are as follows:



29) I note from the SCN that apart from the aforesaid transactions, during the period May 20, 2016 to January 10, 2017, the *Noticee no. 8* had one more transaction with the *Noticee no. 13* wherein he received INR 3 Lakh on August 9, 2016 from it. Further, the analysis of bank accounts also indicates that but for the transfer of funds from the *Noticee no. 13,* the said bank account (current account) of the *Noticee no. 8* did not have sufficient credit balance for making payments to the broker viz, AUM Capital Pvt Ltd towards purchase of shares. Similarly, but for the funds received from his broker after the sale of shares of ECE, the concerned bank account of the *Noticee no. 8* did not have sufficient credit balance to transfer funds to the *Noticee no. 13* as per the above noted narration. Similar pattern is observed w.r.t the onward funds transactions between the *Noticee no. 13* and the *Noticees no. 3* and *14* with respect to the funds routed through the *Noticee no. 8* to facilitate dealing in shares of ECE by him.

30) From the analysis of the aforesaid fund transfers between the *Noticees no. 3, 8, 13, 14* and the AUM Capital Pvt. Ltd., I note that a definite pattern emerges wherein the *Noticee no. 13*, after receiving funds from *Noticee no. 3* and *14,* has transferred the said funds to the *Noticee no. 8* within the same or next working day, which were in turn immediately used by the *Noticee no. 8* to purchase shares of ECE and then pursuant to sale of his shares and receipt of funds (shares sale proceeds) from AUM Capital Pvt. Ltd., the *Noticee no. 8* has returned the said funds immediately to the *Noticees no. 3* and *14* through the *Noticee no. 13* on the same day. To illustrate one example of how the funds have been transferred amongst the *Noticees*, it is observed that the *Noticee no. 14*, after receiving INR 20 Lakh from the *Noticee no. 11* on June 16, 2016,

transferred the said amount to the *Noticee no. 13* on June 21, 2016. The *Noticee no. 13* further transferred INR 20 Lakh to the *Noticee no. 8* the next day i.e., on June 22, 2016 and the same day INR 20 Lakh was transferred to AUM Capital Pvt. Ltd. by the *Noticee no. 8*. Further, considering the fact that the *Noticees* are connected to each other as established above and the *Noticee no. 8* was a partner of the *Noticee no. 13*, I am not inclined to accept that the funds received by the *Noticee no. 8* from the *Noticee no. 13* were pursuant to or part of his capital introduction/capital withdrawal having no nexus with the financial transactions between the *Noticee no. 13* and any other entities as claimed by the *Noticee no. 8*, without producing any evidence to support such a claim. It is rather quite well discernible from the manner the aforesaid transactions have taken place that the funds received and paid by the *Noticee no. 8* in these transactions were part of a group strategy to deal in the shares of ECE in a pre-decided manner due to which such inter se funds transfers were effected by them concurrently during the same period in a synchronous manner. Besides, the *Noticees no. 8* and *13* have not furnished any further details or supporting documents justifying the commercial nature of the aforesaid fund transfers. Therefore, I find that submissions of the *Noticees no. 8* and *13* made in this regard fall far short of deserving any favourable consideration, hence not tenable.

31) Further, as held by me aforesaid while dealing with the transactions of the *Noticee no. 11* while rejecting their claim that the imputed fund transfers represented loan transactions with other entities since, the same view has to be reiterated here in the case of the transactions of the *Noticee no. 8* with the *Noticee no. 3* and the *Noticee no. 13* as well. I find that the *Noticee no. 3* has not provided any verifiable documents like loan agreement, bank statement showing payment of interest etc. in support of its claim that it had provided a loan of INR 76,00,000 to the *Noticee no. 13* and the *Noticee no. 13* repaid that amount alongwith interest back to it. I note that the *Noticee no. 3* has only provided self-generated voucher entries to show that there was payment of interest in this regard. Further, the claim of the *Noticee no. 13* that monies received by it from some other entities on June 15 and September 9, 2016 (and not from the *Noticee no.3*) could also have been transferred to the *Noticee no. 8* is also not accepted for lack of any supporting proof or corroborative material. Therefore, I reject all its submissions made in this regard.

32) I note that the acquisition of around 1048 shares of ECE through off-market transactions after the closure of the Buyback Period, i.e. on August 09, 2016 by the *Noticee no. 8* does not have any bearing on the charges levelled against the *Noticee no. 8* in the SCN as his trades done during the period May 27, 2016 to June 24, 2016 are alleged to have been funded by promoters related entities.

33) It is not a charge in the SCN that the *Noticee no. 8* had traded in the shares of ECE only pursuant to and with the help of the monies received from the *Noticees no. 3* and *14* through the *Noticee no. 13*. At the same time it is noted from the bank account statement in respect of the Corporation Bank Account of the *Noticee no. 8* (as provided by him in his reply dated September 14, 2020) that an amount of INR 7,66,063 has been paid by him to AUM Capital Pvt. Ltd. through RTGS on June 10, 2016 the nature and purpose of which is not clear nor has the *Noticee no. 8* made any attempt or furnished any details or documents in this regard to explain the said RTGS payment. Therefore, the claim of the *Noticee no. 8* that it had been making payments to AUM Capital Pvt. Ltd. for purchase of ECE shares even prior to the funds received by him on June 15, 2016 from the *Noticees no. 3* and *14* through the *Noticee no. 13* (viz., May 27, May 30, June 03, June 06 and June 09, 2016) remains unsubstantiated and in the absence of any verifiable supporting documents from the *Noticee no. 8* the aforesaid claim of the *Noticee no. 8* has no strength to pass the muster and is liable to be rejected. Further, the *Noticee no. 8* has also not submitted any details or documents evidencing the specific nature or purpose of the payment received by him from the *Noticee no. 13* to prove his claim to the contrary to take his funds transactions with the other entities off the zone of suspicion. As noted above that the SCN does not per se, hold any allegations that all the trades of the *Noticee no. 8* were backed by the funds received from the promoter related entities. What the SCN alleges is that during the investigation period the trades of the *Noticee no. 8* in the scrip of the *Company* were not usual trades executed in the normal course of his trading in the securities market and the said allegation is further exacerbated by the fact that during such period when the *Noticee no. 8* was dealing in the shares of ECE substantial funds are seen to have been received by him from some other connected *Noticees* and the funds so received by him were also undisputedly used for transacting in securities of the *Company*. In such circumstances, there remains an onerous burden on the part of the *Noticee no. 8* to submit sufficient explanation supported by verifiable evidences so as to counter the charge against it for using the funds received by him from certain entities having connection with promoters of the *Company*. In response to such a serious allegation backed by tangible factual evidence available on records in the form of funds transactions and transactions in shares of ECE by the *Noticee no. 8*, mere general statement that it had funds at his disposal prior to receipt of funds from other connected entities and that funds received by him were not solely used for transacting in securities or that it had also dealt with shares of ECE prior to investigation period etc. cannot come to the rescue of the *Noticee no. 8* being far from convincing enough to have any credence to rely upon, more so when the pattern of trading adopted by the *Noticee no. 8* is seen to be very unusual apparently giving an impression that such trades were executed by the *Noticee no.*

8 towards accomplishing a particular objective or pre-designed scheme in cahoots with certain other connected *Noticees*.

34) I note from the SCN that the *Noticee no. 8* sold 32,979 shares through the stock exchange under the Buyback Offer in 4 trades on June 24, 2016. In each of the four trades, sell order was placed by the *Noticee no. 8* within less than 60 seconds time of placement of buy order by ECE and at the same rate as offered by ECE. The order details as given in the SCN are as under:

Table-3: Details of orders

Trade Date	Buy Order No	Sell Order No	Buy Order Time	Sell Order Time	Buy Order Rate	Sell Order Rate
24/06/2016	1000000000056455	1000000000056489	09:15:00	09:15:00	170	170
24/06/2016	1000000000056455	1000000000057509	09:15:00	09:15:03	170	170
24/06/2016	1000000000056468	1000000000057509	09:15:00	09:15:03	170	170
24/06/2016	1000000000056455	1000000000057509	09:15:00	09:15:03	170	170

35) I note from the trade log that aforesaid sell orders of the *Noticee no. 8* were limit orders which were placed either at the same time or within 3 seconds of the placement of buy orders. When a prudent person would consider the above fact through the lens of already established connections that have been observed between the *Noticees*, it would be noted that it is not a coincidence that the *Noticee no. 8* placed his sell orders within such a miniscule time, and at the same price matching the pending buy order of ECE. I find the justification advanced by the *Noticee no. 8* that he placed his sell orders close to INR 170 on account of a lack of trading volume in the scrip and not to create a false or misleading appearance of trading to be not convincing at all and just an afterthought alibi chosen by him so defend his sales during the said Buyback Offer.

36) I note from the SCN that the *Noticee no. 9* sold 5,000 ECE shares (1.14%) in the Buyback Offer out of 91,000 shares of the *Company*, which it purchased on market during the period May 22, 2013 and between Aug 27, 2015 and August31, 2015 at an average acquisition cost of INR 133.73 per share.

37) I note that even if the contention of the *Noticee no. 8* that he tendered his 32,979 (7.54%) shares on the last day of the Buyback Period i.e., June 24, 2016 by which time ECE had already received more than 50% of the shares required for the Buyback Offer to be successful, given the fact the *Noticees* are found to be inter-connected , I cannot lose sight of the fact that the *Noticee no. 8* [32,979 (7.54%)], *9* [5,000 (1.14%)] and *11* [90,969 (20.80%)] sold together 1,28,948

shares (constituting a substantial 29.48%) out of 4,37,280 shares acquired by the *Company* during the Buyback Offer. Therefore, the trades of the *Noticees no. 8, 9* and *11* cannot be viewed in isolation especially when the *Noticees* are seen enjoying interconnection and have received funds, directly or indirectly, from the promoter related entities during the relevant period and the said funds so received have also been found to have been used for transacting in shares of the C*ompany,* as demonstrated in preceding paragraphs as well as diagrams. Therefore, I find that the submissions of the *Noticees no. 8, 9* and *11* that their trades in ECE which in fact together constituted a significant percentage of 29.48% of the total quantity of shares bought back by the *Company*, were not relevant for the purpose of making the Buyback Offer successful, is devoid from truth and ground realities surrounding the success of Buyback Offer of the *Company*, hence is rejected for want of any merit.

38) I note from the SCN that during the period from December 21, 2016 to December 30, 2016, the price of the scrip opened at INR 316.60 reached a low of INR 214.00 (December 30, 2016) and closed at INR 218.75 with a net LTP of INR -110.25 and a market negative LTP of INR -764.75 with a total traded volume of 75771 shares. Also, this is the period when Delisting Offer was open from December 26, 2016 to December 30, 2016. I further note from the SCN that the *Noticee no. 8* traded as seller during the period. Details of his LTP contribution as a seller as given in the SCN are reproduced below:

Table-4: LTP contribution of the Noticee no. 8 as a seller

Name	All Trades			LTP Diff. >0			LTP Diff. <0			LTP Diff. =0		%neg
	Sum of LTP diff	Sum of Quantity	No of trades	LTP impact	QTY traded	No of trades	LTP impact	QTY traded	No of trades	QTY traded	No of trades	LTP to market
Mahendra Kumar Agarwala	-116.1	3,232	208	74.80	729	49	-190.90	1,198	83	1,305	76	24.96%
Market Total	**-110.25**	**75,771**	**2306**	**654.5**	**19,638**	**567**	**-764.75**	**23,459**	**725**	**32,674**	**1014**	**100.00 %**

39) From the aforesaid details, I note that the *Noticee no. 8* contributed 24.96% to negative LTP through his 83 negative LTP trades. In 6 such negative LTP trades, he placed sell orders first and contributed INR -37.50 (4.90%) to market negative LTP. In remaining 77 negative LTP trades, he placed his sell orders after buy order were placed. Thus, I observe from the SCN that he placed sell orders after the buy orders in the 77 of his 83 negative LTP trades. Again, interestingly in 67 of these 77 trades, his sell order prices were less than buy order price. It was

also observed that while placing his sell orders for these 77 trades he had repeatedly placed sell orders at a price below the best available buy order price available in the system. Some instances of such trades are illustrated below:

Table-5: Instances of placing sell orders at prices below best available buy order prices by Mr. Mahendra Kumar Agarwala (Noticee no. 8)

Buyer Name: Sandesh Kumar Mahesh				Seller Name: Mahendra Kumar Agarwala				Date: 27 December 2016		
order Type	**Order No**	**Order Time**	**Order Qty**	**Order Price**	**Pending counter party Order Qty Range**	**Pending counter party order Price range**	**Buy Order Qty pending at or below Sell Order Price**	**Traded qty**	**Trade Price**	**Diff in LTP (in INR.)**
Buy	1000000000006330	09:00:10	1	262.55	1-50(102)	299.3-325	268	1	262.55	-0.05
Sell	1000000000054543	09:15:02	50	240	1-200(424)	217.1-262.55				
Buyer Name: Uttam Share Broker Pvt. Ltd.				Seller Name: Mahendra Kumar Agarwala				Date: 29 December 2016		
order Type	**Order No**	**Order Time**	**Order Qty**	**Order Price**	**Pending Counter Party Order Qty Range**	**Pending Counter Party order Price range**	**Buy Order Qty pending at or below Sell Order Price**	**Traded qty**	**Trade Price**	**Diff in LTP (in INR)**
Buy	1000000001086854	10:17:53	2	232.3	1-200(1044)	225-252	2398	2	232.3	-2.60
Sell	1000000001113191	10:21:07	10	225	1-2000(4386)	207-232.3				
Buyer Name: Shilpa				Seller Name: Mahendra Kumar Agarwala				Date:30 December 2016		

order Type	Order No	Order Time	Order Qty	Order Price	Pending Counter Party Order Qty Range	Pending Counter Party order Price range	Buy Order Qty pending at or below Sell Order Price	Traded qty	Trade Price	Diff in LTP (in INR)
Buy	1000000000014287	09:00:45	1	230	5-59(264)	218-255	101	1	230	-3.25
Sell	1000000000055394	09:15:01	20	218	1-500(1113)	211-230				

40) I note that the *Noticee no. 8* in the above instances has placed his sell orders below the best available buy order prices. Moreover, it is seen that his sell order quantities were less than the quantities demanded by the buy orders which were available at the prices offered by the *Noticee no.8* in his sell orders. He was observed to be repeatedly placing sell orders for small quantities at below available buy order prices even when there was a demand for purchase at higher prices by the buyers. I note from the SCN that during this period, price of the scrip moved from an open price of INR 316.6 to a low price of INR 214.0 and also to as low as INR 102.60 thereby creating a New Low Price (NLP) In the scrip and the *Noticee no. 8* is seen to have substantially contributed to the above noted NLP in the scrip during the said period. Details of his NLP contribution are as under:

Table-6: Details of New Low Price (NLP)

Client Name	Quantity	Number Of Trades	Contribution To Market NLP	% Of Market NLP
Mahendra Kumar Agarwala	137	23	-56.95	55.51%
Total	**137**	**23**	**-56.95**	**55.51%**
Market total	**1097**	**86**	**-102.60**	**100.00%**

41) I note from the aforesaid details that the *Noticee no. 8* has contributed INR -56.95 to market NLP which was 55.51% of market NLP during the period. During this period, there were 8 first trades with negative LTP of INR -69.05 and net LTP of INR -69.05. The *Noticee no. 8* was seller in 7 of 8 first trades during the period. Through his seven first trades he contributed INR -60.45 to negative LTP which was 7.9% % of market negative LTP. In this regard, I note that

the *Noticee no. 8* has not given any plausible reasons for indulging in such peculiar trades as narrated earlier.

42) In the absence of any justifiable reasons presented before me, I am constrained to observe that the *Noticee no. 8* has indulged in trading in the scrip of ECE which was not fair and had adverse impact on the price of the scrip of the *Company*. A company that had just concluded Buyback and was taking necessary steps towards completing the process of an already announced Delisting Offer and whose scrip had witnessed rise upto INR 316, now finds a shareholder indulging in selling his shares in ECE by offering prices even at prices lower than the prices quoted by the buyers, thereby consistently causing negative LTP to the price of the scrip of the *Company* which cannot be seen as transactions executed in the normal course of trading, more particularly when the *Noticee no. 8* himself has not come out with any plausible reason to justify his acts of selling the shares at such lower prices. It is not even the case of the *Noticee no. 8* that he was under any compulsion or stress of any kind which compelled to sell the shares of the *Company* at such lower prices just before the commencement of delisting process as per the announcement made by the *Company*. The absence of any such compulsion or stress coupled with the connections of the *Noticee no. 8* with the promoters and promoter related entities as demonstrated earlier in this order, when examined in a holistic manner in the backdrop of the charges levelled in the SCN, it constrains me to believe that these trades were executed by the *Noticee no. 8* with an intent to distort the price of the scrip. The facts of the matter clearly suggest that the trades were executed to manipulate the scrip price by repeatedly placing sell orders at price below the available buy order prices and by contributing to NLP and negative LTP through first trades, the alleged trades of the *Noticee no. 8* had the potentialities to create a false and misleading appearance of trading in the scrip of the *Company* as well as to distort the discovery of fair market price of the scrip. Under the aforesaid compelling facts and circumstances, the decisions of the Hon'ble SAT in *Ketan Parekh v. SEBI* and *SPJ Stock Brokers Private Limited v. SEBI,* as relied upon by the *Noticee no. 8* in his defense do not come to his aid at all.

43) To explain the manipulative role played by the *Noticee no. 8* further, it is relevant here to iterate the significance and inter-relationship between LTP, NLP and closing price in trading of a scrip that is poised for a Buyback and Delisting offer like the instant case. It is a common knowledge that LTP or the Last Traded Price stands for the price of a stock on which the last transaction or trade has occurred on a particular day. It is a reliable metric to assess the value of the stock at any point of trading hours and to ascertain how the prices have fluctuated in the past. The LTP always moves with every successful trade. LTP is generally used to derive the value at which a stock is perceived, and to estimate the possible range of market prices of

a stock based on its past trading history. Another thing to note is that LTP can only be determined if an actual transaction happens. It is merely subjective to the last price at which investors exchanged stocks. In conclusion, LTP plays significant role in prediction of stock price movement and determination of the appropriate ask/bid price. New Low Price or NLP is the lowest price of a particular share that has earlier been not achieved or witnessed in the scrip. This may be achieved as an outcome of sustained downward push of LTP executed by the traders either as a function of demand–supply forces or deliberately by way of executing manipulative trades to deflate price of a scrip. Closing price of the day is the weighted average price of the last 15 minutes of trading, whereas the LTP of the day is the actual last traded price. As can be seen, there is a constant interplay between the closing price, LTP and NHP or NLP, as the case may be. If LTP of a scrip is consistently high, it may lead to establishment of NHPs (new high prices) which in turn, is likely to push the closing price of the said scrip upwards thereby inflating the market price of the scrip over a period of time. Similarly, if LTP of a scrip is consistently low, it may lead to establishment of NLPs which in turn, is likely to push the closing price of the said scrip downward thereby deflating the market price of the scrip over a period of time. As discussed earlier, in the instant case, the scrip witnessed sustained decrease of its market price over a period of time due to consistent negative contribution to the LTPs and repeated creation of NLPs by the trading acts of the *Noticees*.

44) In fact, it is a matter of record that the consistent negative LTP contribution by some of these *Noticees* and in the process such NLP influenced the Buyback process and subsequently the Delisting process. I note from the SCN that the *Company* conducted auction through RBB process from December 26, 2016 to December 30, 2016 for the purpose of delisting. Before the said Delisting Offer, the promoters of the *Company* held 66.78% of the shareholding in the *Company*. In terms of the Delisting Regulations for the Delisting Offer to be successful, the *Company*'s promoters needed to acquire such numbers of shares in the said auction so that post the delisting offer, promoter shareholding taken together with the shares accepted through eligible bids, crossed 90% of total shareholding of the *Company*.

45) Based on the recommendation of its merchant banker, the *Company* declared INR 202.56 as the floor price for delisting. It is seen that during the period of RBB, the *Company* received bids as given below:

Table-7: Bids received under Reverse Book Building

Order Rate (in INR)	Sum of Order Quantity	Cumulative Order Quantity	Number of Orders
202.56	952573	952573	17
202.75	49400	1001973	1
203.00	2074	1004047	4

203.10	18833	1022880	1
203.25	6679	1029559	2
203.50	322690	1352249	4
204.00	357422	**1709671**	4
Above 204	13620		41
Grand Total	**1723291**	**1723291**	**74**

46) It is noted that the *Company* was required to acquire a minimum of 16,92,552 shares in the auction for successful delisting. As evident from Table-7, the *Company* received a total of 74 bids/orders for 17,23,291 shares. As 33 orders out of 74 such bids/orders for a total of 17,09,671 shares were already placed at or below the floor price of INR 204, therefore, 17,09,671 shares were accepted by the *Company* as eligible bids/orders and as a result the *Company* announced INR 204 as offer price for delisting. In this regard, I note that the *Noticees no. 8, 9* and *10* together had placed their offers for 1,82,736 shares out of a total of 17,09,671 shares accepted as eligible bids/orders by the *Company*. The details of bids/offers placed by these *Noticees* are given below:

Table-8: Details of bids placed by the Entities

S. No.	Order Date	Order Quantity	Order Rate	% of bid quantity accepted	Pan	Name
1	26-12-2016	49400	202.75	2.89%	AAECA1091N	Abhishek Chemicals Pvt Ltd (Noticee no. 10)
2	26-12-2016	115641	202.56	6.76%	AAACH6414N	Himatsingka Chemicals Pvt Ltd (Noticee no. 9)
3	30-12-2016	16361	203.5	0.96%	ACSPA8810C	Mahendra Kumar Agarwala (Noticee no. 8)
4	30-12-2016	704	203.5	0.04%	ACSPA8810C	Mahendra Kumar Agarwala
5	30-12-2016	630	203.5	0.04%	ACSPA8810C	Mahendra Kumar Agarwala

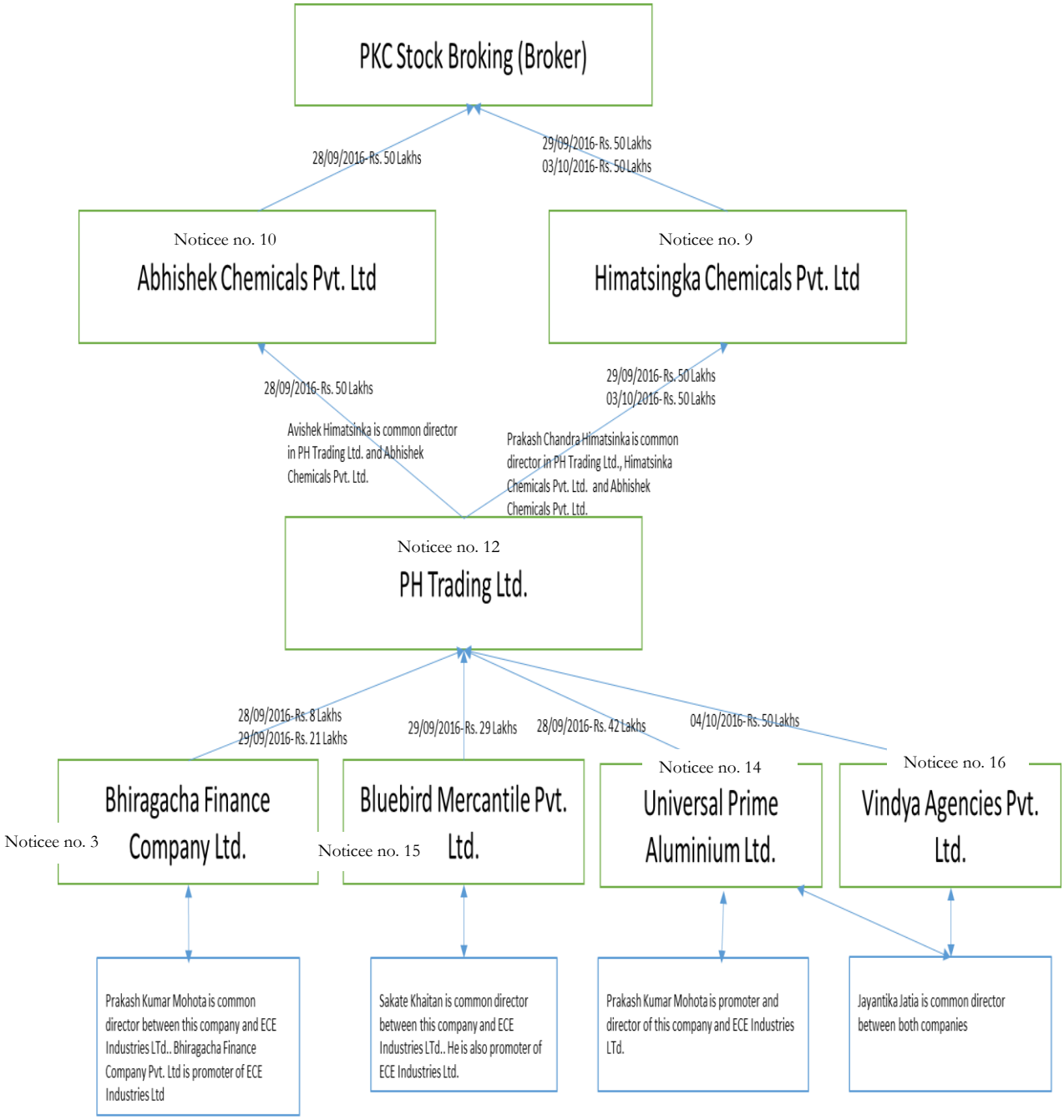
47) In this regard, the details regarding the source of the shares offered by the aforesaid *Noticees* in the Delisting Offer, as presented in the SCN, are as under:

Table-9: Details of source of shares bid by the Entities

Sl. No.	Entity Name	Shareholding as on	Buy quantity in 2016 before their	Period & mode of acquisition of shares	Avg acquisition

		Jan 01, 2016	last bid in delisting offer	tendered in delisting offer	Cost (in Rs)
1.	Himatsingka Chemicals Pvt Ltd (Noticee no. 9)	91000	32880	22 May 2013 and 27 Aug 2015 to 31 August 2015 and 29 Sep 2016 to 4 Oct 2016 (On market)	178.55
2.	Abhishek Chemicals Pvt. Ltd. (Noticee no. 10)	33400	16000	28 Aug 2015, 10 Dec 2015 and 29 Sep 2016 (On market)	198.61
3.	Mahendra Kumar Agarwala (Noticee no. 8)	704	123989	27 May 2016 to 29 December 2016 (On market)	244.97

48) I note from the SCN that Both the *Noticees no. 9* and *10* have traded through PKC for purchase value of INR 99.48 Lakh and INR 49.84 Lakh respectively during the period from September 29, 2016 to October 04, 2016 and have made payments for their purchases during the period from September 28, 2016 to October 04, 2016. On an analysis of the bank statements of the *Noticees no. 9* and *10*, it is observed that such payments to PKC were made out of funds received by both entities from the *Noticee no. 12*, which in turn had received from entities closely connected to the promoters of ECE. The details of fund analysis as depicted in the SCN are as under:



49) I note from the above diagram that the funds transferred by promoter-connected companies viz., the *Noticees no. 3, 14, 15* and *16* to the *Noticee no. 12* were immediately transferred by the *Noticee no. 12* to the *Noticees no. 9* and *10* who in turn have transferred the said funds to their broker i.e., PKC for purchase of shares of ECE. In this regard I note that the *Noticee no. 12* had transferred INR 50 Lakh each on September 29, 2016 and October 03, 2016 to the *Noticee no. 9* and on the same days, the *Noticee no. 9* transferred these amounts to PKC. Similarly, the *Noticee no. 12* transferred INR 50 Lakh to the *Noticee no. 10* on September 28, 2016 and on the

same day the *Noticee no. 10* transferred the said amount to PKC. In any case, I note that the *Noticee no. 12* received INR 50 Lakh each on September 28, 2016 and September 29, 2016 from the *Noticees no. 3, 14* and *15* which it transferred to the *Noticees no. 9* and *10* on those two dates and it is clearly established that *Noticees no. 9* and *10* paid to the broker PKC from the funds so received from *Noticee no. 12*. In view of the above undisputed fact, the contention of the Noticees that an amount of INR 50,00,000 was also received by it from the *Noticee no. 16* only on October 04, 2016 by which time the *Noticee no. 9* and the *Noticee no. 10* had already made payments to their stock broker i.e., PKC for purchase of ECE shares is immaterial, because the *Noticees no. 9* and *10* could make its payments to PKC only after receiving the amounts from the *Noticee no. 12* as demonstrated above. Under the circumstances, the aforesaid contentions of the *Noticees no. 9* and *10* and also by *Noticee no.12* made in this regard about fund received from the *Noticee no.16* are found to be not grounded on facts and diverting attention from the actual transactions that have been referred to in the SCN hence, rejected.

50) Continuing the aforesaid deliberations, it is observed that the *Noticee no. 12* had transferred INR 50 Lakh to the *Noticee no. 10* on September 28, 2016 after receiving INR 8 Lakh and INR 42 Lakh from the *Noticee no. 3* and *14*, respectively on September 28, 2016. Similarly, the *Noticee no. 12* had transferred INR 50 Lakh to the *Noticee no. 9* on September 29, 2016 after receiving INR 21 Lakh and INR 29 Lakh from the *Noticee no. 3* and *15*, respectively on September 29, 2016 making it clear that *Noticee no. 3* and *15, Noticee no. 12, Noticee no. 9 and Noticee no. 10* are all connected with the same thread of funds transfers. In this respect, another interesting connection is also observed from the transactions as depicted above, where the *Noticee no. 12* is seen to have transferred INR 50 Lakh to the *Noticee no. 10* on October 3, 2016 and the *Noticee no. 10* has transferred the same amount to PKC on the same day for purchase of shares of the ECE. On the very next day i.e. on October 4, 2016, the *Noticee no. 16* has transferred exactly INR 50 Lakh to the *Noticee no. 12*. The *Noticees* have not been able to explain the nature or purpose or to justify the aforesaid transfers of funds in such close proximity. Therefore, in the absence of any plausible justification, I am constrained to observe that the above noted transfer of INR 50 Lakh by the *Noticee no. 12* to the *Noticee no. 10* was made with an advance understanding that the said amount will be recouped by a promoter related entity, which turned out to be the *Noticee no. 16*. The absence of any justification and the ultimate use of such funds (to buy shares of ECE) so transferred to the *Noticee no. 10* from the other two promoters related entities, overwhelmingly indicate that the said fund was transferred under a pre-determined scheme to deal in the securities of the *Company*.

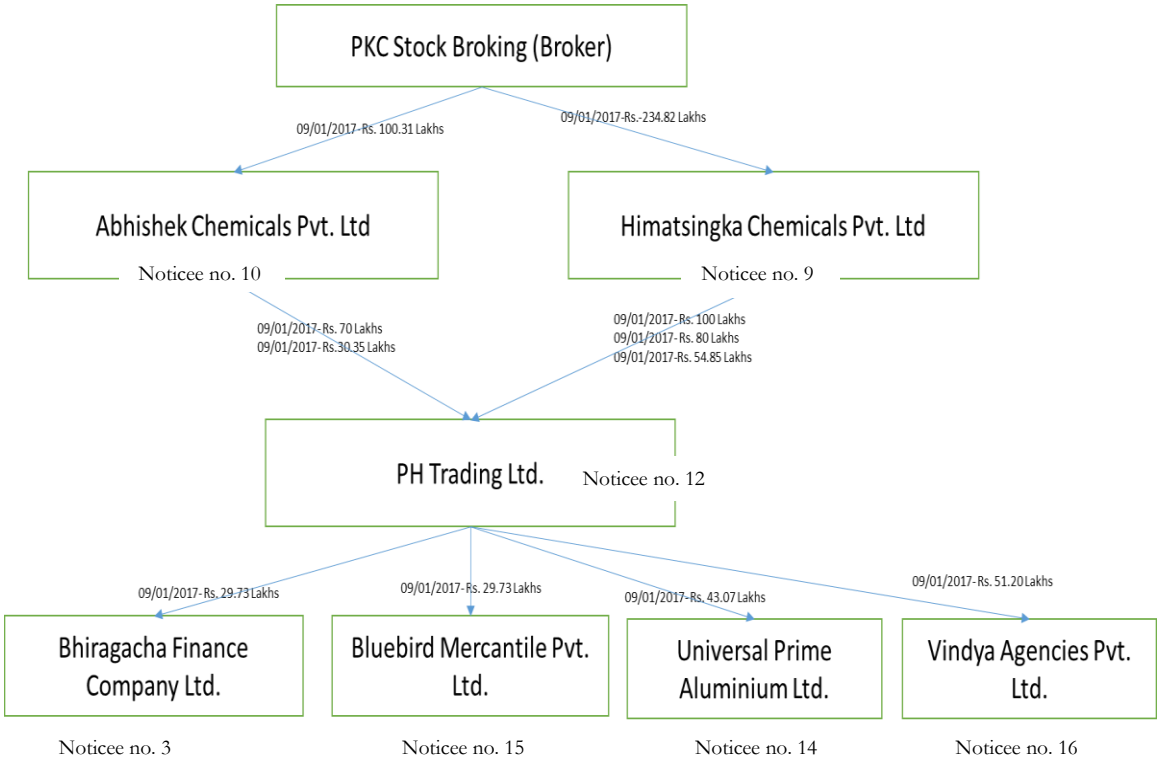
51) In this respect, it is further observed that both the *Noticees no. 9* and *10* had traded in ECE shares through PKC for a purchase value of INR 99.48 Lakh and INR 49.84 Lakh respectively

during the period September 29, 2016 to October 04, 2016. The *Noticees no. 9* and *10* were required to make a total payment of INR 149.32 Lakh to PKC for the said purchases made by them by October 4, 2016 against which, the funds so received by them during the said period out of the funds transferred by the *Noticees no. 3, 14, 15* and *16* was also totaling to INR 150 Lakh, which cannot be seen as mere coincidence. The aforesaid pattern of funds transfers, payments by the *Noticee no. 9* and *10* to PKC for purchase of shares by using the funds so received on transfers from other connected *Noticees* and the unusual conduct of these *Noticees* while dealing in the shares of the *Company* during Delisting process of the *Company* are strongly indicative of the fact that the *Noticees no. 3, 9, 10, 12, 14, 15* and *16* were acting in a peculiar manner so as to accomplish the only objective of making the Delisting Offer successful. It is also pertinent to note here that Mr. Prakash Chandra Himatsingka was the common Director of the *Noticees no. 9*, *10* and *12*. Therefore, faced with such uncontroverted facts and compelling circumstantial evidences and in the absence of any credible explanations from the *Noticees* to the contrary, I have to reject the contention of the *Noticee no. 12* that the SCN has incorrectly assumed that the payments made by the *Noticee no. 12* to the *Noticees no. 9* and *10* were for the purpose of funding such entities to purchase ECE shares and making Delisting Offer successful.

52) The SCN has also observed from the analysis of bank statement that but for the funds received from promoter related entities viz., the *Noticees no. 3, 14, 15* and *16*, the bank account of the *Noticee no. 12* otherwise did not have sufficient credit balance for effecting any fund transfer to the *Noticees no. 9* and *10* on the above stated dates. Similar pattern is observed with respect to transactions of the *Noticees no. 9* and *10* with their broker viz, PKC. In this regard, I note from a perusal of the overdraft facility sanction letter of ICICI Bank dated August 26, 2014 as submitted by the *Noticee no. 12* that the validity of the said facility was upto August 13, 2015 whereas the above noted fund transactions from the account of *Noticee no.12* were carried out in September-October 2016. Also, assuming the claim of the *Noticee no. 12* to be true and assuming that it had availed this overdraft facility at the time of making the afore-noted fund transactions in favour of the *Noticee no. 9* and *10*, the *Noticee no. 12*, apart from making a bald claim to this effect, has not submitted any supporting details/documents evidencing that the *Noticee no. 12* had actually invoked this facility at the time of making the said fund transactions. Further, the *Noticee no. 12,* except for showing its own generated financial ledgers, has not submitted any third-party verifiable documents like its ITR filing, TDS certificate, audited accounts that have been filed with ITR etc. to support its claim and therefore, I am not inclined to accept its assertion before me that lack of sufficient funds in its bank account was completely irrelevant in the present matter.

53) I note that except for presenting self-made general and financial ledger and general documents indicating loans transactions including entries of interest payment, the *Noticee no. 12* has not submitted any loan agreements entered into with these connected entities hence, I cannot accept its submissions that the aforesaid fund transfers were made by it in the ordinary course of its financing business.

54) I note from the SCN that the *Noticees no. 9* and *10* had offered their entire shareholding under the Delisting Offer. On further analysis of the bank statements of these entities, it is seen that pursuant to receipt of funds after selling their shares under the Delisting Offer of the *Company*, the *Noticees no. 9* and *10* have transferred funds to the tune of INR 153.73 Lakh to the promoter connected entities viz., the *Noticees no. 3, 14, 15* and *16* who had initially transferred funds to them which in turn were found to have been used for purchasing the shares of the *Company*. The details of fund flow analysis in this regard are depicted in the following diagram:



55) As the above discussions clearly bring out, that the *Noticees no. 9* and *10* who have collectively purchased 48,880 shares of ECE during the period September 29, 2016 to October 04, 2016 at an average price of INR 305.50, were funded by the entities connected to promoters of ECE. The *Noticee no. 9* (bid/offered 1,15,641 shares at price of INR 202.56 on December 26, 2016) and the *Noticee no. 10* (bid/offered 49,400 shares at price of INR 202.75 on December 26, 2016) were also the first two bidders/sellers who offered their shares in the auction through

the RBB process conducted for the delisting of shares of ECE on December 26, 2016. In this regard, I note from the SCN that the market price of the scrip which had closed at INR 289.4 on previous day of the auction, opened at an opening price of INR 289.4 on December 26, 2016. As there were no previous bidders/sellers before the *Noticee no. 9* and *10* offered their shares in the RBB it was unusual that the *Noticees no. 9* and *10* chose to offer their shares in the RBB at a price close to the floor price of delisting and much lower than the prevailing market price of the scrip which was ruling at INR 289.4 per share.

56) I note that the *Noticee no. 8* bought 1,23,989 shares between May 2016 to December 2016 at an average price of INR 244.97, sold 98,046 shares in market at an average price of INR 243.08(with a marginal loss) but when it came to delisting of the *Company*, the said *Noticee* bid 17,695 shares under Delisting Offer at a price much lower than market price as a result of which, his average acquisition cost became much higher than his average sell price. It has already been observed that entities related to the promoters of ECE, i.e., the *Noticees no. 3,* and *14* had funded the *Noticee no. 8* for the aforesaid purchase of shares in ECE. He was also observed to have contributed to scrip's price fall by indulging in manipulative trades thereby consistently contributing to the market negative LTP and NLP in the scrip and consequently causing adverse impact on the price of the scrip of the *Company*. The trades executed by the *Noticee no. 8* as discussed aforesaid, glaringly contained all the elements to be held as manipulative trades and the said trades were executed during the period December 21, 2016 to December 30, 2016, which included the period of RBB process under the delisting exercise as demonstrated above. Also, the *Noticee no. 8* was seen to have transferred funds/sale proceeds received from its broker pursuant to completion of the delisting process, to the entities (the *Noticees no. 3* and *14)* who had transferred funds to him, that were used to purchase of shares of the *Company* and for which, no justifiable explanations have been offered by any of the concerned *Noticees*.

57) I note from the SCN that acquirers/promoters of ECE needed to acquire 16,92,552 shares under the Delisting Offer. As observed from Table-7 above, it is noted that the total bids/sell offers and eligible bids/sell offers placed under the RBB process of Delisting Offer were 17,23,291 and 17,09,671 shares, respectively. As per the analysis of bids under RBB process, it is observed that assuming all other bids remaining the same, had the *Noticee no. 8* not offered his shares (which were purchased with funding from entities connected to promoters of ECE), the cutoff price under the book building process so conducted by the *Company* would have been discovered at a higher amount of INR 285. Further, again assuming that all other bids remained same, had the *Noticees no. 8, 9* and *10* together not bid/tendered their 1,82,736 shares (Table-8) which they had acquired from September 2016 to October 2016 with the funds

received from entities connected to promoters of ECE and which constituted 10.60% of the total number of shares offered by the shareholders, the Delisting Offer would have grossly failed, as promoters would not have been able to acquire the minimum number of eligible 17,09,671 shares as per the mandatory provisions of Delisting Regulations. In the aforesaid context which now empirically reveals the crucial role played by the three *Noticees* (the *Noticees no. 8, 9* and *10)* in making the Delisting Offer of ECE a success, a holistic analysis of the charges made in the SCN on the *Noticees*, particularly against the *Noticees no. 8, 9* and *10*, further exposes their unusual and abnormal trading behavior in the scrip of the *Company*, together with the fact that these three entities have been found receiving funds from promoter related entities i.e. the *Noticees no. 3, 10* and *12* to *16* and upon receipt of the said funds, the same were also seen to have been transferred to their stock broker for trading in the scrip of the *Company* and further after execution of sell trades, the funds/sales proceeds have also been transferred to the above promoter related entities. The explanations furnished by the above noted *Noticees* in respect of the fund transfers sans any documentation or any independent verifiable evidence render their stands more indefensible. The way the *Noticees no. 8, 9* and *10* have executed their trades in the scrip of the *Company* and even have placed their bids/sell offers contrary to normal market practices clearly suggest that had they not placed their sell bids in the RBB the way they did, the *Company* would not have been successful in achieving the required delisting threshold at a price of INR 204 and in the process these *Noticees* have made their collusive nexus with the *Company* and its promoters quite conspicuous.

58) The aforesaid observation is also supported by the fact that a clear definite pattern has emerged so far as the trades and conduct of the *Noticee no. 8* is concerned in Buyback and Delisting Offer. In this regard, just to recollect, the *Noticee no. 8* was holding merely 704 shares of ECE as on January 01, 2016 and acquired a total of 47,644 shares between May 27, 2016 and June 24, 2016 for a purchase value of INR 86.12 Lakh at an average acquisition cost of INR 180.77 per share. As discussed above, the said purchase of shares in ECE by the *Noticee no. 8* was found to be funded by the *Noticees no. 14* and *3* through the conduit of *Noticee no. 13*. Further, out of the said 47,644 shares purchased, the *Noticee no. 8* had sold 32,979 shares in 4 trades on the last day of Buyback Offer i.e., June 24, 2016 and in each of those 4 trades, sell order was placed by the *Noticee no. 8* within less than 60 seconds time of placement of buy order by ECE and at the same rate of INR 170 as offered by ECE. Similar pattern is also observed in the trading of the *Noticee no. 8* during the Delisting process, where he was seen to have tendered 17,695 shares close to floor price on the very last day of Delisting Offer i.e., December 30, 2016. The tendering of shares close to floor price may not appear illegal or abnormal in normal circumstances but when the said tendering is analyzed in conjunction with the unassailable

facts pertaining to receipt funds from the promoter related entities which were used for purchase of shares of ECE and also the unusual fact of tendering such a good number of shares on the very last date of Delisting Offer, the act of tendering the aforesaid 17,695 shares close to floor price on the very last day of Delisting Offer certainly fails to qualify as a normal conduct by a normal investor in normal times. As noted that the *Noticee no. 8* has tendered 17695 shares on the very last day of the Offer and the total number of shares required to be acquired by the promoters to make the Delisting offer successful was 16,92,552 shares, whereas the total eligible bids/orders placed under RBB process including that of the *Noticee no. 8* was 17,09,671 shares. From the above, it is evident that in case the *Noticee no. 8* had not participated and tendered his 17695 shares on the last date, the eligible bids received at INR 204 price would have fallen short by 576 shares (1709671-17695=1691976+567=-1692552), and the Delisting Offer would not have been successful. I cannot also ignore the fact that the scrip of the *Company* was trading at much higher price during the period when the *Noticee no. 8* had tendered the shares at price close to the floor price for which the general explanation advanced by the *Noticee no.8* is far from satisfactory.

59) In view of the above stated factual analysis and my observations on the crucial role played by the *Noticee no.8* in the RBB under the delisting offer of the company, I am now completely persuaded that the success of Delisting Offer of the *Company* entirely hung on the shoulders of the *Noticee no. 8, 9* and *10* and these *Noticees* participated in the RBB by offering their shares at close to the floor price disregarding the ruling market price of the scrip which was much higher than the floor price, by acting deliberately only to help the promoters of the *Company* in achieving the eligible bids for 17,09,671 shares so as to make it possible for the acquirers/promoters of the *Company* to acquire a minimum of 16,92,552 shares and to make the Delisting Offer successful in terms of the Delisting Regulations. Further, that looking at the conduct and pattern of trades indulged in by these *Noticees* through the prism of their inter-connection, I do not have any hesitation in holding that the each of them acted in a concerted manner as per their assigned role in the scheme that was apparently conceived in collusion with other connected *Noticees*/entities for the purpose of making the Buyback and Delisting Offer successful. In fact, I find the *Noticee no. 8* by his act of coming with his offer on the last day of Buyback and Delisting Offer has seemingly acted as a savior for the promoters of ECE by helping them sail through these offers with sure success. The submission of the *Noticee no. 8* that he has tendered only a very insignificant percentage of the total number of shares tendered in the offer and therefore cannot be held responsible for the charges of acting under a scheme to help promoters, may at first appear appealing on its face but when the same is looked from other attending facts and circumstances and scrutinized in depth in the context

of his connections with other Noticees/entities, I find that the so called insignificant percentage assumes very central, significant and crucial role in facilitating the promoters to achieve the requisite statutory thresholds to make both the buyback and the delisting offer successful. In view of the aforesaid, I see no merit in the submission of the *Noticee no. 8* that it had merely tendered around 17,695 (1% of the total shares tendered) ECE shares and the same is insignificant to make the Delisting Offer successful or to depress the cut-off price, especially when he sold a substantial number of shares on the last day of the Delisting Offer.

60) I note that in terms of the Delisting Regulations, for a Delisting Offer to be successful, the *Company's* promoters needed to acquire as much shares in the auction, so that post the completion of offer, the promoter shareholding taken together with the shares accepted through eligible bids, reaches 90% of total shareholding of the *Company*. In this regard, I note that the promoters of the *Company* held 66.78% shareholding before the Delisting process and required 16,92,552 shares to make the said Delisting Offer successful. As already noted above, the total bids/orders were received for 17,23,291 shares and out of the said shares, 17,09,671 shares were declared by the *Company* as eligible bids/orders and therefore, as per Delisting Regulations, the promoters of the *Company* had to acquire 17,09,671 shares a break up of which is recorded in Table-10 below. It is also on record that out of the above noted eligible bids/orders for 17,09,671 shares, the *Noticees no. 8, 9* and *10* placed bids/orders for a substantial number of 1,82,736 shares (Table-8 which indicates that without the active participation of these *Noticees*, the Delisting Offer would not have been successful.

61) In this regard, I note from the SCN that as per the public announcement dated December 16, 2016 and post offer public announcement dated January 05, 2017 made in respect of Delisting Offer, Mr. Prakash Kumar Mohta (*Noticee no. 1*) was the acquirer under the offer while the *Noticees no. 2* to *7* were the persons acting in concert with the acquirer. On further analysis, it is seen that the shares which were acquired by the aforesaid acquirer and PACs under the Delisting Offer as under: -

Table-10: Acquirers in Delisting Offer

Promoter Name/PACs	**Shareholding quarter ending Dec 2016**	**Shareholding quarter ending Mar 2017**	**Shares acquired in delisting**
Prakash Kumar Mohta (Noticee no. 1)	1348158	1524182	176024
Prakash Kumar Mohta (HUF) (Noticee no. 2)	0	174279	174279
Maitreyi Kandoi (Noticee no. 4)	0	174279	174279

Pratibha Khaitan (Noticee no. 5)	0	174279	174279
Moulishree Gani (Noticee no. 6)	100	174379	174279
Jayantika Jatia (Noticee no. 7)	0	174279	174279
Bhiragacha Finance Company Private Ltd. (Noticee no. 3)	255482	917734	662252
Total	**1603740**	**3313411**	**1709671**

62) As mentioned earlier in this order, Mr. Prakash Kumar Mohta (the *Noticee no. 1*) who was promoter of the *Company* was also director of the *Noticee no. 3* and held 99.75% shareholding in the *Noticee no. 3* alongwith the *Noticee no. 2* (*Noticee no. 1* is karta of *Noticee no. 2*) during Investigation Period. Therefore, I note that the *Noticee no. 1* was in control of the *Noticee no. 3*. Further, the *Noticee no. 3* acquired 66,22,52 shares of ECE (out of total number of 17,09,671 shares) which constituted 38.73% of the total number of shares acquired during Delisting Offer. Considering the aforesaid facts through the prism of connections noticed amongst the *Noticees*, I am of the view that the *Noticee no. 3* was actively involved in the Delisting Offer and therefore reject its submission that its role was only limited to acting as person in concert.

63) I further note that the *Noticee no. 3* has only provided voucher entry and general documents indicating receipt and payment of loan of INR 29,00,000 given to the *Noticee no. 12*. In the absence of any supporting documents like loan agreement etc. for the said fund transfers and considering the manner in which funds were transferred by the connected entities including funds transfers by the *Noticee no. 3* to the *Noticees no. 9* and *10* through the *Noticee no. 12* just before the purchase of shares of ECE by the *Noticees no. 9* and *10* and thereafter those funds routed back to the same entities (original transferor entities), the submission of the *Noticee no. 3* lacks merit and untenale.

64) In view of the aforesaid factual analysis of connections, funds transfers, timing of transactions, manipulative trades in the scrip of ECE to pull down its market price by contributing to market negative LTPs and the unusual way of placing sell orders of the shares of ECE during the buyback and delisting offers and my observations on such issues as above, I can now unambiguously observe that there is an apparent collusion amongst the *Noticees* who appears to have conceived a plan or scheme in terms of which each of the *Noticees* has apparently performed its assigned role. I am aware of the fact that in cases of this nature, it is difficult to always get direct and clinching evidence against each of the *Noticees* as argued by some of the *Noticees*. However, in such cases like the present matter before me, the set of factual and circumstantial evidences against the *Noticees* as noted above are so clinching that the matter deserves to be adjudicated based on the principle of preponderance of probabilities and I have

no hesitation at this point to hold that the preponderance of probabilities in this case surely tilt against the *Noticees*. I further note that although all the *Noticees* have argued that that it was their usual business activity to provide and receive loans which were carried out even before and after the Investigation Period, none of them has submitted any loan agreements or any verifiable document like ITR, TDS certificate, audited accounts etc. evidencing grant of any loan as claimed by them Further, self-generated documents whose authenticity can always be questioned such as loan vouchers, general ledger etc. were offered as documentary support for the receipts and payment of so called loans and interest etc. which cannot be relied upon in a adjudicatory proceedings like the present proceedings. Further, the *Noticee no. 14* has claimed that the final settlement of the outstanding loan took place on March 31, 2020 which in my considered opinion appears to be an afterthought attempt to present the past fund transfers as a loan for which no contemporaneous proof or documentary evidence was produced before me. I note that the replies of the *Noticees* filed during the investigation stage have already been dealt with adequately at appropriate places in the SCN.

65) In view of the foregoing discussions, I bring myself now to conclude that the entities connected to promoters of ECE i.e., the *Noticees no. 14* and *15* funded the *Noticee no. 11* to purchase shares of ECE from market during the period January 2016 to June 2016, the bulk of which was subsequently sold under the Buyback Offer of the *Company* during the period from April 20, 2016 to 24 June, 2016. Further, the *Noticee no. 8*, who had insignificant holding in the *Company*, bought more shares with funding from ECE's promoters' connected entities i.e., the *Noticees no. 3, 13* and *14* with a view to make the Buyback Offer successful. Also, the *Noticees no. 8* and *11* repeatedly placed sell orders within a gap of less than 60 seconds of the buy orders placed by ECE and at the same rate as demanded by ECE in their buy orders. Thus, the *Noticees no. 8* and *11* along with the *Noticees no. 3, 14* and *15* were part of a manipulative and fraudulent scheme to make the Buyback Offer of the *Company* successful.

66) The *Noticee no. 9* and the *Noticee no. 10*, who with the help of funding by entities connected to promoters of ECE, purchased shares of ECE and thereafter, offered their shares under the Delisting Offer at a price substantially lower than the prevailing market price. By tendering their shares for large quantities at prices substantially lower than the prevailing market price, these entities contributed towards depressing the cut-off price for the Delisting Offer in a manipulative manner. The *Noticees no. 8, 9* and *10* by their acts of tendering large quantities of shares which were in fact purchased with the funding provided by the promoter related entities, created a false or misleading appearance of trading in the market to make the Delisting Offer of ECE successful. Thus, the *Noticees no. 8, 9, 10* along with the *Noticees no. 12-16* and the *Noticee no. 3* played their role as part of a fraudulent scheme to depress the cut-off price under the

Delisting Offer thereby making the Delisting Offer successful. The promoter of the *Company* viz, the *Noticee no. 3* who was a major acquirer and PAC under the Delisting Offer was part of a manipulative and fraudulent scheme wherein entities related to the said promoters, were seen to have funded purchase transactions of the *Noticees no. 8* and *11* who subsequently bid under Buyback Offer to make it successful. Further the related entities also funded purchase transactions of the *Noticees no. 9* and *10*. Thereafter, the *Noticees no. 8*, 9, 10 tendered their shares near the floor price under Delisting Offer to depress the cut-off price and also to make the delisting successful. Additionally, the *Noticee no. 8* was also seen playing an active role in manipulating the scrip price during said period of delisting process (i.e, December 21, 2016 to December 30, 2016) causing the market price of the scrip to decline, thereby inducing more entities to tender their shares in the Delisting Offer to avoid loss on account of declining market price .

67) The conduct of the *Noticees* and the outcome of their conduct corroborate the allegation against them in the SCN. In the instant matter, as I have already held earlier, the facts of the case, the material evidence brought on record clearly demonstrate that there was a direct nexus amongst the *Noticees* in influencing the cut-off price for delisting of equity shares of *ECE* and there is an overwhelming preponderance of probabilities that the Noticees have committed the contraventions as alleged in the SCN which is further substantiated by the alluring motive that is so writ large in all the transactions, funds transfers and trading in shares indulged in by the *Noticees*. In the matter of *Securities and Exchange Board of India vs Kishore R. Ajmera* (decided on February 23, 2016), the Hon'ble Supreme Court has *inter alia* held as under:

> *"The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned."*

68) In this context, I find it relevant to quote the decision of the Hon'ble Supreme Court in *Collector of Customs v. D. Bhoormull* (1974 AIR 859, 1974 SCR (3) 833) dated April 03, 1974, wherein it was held that:

> *"...The prosecution or the department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and- as Prof. Brett felicitously puts it - "all exactness is a fake". El Dorado of absolute proof being unattainable, the law, accepts for it probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.... Since it is exceedingly difficult, if not absolutely*

impossible, for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden."

69) Considering the foregoing discussions, I have now come to a conclusion that the promoters of ECE who were acquirers under Delisting Offer alongwith its related entities have participated in a manipulative and fraudulent scheme at various stages, wherein a false and misleading appearance of trading in the scrip of ECE was created in the market to first make the *Company's* Buyback Offer successful and also thereafter, by depressing both the cutoff price under Delisting Offer as well as the market price of the scrip by way of manipulative trades, to make the Delisting Offer successful to the undue advantage of promoters and promoter related entities. Further, as discussed above, I find that Mahendra Kumar Agarwala (the *Noticee no. 8*) manipulated the price of the scrip of ECE by repeatedly placing sell orders below available buy order price as well as contributed to negative LTP through first trades as well as to the New Low Price in the scrip. I also find that the said *Noticee* along with Himatsingka Chemicals Pvt. Ltd. (the *Noticee no. 9*) and Abhishek Chemicals Pvt. Ltd. (the *Noticee no. 10*) were also part of fraudulent scheme to make ECE's Buyback Offer successful and to depress the cutoff price in delisting. It is trite law to state that such acts of the *Noticees* represent a deceptive behaviour depriving a large majority of the retail shareholders from giving their informed consent or from full participation in the buyback and delisting offers. I find that the *Noticees* have perpetrated fraud on the gullible investors while colluding with each other to foreordain the cut-off price for the delisting of equity shares of ECE. The act of foreordaining or predetermining the pricing of shares for delisting was aimed to circumvent or defeat the legitimate market mechanism prescribed under the Delisting Regulations for determination of the cut off price for delisting. Under the circumstances such behaviour and fraudulent conduct displayed by the *Noticees* while dealing in the securities of ECE, both directly or indirectly, are held to be violative of the provisions of regulation 3(b), (c) and (d) and regulation 4(1) of the PFUTP Regulations, 2003 read with sections 12A(a), (b) and (c) of the SEBI Act, 1992.

70) With regard to the fraudulent transactions indulged in by the *Noticees* as narrated in the preceding paragraphs in this order, I deem it relevant to refer to the following rulings of the Hon'ble SAT, in the matter of *Ketan Parekh Vs. Securities and Exchange Board of India* (Appeal No. 2 of 2004):

".....Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such

cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

71) The following ruling of the Hon'ble SAT in matter of *V. Natarajan vs. SEBI* (Order dated June 29, 2011 in Appeal no. 104 of 2011) would also be relevant in the context of this case:

"… 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, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging in any act, practice, and 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 that are listed on stock exchanges."

72) At this point I want to iterate that the Board is mandated under the SEBI Act, 1992, *inter alia*, to protect the interests of the investors in the securities market and to promote the development of the securities market. The securities market functions on the premise of fair conduct by the market participants, especially the issuer and its promoters. If the issuer or the promoters thereof fail to keep their acts above board, the market mechanism of fair trade is bound to fail. The issuers and promoters thereof are duty bound to act in a fair and equitable manner. In the instant case, as discussed above, the *Noticees* have failed to act as such and hence the retail shareholders were not in a position to take informed decision with regard to their participation in passing the mandatory resolution under the Delisting Regulations, for delisting of the equity shares of ECE. What is more deleterious is that the small/actual retail shareholders had neither any say in the determination of the cut-off price for delisting of the equity shares of ECE nor had they any knowledge that their capacity to determine the cut-off price in the RBB mechanism had already been curtailed by the nefarious nexus amongst the Noticees to help the promoters sail through the delisting offer as per the cut off price so pre-determined by them and not by the market mechanism of RBB. The case laws cited and relied upon by the *Noticees* do not come to their aid in view of the clear findings of the Hon'ble Supreme Court and the Hon'ble SAT with regard to the fraudulent and manipulative trading

and their impact on the gullible investors. I, therefore, do not find any reason to deal in detail with the case laws relied upon by the *Noticees*.

III. Whether Noticee no. 3 and 8-16 have violated any provisions of the SEBI Act, the PFUTP Regulations, 2003 or the Delisting Regulations, 2009.

73) As mentioned earlier, the proceedings *qua* the *Noticees no. 1, 2, 4, 5, 6* and *7* have been disposed by way settlement order dated April 28, 2020. I, therefore, would restrict myself to the findings *qua* the remaining *Noticees*. Based on the discussion above, I find that:

a. The *Noticees no. 3, 8, 9* and *10* viz. Bhiragacha Finance Company Pvt. Ltd., Mr. Mahendra Kumar Agarwala, Himatsingka Chemicals Pvt. Ltd. and Abhishek Chemicals Pvt. Ltd. have violated sections 12A (a), (b) and (c) of the SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) and (e) of the PFUTP Regulations, 2003 and regulations 4(5) (a), (b) and (c) of the Delisting Regulations, 2009.

b. Vijaypath Management Pvt Ltd (the *Noticee no. 11)* has violated sections 12A (a), (b) and (c) of the SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1) & 4(2)(a) of the PFUTP Regulations, 2003.

c. The *Noticees no. 3* and *12* to *16* viz. Bhiragacha Finance Company Pvt. Ltd., PH Trading Ltd, Agarwal Trading Co., Universal Prime Aluminium Ltd., Bluebird Mercantile Pvt. Ltd. and Vindya Agencies Pvt. Ltd. have violated sections 12A (a), (b) and (c) of the SEBI Act, 1992 read with regulations 3 (b), (c), (d), 4(1) & 4(2)(d) of the PFUTP Regulations, 2003 and regulations 4(5) (a), (b), (c) of the Delisting Regulations, 2009.

DIRECTIONS

74) In view of the above, in exercise of powers conferred upon me under sections 11(1), 11(4) and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992, in order to protect the interest of investors and the integrity of the securities market, I hereby direct that the following *Noticees* are debarred from accessing the securities market and further prohibit them 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 **one year from the date of this order**.

Sl. No.	Noticee no.	Name of the Noticee	PAN
1.	Noticee no. 3	Bhiragacha Finance Company Pvt. Ltd.	AABCB0374J
2.	Noticee no. 8	Mr. Mahendra Kumar Agarwala	ACSPA8810C

3.	Noticee no. 9	Himatsingka Chemicals Pvt Ltd.	AAACH6414N
4.	Noticee no. 10	Abhishek Chemicals Pvt Ltd.	AAECA1091N
5.	Noticee no. 11	Vijaypath Management Pvt Ltd.	AAACV8930F
6.	Noticee no. 12	PH Trading Ltd.	AAACL4603M
7.	Noticee no. 13	Agarwal Trading Co.	AAEFA6220E
8.	Noticee no. 14	Universal Prime Aluminium Ltd.	AAACU3632M
9.	Noticee no. 15	Bluebird Mercantile Pvt. Ltd.	AABCB0735D
10.	Noticee no. 16	Vindya Agencies Pvt. Ltd.	AAACV9891P

75) It is further clarified that during the period of restrain the existing holding of securities, including the units of mutual funds shall remain under freeze in respect of the aforesaid 10 *Noticees*.

76) The obligation of the aforesaid 10 *Noticees*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Noticees* debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

77) The Order shall come into force with the immediate effect.

78) A copy of this order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

79) A copy of this order shall be served upon entities referred in para 74 above, Stock Exchanges, Registrar and Transfer Agent and Depositories for ensuring compliance with the above direction.

-Sd-

DATE: MAY 28, 2021 **S. K. MOHANTY**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA