

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11(1), 11(4), 11B(1) 11B(2) AND 11(4A), OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Sl. No.	Name of the Noticees	PAN
1.	Money Mishra Financial Services	AAZFM1357R
2.	Money Mishra Overseas Pvt. Ltd.	AAJCM8612N
3.	Mr. Awanish Kumar Mishra	AGOPM7538H
4.	Mr. Jitendra Kumar Tiwari	ALBPT6629A

In the matter of transfer of mutual fund units by Money Mishra Financial Services and others

BACKGROUND

- 1) Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received the following complaints against Allied Financial Services Pvt. Ltd. (hereinafter referred to as “AFSPL”), a Depository Participant (“DP”) of the National Securities Depository Limited (hereinafter referred to as “NSDL”), alleging unauthorized transfer of mutual fund units (hereinafter referred to as “MF Units”):
 - i. Complaint dated February 08, 2019, from Finsec Law Advisor on behalf of its clients Dalmia Cement East Limited (hereinafter referred to as “DCEL”) and OCL India Limited (hereinafter referred to as “OCL”) alleging

Order in the matter of transfer of mutual fund units by Money Mishra Financial Services and others

unauthorised transfer of MF Units worth INR 344.07 Crore by AFSPL (these complainants are hereinafter collectively referred to as “**Dalmia Group**”).

- ii. Complaint vide SCORES registration no. SEBI/WB18/0001138/1 dated December 31, 2018 and letters dated January 18, 2019 and January 21, 2019 from Novjoy Emporium Private Limited (hereinafter referred to as “**NEPL**”) alleging unauthorized transfer of its MF Units worth INR 21 Crore by AFSPL.
- 2) A preliminary examination of the contents of the complaints showed that the alleged acts of AFSPL and other entities were not carried out in a fair and transparent manner and the same appeared to have contravened the provisions of law pertaining to securities market. Such preliminary findings led to the initiation of an investigation into the matter for the period from February 20, 2017 to February 08, 2019 (hereinafter referred to as the “**Investigation Period**”) to determine as to whether the alleged acts of AFSPL and other entities if any, are in possible violations of provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”). As a part of the said investigation, SEBI also carried out a forensic audit through Sarath & Associates for a detailed examination of the business affairs of AFSPL for better understanding of the role of AFSPL in the alleged transfer of securities from accounts of its aforesaid clients. SEBI further, directed the National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) to undertake another forensic audit of AFSPL for the period April 01, 2017 to January 31, 2019.
- 3) Pursuant to conclusion of the investigation, a common Show Cause Notice dated July 30, 2021 (hereinafter referred to as “**SCN**”) was issued *inter alia*, to Money Mishra Financial Services, Money Mishra Overseas Pvt. Ltd., Mr. Awanish Kumar Mishra and Mr. Jitendra Kumar Tiwari (hereinafter collectively referred

to as “**Noticees**”). The relevant facts arising out of the said investigation qua the *Noticees* as contained in the SCN are as under:

- i. The *Noticee no. 1* i.e., Money Mishra Financial Services (hereinafter also referred to as “**MMFS**”) is a partnership firm where the *Noticee nos. 3* (Mr. Awanish Kumar Mishra) and *4* (Mr. Jitendra Kumar Tiwari) are its partners. Similarly, the *Noticee no. 2* i.e., Money Mishra Overseas Pvt. Ltd. (hereinafter also referred to as “**MMOPL**”) is a private limited company where the *Noticee nos. 3* and *4* are directors and are holding 99.9% and 0.1% shares of MMOPL, respectively.
- ii. The *Noticee nos. 3* and *4* who are partners/directors in MMFS (*Noticee no. 1*) and MMOPL (*Noticee no. 2*) are also directors of AFSPL (where the *Noticee nos. 3* is the Promoter & MD and the *Noticee no. 4* is the Additional Director, respectively) and consequently the *Noticees* are affiliated entities of AFSPL as they are under common control of the *Noticee nos. 3* and *4*. Further, the *Noticee nos. 1, 2* and *3* are also clients of AFSPL as they hold trading and demat accounts with AFSPL.
- iii. The *Noticee nos. 1, 2* and *3* received MF Units from the demat accounts of DCEL, OCL and NEPL into their own demat accounts and actively permitted these MF Units to be transferred out of their accounts to the pool account of AFSPL, which further got transferred to IL&FS Securities Services Limited (hereinafter referred to as “**ISSL**”), a clearing member of AFSPL during the Investigation Period for being utilised as collateral for taking trade exposure in the Future & Option (hereinafter referred to as “**F&O**”) segment on behalf of the *Noticee nos. 1, 2* and *3*.
- iv. The *Noticee nos. 3* and *4*, as partners and directors in the *Noticee nos. 1* and *2*, respectively, raised no objection to the receipt of such large value MF Units from the demat accounts of beneficial owners (approx. INR 5371.28 Crore) for which primarily no consideration was found to have been paid and thereafter, transferred these MF Units to AFSPL. Further, the *Noticee no. 3*, in his role as partner and director of the *Noticee nos. 1* and *2*,

respectively, was the authorized signatory to sign Delivery Instruction Slip (hereinafter referred to as “**DIS**”) and by signing the DIS caused the transfer of the MF Units from the demat accounts of the *Notices nos. 1 and 2*, to AFSPL.

- v. The *Notice no. 4* along with the *Notice no. 3*, in his capacity as partner of the *Notice no. 1*, has signed a declaration that has authorized the *Notice no. 3* to carry out all acts on behalf of the *Notice no. 1*. Similarly, in his capacity as director of the *Notice no. 2*, he has signed the Board Resolution that has made the *Notice no. 3* the authorised signatory to sign and execute DISs.
- vi. The above acts on the part of *Notices nos. 1, 2 and 3*, where they have been noticed to have overtly or covertly acted in securing the transfer of MF Units to their own demat accounts to be used subsequently as collateral/margins by ISSL for trades executed on their behalf, are alleged to be a fraudulent and unfair trade practice within the realm of the PFUTP Regulations, 2003, wherein the *Notice no. 3* in particular, in his capacity as partner/director/authorised person has knowingly and intentionally perpetrated the said fraudulent and unfair acts.
- vii. It is also alleged that the *Notice no. 4* has knowingly by not undertaking /observing due diligence measures including keeping a check on the transactions in the demat accounts, tracking the use of the DIS for transfer of MF Units, etc., has committed deliberate neglect on his part by allowing the above acts to be carried out by the *Notices nos. 1, 2 and 3* and thereby becoming liable for the above acts, since the acts of the *Notices nos. 1 and 2* are attributable to his negligence being a partner and director of the *Notices nos. 1 and 2*, respectively. Consequently, the aforesaid fraudulent acts and negligence committed on the part of the *Notices* have been alleged to be in violation of regulation 3 (a) and regulation 4(1) of the PFUTP Regulations, 2003.
- viii. In view of the aforesaid findings, the *Notices* have been asked to show cause as to why suitable directions under Sections 11B(1), 11(4) read with

11(1) of the SEBI Act, 1992 should not be issued against them for the alleged violations of the relevant provisions of the PFUTP Regulations, 2003. The *Notices* have also been called upon to show cause as to why appropriate order/direction imposing monetary penalty under Sections 11B(2) and 11(4A) read with Sections 15HA of the SEBI Act, 1992 read with SEBI(Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Rules**”) should not be issued against them for the alleged violations of the aforementioned provisions of the PFUTP Regulations, 2003.

- 4) I note from the records before me that the SCN was duly served upon the *Notices* as detailed here under:

Noticee	Date of delivery of SCN	Mode of delivery
Noticee no. 1 (Money Mishra Financial Services)	July 30, 2021	Email
Noticee no. 2 (Money Mishra Overseas Pvt. Ltd.)	July 30, 2021	Email
Noticee no. 3 (Mr. Awanish Kumar Mishra)	July 30, 2021	Email and letter
Noticee no. 4 (Mr. Jitendra Kumar Tiwari)	August 14, 2021	Affixture

REPLY, PERSONAL HEARING AND SUBMISSIONS

- 5) Pursuant to receipt of the SCN, one Mr. Manish Kumar Mishra (hereinafter referred to as “**Mr. Manish**”), claiming to be a younger brother of the *Noticee no. 3*, vide his email dated August 25, 2021 (received from email address manishk75@gmail.com) and letter dated August 25, 2021 has *inter alia* requested SEBI to keep the present SCN and related proceedings in abeyance for the reasons stated therein which are summarised in para 6 below. As the *Notices* have not filed any reply refuting the charges/allegations made in the SCN within the stipulated time as indicated therein, in order to provide them with fair and sufficient opportunity as also to comply with principle of natural justice, a reminder letter cum hearing notice dated September 13, 2021 was issued to them

advising them to file their written replies to the SCN by October 12, 2021 and to avail an opportunity of personal hearing scheduled for them on October 20, 2021. However, I note that the *Notices* failed to file any written response on the charges made /allegations levelled in the SCN and have also chosen not to attend the personal hearing on October 20, 2021 despite receiving the said letter cum hearing notice dated September 13, 2021 that was served on them. Meanwhile, I note that Mr. Manish vide his email dated October 12, 2021 has reiterated his submissions earlier made on behalf of the *Noticee no. 3* vide his earlier email dated August 25, 2021.

- 6) The submissions made by Mr. Manish on behalf of the *Noticee no. 3* are summarised as under:
- i. In an earlier proceedings initiated by SEBI on the basis of a separate show cause notice issued on December 09, 2019, an inquiry has already been held against the *Noticee no. 3* in his capacity as the Managing Director and Promoter of AFSPL based on which SEBI vide its order dated July 02, 2021 has imposed penalty on AFSPL as well as on Mr. Awanish Kumar Mishra (i.e., the *Noticee no. 3*) in his capacity as the MD and Promoter of AFSPL. While doing so, respected Whole Time Member of SEBI has extensively discussed the role of the *Noticee no. 1, 2* as well as that of the *Noticee no. 3*. As such, issuing of the present SCN and initiating another proceeding against the *Noticee no. 3* and other entities all over again would clearly amount to multiple and parallel proceedings for the same allegations under the same law and against the same person seeking to penalize him twice.
 - ii. Apart from the levy of penalty as above, various assets owned by the *Noticee no. 3* i.e., Mr. Awanish Kumar Mishra and AFSPL have already been frozen by SEBI.
 - iii. In addition to the above, the Economic Offences Wing (EOW) of Delhi Police has registered an FIR No. 0046/2019 dated March 26, 2019 against the *Noticee no. 3* in a complaint made by Mr. Puneet Dalmia/Dalmia Bharat Group. At this stage, nothing has been determined against him as the trial is

far off from commencement. However, after the filing of the said FIR the *Noticee no. 3* was first arrested by EOW on August 16, 2019 and confined to custody at various points in time over the last 2 years or so. An interim bail was eventually granted on July 13, 2019 and which stood extended until March 20, 2021. The *Noticee no. 3* has been in custody after having surrendered on March 21, 2021.

- iv. The *Noticee no. 3* has no access to any relevant papers, documents and records to prepare a suitable reply to the SCN. Further, an attempt is being made to prepare and file an appeal before the Hon'ble Securities Appellate Tribunal as soon as possible, against SEBI order dated July 02, 2021 despite the fact that the family and lawyer of the *Noticee no. 3* have extremely limited access to him.
- v. In the above circumstances, where order dated July 02, 2021 has already been passed against the *Noticee no. 3* widely discussing his role and that of the other entities in the allegations, his assets are under freeze and he is under restrictive access, it is requested to keep the present SCN and related proceedings on hold for a period of at least 4 months.
- vi. The *Noticee no. 3* is not in a position to attend the hearing fixed on October 20, 2021.

CONSIDERATION OF ISSUE AND FINDINGS

7) I have carefully perused the SCN, the replies dated August 25, 2021 and October 12, 2021 filed on behalf of the *Noticee no. 3* and materials/details available on the record. After considering the allegations made/charges levelled against the *Noticees* in the instant matter as spelt out in the SCN, the issue which arises for my consideration and adjudication in the present proceeding is as under:

- I. Whether the acts of receipt of MF Units in the accounts of the *Noticee nos. 1, 2 and 3* without consideration from the demat accounts belonging to others and subsequent transfer of these units for utilization as collateral/

margins for their trade exposure taken in derivative segments, are in violation of regulations 3(a) and 4(1) of the PFUTP Regulations, 2003?

- 8) Before dealing with the issue framed above, the charges levelled against the *Notices* and submissions made by the *Notices*, it would be appropriate to refer to the relevant provisions of law alleged to have been violated in the matter, extract whereof is reproduced below:

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;

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.

- 9) Before proceeding to deal with the aforesaid issue in the context of the allegations made/charges levelled in the SCN, I find it appropriate to deal with the preliminary objections/issues raised on behalf of the *Noticee no. 3* stating that issuance of the present SCN has amounted to multiple and parallel proceedings against him for the same allegations under the same law and against the same person thereby, seeking to penalize the same persons twice since, SEBI had already imposed penalty on AFSPL as well as on the *Noticee no. 3* in his capacity as Promoter and MD of AFSPL vide another order dated July 02, 2021. It has been further contended that the present proceedings are required to be kept in abeyance on account of his inability to prepare and file a suitable reply for want of access to relevant papers, documents and records in this regard.
- 10) The aforesaid submissions made before me on behalf of the *Noticee no. 3* may appear to be attractive on the first blush, however, on a closure scrutiny, it is noticed that the earlier proceedings being referred to by the *Noticee no. 3* were initiated against AFSPL and its three directors for alleged violations of the applicable provisions of SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as “**DP Regulations**”) read with the PFUTP

Regulations, 2003 and various Circulars issued from time to time, wherein the *Notices nos. 3 and 4* were made notices in their specific role as Promoter and Director of AFSPL and more specifically against the *Notice no. 3* as Promoter and MD of AFSPL and against the *Notice no. 4* in the capacity of as an Additional Director only. It is further noticed that the scope of the earlier proceedings mentioned by the *Notice no. 3* was primarily limited to the role of AFSPL and its three directors in vicarious capacities, as a registered intermediary and its management team and the same proceedings went into the commission of violations as alleged in that show cause notice pertaining to the transfer and utilisation of MF Units by AFSPL as a DP for being utilised as collateral/margins for the trades executed on behalf of its various clients. Thus the said proceedings were initiated against AFSPL and its directors for their alleged acts in the capacity of a registered intermediary and accordingly, after having analysed, considered and heard the submissions on the alleged violation of the DP Regulations, the PFUTP Regulations and applicable Circulars, the said proceedings were disposed of vide order dated July 02, 2021 wherein the said alleged violations were found to be established on the reasons and findings recorded therein. Whereas in the present proceedings before me the alleged fraudulent role of the *Notices* as clients (i.e., the *Notice nos. 1, 2 and 3*) of AFSPL *per se* is under consideration and in the SCN that is under adjudication before me the *Notices* are alleged to have acted as conduits who knowingly and purposefully facilitated the transfer of units of MFs purportedly belonging to the beneficial owners by routing them through their demat accounts of the pool accounts to the AFSPL so as to utilise those units as collaterals towards margin money for their trades executed in the securities market. Therefore, the scope of the present proceedings is limited to obtain a satisfactory explanation from the *Notice no. 3* with respect to the receipt of units of MFs in their respective demat accounts without paying any consideration, which have been alleged as a fraudulent acquisition of those MF Units in violations of applicable provisions of the PFUTP Regulations. In this respect, the roles of the *Notice nos. 3 and 4* have been alleged as partners and directors in the *Notice nos. 1 and 2* which is different from their alleged roles as MD & Promoter and Director, respectively of AFSPL, a registered intermediary

of the securities market which was the subject matter of the earlier order dated July 02, 2021.

- 11) It is thus evident from above that *Noticee no. 1 and 2* have not been proceeded with previously and the remaining two *Noticees* were proceeded against in the earlier proceedings in their respective capacity of Promoter & MD and Additional Director of AFSPL. Therefore, the roles of the *Noticee nos. 1 and 2* and the roles of their partners and directors, respectively (the *Noticee nos. 3 and 4*) were neither discussed nor subjected to any proceedings before the present proceedings. To put it differently, the issues that were under consideration in earlier proceedings were against AFSPL as a registered Depository Participant and its three directors as co-conspirators whereas the scope of the instant proceedings is in respect of the role and acts of the *Noticees* as clients of AFSPL, who are alleged to have acted as conduits in receiving the MF Units and further facilitating unauthorised transfer of the said units from the accounts of the beneficial owners for being used as collateral by AFSPL for the trades of the *Noticee nos. 1, 2 and 3* in the securities market. In view of the aforesaid, it is abundantly clear that the alleged acts and roles of the *Noticees* which are the subject matter of the present proceedings were never part of the earlier proceedings which got disposed of vide order dated July 02, 2021 and resultantly were never examined nor any finding thereon has ever been arrived at in the earlier proceedings. In view of the above, I am of the considered view that merely because the *Noticee nos. 3 and 4* have been proceeded against in another previous proceedings and the charges against them were found to be established in the said proceedings in their capacity as persons responsible for the management & affairs of AFSPL as a DP, such earlier proceedings would not entitle them to claim immunity (double jeopardy) from the alleged violation committed by them (the *Noticee nos. 3 and 4*) in their capacity as partners and directors of the *Noticee nos. 1 and 2* in the present proceedings.
- 12) As regards the other preliminary issue raised by the *Noticee no. 3* that he is unable to prepare a suitable reply because he has no access to any relevant papers, documents and records and therefore the proceedings should be kept on hold, I

see no merit in the same as the *Noticee no. 3* has neither brought to my notice as to which specific documents/records he proposed to rely upon which are not accessible by him nor has he provided any insight as to how he will have access to those particular documents after few months which are beyond his reach now. In this respect, it is brought to my notice that the *Noticee no. 3* in the earlier proceedings, in his capacity as Promoter and MD of AFSPL has already filed a detailed reply and additional submissions and the same have been dealt with extensively in the relevant order dated July 02, 2021. Nonetheless, apart from submitting that he has no access to any relevant papers, documents and records to prepare a suitable reply to the SCN, I find that the *Noticee no. 3* has not specified as to what relevant papers, documents and records he is referring to whose non-availability obstructs him to file a suitable reply especially when all the relevant details/documents have already been supplied to him as part of the SCN which he has already received. Moreover, Mr. Manish (who has made submission on behalf of the *Noticee no. 3* and claims to be his brother) is at liberty to collect the relevant records/documents to submit a suitable reply to the SCN and it has not been brought to my notice if he has any impediments in doing so. Thus, I do not find any merit in the submissions of the *Noticee no. 3* that he is unable to prepare and file suitable reply to this SCN on account of lack of access to the relevant papers and documents (who has already filed a detailed reply on behalf of AFSPL in the earlier proceedings originating from the same matter in the capacity of MD of AFSPL) hence the same is rejected.

- 13) Moving on to the main allegation against the *Noticees*, I find that the *Noticees* have allegedly played a role/part in a scheme of unjustified receipt and transfer of the MF Units before the same were transferred to ISSL for use as collateral/margins against the trade exposure in F&O segment *inter alia* on behalf of the *Noticee no. 1, 2 and 3*. The investigation has revealed that the above *Noticees* have received in large number (of very high value) of MF Units into their demat accounts without having paid any consideration in lieu of receiving those MF Units nor have they raised any objection when those MF Units owned by the beneficial owners were transferred into those demat accounts. Further, those large

quantities of units of MFs have been subsequently transferred and used by the *Notices nos. 1, 2 and 3* as collateral in respect of trades executed on their behalf. In this regard, the *Notice no. 4*, is alleged to be liable for the acts of the *Notice no 1 and 2* and the *Notice no. 3* being the partner, director and authorised person is alleged to be liable for the receipt and transfer of units of MFs. Thus, the aforesaid acts of buy, sell or otherwise dealing in securities are alleged to have been conducted by following fraudulent and an unfair trade practice in securities and are in violation of regulations 3(a) and 4(1) of the PFUTP Regulations, 2003.

- 14) It is noted that none of the *Notices* has been able to advance any justification or evidence or any submissions refuting the allegations/charges levelled against them in the SCN. Moreover, the *Notices* have chosen to remain absent during the personal hearing granted to them on October 20, 2021 despite the reminder cum hearing notice having been duly served on them as noted above. Under the circumstances, absence of any reply or response to the allegations made in the SCN, leaves no other impression except that the *Notices* have nothing to offer in their defence against the charges levelled in the SCN and have by their deliberate silence, admitted to their role in the aforesaid fraudulent manipulative scheme as has been alleged against them in the SCN. Such an adverse view has also been well recognised as a legitimate item that can be taken in such circumstances, in various decisions of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT/Tribunal**"). I would seek reference to and reliance on the observations of Hon'ble SAT, in the matter of *Classic Credit Ltd vs. SEBI* (Appeal No. 68 of 2003, decided on December 8, 2006), wherein it was *inter alia*, held that "*.....the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them*". It is also pertinent to refer to the observations of Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI* (Appeal No. 68/2013, decided on February 11, 2014) wherein while endorsing the above view, the Hon'ble SAT has *inter alia* held as follows:

".... As rightly contented by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal

bearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices...”

- 15) Without prejudice to the aforesaid view, in the interest of clarity and better appreciation of facts, I move on to examine the charges made in the SCN and note that DCEL and OCL had opened their demat accounts with AFSPL on February 20, 2017 and May 10, 2017, respectively. The examination reveals that MF Units of large values were credited into the demat accounts belonging to the *Noticee nos. 1, 2 and 3* from the demat account of DCEL and OCL. The market values of such MF Units received in the demat account of the *Noticee nos. 1, 2 and 3* on several occasions from DCEL and OCL during the period April 01, 2017 to January 31, 2019 were found to be as under:

Table 1: Transfer of MF Units from Demat Accounts of Dalmia Group

Dalmia Group entity	Client of AFSPL which received MF Units from Dalmia Group	Value of MF Units Received (INR)
OCL India Limited	<i>Noticee no. 01</i> -Money Mishra Financial Services	2263,06,89,606
	<i>Noticee no. 02</i> -Money Mishra Overseas Pvt. Ltd.	112,03,82,323
	<i>Noticee no. 03</i> -Awanish Kumar Mishra	204,42,27,365
	Total	2579,52,99,294
Dalmia Cement East Limited	<i>Noticee no. 01</i> -Money Mishra Financial Services	2516,41,98,449
	<i>Noticee no. 03</i> -Awanish Kumar Mishra	253,63,09,191
	Total	2770,05,07,640
Grand Total		5349,58,06,934

- 16) Subsequent to receipt of the aforesaid MF Units into the demat accounts of the *Noticee nos. 1, 2 and 3* as indicated above, those MF Units were onward transferred

to the pool account of AFSPL by the *Notices nos. 1, 2 and 3* and thereafter, these MF Units were placed with ISSL (by AFSPL), a clearing member of NSE clearing Ltd. and ISSL in turn utilized those MF Units as collateral *inter alia* for taking huge amounts of trade exposure in the F&O segment in the trading accounts of the *Notices nos. 1, 2 and 3*. As noted above, the common link between the *Notices nos. 1 and 2* and AFSPL can be found in the *Notice nos. 3 and 4* who are co-partners and co-directors in the *Notice nos. 1 and 2*, respectively and are also co-directors in AFSPL wherein the *Notice no 3* is also the Promoter & MD and the *Notice no. 4* serves as an Additional Director of AFSPL.

- 17) As regards to the mystery surrounding the receipt and further transfer of those MF Units by the *Notices nos. 1, 2 and 3* in the manner as narrated above, no explanation till date has been submitted by the *Notices* as to how & why such large quantities of MF Units worth of INR 5349.58 Crore came to their demat accounts without involving any purchase transactions or payment of consideration. I further note that an endeavour was made during the fact finding exercise by SEBI so as to ascertain the justification for the end use of these large quantities of MF Units as collateral by AFSPL. In this respect, it is noted from the Annexure B to the SCN that the *Notice no. 3* has provided an unsubstantiated lame excuse by claiming that in terms of various member-client agreements entered into between AFSPL/*Notice no. 1/Notice no. 2* and certain Dalmia Group affiliated entities, the MF Units were made available to the *Notices nos. 1, 2 and 3* to be used as collateral for the benefit of these Dalmia Group affiliated entities.
- 18) As noted above, the primary objective of the instant proceedings is to examine the legality and justification for receipt of the aforesaid securities (i.e., MF Units of OCL & DCEL) in the demat accounts of the *Notices nos. 1, 2 and 3* and their further transfer to the pool demat account of AFSPL for utilisation as collaterals against derivatives trading of these three notices. I have found that no plausible justification has so far been provided by any of the *Notices* in respect of the same. Even assuming for a moment that the aforesaid claim put forth by *Notice no. 3* is true in so far as the clause of the said member client agreement provided that the MF Units were available to be used as margin for the trades of the affiliated

entities, the *Notices* are under obligation to provide the reason as to why in such case, the said MF Units were not directly transferred out from demat account of OCL & DCEL to the account of the Intermediary (ISSL) and instead were transferred to the accounts of the *Noticee nos. 1, 2 and 3* through which, these units finally were transferred to the account of the ISSL. Additionally, a perusal of the clauses of the agreements as relied upon by the *Noticee no. 3* shows that there is no such clause in the said member-client Agreements which allows use of MF Units belonging to third parties, including the complainants, to be used as collateral by AFSPL for its clients. On the contrary, a perusal of one of such agreements dated March 24, 2017 entered into between one of the Dalmia Group affiliated entities i.e., Cointribe Technologies Private Limited with AFSPL and the *Noticee nos. 1 & 3* (supplied to the *Notices* as Annexure-C to the SCN) it is observed that the said agreement contains a clause that mandates one of the obligations to be performed by AFSPL as under:

“3. OBLIGATION OF AFSL

a) Any transfer of the securities to and from the accounts of the investor shall be made by AFSL only on the basis of a written order, instruction, direction or mandate duly authorised by the investor and that AFSL shall maintain adequate audit trail of such authorisation. The investor may also give standing instructions with regard to the crediting of securities in its Demat Account and AFSL shall act according to such instructions.”

It is evident from the perusal of the aforesaid clause of the above cited agreement that a written instruction/order from the investor was a mandatory pre-condition to effect any transfer of securities to and from the accounts of the beneficial owners/investors, which certainly leaves no scope for using any securities belonging to such investors / beneficial owners even in the form of units of MF as collateral by AFSPL that too for the trades of the *Noticee nos. 1, 2 and 3*.

19) I have already found above that nothing has been brought forth by the *Notices* either during the course of facts finding exercise or in defence to the charges levelled in the SCN in the instant proceedings, to refute the allegations made in the SCN with supporting documentary evidence to either show that the MF Units

of such huge amounts were transferred and got credited to their demat accounts in lieu of proper & adequate consideration or even to prove that those MF Units transferred to their demat accounts in due compliances of the provisions of clauses of the member-client agreements as referred to above. I further note from the above that the member-client agreements referred to and relied upon by the *Noticee no. 3* were actually entered into and executed primarily between AFSPL and affiliated entities of Dalmia Group, whereas what is alleged in the SCN is that the units of MF worth of INR 5349.58 Crore were transferred and got credited in the demat accounts of the *Noticee nos. 1, 2 and 3* (who are not the trading members but clients of AFSPL) before the same were finally made available to ISSL for being used as collateral for the trades in F & O segment of securities executed by the above three noticees and not by any of the beneficial owners (DCEL and OCL) who were the actual owners of these MF Units.

20) I note that SEBI's investigation has further unearthed documents based on which it is understood that the aforesaid MF Units were prohibited from being used as collateral even in respect of trades of the owners of those units thereby further exposing the fraudulent intent behind the usage of those units for the trades of the *Noticee nos. 1, 2 and 3*. It is now an undisputed fact that the above referred units of MFs were transferred to the pool account of AFSPL as soon as they were recorded in the demat account of the *Noticee nos. 1, 2 and 3* and AFSPL being an entity primarily controlled and owned by the *Noticee nos. 3 and 4*, it constraints me to observe that the *Noticees* have by means of deliberate strategy, managed to get those MF Units transferred to their own demat accounts. The *Noticees* have not brought any material before me to exhibit that they had taken any measures or steps either to prevent the said transfer of MF Units to their demat accounts or to prevent the misutilisation of those MF Units as collateral on their behalf, which further constrains me to hold that the above stated acts of getting the MF Units transferred and using them as collaterals, were done with their knowledge and complicity.

21) In the previous table-1, it is indicated how the *Noticee nos. 1, 2 and 3* had unauthorisedly received MF Units worth INR 5349.58 Crore (in aggregate) in

their demat accounts from the demat accounts of the beneficial owners (i.e., DCEL and OCL). During the investigation it is also noticed that MF Units worth INR 5014.03 Crore were transferred/delivered back from the demat accounts of the *Notices nos. 1, 2 and 3* to the accounts of the beneficial owners (i.e., DCEL and OCL). In this regard, details of value of MF Units which were delivered/returned back to the demat accounts of the beneficial owners and the balance outstanding unreturned MF Units which were misappropriated towards their collateral requirements, as alleged in the SCN, are indicated below:

Table 2: Return of MF Units to DCEL and OCL

Dalmia Group entity	Client of AFSPL which returned MF Units	Value of returned/transferred/delivered back MF Units (INR)	Net Value of balance outstanding unreturned MF Units used as collateral (INR)
OCL India Limited	<i>Notice no. 1</i> - Money Mishra Financial Services	2099,49,04,165	163,57,85,441
	<i>Notice no. 2</i> -Money Mishra Overseas Pvt. Ltd.	64,37,04,921	47,66,77,401
	<i>Notice no. 3</i> -Awanish Kumar Mishra	145,36,16,230	59,06,11,135
	Total	2309,22,25,316	270,30,73,977
Dalmia Cement East Limited	<i>Notice no. 1</i> -Money Mishra Financial Services	2516,41,98,449	NA
	<i>Notice no. 3</i> -Awanish Kumar Mishra	188,38,55,908	65,24,53,283
	Total	2704,80,54,357	65,24,53,283

Dalmia Group entity	Client of AFSPL which returned MF Units	Value of returned/transferred/delivered back MF Units (INR)	Net Value of balance outstanding unreturned MF Units used as collateral (INR)
Grand Total		5014,02,79,673	335,55,27,260

In this regard also, I note that the *Notices* have once again failed to furnish any explanation or reason or evidence to justify under what circumstances some of the MF Units were transferred back to the demat accounts of the beneficial owners from whose accounts the units were initially discreetly and unauthorisedly transferred into the demat accounts of the *Noticee no. 1, 2 and 3*. In fact it shows how, the *Noticee no. 1, 2 and 3* had unrestricted access to the demat accounts of the beneficial owners so much so that they were able to transfer the MF Units out of their beneficial owners' demat accounts as well as transfer back MF Units into the said demat accounts of the beneficial owners at ease and seamlessly at their liberty without obtaining any consent of the beneficial owners and purely on their own whims & fancy.

- 22) Similarly, the SCN also states and records the transfer of units of MF from another beneficial owner (NEPL) to the accounts of the *Noticee nos. 1 and 3*. In this regard, it is noted that NEPL had opened a demat account with AFSPL on November 13, 2018. MF Units worth INR 21.70 Crore were transferred to the demat accounts of the *Noticee nos. 1 and 3*, and ultimately got transferred to ISSL through AFSPL for being utilized as collateral for the trades executed by AFSPL for their clients. The market value of those MF Units transferred from the account of NEPL by the *Noticee no. 1 and 3* is as under:

Table 3: Transfer of units from NEPL by the Noticee nos. 1 and 3

Entity from whose account MF units were originally transferred	Name of the client of AFSPL to whose account the MF units were ultimately transferred)	Value of MF Received (INR)	Value of MF delivered back (INR)	Value of MF unreturned (INR)
NEPL	<i>Noticee no. 1 - Money Mishra Financial Services</i>	12,01,50,428	-	12,01,50,428
	<i>Noticee no. 3- Awanish Kumar Mishra</i>	9,68,54,309	-	9,68,54,309
Total		21,70,04,737		21,70,04,737

With respect to the above noted transfer of MF Units also, the *Noticees* have not furnished any defence with any supporting evidence to justify if the aforesaid dealing in securities in the form of units of MFs was bonafide and executed in the normal course of dealing in securities.

23) Keeping the aforesaid in view, it is now relevant to identify the *modus operandi* of the *Noticees* as far as receipt of the MF Units from the demat account of the beneficial owners to the demat accounts of the *Noticee nos. 1, 2 and 3* is concerned. In this context, I note from the order dated July 02, 2021 passed in the earlier proceedings discussed in the beginning that the transfer of MF Units from the account of the above noted beneficial owners (DCEL, OCL and NEPL) was done by AFSPL (which happens to be an entity controlled by the *Noticee nos. 3 and 4*) through issuance of DIS. It was observed that to give effect to their act of transfer of MF Units from the accounts of the aforesaid beneficial owners to the demat accounts of the *Noticee no 1, 2 and 3*, AFSPL had deliberately entered incorrect details in the Depository Participant Module (DPM) system of NSDL with respect to the contact details of beneficial owners, so that transfers of MF

Units could be done successfully from their demat accounts without causing any alert to the beneficial owners while making transfers of the said securities. The aforesaid finding about such a malicious acts on the part of the *Notices* further suggests that in order to give credit of MF Units in the pool demat account of AFSPL and to avoid regulatory detection, a scheme was successfully implemented by devising the transfer of those MF Units to AFSPL through the accounts of the *Noticee nos. 1, 2 and 3*, who being aware of the intimated intended usage of those assets, did not allow parking of those MF Units in their demat accounts and rather permitted further transfer of those securities through their account to the accounts of AFSPL for using those securities as margin for their trades in the securities market. The scheme was implemented in such a manner that the DP i.e., AFSPL kept the beneficial owners under a belief that the MF Units were held intact in their demat accounts by sending false holding statements, making false representations and sharing a false NSDL signed and stamped holding statement with them etc.

- 24) In this context, it is pertinent to reiterate that AFSPL was primarily acting through its one of the directors i.e., the *Noticee no. 3* who was Promoter and MD of AFSPL and who once again, as the principal partner and director of the *Noticee nos. 1 and 2*, respectively in the present proceedings, is responsible for the acts of these two noticees as explained in detail in the succeeding paragraphs. Therefore, I find that the *Noticee no. 3* has cunningly leveraged/misused his position/knowledge as MD and Promoter of the DP i.e., AFSPL in a nefarious manner by easily effecting the act of receipt and transfer of the MF Units into/from the accounts of the *Noticee nos. 1, 2 and 3* in a seamless manner without alerting the beneficial owners because he is also partner and a director of the *Noticee nos. 1 and 2*, respectively.
- 25) In view of the above, I find from the material that the credit and transfer of MF Units belonging to the beneficial owners into/from the respective accounts of the *Noticee nos. 1 to 3* were not genuine nor were those transfers of MF Units executed in due compliance of procedure and law so as to be held as bonafide transfers from one demat account to another demat account. Instead,

considering the overall conduct of the *Notices* and their decision to ignore and keep silence over the allegations made in the SCN it constrains me to record that the acts of dealing in securities on the part of these *Notices* while securing credit of units of MFs in their respective demat accounts in a fraudulent manner behind the back of the beneficial owners, fulfill the necessary ingredients to be held as fraudulent and unfair dealing of securities under the provisions of the PFUTP Regulations, 2003.

- 26) Having dealt with the apparently illicit acts of the *Notices* behind the aforesaid receipts and transfers of the MF Units into/from their demat accounts in the preceding paragraphs, I now find it appropriate to deal with the respective roles and part played by each of the *Notices* in the aforesaid fraudulent acts of receipt and transfer of the MF Units. As noted above, the receipt and transfer of the MF Units took place into/from the demat accounts of the *Noticee nos. 1, 2 and 3*. In this regard, I observe that the *Noticee no. 1* (a partnership firm) and the *Noticee no. 2* (a private limited company) are juristic persons and thus are bound to act through a natural person. As noted earlier, the *Noticee nos. 3 and 4* are the partners and directors of the *Noticee nos. 1 and 2*. In this context, from the KYC of the *Noticee no. 1*, I note that the *Noticee no. 3*, partner of the *Noticee no. 1*, has been authorized to sell, purchase, transfer, etc. on behalf of the *Noticee no. 1*. This declaration has been signed by both the partners (i.e., the *Noticee nos. 3 and 4*) of the *Noticee no. 1*. Further, in terms of KYC of the *Noticee no. 2*, it is noticed that the *Noticee no. 3*, director of the *Noticee no. 2*, has been authorized through a Board Resolution to sign the DIS on behalf of the *Noticee no. 2* and the said Board Resolution has been signed by the *Noticee no. 4*. Thus, I find that the *Noticee no. 3*, in his role as partner and director of the *Noticee nos. 1 and 2*, respectively, was the authorized signatory to sign the DISs which were used to effect the transfer of the MF Units from the demat accounts of *Noticee nos. 1 and 2* that were received from the demat accounts of the beneficial owners without having any proper authorization and hence was responsible for the acts of dealing in securities in the account of *Noticee nos. 1 and 2*. As the *Noticee no. 3*, in his capacity as partner and director of the *Noticee nos. 1 and 2* respectively, has dealt in

securities in a manner that was blatantly in violation of the provisions of the PFUTP Regulations, he renders himself liable for such illicit acts of the *Noticee nos. 1* and *2*. The *Noticee no. 3* has also received and transferred some of the MF Units in/from his individual demat account as noted above which also makes him responsible for the fraudulent dealings in securities in his individual account as well.

27) I have noted above that the *Noticee no. 4* along with the *Noticee no. 3* (as partners and directors of the *Noticee nos. 1* and *2*, respectively) has signed the declaration through which he has authorized the *Noticee no. 3* to carry out all acts on behalf of the *Noticee no. 1*. Similarly, the *Noticee no. 4* by signing the Board Resolution as a director of the *Noticee no. 2* has made the *Noticee no. 3* the authorized signatory to sign the DIS on behalf of the *Noticee no. 2*. From the above, it may appear at first glance that the *Noticee no. 4* may not have a role to play in the affairs and management or acts done by or on behalf of the *Noticee nos. 1* and *2*. However, I cannot ignore the facts that he was also holding a post of Director in the AFSPL of which the *Noticee no. 3* was the Promoter and MD. The entire facts unearthed by the investigation show as to how the impugned securities (MF Units) reached the pool demat account of AFSPL through layering of transfers and finally reached ISSL *inter alia* to be used as margin for trading exposure of the *Noticee nos. 1, 2* and *3* in the securities market. Analyzing the facts from the above perspective, I see no reason to believe that the *Noticee no. 4* was not aware or cognizant of the above said acts or the scheme through which the MF Units were stealthily transferred out of the demat accounts of the beneficial owners to the demat accounts of the *Noticee nos. 1, 2* and *3* merely for the reason that it was the *Noticee no. 3*, who was having authorization to officially act on behalf of the *Noticee nos. 1* and *2*.

28) On the contrary, looking at the entire chain of facts which are intricately linked with each other, disclosing how securities moved from the demat accounts of the *Noticee nos. 1, 2* and *3* to the pool demat account of AFSPL and then to a clearing member where it was used as collateral/margin for the F & O trades executed by the *Noticee nos. 1, 2* and *3*, it becomes difficult to believe that throughout these

chain of transactions the *Noticee no. 4* was ignorant and unaware of these transactions. Instead, it forces me to observe that the *Noticee no. 4* has knowingly facilitated (through the aforesaid Board resolution and authorization) the smooth transition of securities from one account to another and has consciously ignored to take any corrective steps either as a partner or Director of *Noticee no. 1* and *2*. Further, by remaining absent from the personal hearing and preferring not to file any reply, the *Noticee no. 4* has not cared at all to bring any material on record to demonstrate that the said acts of the *Noticee no. 1* and *2* were done with proper checks and balances in place or under his vigilant watch. Therefore, I have to come to a view that the *Noticee no. 4* has knowingly neglected to take any due diligence measures including keeping a check on the transactions in the demat account, tracking the use of the DIS for unauthorized transfer of units of MFs etc. As a result of such glaring negligence on the part of the *Noticee no. 4*, I can observe that commission of such fraudulent acts by the *Noticee nos. 1* and *2* was further facilitated. It would not be out of context to refer to and rely upon Section 166 of the Companies Act, 2013 which cast certain duties with respect to the obligation of directors of a company. Perusal of this statutory provision would indicate that a director of a company shall exercise independent judgement. Further, a director of a company shall not assign his office and any assignment so made in favour of others, shall be void. In the context of the above stated statutory provision dealing with the duty of a director under law, I note that the *Noticee no. 4* has a statutory obligation to take his office with due diligence on account of the fiduciary obligation being carried by him vis-à-vis the company i.e., the *Noticee no. 2*.

29) Having discussed the acts and roles played by the *Noticees* in the foregoing paragraphs in the entire episode involving unauthorized transfer of MF Units and their misutilisation towards margin money/collaterals by the *Noticee no. 1, 2* and *3* through AFSPL, I can clearly observe that the aforesaid illegal & unauthorized transfer of securities to and from the accounts of the *Noticee nos. 1, 2* and *3* is inexplicable since neither the *Noticee nos. 1, 2* and *3* have raised any alarm at the time of receipt of such a large number and value of MF Units into their demat

accounts for which no consideration was ever paid by them, nor have they assigned any reason whatsoever when some of these units were again transferred back to the demat accounts of the beneficial owners. On the contrary from the conduct of the *Notices* and their decision to remain silent when all these illegal transfers of securities were going on, force me to observe that such huge amounts of MF Units owned by the beneficial owners were first brought into and then were transferred out of their demat accounts to AFSPL in an illegal manner and further were used as collateral/margins for their trades with their active connivance and under their full knowledge and permission. As noted above, the common link between the *Notice nos. 1 and 2* are the *Notice nos. 3 and 4*. In their capacity as partners and directors in the *Notice nos. 1 and 2* they (the *Notice nos. 3 and 4*) raised no objection to the receipt of such large value MF Units and instead went on to transfer these MF Units to AFSPL, whose affairs were also being managed by the *Notice nos. 3 and 4* and in this process they have intentionally and knowingly used those units as margin money for trading undertaken in the securities market on behalf of the *Notice no. 1 and 2*.

30) In order to understand and ascertain the reason behind commission of the above acts by the *Notices*, I find it relevant to note from the trade details as submitted by the NSE to SEBI during the course of investigation which revealed that substantial amounts of open positions in the Options segment were taken by the *Notices* in the accounts of the *Notice nos. 1 and 2* during December 2018. In this regard, as per the information received from the NSE Clearing Ltd., as on the last trading day i.e., February 28, 2019, against the total margin requirement of INR 436.1 Crore from AFSPL as a broker / trading member of NSE, the margin required for the trade positions in respect of the *Notice nos. 1, 2 and 3* (through AFSPL) stood at INR 368.45 Crore (84.50%), a break-up of which is as under:

Table 4: Margin requirements of the Notice nos. 1, 2 and 3

Day Date	Client Name	Total Margin (in INR)
28-Feb-19	<i>Notice no. 1</i> -Money Mishra Financial Services	150,95,47,888.98

28-Feb-19	<i>Noticee no. 2</i> -Money Mishra Overseas Pvt Ltd	76,95,16,371.57
28-Feb-19	<i>Noticee no. 3</i> -Awanish Kumar Mishra	140,54,41,138.02
	Total	368,45,05,398.57

- 31) It is therefore self-evident from the above table that in order to meet their huge margin requirements to the tune of INR 368.45 Crore, the *Noticees* have indulged in such illegal activities involving unauthorized transfer of MF Units from the demat accounts of the beneficial owners to their own accounts and again through their demat accounts, ultimately to ISSL for meeting their margin requirements. The aforesaid findings are also fortified from the fact that the cumulative market value of balance outstanding unreturned MF Units to DCEL & OCL (INR 335.55 Crore-Table 2) and NEPL (INR 21.70 Crore-Table 3) aggregated to a sum of INR 357.25 Crore as against the margin requirements of INR 368.45 Crore (Table-4) against the trade of the *Noticee nos. 1, 2 and 3* and as pointed out in the SCN such unreturned MF Units were utilized by the *Noticee nos. 1, 2 and 3* to replenish the margin requirements through the clearing member i.e., ISSL.
- 32) The above discussions now make it absolutely clear that the *Noticees* have engaged and played an important role in securing illicit receipt and onward transfer of the MF Units of very high magnitude belonging to the beneficial owners into their demat accounts, for which no bonafide explanations have been furnished by the *Noticees* in their defense so that such transfers can be held as acts committed in the normal course of dealing in securities. As noted above, the aspect of active collusion by the *Noticees* is evident from the fact that the control of AFSPL, in its capacity as a stock broker and DP, as well as the control over the affairs of the *Noticee nos. 1 and 2* (the clients of AFSPL) rested in the hands of the *Noticee nos. 3 and 4* and, there was a glaring meeting of minds amongst all the *Noticees* and AFSPL in commission of the aforesaid actions & illicit transfers of MF Units to meet the margin obligations of the *Noticees*. It now clearly appears that the *Noticee nos. 1, 2 and 3* have acted as conduits for the deceitful transfer of MF Units from the demat accounts of the beneficial owners, and *Noticee no. 4* by knowingly

neglecting to take any due diligence regarding the use of the DIS for transfer of those units of MFs, from the accounts of the *Notices nos. 1 and 2* and also by continuing to neglect his duties as a Director, has also contributed in commission of those fraudulent acts by the *Notices nos. 1, 2 and 3* to meet their margin obligations to the clearing member. Therefore, I hold that the scheme for the transfer of the MF Units would not have been possible without the active role of all the *Notices* who have acted together harmoniously to facilitate such a fraudulent scheme.

33) In this regard, it is worth noting that as per Section 25 of Indian Partnership Act, 1932 every partner is liable, jointly with all the other partners and also severally, for all the acts of the firm done while he is partner. Further, it is a trite law that any company, though a legal entity, cannot act by itself and it can act only through its directors. The directors are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things which the company is authorized to exercise and to do. Therefore, the Board of Directors, being responsible for the conduct of the business of a company, is liable for any non-compliance of law by the company and such liability shall also devolve upon the individual directors because of whose non-compliance or negligence the company has breached the law. The aforesaid position/principle is also reiterated/embodyed in the provisions of Section 27 of the SEBI Act, 1992 which fasten liability on directors who are in charge of the affairs of the company at the time of the commission of any alleged violations by the company. I deem it appropriate here to refer to the observations of Hon'ble Supreme Court of India in the matter of *N Narayanan vs Adjudicating Officer*, SEBI decided on April 2, 2013, wherein the Court observed as follows:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1 SCC 602 that a Director may be shown to be placed

and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.

- 34) To put the aforesaid findings and discussions in a perspective, I note that the above conduct of the *Notices* has not only breached the ethical standards but also shows the kind of unscrupulous act the entities have resorted to fulfill their own selfish objectives deceptively at the cost of others. Hence after considering the entire issue holistically, I have no hesitation in holding that the acts and conduct as narrated in detail in the preceding paragraphs are sufficient, not only to qualify as “unfair trade practice” but also those acts & conducts have led to further acts of dealing in securities in a fraudulent manner thereby breaching the PFUTP Regulations. Therefore, I find that the conduct of the *Notices* as elaborated above falls, squarely into the label of a fraudulent, prohibited and unfair trade practices under the provisions of the PFUTP Regulations.
- 35) Under the circumstances, the above narrated acts of receiving units of MF Units carrying huge sums of value to their demat accounts in an illegal manner for which the *Notices* have not been able to provide any bonafide reason with any supporting evidence which can evoke any contrary opinion, compel me to hold that the allegations/ charges made in the SCN against the *Notices* stand established. The *Notices* have failed to rebut the said allegations in any manner and instead the facts of the case have strongly pointed out that the *Noticee no. 1, 2 and 3* did not have any valid authority to receive the MF Units from the demat account of the beneficial owners which were used as collateral on their behalf. In view of the above findings and deliberations, I find that the issue framed for consideration earlier at paragraph 7 is answered in the affirmative.
- 36) Having already held in the preceding paragraphs that the *Notices* have engaged in a fraudulent scheme/act/course of business, and thus have violated regulations 3 (a) and 4(1) of the PFUTP Regulations, I note that the *Notices* are liable for:

- i. Issuance of appropriate directions under Sections 11B (1) and 11(4) read with Section 11(1) of the SEBI Act, 1992, and
- ii. Imposition of monetary penalty under Sections 11B (2) and 11(4A) read with Sections 15HA (penalty for fraudulent and unfair trade practices) of the SEBI Act, 1992.

37) The provisions of the aforesaid sections are reproduced below for ease of reference:

SEBI Act, 1992

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

38) Keeping in view the aforesaid finding that the *Notices* having committed fraudulent acts and unfair trade practice, I find that the *Notices* are liable for imposition of monetary penalty under Section 15HA of the SEBI Act, 1992. In this regard, I note that factors as provided under Section 15J of the SEBI Act, 1992 have been taken into consideration while adjudging the quantum of penalty to be levied on the *Notices*.

39) With respect to the *Notice nos. 1, 2 and 3* it has been found that the aforesaid violations were done with their active involvement and in collusion with AFSPL whereas the *Notice no. 4* was found to have committed the violations as alleged in the SCN, by his deliberate acts of negligence, lack of due diligence as a partner and director of the *Notices no. 1 and 2* as well as by his apparent active connivance with other *Notices* thereby facilitating the commission of the aforesaid fraudulent acts (by assigning his duties as a partner and director to the *Notice no. 3*). Therefore, such acts of negligence & abatement need to be taken into account while issuing directions and imposing penalty on him.

DIRECTIONS AND PENALTIES

40) In view of the above, in exercise of powers conferred upon me under sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) 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 issue the following directions:

- i. The *Notices nos. 1* (Money Mishra Financial Services), *2* (Money Mishra Overseas Pvt. Ltd.) and *3* (Mr. Awanish Kumar Mishra) are restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of two (02) years from the date of this Order.
- ii. The *Notice no. 3* i.e., Mr. Awanish Kumar Mishra is restrained from associating with a listed entity, a material subsidiary of a listed entity or a SEBI registered intermediary in any capacity, either directly or indirectly, in any manner whatsoever, for a period of two (02) years from the date of this Order.
- iii. The *Notice no. 4* i.e., Mr. Jitendra Tiwari is restrained from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of one (01) year from the date of this Order.
- iv. The following penalty is levied on the *Notices*:

Under Section	MMFS	MMOPL	Mr. Awanish Kumar Mishra	Mr. Jitendra Tiwari
Section 15HA of the SEBI Act, 1992	INR 50,00,000 /-(INR Fifty Lakh)	INR 50,00,000 /-(INR Fifty Lakh)	INR 50,00,000 /-(INR Fifty Lakh)	INR 5,00,000/- (INR Five Lakh)

- 41) It is further clarified that during the period of restraint the existing holding of securities, including the units of mutual funds shall remain under freeze in respect of the aforesaid *Notices*.
- 42) The penalty shall be paid by the *Notices* within a period of forty-five (45) days, from the date of receipt of this order. Payment can be made online by following the below path at SEBI website www.sebi.gov.in
- ENFORCEMENT → Orders → Orders of Chairman/Members → Click on
PAY NOW or at
<https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html> and
selecting Type of Category as 11B orders.
- 43) The obligation of the *Notices*, 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 *Notices* 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.
- 44) The Order shall come into force with the immediate effect.
- 45) If there is a failure to pay the penalty, as mentioned above, SEBI may recover the amount from the *Notices* as per applicable law.
- 46) A copy of this order shall be served upon the *Notices*, the Stock Exchanges, the Registrar and Transfer Agent and the Depositories for ensuring compliance with the above direction.

Sd/-

DATE: FEBRUARY 18, 2022

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA