

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

UNDER SECTIONS 11(1), 11(4), 11B AND 11A OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECTION 12A OF SECURITIES CONTRACT (REGULATION) ACT, 1956.

In respect of:

Noticee no.	Noticee Name	PAN No.
1.	MPF Systems Limited	AADCM7896A
2.	Ms. Kirti Salvi	ADHPJ9221C
3.	Mr. Anil Kothari	BZAPS5179J
4.	Mr. Aakesh Chopra	AENPC7889Q
5.	Mr. Ambrish Barsati Pal	APFPP2586L

(The aforesaid entities are hereinafter referred to by their respective names / Noticee numbers and collectively as “the Noticees”)

In the matter of MPF Systems Limited.

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1. Present proceedings have emanated from a show cause notice dated April 22, 2019 (hereinafter referred to as “**SCN**”), issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), to the abovenamed Noticees, calling upon them to show cause as to why appropriate directions under Sections 11(1), 11(4), 11A and 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and Section 12A of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”) should not be issued against them for the violations of provisions of SEBI Act, SCRA, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”) and SEBI (Prohibition on Fraudulent and Unfair Trade Practices Relating to Securities Market)

Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”), as mentioned therein.

2. The brief narrations of the facts leading the issue of aforesaid SCN is as under:

- (i) SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (**‘MCA’**) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office (**‘SFIO’**) dated May 23, 2017 which contained the database of shell companies along with their inputs.
- (ii) SEBI by its letter dated August 7, 2017 addressed to BSE Ltd. (**‘BSE’**), *inter alia* in respect of listed shell companies including MPF Systems Ltd. (hereinafter also referred to as **‘MPFSL’/ ‘the Company’**) (previously known as Mather and Platt Fire Systems Ltd.), placed trading restrictions on promoters/directors of such companies. Vide said letter dated August 7, 2017, SEBI also directed the stock exchanges to place the scrip of such shell companies in the trade to trade category with limitation on the frequency of trades and imposed a limitation on the buyer by way of 200% deposit on the trade value.
- (iii) Pursuant to the same, BSE vide notice dated August 7, 2017, to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed shell companies, as identified by MCA and communicated by SEBI, with effect from August 8, 2017.
- (iv) MPFSL vide its letter dated August 14, 2017 made a representation to BSE with a copy marked to SEBI submitting that the Company has been put under surveillance grade –VI without giving any proper reason of Company being involved in suspected manipulative activities, without any details of company distorting the market equilibrium or any allegation from any investor, without any pending investigation and opportunity of being heard in the matter. Further, MPFSL stated that the Order affects 25696 shareholders and other stake holders and thus they intend to move

to Securities Appellate Tribunal (hereinafter referred to as “**Hon’ble SAT**”) for appropriate directions.

- (v) In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and BSE, MPFSL filed an Appeal No. 210 of 2017 before the Hon’ble SAT. The Hon’ble SAT vide order dated August 29, 2017 directed the following:-

“

2. As the appellant has already made a representation to BSE against the said ex-parte order dated 7th August, 2017, with a copy to SEBI, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.

3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of four weeks from today. It is made clear that passing of any order on the representation made by the appellant would not preclude SEBI from further investigating the matter and initiate appropriate proceedings if deemed fit....”

- (vi) Pursuant to the aforesaid directions by Hon’ble SAT, SEBI passed an order dated September 26, 2017 directing *inter alia* as under:

26.

- i. The trading in securities of MPFSL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
- ii. Exchange shall appoint an independent forensic auditor *inter alia* to further verify:
 - a. Misrepresentation including of financials and/or business of MPFSL, if any;
 - b. Misuse of the books of accounts / funds including facilitation of accommodation entries, if any.

- iii. The limitation on the transfer of shares held by the Promoters and Directors as mentioned in para 1(b) of SEBI's letter dated August 07, 2017 is removed.*
 - iv. The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1(d), as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against M/s MPF Systems Limited.*
- (vii) Based on the directions given by SEBI in its order dated September 26, 2017, BSE appointed M/s. Adukia & Associates, Chartered Accountants, for conducting Forensic Audit of MPFSL. The Forensic Audit was conducted for the period from April 1, 2015 to January 15, 2018. The Forensic Audit Report (hereinafter referred to as "**FAR**") was submitted by BSE to SEBI on September 27, 2018. On the basis of the examination of the FAR by SEBI, an SCN, as referred to in paragraph 1 of this order, was issued to the Noticees.
3. The brief of the allegations levelled against the Noticees in the SCN is as under:
- (i) MPFSL had taken loan from the Noticee no. 3 and 4 i.e. its independent directors, thus the said independent directors were having pecuniary relationship with the Company which is not in accordance with Regulation 16(1)(b)(iv) of LODR Regulations. As the said independent directors were not independent, therefore, MPFSL violated Regulations 17(1)(b), 18(1)(b) and 19(1)(c) of LODR Regulations. In view of these allegations, SCN alleged that Noticee no. 1 has violated Regulations 16(1)(b)(iv), 17(1)(b), 18(1)(b) and 19(1)(c) of LODR Regulations.
 - (ii) Financial statements of MPFSL were misrepresented because of false and misleading statements with respect to the following:
 - a. The MPFSL had previously shown the entire sundry debtors of ₹5.97 crores as doubtful, however, afterwards, MPFSL showed the entire sundry debtors as NIL. Thus, by showing sundry debtors as well as provision for doubtful debts, MPFSL has incorrectly indicated that the

Company has 'doubt' that these receivables will be recovered, i.e. giving impression that there are slight chances of recovery. However, as stated by the FAR, no details of debtors are available.

- b. MPFSL had done incorrect recording/grouping and disclosure of balances in the Financial Statements as some transactions which should not have been shown as Trade Payables were shown as such and not as Sundry Creditors.
 - c. MPFSL reported other income of Rs. 8.34 Lakh for the financial year 2015-16 and attributed the same to the gain made out of the sale of the shares of United Spirits Ltd. by MPFSL. However, MPFSL did not produce any documentary proof of such transaction. On the contrary, stock exchanges and depositories informed forensic auditor that they did not observe any such transaction by MPFSL. Thus, SCN alleged that that such transactions shown as 'other income' by MPFSL in the financial statements of 2015-16 was not genuine.
- (iii) In view of the misrepresentations in the financial statements of MPFSL, as mentioned in sub-para (ii) above, Noticee no. 1 to 4 are alleged to have violated Regulation 4(1)(a),(b),(c),(e) & (g), Regulation 4(2)(f)(i) (2), Regulation 4(2)(f)(iii) (6) & (7), Regulation 4(2)(f)(iii)(1),(3),(6) & (12) and Regulation 33(2)(a) of LODR Regulations whereas Noticee no. 5 is alleged to have violated Regulation 4(1)(a),(b),(c),(e) & (g) and Regulation 33(2)(a) of LODR Regulations.
 - (iv) In view of the violations of the provisions of the LODR Regulations, as mentioned in sub-para 3(i) and para 3(iii) above, Noticees are alleged to have violated Section 21 of SCRA.
 - (v) In view of the instances of misrepresentation in the financial statements by MPFSL as mentioned in sub-para 3(ii) above, which misled the investors, SCN alleges that such acts were fraudulent. Thus, Noticees are alleged to have violated Section 12A (a), (b) & (c) of SEBI Act and Regulation 3(b), (c) & (d) and Regulation 4(1) and 4(2) (f) & (r) of PFUTP Regulations, 2003.

- (vi) Noticees have failed to provide affidavits of past directors of MPFSL to forensic auditor, as directed in the SEBI order dated September 26, 2017, Noticees furnished contradictory information about employees of MPFSL and Noticees did not furnish information other information to forensic auditor and thus Noticees are alleged to have violated Section 11(2)(i) and (ia) of the SEBI Act.

Hearing, reply and written submissions:

4. The service of SCN was successfully completed on all the Noticees. I note that Noticee no. 1 has filed its reply dated November 22, 2019 to the SCN. I also note that Noticee no. 2 to 5 have adopted the reply of Noticee no. 1. An opportunity of personal hearing was granted to the Noticees on November 26, 2019 and the same was attended by the Authorized Representative of the Noticees. Noticee no. 3 has filed its written submission dated December 2, 2019.

Consideration of issues and findings:

5. Various submissions made the Noticees in their reply and written submissions have been referred to and dealt with, while dealing with various allegations made against the Noticees in the SCN, in the following paras. Before dealing with the various allegations made in the SCN, it would be appropriate to refer to the provisions of law which are alleged to have been violated by the Noticees and relevant extract whereof is reproduced below:

Relevant extract of provisions of SEBI Act:

“Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

(a).....

(b).....

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(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;.....

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

Section 12A: No person shall directly or indirectly, -

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised 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;

(d)”

Relevant extract of provisions of SCRA:

“Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.”

Relevant extract of provisions of LODR Regulations:

“Principles governing disclosures and obligations.

4.(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d)

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(f)

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

.....

(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

(a)

(b)

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(f) Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

(1)

(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

.....

(ii) Key functions of the board of directors-

(1)

(2)

(3)

(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards...

.....

(iii) Other responsibilities: (1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

(2)

(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

(4)

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(6)The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders...

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(12)Members of the board of directors shall be able to commit themselves effectively to their responsibilities.

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Applicability.

15.(1) The provisions of this chapter shall apply to a listed entity which has listed its specified securities on any recognised stock exchange(s) either on the main board or on SME Exchange or on institutional trading platform.

(2) The compliance with the corporate governance provisions as specified in regulations 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 and para C , D and E of Schedule V shall not apply, in respect of –

(a) the listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty five crore, as on the last day of the previous financial year:

Provided that where the provisions of the regulations specified in this regulation becomes applicable to a listed entity at a later date, such listed entity shall comply with the requirements those regulations within six months from the date on which the provisions became applicable to the listed entity.....

Board of Directors.

17.(1) The composition of board of directors of the listed entity shall be as follows:

(a).....

.....

(b)where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

.....

Audit Committee.

18.(1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:

(a).....

(b)Two-thirds of the members of audit committee shall be independent directors

.....

Nomination and remuneration committee.

19.(1) The board of directors shall constitute the nomination and remuneration committee as follows:

(a).....

(b)

(c) at least fifty percent of the directors shall be independent directors.

.....”

Relevant extract of provisions of PFUTP Regulations, 2003:

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a)

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

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

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

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

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

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

(a).....

(b).....

...

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

(g)...

(h)...

.....

(r) Planting false or misleading news which may induce sale or purchase of securities;

.....”

6. From the Annual Report of MPFSL for the Financial Years 2015-16, 2016-17 and 2017-18, I find that:

(a) Noticee no. 2 was the Managing Director of MPFSL during the period covered under Forensic Audit;

(b) Noticee no. 3 was the independent director of MPFSL and Chairman of the Audit Committee of the board of MPFSL during the period covered under Forensic Audit;

- (c) Noticee no. 4 was the independent director of MPFSL and member of the Audit Committee of the board of MPFSL during the period covered under Forensic Audit from September 2016 onwards; and
- (d) Noticee no. 5 was the Chief Financial Officer of MPFSL during the period covered under Forensic Audit from March 2016 onwards.

7. First allegation in the SCN is that Noticee no. 3 and 4, who were designated as independent directors of MPFSL, had provided loan to MPFSL to the extent of Rs. 15, 000/- and Rs. 5,15,000/- respectively. Thus, the said independent directors were having pecuniary relationship with MPFSL which is not in accordance with Regulation 16(1)(b)(iv) of LODR Regulations. Further, as the said independent directors were not independent, SCN alleged that MPFSL is in violation of Regulations 17(1)(b), 18(1)(b) and 19(1)(c) of LODR Regulations. In this regard, before dealing with the contentions made by the Noticees in respect of this allegation, I note that Regulation 15(2) of LODR Regulations provide that the provisions of Chapter IV of LODR Regulations pertaining to corporate governance which includes Regulations 17, 18 and 19 of LODR Regulations, shall not apply in case of the listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty five crore, as on the last day of the previous financial year. I note that paid up equity share capital of MPFSL during financial years 2014-15 and 2015-16 was Rs. 3.4 Crores and networth was negative and during the Financial Year 2016-17 was Rs. 17.01 Lacs and networth was negative. Therefore, in terms of Regulation 15(2) of LODR Regulations, provisions of Regulations 17, 18 and 19 of LODR Regulations shall not apply in case of MPFSL. Regarding the violation of Regulation 16(1)(b), as alleged in the SCN, I note that Regulation 16 lays down certain definition for the purposes of Chapter IV of LODR Regulations. Regulation 16(1)(b) lays definition the definition of "independent director" and it is not a charging provision. Therefore, violation of Regulation 16(1)(b)(iv), as alleged in the SCN, is not maintainable. In view of the aforesaid discussions I find that violations of Regulations 16(1)(b)(iv), 17(1)(b), 18(1)(b) and 19(1)(c) of LODR Regulations, as alleged in the SCN, are not maintainable in view of Regulation 15(2) of LODR Regulations. Since, no violation of these provisions, as alleged in the SCN, is maintainable in view of Regulation 15(2) of LODR Regulations, therefore, I do

not find it necessary to deal with the contentions raised by the Noticees regarding the merits of these violations.

8. Another allegation in the SCN is that MPFSL had reported an amount of Rs. 8.34 Lakh during FY 2015-16, as “other income” which was profit from the sale of shares of United Spirits Ltd., without providing any documentary evidence in support of the same. Vide email dated November 12, 2018, November 13, 2018 and November 14, 2018, BSE, NSDL, CDSL and NSE had submitted that no transaction in the scrip of United Spirits Ltd., entered by MPFSL during FY 2015-16 was observed by them. Hence, SCN alleges that such transactions shown as “other income” by MPFSL are not genuine. In this regard, Noticees have submitted that MPFSL had 266 shares of United Spirits Ltd., in physical form and had in fact sold these shares to one Mr. Suresh Ganpat Tambe in June/July 2015 for a consideration of Rs. 8.5 Lakh (approx.) at a price of Rs. 3196/- (approx.) per share. Noticees have also submitted documentary proof in support thereof. From the letter, demat statement and bank statement of Suresh Ganpat Tambe, as submitted by Noticees, I find that the transaction to which “other income” of Rs. 8.34 Laks has been attributed by MPFSL, is genuine and thus the allegation levelled in the SCN in this regard does not sustain.
9. Another allegation, as alleged in the SCN, against the Noticees is that earlier management had considered the entire sundry debtors of Rs. 5.97 crores as doubtful, however after the Company was acquired by the present management and they considered the entire sundry debtors as NIL. Thus, by showing sundry debtors as well as provision for doubtful debts, MPFSL had incorrectly indicated that the Company has ‘doubt’ that these receivables will be recovered, i.e. giving impression that there are slight chances of recovery. However, as stated by the FAR, no details of debtors were available with the company of such debtors. SCN, therefore, alleges that the financial statements are misrepresented to that extent. In this regard, Noticees have submitted that the new management/promoters of the Company had taken over the Company only after July, 2014. The provision for doubtful debt was made by the earlier management. Further, there is no misrepresentation on part of the Company with respect to these debts as doubtful, as 100% provision was made against

the doubtful debts and it is to be assumed that chances of recovery from debtors was nil. The very fact that the provision has been made for the entire amount of the doubtful debts, itself shows that the Company also represented that there is no chance of recovery of the said debt else the provision would not have been made for the entire amount. The value of the debtors taken into main balance sheet is also shown as nil. Therefore, it cannot be alleged that the management or the Company gave a wrong impression that there is slight chance of recovery of these debts. The reason for which the earlier management of the Company had shown Rs. 5.97 Crores as Sundry Debtors and also created provision for the same was a management decision made by the Company at that time and once the new management came into picture, it has tried to rectify all the prior mistakes/errors by the Company and are trying to revive the Company as on date.

10. In this regard, I note that the FAR has stated that the trade receivables were not in existence as there were no details available with MPFSL. It was further stated in the FAR that MPFSL was unable to provide the details about the amount being receivable from debtors with breakup. However, MPFSL showed sundry debtor of Rs. 5.97 crore and 100% provision was made against the same, to incorrectly indicate that MPFSL had “doubt” that these receivables will not be recovered, thus, giving an impression that there were slight chances of recovery from these sundry debtors whereas in fact company was not even having the details of these debtors and amount recoverable from them. The contention of the MPFSL is that there is no misrepresentation on part of MPFSL with respect to these debts as doubtful, as 100% provision was made against the doubtful debts and it is to be assumed that chances of recovery from debtors was nil. The said contention of MPFSL stands defied by its subsequent conduct whereby it had itself written off the said amount as “bad debt” thus assuming the chances of its recovery as “nil”. Making of 100% provision for particular amount may be indicative of difficulty in recovery but it indicates that there are chances of recovery. Thus, MPFSL by making 100% provision for sundry debtors for Rs. 5.97 crore, whereas in fact there was no sundry debtor, made misrepresentation in its financial statement.

11. Another allegation levelled in the SCN is that MPFSL had done incorrect recording/grouping and disclosure of balances in the Financial Statements as some transactions which should not have been shown as Trade Payables were shown as such and not as Sundry Creditors. Trade payables of Rs. 14.18 Lakh as on March 31, 2016, as informed by MPFSL to forensic auditor, vide its letter dated June 21, 2018, were not trade payable but sundry creditors and hence, the financial statements of MPFSL were misrepresented to that extent. In this regard, MPFSL has submitted that it is not in operation since December 2012 and the Company in all its filing with the Registrar of Companies (ROC) as well as stock exchange has shown in the profit & loss statement for the financial year 2013-14 to 2018-19 that the revenue from operations and other operating revenue is nil and therefore, the question of misleading the investors or shareholder to believe that the Company is operational does not arise. MPFSL has further submitted that the sum of Rs. 8.6 Lakhs was correctly shown under the category of 'trade payables' as it was relating to cheques issued but not deposited by the creditors for goods purchased or services received. It has been submitted that the Balance Sheet like any other document which has to be reviewed by a person must be read as whole to identify as to the whether the information contained in such document can be construed to be misleading. Reading the Accounts as a whole it can clearly be seen that there is no manner of doubt that the Company had no operations since financial year 2013-14 and thus is not in operation or is generating no revenue. Without prejudice to the above, if at all it is admitted that the grouping of trade payable and sundry creditor done by the Company was wrongful at the highest it can be alleged to be a technical mistake and not a misrepresentation/wrongful indication on part of the Company as both are covered under the head of Current Liabilities and also the fact that for all the relevant years the Company has shown nil revenue from operations in all its financial statements.

12. In this regard, I note that Noticee no. 1 has claimed that the sum of Rs. 8.6 Lakhs was correctly shown under the category of 'Trade Payables' as it was relating to cheques issued but not deposited by the creditors for goods purchased or services received. I note that MPFSL has failed to provide any proof in support of this claim, either in the form of a copy of the invoice(s) or copy of cheque issued or acknowledgment of debt by the creditor or any other

documentary evidence. Further, it also raises serious suspicion over such transactions when amount of Rs. 8.6 lacs is seen to have not been claimed by the vendor creditors for such long period of time. Be that as it may, I note that in the present case, Noticees have themselves submitted that MPFSL was not having any operations since financial year 2013-14 and hence, it is not generating any revenue. Thus, in the absence of regular operations generating revenue, the classification of such creditors as 'Trade Payable' by MPFSL was incorrect. Further, I do not agree with the argument of the Noticees that the wrong grouping/classification of Sundry Creditors as Trade Payable was at best merely a technical default. Further, the contention of the Noticees that balance sheet must be read as a whole and therefore, even if certain amount was disclosed as "trade payables", it did not misled the investors as it was disclosed that MPFSL was not having any operations since 2013-14, is not tenable as the balance sheet of a listed public company must be correct in all respect. Once it is found that the financial statements of a company contain incorrect statements then such statements misled the investors. Thus, I find that by misclassifying sundry creditors, the Financial Statements of MPFSL, were misrepresented to that extent.

13. I note that such entries, as discussed in paras 9 to 12 above, in the books of accounts of MPFSL must also be looked in the light of the fact that the proceedings against MPFSL were initiated on the premise that MPFSL is a shell company having only investments and no business operations. When so looked, these entries pertaining to sundry debtors and creditors in the books of accounts of MPFSL, can be said to be misrepresentation of financial statements to that extent.

14. I note that financial statements are important document of a listed company which are critical for the investors and other stakeholders to take an informed decision regarding investment/dealings in/with the listed company. Therefore, law requires that such financial statements contains true and fair information, in accordance with the applicable accounting standards. A company being juristic person acts through its board of directors. Thus, the obligations imposed upon the listed company regarding the preparation and disclosure of financial statement, in accordance with applicable legal provisions, casts duty on the

board of directors of the listed company and on the CFO of such company, to ensure discharge of such obligation of listed company in true letter and spirit.

15. In view of the misrepresentations in the financial statements of MPFSL, as discussed in paragraphs 9 to 12 above, I find that Noticee no. 1 to 4, being the listed company and its directors, have violated Regulation 4(1)(a),(b),(c),(e) & (g), Regulation 4(2)(f)(i) (2), Regulation 4(2)(f)(iii) (6) & (7), Regulation 4(2)(f)(iii)(1),(3),(6) & (12) and Regulation 33(2)(a) of LODR Regulations. I find that for the same misrepresentation in the financial statements of MPFSL, as discussed in paragraphs 9 to 12 above, Noticee no. 5 being Chief Financial Officer (CFO) of MPFSL, has violated Regulation 4(1)(a),(b),(c),(e) & (g) and Regulation 33(2)(a) of LODR Regulations. I note that Section 21 of the SCRA provides that when the securities of a company are listed on a stock exchange on the application by any person such person shall comply with the conditions of listing. In terms of provisions of Section 11 and 11A of the SEBI Act, LODR Regulations have been framed to provide for conditions of listing. In view of the violations of the provisions of the LODR Regulations, by MPFSL, as mentioned above, Noticee no. 1 has violated Section 21 of SCRA.
16. I note that misrepresentation in the financial statements of MPFSL, as discussed in paragraphs 9 to 12 above, was also fraudulent as it had the potential to induce the investors to trade in scrip of MPFSL. Therefore, Noticees, being the listed company, its directors and CFO, have violated Section 12A (a), (b) & (c) of SEBI Act and Regulation 3(b), (c) & (d) and Regulation 4(1) and 4(2) (f) & (r) of PFUTP Regulations, 2003.
17. Another allegation levelled in the SCN is that Noticees have failed to provide affidavits of past directors of MPFSL to forensic auditor, as directed in the SEBI order dated September 26, 2017, furnished contradictory information about employees of MPFSL and did not furnish the information/document to forensic auditor. In this regard, I note that SCN alleges that BSE vide letter dated December 22, 2017 informed MPFSL about the appointment of Forensic Auditor in accordance with SEBI order dated September 26, 2017. In the same letter, BSE had requested the Company to co-operate with the audit firm to carry out the forensic audit of the Company and had also indicated that the non-

cooperation in the matter will be viewed seriously leading to further appropriate action. SEBI vide letter dated November 2, 2017, delegated on the stock exchanges certain powers of SEBI under Section 11(2)(i) and 11(2)(ia) of the SEBI Act for the purpose of performing direct fact finding exercise in the matter of shell companies *inter alia* including calling for information. Further, in the SEBI order dated September 26, 2017, it was stated that MPFSL has failed to submit the number of employees including the Provident Fund details, if any, for the FY 2015-16 and FY 2016-17 and as on September 14, 2017. In this regard the forensic auditor had sought details from MPFSL. There was no confirmation regarding exact number of employees working for MPFSL, as the statement issued to the forensic auditor were inconsistent. As per the forensic auditor in one letter dated January 29, 2018, MPFSL stated that “there are no employees on paid salary”, indicating that employees were there but no salary was paid. Further, the forensic auditor has also stated that in the minutes of the discussion dated March 24, 2018, signed by Mr. Ambrish Pal, “MD says in his company there is no other employee”. This is in contradiction to another email dated June 22, 2018 by Mr. Ambrish Pal stating that there are ‘1+3 employees’. SCN alleges that MPFSL has failed to submit the required information/supporting documents as sought by the Forensic Auditor on certain occasions. The same conduct of MPFSL was also observed at the time of passing of SEBI order dated September 26, 2017. The SCN thus alleges that MPFSL, its directors and CFO, have failed to provide information to the forensic auditor and thus failed to provide information to SEBI and thereby violated Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992. In this regard, MPFSL has contended that all information which was in their control was provided to the forensic auditor. With respect to the details of employees of MPFSL, the Noticees have submitted, “As the Company is currently not having any operations, it has no employees other than the Managing Director (Ms. Kirti Salvi), 2 Independent Directors (Mr. Anil Kothari & Mr. Aakesh Chopra) and one CFO (Mr. Ambrish Barsati Pal) and therefore the submission of Mr. Ambrish Pal is not incorrect with regards the fact that there are only 1+3 employees of the Company. With regards the contradiction in the minutes of discussion dated 24th March, 2018, it is submitted that the said meeting was attended by all the 3 Directors along with the CFO of the Company and the statement that “Managing Director says in this co. there is no other employee” has to be read

to mean that other than the 3 Directors and the CFO there are no other employees of the Company. The submission was made in the context of no other employees.”

18. I find that the explanation provided by the Noticees with regard to the allegation of providing contradicting/incomplete information about the employees of MPFSL, is plausible and hence, no adverse inference can be drawn against the Noticees, in this regard. With regard to the allegation of not providing information to the forensic auditor on other occasions, I find that SCN does not enlist such occasions when the Noticees failed to provide information. On the other hand, Noticees have submitted that they had provided all the information, in their control, to forensic auditor. Thus, on both these counts, I find that violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act, is not made out against the Noticees.
19. Regarding the allegation in SCN that Noticees have failed to provide affidavit from past directors namely, Mr. Bijay Kumar Dukania, Mr. Shailendra Patni, Mr. Mukesh Saraswat, Ms. Pooja Jian, Mr. Rajesh Khetan and Mr. Arvind Maurya, the Noticees have submitted that MPFSL or the present Directors cannot be made liable for non-filing of affidavits by past directors of MPFSL because the new management took over MPFSL on July 1, 2014 and they could not have forced the past directors to file an affidavit after a period of more than 2 years of their resignation. It is contended that if SEBI or the forensic auditor wanted any information or affidavit from any past director, it could have written directly to that concerned person and if that person did not reply or file an affidavit then in that case SEBI can take action against those entities for violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act. I find that the affidavits, as required have been filed by the current directors of MPFSL. I note that present directors of MPFSL cannot force the former directors of MPFSL, to file the affidavit. Therefore, I find merit in the submission of the Noticees that the Noticees are not responsible for failure to file the affidavits by the past directors of MPFSL. Therefore, the violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 as alleged against the Noticees for this cause of action does not stand established.

Directions:

20. In view of the above, I, in exercise of the powers conferred upon me through Section 19 read with Sections 11(1), 11(4), 11A and 11B of the SEBI Act and Section 12A of SCRA, hereby direct that Noticees are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, for a period of six months from the date of coming into force of this Order.

21. This Order comes into force with immediate effect.

22. A copy of this order shall be sent to the Noticees, recognised Stock Exchanges, the relevant Banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

23. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs along with a copy of the Forensic Audit Report for their information.

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

Date: April 20, 2020

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA