

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
FINAL ORDER**

**Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of
India Act, 1992**

**In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and
Unfair Trade Practices Relating to Securities Market) Regulations, 2003**

In respect of:

| S. No. | Name of the Entity | PAN |
|---------------|---|-------------------|
| 1. | Aplaya Creations Ltd. | AAACG1479J |
| 2. | Shri Ramawtar Gupta | AGEPG2765Q |
| 3. | Shri Pramod Kumar Gupta | ABRPG4589Q |
| 4. | Maheswari Financial Services Pvt. Ltd. | AAACM9185B |
| 5. | Vemuri Finvest Pvt. Ltd. | AAACV3615M |

In the matter of Aplaya Creations Ltd.

BACKGROUND

1. Aplaya Creations Ltd. (hereinafter referred to as “**ACL / Company**”) provides consultancy services in the educational and training sectors in India and internationally. The company offers its services through online and instruction-led, web based, and computer based training for and on behalf of schools, universities, individuals and libraries, as well as corporations. The company formerly known as Eins Edutech Limited and changed its name to ACL in April, 2015. The company was

incorporated in 1983. The scrip was listed at BSE w.e.f January 14, 1985. As per the disclosures available on BSE website, on March 20, 2013, Westfield Apparels Pvt. Ltd. became a Promoter on acquisition of 1,76,450 shares (65.35% of share capital) from Shri Sanjay Salunkhe (ex-promoter of the company) vide share purchase agreement dated December 29, 2012.

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation in the scrip of ACL based on a reference received from the Principal Director of Income Tax (Investigation), Kolkata. The focus of the investigation was to ascertain whether there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) by certain entities in the scrip of ACL during the period April 17, 2014 to July 31, 2015 (hereinafter referred to as “**Investigation Period**”).
3. It is observed from the investigation report (herein after referred to as “**IR**”) that during the investigation period, the shares of ACL were traded for an average volume of 70,123 shares per trading day and a total volume of 2,17,38,040 shares in 23,088 trades for a total of 310 days. Prior to the investigation period, the scrip had traded only on three days during September 19, 2005 to April 16, 2014. During the Investigation period, price of the scrip increased from ₹ 18/- (opening price) to ₹ 490/- (high price). It is observed from the IR that the company made a net profit of ₹ 0.04 crore for the year ended 2012-13, incurred a loss of ₹ 15 lakh for year ended 2013-14 and made a net profit of ₹ 0.28 crore for the year ended 2014-15.
4. From the shareholding pattern available on the BSE website for quarter ending March 2013, prior to a preferential allotment, shareholding of the company was observed to be 2,70,000 shares. On May 02, 2013, ACL made preferential allotment of 67,30,000 shares at ₹ 15/- to 47 entities other than Promoters thereby increasing the shareholding of the company to 70,00,000 shares. These shares were under lock-in up to May 01, 2014. On September 13, 2013, ACL made preferential allotment of

73,80,000 shares at ₹ 15/- to 1 Promoter (Westfield Apparels Private Limited – 12,00,000 shares) and 46 entities other than Promoters (61,80,000 shares) thereby increasing the shareholding of the company to 1,43,80,000 shares. The shares allotted to Promoter group were under lock-in up to October 14, 2016. The shares allotted to entities other than promoter group entities were under lock-in till October 14, 2014.

5. On analysis of the KYC, off-market transfers and details on MCA website, two groups were identified. A Group of 18 buyers and 2 sellers (total 20 entities -hereafter referred as Group-1 – names listed in table below) and a group of 7 entities (hereafter referred as Group-2 - names listed in table below). Details on MCA website were analyzed to see the connection of the Group-1 and 2 entities with the ACL, if any based on address, directors, telephone numbers etc. It was observed that Shri Manoj Kumar Sharma (DIN: 2701338) was a common Director in Panchamukhi Vincom Private Limited (22/10/2009 to till date), Natural Investment Management Pvt. Ltd. (22/10/2009 to till date), Improve Distributors Private Limited (22/10/2009 to till date) and Westfield Apparels Private Limited – Promoter of ACL (2/09/2010 to 06/08/2012). It was also observed that Shri Sohan Lal Agarwal (Din: 6636039) was a Director in Wellplan Financial Management Private Limited (Group-1 entity) and ACL during 12/02/2014 to 14/08/2014. Further, it is observed that Shri Ramawtar Gupta, Director of the ACL, shares a common phone number (9331110151) with Kuber Dealcom Private Limited, Vindhya Vasini Agency Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited. Thus, Group-1 is connected to ACL.

| S. No. | PAN | Name of the Entity | Basis of Connection |
|-------------------------|------------|-------------------------------|--|
| Group-1 Entities | | | |
| 1 | AAECK5111B | Kuber Dealcom Private Limited | 1. Surendra Sharma (DIN: 3127194) is common director in Kuber Dealcom Private Limited and Vighnaharta Infra Developers Private Limited 2. Common Phone Number (Ph: 9331110151) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi |

| | | | |
|----|----------------|--|--|
| | | | Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited |
| 2 | AAVFA6 230F | Aries Commercials | 1. Common Phone Number (Ph: 9330234518) with Aries Commercials, Overtop Construction Private Limited and Starrose Dealer Private Limited |
| 3 | AADCV4 831G | Vighnaharta Infra Developers Private Limited | 1. Surendra Sharma (DIN: 3127194) is common director in Kuber Dealcom Private Limited and Vighnaharta Infra Developers Private Limited 2. Common Phone Number (Ph: 9331110151) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited |
| 4 | AADCV6 070D | Vindyavasani Agency Private Limited | 1. Common Phone Number (Ph: 9331110151) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited. 2. Vivek Gupta (DIN: 5305054) and Somya Bansal (DIN: 6379237) are common directors in Vineet Builders Private Limited and Star Rose Dealer Private Limited and Vindyavasani Agency Private Limited. |
| 5 | AAOCS4 115M | Saraswati Buildhome Private Limited | 1. Common Phone Number (Ph: 9331110151) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited |
| 6 | AACCV7 461K | Vaibhavlaxmi Vanijya Private Limited | 1. Common Phone Number (Ph: 9331110151) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited. 2. Ranjit Srivastva (DIN: 3127153) is common director in Surakshit Merchants Private Limited (till 12/08/2014) and Vaibhavlaxmi vanijya Private Limited and Wellplan Financial Management Private Limited 3. Pravin Kumar Agarwal (DIN: 02556093) was the common director in Vaibhavlaxmi Vanijya Private Limited, Wellplan Financial Management Private Limited and Maheshwari Financial Services Private Limited |
| 7 | ACDFS3 494F | Samrat Trading Co | 1. Common Phone Number (Ph: 9331110151) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited |
| 8 | AABCO7 071M | Overtop Construction Private Limited | 1. Common Phone Number (Ph: 9330234518) with Aries Commercials, Overtop Construction Private Limited and Starrose Dealer Private Limited |
| 9 | AANCS7 666N | Surakshit Merchants Private Limited | 1. Ranjit Srivastva (DIN: 3127153) is common director in Surakshit Merchants Private Limited (till 12/08/2014) and Vaibhavlaxmi vanijya Private Limited, Surakshit Merchants Private Limited 2. Purushotam Agrawal (DIN: 854523) is common director of Surakshit Merchants Private Limited and Fortune Infra Developers Private Limited |
| 10 | AAQCS1 902G | Starrose Dealer Private Limited | 1. Vivek Gupta (DIN: 5305054) and Somya Bansal (DIN: 6379237) are common directors in Vineet Builders Private Limited and Star Rose Dealer Private Limited and Vindyavasani Agency Private Limited 2. Common Phone Number (Ph: 9330234518) with Aries Commercials, Overtop Construction Private Limited and Starrose Dealer Private Limited |
| 11 | AAACW 7964Q | Wellplan Financial Management Private Limited | 1. Ranjit Srivastva (DIN: 03127153) is common director in Wellplan Financial Management Private Limited, Surakshit Merchants Private Limited and Vaibhavlaxmi Vanijya Private Limited 2. Sohan Lal Agarwal (DIN: 06636039) is a common director in Wellpaln Financial Management Private Limited and Aplaya Creations Limited (12/02/2014 to 14/08/2014) 3. Pravin Kumar Agarwal (DIN: 02556093) was the common director in Vaibhavlaxmi Vanijya Private Limited, Wellplan Financial Management Private Limited and Maheshwari Financial Services Private Limited |
| 12 | AAECP7 116K | Panchmukhi Vincom Private Limited | 1. Manoj Kumar Sharma (DIN: 2701338) and SIMA SINGH (2701363) are common directors in Panchmukhi Vincom Private Limited and Improve Distributors Private Limited and Natural Investment Management Private Limited. Further, Manoj Kumar Sharma is |

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|-------------------------|----------------|--|--|
| | | | also a director of Westfield Apparels Pvt. Ltd. (promoter of Aplaya Creations) from 30/10/2009 to 06/08/2012. 2. Panchamukhi Vincom Private Limited, Improve Distributors Private Limited and Natural Investment Management Private Limited share common email (simasingh445@gmail.com) |
| 13 | AABCI89 72K | Improve Distributors Private Limited | 1. Sima Singh (DIN: 2701363) and Manoj Kumar Sharma (DIN: 2701338) are common directors of Panchamukhi Vincom Private Limited, and Natural Investment Management Private Limited and Improve Distributors Private Limited. 2. Panchamukhi Vincom Private Limited, Improve Distributors Private Limited and Natural Investment Management Private Limited share common email (simasingh445@gmail.com) |
| 14 | AADCV8 452B | Veenit Builders Private Limited | 1. Vivek Gupta (DIN: 5305054) and Somya Bansal (DIN: 6379237) are common directors in Vineet Builders Private Limited and Star Rose Dealer Private Limited and Vindyavasini Agency Private Limited |
| 15 | AACCN7 952M | Natural Investment Management Pvt Ltd | 1. Panchamukhi Vincom Private Limited, Improve Distributors Private Limited and Natural Investment Management Private Limited share common email (simasingh445@gmail.com) 2. Sima Singh (DIN: 02701363) and Manoj Kumar Sharma (DIN: 02701338) are common director in Panchmukhi Vincom Private Limited And Natural Investment Management Private Limited and Improve Distributors Private Limited. Furhter, Manoj Sharma is a director Westfield Apparels Pvt. Ltd. (Promoter of the Aplaya Creations) from 30/10/09 to 06/08/2012. 3. Manoj Kumar Sharma (DIN: 02701338) is common director in Panchmukhi Vincom Private Limited, Improve Distributors Private Limited and Natural Investment Management Private Limited. Further, he is a director Westfield Apparels Pvt. Ltd. (Promoter of the Aplaya Creations) from 30/10/09 to 06/08/2012. |
| 16 | AABCF4 418M | Fortunate Infra Developers Private Limited | 1. Purushotam Agrawal (DIN: 854523) is common director of Surakshit Merchants Private Limited and Fortune Infra Developers Private Limited |
| 17 | AAGCP1 418E | Pinkrise Commercial Private Limited | 1. Common Phone Number (Ph: 9331110151) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited |
| 18 | AADCV4 835C | Vistaar Infra Property Private Limited | 1. Common Phone Number (Ph: 9331110151) with Kuber Dealcom Private Limited, Vindhya Vasini Private Limited, Vaibhavlaxmi Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited |
| 19 | AAACM9 185B | Maheswari Financial Services Private Limited | 1.Pravin Kumar Agarwal (DIN: 02556093) was the common director in Vaibhavlaxmi Vanijya Private Limited, Wellplan Financial Management Private Limited and Maheshwari Financial Services Private Limited 2. Westfield Apparels Limited (promoter of ACL), Maheswari Financial Services Private Limited and Vemuri Finvest Private Limited had Registered Offices at the same address (Flat No. 66, G – 10, Ground Floor, Sector 15, Rohini, Delhi – 110085). |
| 20 | AAACV3 615M | Vemuri Finvest Private Limited | 1. Westfield Apparels Limited (promoter of ACL), Maheswari Financial Services Private Limited and Vemuri Finvest Private Limited had Registered Offices at the same address (Flat No. 66, G – 10, Ground Floor, Sector 15, Rohini, Delhi – 110085). |
| Group-2 Entities | | | |
| 1 | AAECV1 283F | Vilohit Property Private Limited | 1. Common Phone Number with (9748808656) Padmavati Tradevin Private Limited, Viohit Property Private Limited, Samudita Vanijya Private Limited, Cheroot vanijya Private Limited |
| 2 | AAHCP5 209Q | Padmawati Tradevin Private Limited | 1. Common Phone Number with (9748808656) Padmavati Tradevin Private Limited, Viohit Property Private Limited, Samudita Vanijya Private Limited, Cheroot vanijya Private Limited 2. Arup Kumar Deb (DIN: 06730844) is common director in Goldensight Commotrade Private Limited, Samudhita Vanijya Private Limited and Padmawati Tradevin Private Limited 2. Newton Sarkar (DIN: 6733863) is comon director of Padmawati Tradevin Private Limited and Cheroot Vanijya Private Limited 3. Surajit Sarkar (6937393) is common director of Goldensight Commotrade Private Limited and Samudhita Vanijya Private Limited and Arup Kumar Deb (6730844) are |

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| | | | common directors in Goldensight Commotrade Private Limited and Samudhita Vanijya Private Limited and Padmavathi Tradevin Private Limited |
| 3 | AAUCS7 467C | Samudhita Vanijya Private Limited | 1. Common Phone Number (9748808656) with Padmavati Tradevin Private Limited, Viohit Property Private Limited, Samudita Vanijya Private Limited, Cheroot vanijya Private Limited 2. Arup Kumar Deb (DIN: 06730844) is common director in Goldensight Commotrade Private Limited, Samudhita Vanijya Private Limited and Padmawati Tradevin Private Limited 3. GoldenSight and Samuditha have common address (18 B Brabourne Road, 2nd Floor, Kolkata). 4. Surajit Sarkar (6937393) is common director of Goldensight Commotrade Private Limited and Samudhita Vanijya Private Limited and Arup Kumar Deb (6730844) are common directors in Goldensight Commotrade Private Limited and Samudhita Vanijya Private Limited and Padmavathi Tradevin Private Limited |
| 4 | AAECC9 285A | Cheroot Vanijya Private Limited | 1. Common Phone Number (9748808656) with Padmavati Tradevin Private Limited, Viohit Property Private Limited, Samudita Vanijya Private Limited, Cheroot vanijya Private Limited 2. Newton Sarkar (DIN: 6733863) is comon director of Padmawati Tradevin Private Limited and Cheroot Vanijya Private Limited |
| 5 | AADCH4 445A | Headfirst Vinimay Private Limited | 2. Common Phone Number (9681936661) among HeadFirst Vinimay Private Limited and Reach Smart Construction Private Limited |
| 6 | AAGCR4 662J | Reachsmart Construction Private Limited | 1. Sukumar Ghosh (DIN: 6624193) is a common director in Reachsmart Construction Private Limited (07/01/2013 to 04/03/2014) and Cheroot Vanijya Private Limited (28/08/2013 to till date) 2. Share Common Phone Number (9681936661) - HeadFirst Vinimay Private Limited and Reach Smart Construction Private Limited |
| 7 | AAFCG6 723L | Goldensight Commotrade Private Limited | 1. Arup Kumar Deb (DIN: 06730844) is common director in Goldensight Commotrade Private Limited, Samudhita Vanijya Private Limited and Padmawati Tradevin Private Limited 2. GoldenSight Commotrade Private Limited and Samuditha Vanijya Private Limited have common address (18 B Brabourne Road, 2nd Floor, Kolkata). 3. Surajit Sarkar (6937393) is common director of Goldensight Commotrade Private Limited and Samudhita Vanijya Private Limited and Arup Kumar Deb (6730844) are common directors in Goldensight Commotrade Private Limited and Samudhita Vanijya Private Limited and Padmavathi Tradevin Private Limited |

6. Based on price trend (rise/ fall), the investigation period has been split into 3 patches, details of which are given below:

| Patches | Period | Particulars | Open | High | Low | Close | Avg. Volume |
|--|--------------------------|-------------|--------|------------------------|-----------------------|--------|-------------|
| Pre – IP | 17/03/2014 to 16/04/2014 | No Trades | | | | | |
| Pre-Split – Low Volume IP* - Patch-1 | 17/04/2014 to 13/10/2014 | Price | 18 | 222.85 [13/10/2014] | 18 [17/04/2014] | 222.85 | 2 |
| | | Volume | 5 | 37 [13/10/2014] | 1 [Multiple Dates] | 37 | |
| Pre- Split IP – High Volume IP – Patch-2 | 14/10/2014 to 10/03/2015 | Price | 227.3 | 490.00 [05/03/15] | 227.3 [14/10/2014] | 478.30 | 42177 |
| | | Volume | 27502 | 108615 [08/12/14] | 2 [17/10/2014] | 45706 | |
| Post – Split IP- Patch-3 | 11/03/2015 to 31/07/2015 | Price | 50.10 | 51.00 [19/03/15] | 42.5 [12/05/15] | 43.30 | 179206 |
| | | Volume | 110005 | 840000 | 10000 | 37000 | |

| | | | | | | | |
|-----------|----------------------------|--------|-------|----------------------|---------------------|--------|-------|
| | | | | [18/03/15] | [24/07/15] | | |
| Post – IP | 01/08/2015 to 26/08/2015** | Price | 43.25 | 45.45 [07/08/15] | 39.20 [26/08/15] | 39.20 | 55850 |
| | | Volume | 28540 | 178081 [26/08/15] | 5000 [17/08/15] | 178081 | |

*IP – Investigation Period

** The scrip was suspended from August 27, 2015 to June 13, 2016.

*** Prior to the IP, the scrip had traded only on three days during September 19, 2005 to April 16, 2014.

SHOW CAUSE NOTICE

7. Consequent to the investigation, a show cause notice dated June 14, 2017 (hereinafter referred to as “SCN”) was served on ACL, Shri Ramawtar Gupta (Managing Director), Shri Promod Kumar Gupta (Director and CFO), Maheswari Financial Services Private Limited (hereinafter referred to as “MFSPL”) and Vemuri Finvest Private Limited (hereinafter referred to as “VFPL”) in the extant matter. The SCN *inter alia* alleged as follows:

- a) The Last Traded Price (hereinafter referred to as “LTP”) analysis of the 3 patches was done and the details of patch 1 qua the Noticees, MFSPL and VFPL, is given below:

LTP Analysis: Patch 1 - (Pre-Split Low Volume Price Rise Patch - 17/04/2014 - 13/10/2014):

- During this period, price of the scrip opened at ₹ 18/- (April 17, 2014) and closed at ₹ 222.85 (October 13, 2014) in 113 days with a volume of 277 shares. The trades of top 10 net LTP contributing entities contributing greater than 5% of market positive LTP (on buy side) was analyzed and it was observed that two entities of Group – 1 namely MFSPL and VFPL appeared as major counterparties (sellers) to the top 6 positive LTP contributing buyers. The details are as under:

| Buyer | % of +ve LTP to Market | Major Counterparties | | | | | |
|---------------------------|------------------------|--------------------------------------|---------------------|--------------------------------|---------------------|---|--|
| | | Maheswari Financial Services Limited | | Vemuri Finvest Private Limited | | Total +ve LTP with major Counterparties | |
| | | Pos. LTP (in Rs.) | % of Market +ve LTP | Pos. LTP (in Rs.) | % of Market +ve LTP | | |
| Vipul Rajendrabhai Gandhi | 14.93 | 13.05 | 6.34 | 15.8 | 7.68 | 14.02 | |
| Bharti Goyal | 11.86 | 9.9 | 4.81 | 14.5 | 7.05 | 11.86 | |
| Nirav Rajababu Gandhi | 10.28 | 11.7 | 5.69 | 9.45 | 4.59 | 10.28 | |
| Ankit Mahendra Kachhara | 9.14 | 9.2 | 4.47 | 9.6 | 4.66 | 9.13 | |
| Shyam Kanheyalal Vyas | 7.10 | 7.85 | 3.82 | 6.75 | 3.28 | 7.10 | |
| Manbar Singh Negi | 6.22 | 8.45 | 4.11 | 4.35 | 2.11 | 6.22 | |
| Total | 59.53 | 60.15 | 29.24 | 60.45 | 29.37 | 58.61 | |

- From the above, it can be observed that top 6 positive LTP contributors (buyers) had contributed 59.53% of the market positive LTP. Of these, MFSP and VFPL were the counterparties to the trades contributing 58.61% of the market positive LTP.
- In this regard, from the disclosures on shareholdings, it was observed that MFSP and VFPL acquired 3,500 shares each during the quarter ended March 2013 i.e., quarter in which ACL was acquired by Westfield Apparels Private Limited.
- In view of the above, analysis on the trades of MFSP and VFPL during the investigation period was carried out and observed that these entities traded only in the patch-1 as sellers. Details of analysis are as under:

| PAN | Name | Net LTP | | | Pos. LTP | | | Negative LTP | | | Zero LTP | | % of +ve LTP to Mkt | No. of Trading Days |
|---------------|---|---------------|------------|---------------|---------------|------------|---------------|--------------|-----------|---------------|-----------|---------------|---------------------|---------------------|
| | | Net LTP | Trade Qty | No. of Trades | Pos. LTP | Trade Qty | No. of Trades | Neg. LTP | Trade Qty | No. of Trades | Trade Qty | No. of Trades | | |
| AAACV3615M | Vemuri Finvest Private Limited | 115.00 | 110 | 75 | 115.00 | 97 | 62 | 0.00 | 0 | 0 | 13 | 13 | 55.91 | 72 |
| AAACM9185B | Maheshwari Financial Services Private Limited | 88.85 | 94 | 70 | 88.85 | 74 | 50 | 0.00 | 0 | 0 | 20 | 20 | 43.19 | 66 |
| Total | | 203.85 | 204 | 145 | 203.85 | 171 | 112 | 0.00 | 0 | 0 | 33 | 33 | 99.10 | 138 |
| Market | | 205.7 | 277 | 151 | 205.7 | 185 | 113 | 0 | 0 | 0 | 92 | 38 | 100 | - |

- From the above table, it can be observed that MFSP and VFPL had contributed to 99.10% of the positive LTP in 112 trades. All the 112 Positive LTP trades were first trades. Of these 112 trades, for 11 trades, sell orders

were placed first and for the remaining 101 trades, sell orders were placed at the available buy order prices.

- On analyzing the trades, it was observed that all the orders were placed for a quantity ranging from 1 to 5 shares. The quantity and pattern is detailed as under:

| Sell Order Quantity | No. of trades | No. of Pos. LTP Trades | Positive LTP (in ₹) | No. of Trading Days |
|---------------------|---------------|------------------------|---------------------|---------------------|
| 1 | 94 | 61 | 153.40 | 61 |
| 2 | 45 | 45 | 44.40 | 45 |
| 3 | 5 | 5 | 5.20 | 5 |
| 5 | 1 | 1 | 0.85 | 1 |
| Total | 145 | 112 | 203.85 | 112 |

- From the above table, it can be observed that MFSPL and VFPL had contributed positive LTP of ₹ 203.85/- by placing to sell orders in small quantity ranging from 1 to 5 shares through multiple trades in multiple days.
- Further, top 5 positive LTP contributing trades of MFSPL and VFPL during the patch were considered for order log analysis and analyzed as under:

| | Order Type | Order No | Order Time | Order Qty | Order Price | Counterparty Pending Order Qty Range (total) | Counterparty Pending order Price range | Trade No. | Trade time | Traded Qty | Trade Price | Diff in LTP (in Rs.) |
|---|--|---------------------|------------|-----------|-------------|--|--|-----------|------------|------------|-------------|----------------------|
| 1 | Buyer:Manbar Singh Negi Seller:Vemuri Finvest Private Limited Date:13/10/2014 | | | | | | | | | | | |
| | Buy | 1413171000001250000 | 09:23:10 | 50 | 222.85 | 0 | 0 | | | | | |
| | Sell | 1413171000001250001 | 09:32:00 | 1 | 222.85 | 50 (50) | 222.85 | 1 | 09:32:00 | 1 | 222.85 | 4.35 |
| 2 | Buyer:Manbar Singh Negi Seller:Maheshwari Financial Services Private Limited Date:10/10/2014 | | | | | | | | | | | |
| | Buy | 1412911800004220000 | 09:17:11 | 50 | 218.5 | 0 | 0 | | | | | |
| | Sell | 1412911800004220005 | 10:25:07 | 1 | 218.5 | 1 - 49 (58) | 210.05 - 218.50 | 1 | 10:25:07 | 1 | 218.5 | 4.25 |
| 3 | Buyer:Manbar Singh Negi Seller:Maheshwari Financial Services Private Limited Date:09/10/2014 | | | | | | | | | | | |
| | Buy | 1412825400001252000 | 09:19:14 | 100 | 214.25 | 0 | 0 | | | | | |
| | Sell | 1412825400001252001 | 09:50:45 | 1 | 214.25 | 99(99) | 214.25 | 1 | 09:50:45 | 1 | 214.25 | 4.2 |
| 4 | Buyer:Kinshul Sanjaykumar Jain Seller:Vemuri Finvest Private Limited Date:08/10/2014 | | | | | | | | | | | |
| | Buy | 1412739000001039000 | 09:00:00 | 20 | 210.05 | 0 | 0 | | | | | |
| | Sell | 1412739000001039001 | 09:23:56 | 1 | 210.05 | 20(20) | 210.05 | 1 | 09:23:56 | 1 | 210.05 | 4.1 |
| 5 | Buyer:Maheshwari Negi Seller:Vemuri Finvest Private Limited Date:07/10/2014 | | | | | | | | | | | |
| | Sell | 1412652600002237201 | 10:19:38 | 1 | 205.95 | 50(50) | 201.95 | | | | | |
| | Buy | 1412652600002237203 | 10:30:39 | 2 | 205.95 | 1(2) | 205.95 | 1 | 10:30:39 | 1 | 205.95 | 4 |

- From the above order log analysis, it can be observed that there are no sell orders in the market. From the orders listed at Sl. No. 1 above, it can be

observed that Shri Manbar Singh Negi had placed buy order at 09:23:10 to buy 50 shares for ₹ 222.85/- when bid book had no sell orders. Subsequently, VFPL had placed sell order at 09:32:00 to sell 1 share to match the buy order at ₹ 222.85/- and increase the LTP by ₹ 4.35/- when the bid book had order to buy 50 shares. Similar pattern can be observed for the remaining 4 trades. Thus, it is alleged that on sell side, MFSPL and VFPL placed orders repeatedly to sell only a few shares ranging from 1 to 5 at prices higher than LTP and contributed to the price rise even when there was buy demand for more shares.

- As on March 31, 2014, ACL had issued 1,43,80,000 shares. Of these, 58,050 shares were held by shareholders in physical form and 1,43,21,950 were held in demat form. Of the shares held in demat form, 1,41,10,000 shares were issued in preferential allotments dated May 02, 2013 (67,30,000 shares) and September 13, 2013 (73,80,000 shares). Accordingly, these shares were under lock-in till May 01, 2014 and October 14, 2014 (October 14, 2016 for promoter group entity) respectively. Remaining 2,11,950 shares were held by Promoter – West Field Apparels Private Limited (1,76,450 shares) and other 4 entities namely MFSPL (3,500 shares) and VFPL (3,500 shares), Ravioday Realtors Private Limited (24,500 shares) and Paksh Marketing Private Limited (4,000 shares). As stated earlier (preceding paragraph 5 of this order), MFSPL and VFPL were connected to Goup-1 entities and Promoter of ACL. With respect to the connection of other two entities with ACL/Promoter of ACL, it was observed that Surendra Sharma was the common director of Paksh Marketing Private Limited (21/02/2011 – till date), Ravioday Realtors Private Limited (25/07/2011 – till date) and Group-1 entities - Vighnaharta Infra Developers Private Limited, Kuber Dealcom Private Limited. Accordingly, all the four entities were connected to ACL and its Promoter. Summary of shareholding is as under:

| Physical / Demat | Particulars | Number of Shares | % of total shareholding |
|------------------|--|--------------------|-------------------------|
| Physical | Shares held in physical form | 58,050 | 0.40% |
| Demat | Preferential allottees (under lock-in) | 1,41,10,000 | 98.12% |
| | Promoter (Westfield Apparels Private Limited) | 1,76,450 | 1.23% |
| | Company / Promoter Connected entities (4 entities) | 35,500 | 0.25% |
| Total | | 1,43,80,000 | 100% |

- From the above table, it can be observed that 100% of shares in demat form were held by Promoter or its connected entities. The shares in physical form could be sold only in additional trading window on BSE in “C” group. The shares available for sale in demat form were held by Promoter and its connected entities. This, it is alleged had facilitated MFSPL and VFPL to sell few shares and contribute to price rise.
- Thus, it is alleged that the primary objective of MFSPL and VFPL was to inflate the price. In spite of holding more shares (3,500 shares each), only few shares ranging from 1 to 5 shares were sold in the market at the prices higher than LTP with an intention to increase the price of the scrip.
- In view of the above, it is alleged that during patch-1, MFSPL and VFPL created an artificial price rise by repeatedly selling few shares in spite of buy depth in the market at prices higher price than LTP. Thus, it is alleged that the aforesaid entities manipulated the price of the scrip. Hence it is alleged that MFSPL and VFPL have violated Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a), (e) of PFUTP Regulations.
- During the investigation period, it was observed that the 72 preferential allottees had sold 1,70,41,854 shares. On further analysis, it was observed that Group-1 and Group-2 entities traded with 71 preferential allottees and purchased 69,68,328 shares for value of ₹ 77.09 Cr. This accounts for 39.90% of shares sold by preferential allottees and 37.04% of the sell value received by the preferential allottees. It is observed from the IR that preferential allottees had sold shares for a value of ₹ 200.02 Cr.

- The company had made two preferential allotments at ₹ 15/-. Subsequently, it is alleged that price was manipulated by entities connected to the company. Thereafter some of the preferential allottees sold their shares at manipulated high price. Of the shares sold by preferential allottees, company connected entities had purchased 26.35% value of shares.
 - In view of the above, it is alleged that the company was part of scheme to manipulate the price of the scrip to benefit the preferential allottees. Further, it is alleged the Directors of the company at time of preferential allotment (other than Independent and non-executive directors), Shri Ramawtar Gupta (Managing Director) and Shri Promod Kumar Gupta (CFO and Director) were part of this scheme. Hence the company and its aforesaid 2 Directors have alleged to have violated Regulations 3 (a), (b), (c) and (d) and Regulations 4(1), 4(2) (a), (e) of PFUTP Regulations.
- b) The Noticees were advised to show cause as to why suitable actions/directions in terms of Sections 11(1), 11(4) and 11B of SEBI Act should not be initiated against them for the alleged violation of the provisions of PFUTP Regulations.

REPLY & HEARING

8. In response to the SCN, the company vide its letter dated July 18, 2017 *inter alia* submitted as follows;
- a) In order to raise resources to fund growth plans of the company, organically and inorganically, to meet working capital requirement and general corporate purposes, the company decided to infuse fresh capital by way of preferential allotment of shares.
 - b) The company has no role / involvement in the price movement of its share. SCN itself mentions that there were as many as 239 entities dealing in the scrip during the relevant time. Thus, to hold the company responsible for any price movement is unwarranted and unjustified.
 - c) VFPL and MFSPL were looked after by separate management. There is a

proper chinese wall between the said companies and ACL. The decision of trading in stock market is taken independently and autonomously by management of said companies and ACL has no role / participation in management of daily affairs of the said companies.

d) Noticee requested for inspection of certain documents in the matter.

9. Vide a letter dated July 19, 2017, ACL was advised to conduct the inspection in the matter on July 26, 2017 at SEBI Bhavan, Mumbai. The said letter was sent to Noticee's email address also. ACL vide its letter dated July 20, 2017 authorised Prakash Shah & Associates to conduct the inspection on its behalf. The authorized representatives conducted the inspection on the scheduled date and were provided the next day, with the photocopies of the documents as sought at the time of inspection.
10. It is noted from material made available on record that SEBI has not received any reply in the extant matter from Shri Ramawtar Gupta, Shri Promod Kumar Gupta, MFSP and VFPL till date. In order to proceed further in the matter, vide hearing notices dated August 21, 2017, Noticees were granted an opportunity of hearing on October 10, 2017 at SEBI Bhavan, Mumbai. Proof of service of hearing notice is on record. In response to the hearing notice, ACL, Shri Ramawtar Gupta and Shri Promod Kumar Gupta requested to adjourn the scheduled hearing to any date after first week of November, 2017 as they were in the process of submitting a detailed reply and also due to intervening festive season.
11. Noticees were granted another opportunity of hearing on November 27, 2018 vide hearing notice dated November 5, 2018 at SEBI Bhavan, Mumbai. Vide hearing notice dated November 14, 2018, the date of hearing was once again communicated to ACL at its alternate address in New Delhi. It is noted from records that hearing notices could not be delivered to any of the Noticees except VFPL though the hearing notices were sent to the last correspondence address of the Noticees. The hearing notice was affixed at the last known address of VFPL on November 13, 2018. However, VFPL failed to attend the scheduled hearing on November 27, 2018.

12. With respect to the remaining 4 Noticees, the hearing notice was published in the newspaper granting them an opportunity of hearing on January 30, 2019 at SEBI Bhavan, Mumbai. However, the Noticees failed to appear for the personal hearing.
13. In view of the facts and circumstances of the case and failure of the Noticees to avail the opportunity of hearing, I am of the view that principles of natural justice have been followed in the matter and I deem it appropriate to decide the matter on the basis of facts / material available on record.

FINDINGS & CONSIDERATIONS

14. Before delving into the merits of the case, I note that except ACL, none of the other Noticees have replied to the SCN. None of the Noticees in the extant matter have availed the opportunity of hearing granted to them. Service of SCN and hearing notices have been done on the Noticees via post/affixture/newspaper publication. In this regard, the observations of Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the matter of *Sanjay Kumar Tayal & Others Vs. SEBI* decided on February 11, 2014 is pertinent here. The Hon'ble Tribunal observed as follows:

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

15. Without prejudice to the above observation, I proceed to examine the matter on merits. To that effect, I have perused the SCN and other materials available on record. On perusal of the same, the following issues arise for consideration:

- (i) Whether MFSP and VFPL have contributed to the price rise in the scrip and whether they have manipulated the price in the scrip of ACL during the period April 17, 2014 to October 13, 2014?
- (ii) If answer to issue No. (i) is in affirmative, whether MFSP and VFPL have violated the provisions of PFUTP Regulations?

- (iii) Whether, company and its Directors (other than Independent and Non-Executive Directors) were part of the scheme to manipulate the price of the scrip to benefit the preferential allottees?
- (iv) If answer to issue No. (iii) is in affirmative, whether company and its Directors (other than Independent and Non-Executive Directors) have violated the provisions of PFUTP Regulations?
- (v) If answer to issue Nos. (ii) and (iv) are in affirmative, what directions, if any should be issued against the Noticees?

Issue No. 1 - *Whether MFSPL and VFPL have contributed to the price rise in the scrip and whether they have manipulated the price in the scrip of ACL during the period April 17, 2014 to October 13, 2014?*

16. It is noted from the records that MFSPL has executed 70 sell trades in the scrip for 94 shares and VFPL has executed 75 sell trades in the scrip for 110 shares. Out of the said 70 trades of MFSPL, 50 trades were over the LTP for 74 shares and out of the said 75 trades of VFPL, 62 trades were over the LTP for 97 shares. From the material made available on record, I note that though the Noticees were holding substantial number of shares, the Noticees were releasing miniscule quantity of shares (1 to 5 shares) even though on majority of occasions there were large pending buy orders over the LTP. The days when the Noticees had executed the said 112 trades over the LTP, pending buy orders were in the range of 10 shares to 2,000 shares. It is observed that when the Noticees were trading, out of the 113 trading days, on 81 trading days only 2 trades were executed in the scrip. This coupled with the fact that the average volume in the scrip during patch- 1 of the investigation period which spanned for 6 months, was 2 shares, would make a prudent investor to sell its shares at the very first opportunity that he/she is coming across. Moreover, no trades were executed in the scrip prior to Noticees trading i.e. during the period October 16, 2013 to April 16, 2014. In the given situation, there were considerable buy order quantity pending in the system and that too over the LTP. It is not the case of the Noticees that on multiple occasions they had placed sell orders for more than 1 to 5 shares and the

order was not executed. Rather in the instant case, the Noticees sell orders were placed after buy orders, so they could very well see that there were pending buy orders in the system for more than 1 to 5 shares on majority of instances but still they chose to execute their sell trades in miniscule quantity.

17. Furthermore, it is noted from the IR that MFSPL and VFPL apart from being connected to each other as they share the same Registered Office are also connected with the company as they share the same address of their Registered Office with the Promoter of the company, West Field Apparels Ltd. Moreover, out of the said 112 trades over the LTP, it is noted that the frequency of putting sell orders over the LTP were at frequent intervals. The same shows a consistency (both in terms of volume and price) in the way the Noticees were putting orders in the scrip. The table below demonstrates the same:

| Sell Order Quantity | No. of trades | No. of Pos. LTP Trades | Positive LTP (in ₹) | No. of Trading Days |
|---------------------|---------------|------------------------|---------------------|---------------------|
| 1 | 94 | 61 | 153.40 | 61 |
| 2 | 45 | 45 | 44.40 | 45 |
| 3 | 5 | 5 | 5.20 | 5 |
| 5 | 1 | 1 | 0.85 | 1 |
| Total | 145 | 112 | 203.85 | 112 |

18. In the extant matter VFPL by executing trades in miniscule quantity in 62 instances has contributed to ₹ 115/- to the positive LTP which is 55.91% of total market positive LTP and MFSPL by executing trades in miniscule quantity in 50 instances has contributed to ₹ 88.85/- to the positive LTP which is 43.19% of total market positive LTP. Further, no justification has been put forth by the Noticees as they have chosen not to furnish a reply or avail of the opportunity of a personal hearing in the extant proceedings.

19. Thus, based on the trading pattern of the Noticees in the scrip, it is held that the same is not genuine but is manipulative in nature.

20. I note that trades at higher than LTP, undoubtedly have a potential of raising the price of the scrip and the same gives a wrong impression about the price of the scrip in the market based on miniscule quantities traded. It must not be forgotten that

every trade establishes the price of the scrip and trades executed at higher than LTP results in the price of the scrip going up which may influence the innocent/gullible investors. In cases of market manipulation, admittedly, no direct evidence would be forthcoming / available. Manipulative transactions are to be tested on the conduct of parties and abnormality of practices which defy normal logic and laid down procedures. What is needed, is to prove that in a factual matrix, preponderance of probabilities indicate a fraud. In this regard, the observations of Hon'ble Supreme Court of India in *SEBI Vs. Kishore R Ajmera et.al.* decided on February 23, 2016 wherein the Hon'ble Court while deciding the matter under SEBI Act and PFUTP Regulations where there was no direct evidence forthcoming, observed as follows:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion..."

21. Taking support of the observations of Hon'ble Apex Court in Kishore R Ajmera matter, I note that in order to determine whether a trade is manipulative in nature or not, the same has to be inferred from the attending circumstances because direct evidence in such cases may not be available. The list of factors to be taken note of, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of attending circumstances an inference will have to be drawn.
22. Noticees trading during the financial year 2014-2015 was analysed. It is noted that MFSP and VFPL have not traded in any other scrip during the said financial year

either as a seller or as a buyer except in the scrip of ACL. Further, it is observed from the IR that as on March 31, 2014, ACL had issued 1,43,80,000 shares. Of these, 58,050 shares were held by shareholders in physical form and 1,43,21,950 were held in demat form. Of the shares held in demat form, 1,41,10,000 shares out of 1,43,21,950 were issued in preferential allotments dated May 02, 2013 (67,30,000 shares) and September 13, 2013 (73,80,000 shares). Accordingly, these shares were under lock-in till May 01, 2014 and October 14, 2014 (October 14, 2016 for promoter group entity) respectively. Remaining 2,11,950 shares available for trading in the demat form were held by Promoter – West Field Apparels Private Limited (1,76,450 shares) and other 4 entities namely MFSPL (3,500 shares) VFPL (3,500 shares), Ravioday Realtors Private Limited (24,500 shares) and Paksh Marketing Private Limited (4,000 shares).

23. MFSPL and VFPL are connected to the Promoter of ACL namely West Field Apparels Ltd as they share the same address of their Registered Office with it and are also connected to 18 other entities referred to as Group-1 entities in IR as Shri Pravin Kumar Agarwal, the Director of MFSPL is also the Director of two Group-1 entities namely, Vaibhavlaxmi Vanijya Private Limited and Wellplan Financial Management Private Limited. The other 16 entities of Group- 1 are also connected to the company through various common Directors. Thus, Group -1 entities comprising of MFSPL and VFPL along with other 18 entities (total 20 entities) are connected to the company. Same has already been brought out in the connection table at paragraph 5.
24. With respect to the connection of other two entities namely Ravioday Realtors Private Limited (24,500 shares) and Paksh Marketing Private Limited (4,000 shares), who were holding shares that were available for trading in demat form with ACL/Promoter of ACL, it is observed that Shri Surendra Sharma is the common Director of Paksh Marketing Private Limited, Ravioday Realtors Private Limited and Group-1 entities - Vighnaharta Infra Developers Private Limited and Kuber Dealcom Private Limited. It has already been held in preceding paragraph that Group-1 entities are connected to ACL. Accordingly, Ravioday Realtors Private Limited and Paksh Marketing Private Limited are also connected to ACL and its Promoter.

25. Thus, MFSPL, VFPL, Ravioday Realtors Private Limited and Paksh Marketing Private Limited who were holding shares in demat form and were available for trading, are connected to the company. Summary of shareholding is as under:

| Physical / Demat | Particulars | Number of Shares | % of total shareholding |
|-------------------------|--|-------------------------|--------------------------------|
| Physical | Shares held in physical form | 58,050 | 0.40% |
| Demat | Preferential allottees (under lock-in) | 1,41,10,000 | 98.12% |
| | Promoter (Westfield Apparels Private Limited) | 1,76,450 | 1.23% |
| | Company / Promoter Connected entities (4 entities) | 35,500 | 0.25% |
| Total | | 1,43,80,000 | 100% |

26. From the above table, it can be observed that 100% of shares in demat form were held by Promoter or its connected entities. The shares in physical form could be sold only in additional trading window on BSE in "C" group. Considering the shares available for sale in demat form were held by Promoter and its connected entities, it is noted that the same enabled MFSPL and VFPL to control the supply of shares and enabled them to sell few shares repeatedly and contribute to significant price rise.

27. Thus, from the aforesaid paragraphs, it can be gathered that the Noticees were not active in the market during the financial year 2014-2015 and were only trading in the scrip of ACL. This coupled with the finding that the shares in dematerialise form were held by Promoter and its connected entities further casts a shadow of doubt on the trading behavior of MFSPL and VFPL in ACL which has already been held to be manipulative.

28. In the instant matter MFSPL and VFPL have repeatedly sold shares in minuscule quantity over the LTP at frequent intervals, even though they had the opportunity to sell more shares on multiple occasions. If the MFSPL and VFPL were genuine sellers then they had the opportunity to sell share in quantity other than 1 to 5 shares, on multiple occasions but still they chose not to sell share in quantity more than 5 shares

at a time and continued to execute sell trades at over the LTP by selling 1 to 5 shares at a time on 112 instances even though past history showed that there was practically no trading in the scrip at all and there was no change in the fundamentals of the company to warrant a sustained and significant increase in price. Moreover, aforesaid Noticees traded only in the scrip of ACL during the financial year 2014-2015. All the aforesaid, indicates that MFSPL and VFPL were not genuine traders in the scrip.

29. In view of the above, the findings that have been gathered from various circumstances for instance overall trades executed in the scrip (number of trades executed on each trading day) including the average volume during patch-1, volume of the trade effected by MFSPL and VFPL vis-à-vis their holding, holding pattern of shares available in dematerialised form, the period of persistence in trading in the scrip, the particulars of the buy orders in the market and their sell orders, absence of trading in other scrips, the totality of the picture that emerges leads to the conclusion that MFSPL and VFPL by executing the aforesaid sell trades have contributed to the price rise in the scrip and have manipulated the price of the scrip.

Issue No. 2 - *If answer to issue No. (i) is in affirmative, whether MFSPL and VFPL have violated the provisions of PFUTP Regulations?*

30. Before embarking upon the necessary discussions, I would like to reproduce the relevant provisions of PFUTP Regulations:

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

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

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

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

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

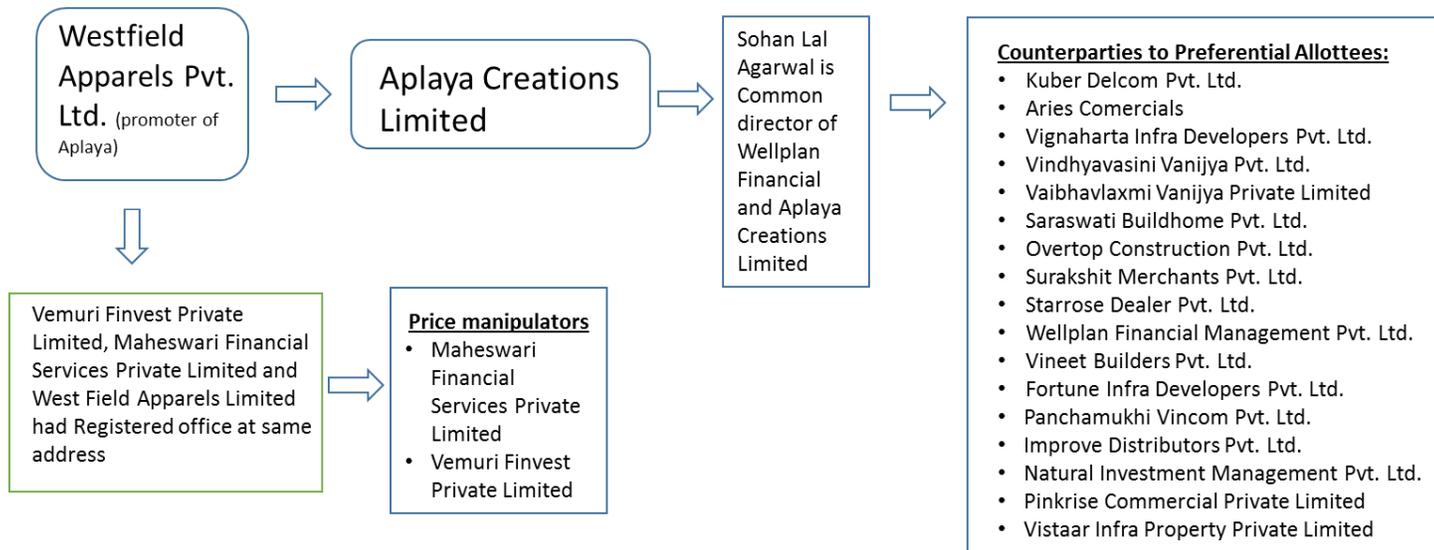
...

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

31. In view of the conclusion arrived at paragraph 29 wherein it has been held that the trades in miniscule quantity executed repeatedly by MFSPL and VFPL over the LTP in the scrip without any consistency with any other trading and in the context of the overall trading pattern in the scrip, are manipulative in nature, it is also held that such trades are fraudulent in nature and would operate as deceit upon any person trading in the extant scrip. Further, as discussed in preceding paragraphs, MFSPL and VFPL by executing impugned trades in the scrip have also manipulated the price of the scrip. I therefore, find that MFSPL and VFPL have violated Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a) and (e) of PFUTP Regulations.

Issue No. 3 – *Whether, company and its Directors (other than Independent and Non-Executive Directors) were part of the scheme to manipulate the price of the scrip to benefit the preferential allottees?*

32. It is noted from records that the company had made two preferential allotments at ₹ 15/- on May 02, 2013 for 67,30,000 shares to 47 entities other than Promoters of the company and on September 13, 2013 for 73,80,000 shares to 1 Promoter (Westfield Apparels Private Limited – 12,00,000 shares) and 46 entities other than Promoters (61,80,000 shares). As per data available on BSE website, the scrip had traded only on 3 days between September 1, 2005 to April 16, 2014 (one trade on September 19, 2005, second trade on December 24, 2008 and third trade on December 2, 2010). It is also observed that post April 16, 2014, shares available for sale in dematerialised form were held by Promoter and its connected entities. Further, it has already been concluded in preceding paragraphs that MFSPL and VFPL, who are connected to the company have contributed to the price rise in the scrip and have manipulated the price of the scrip.
33. From the IR, it is noted that during the investigation period, 72 preferential allottees had sold 1,70,41,854 shares. On further analysis, it is observed that Group-1 entities who are connected to the company have traded with majority of the preferential allottees and had purchased 26.35% value of shares, amounting to ₹ 52,70,86,234/. Diagrammatic representation of the entities involved in providing exit to the preferential allottees is as under:



34. It is pertinent to mention here that shares were allotted by ACL in a preferential allotment unlike a public issue where funds are raised by inviting subscriptions from public in general. Preferential issues can only be made by pre-negotiation. This signifies that the allottees agreed with the company on one-to-one basis to subscribe to shares. The shares of ACL had traded only 3 times in a span of almost 9 years prior to the investigation period and there is nothing on record to show that the fundamentals of the company changed substantially at the time of the preferential allotments which will inspire confidence in the company. It is noted that, even in such circumstances, ACL was able to raise approximately ₹ 19.36 crore from 93 persons other than Promoter at a price of ₹ 15/- per share. This is only possible if there was a prior tacit understanding between the company and the exit providers to benefit the preferential allottees. It is noted that exit providers created the demand against the supply from the preferential allottees as a sudden supply if not matched by similar demand would have led to a considerable price fall. 26.35% value of shares amounting to ₹ 52,70,86,234/- sold by the preferential allottees were purchased by the exit providers who apart from being connected with each other are also connected to the company. It has already been brought out earlier as to how the shares available for sale in dematerialized form were controlled by Promoters and its connected entities and as to how the entities connected to the company had manipulated the scrip and had contributed to the price rise in the scrip. Therefore,

it is concluded that the aforesaid elaborate dubious scheme / plan/ device could be successful only if the company, price manipulators and the exit providers were acting in a pre-determined manner and were hand in glove with each other.

35. The company has submitted that in order to raise resource to fund growth plans of the company, organically and inorganically, to meet working capital requirement and general corporate purposes, the company decided to infuse fresh capital by way of preferential allotment of shares. The submission of the company is not acceptable as it has failed to provide any material such as any communication between the preferential allottees and ACL, Information Memorandum, documents showing deployment of funds etc. in order to substantiate its submission despite being given an opportunity.
36. The company has further submitted that there is a proper chinese wall between MFSPL and VFPL on one hand and ACL on the other hand. The submission of the company is not supported by any documentary evidence demonstrating the existence of chinese wall coupled with the fact that MFSPL and VFPL traded only in the scrip of ACL during the financial year 2014-2015, makes the submission of the company untenable.
37. In view of the above, it is held that the company was part of the scheme to manipulate the price of the scrip to benefit the preferential allottees.
38. It is noted from the IR that Shri Ramawtar Gupta is the Managing Director of the company (08/02/2013 to at least the end of investigation period) and Shri Pramod Kumar Gupta is the Director and CFO of the company (08/02/2013 to at least the end of investigation period).
39. At this juncture, I would like to refer to the order of Hon'ble Supreme Court of India in the matter of *N Narayanan Vs. Adjudicating Officer, SEBI* decided on April 26, 2013. The Apex Court in the said matter 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 (1973) 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.

...

Directors are expected to exercise the powers for the purposes for which they are conferred. Sometimes they may misuse their powers for their personal gain and makes false representations to the public for unlawful gain.

..."

40. I note that the position of a 'Director' in a company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such Director and in case of default, he has to face the consequences thereof. A Director cannot therefore wriggle out from his liability. A Director who is part of a company's board shall be responsible and liable for all acts carried out by the company. It is not in dispute that Shri Ramawtar Gupta is the Managing Director of the company and has been vested with substantial powers of management. He is in charge of the day to day affairs of the company and is bound to discharge his functions with utmost care, skill and diligence. He being the senior most full time executive of the company is responsible in formulating and implementing the company policies and strategies towards the profitable growth and operation of the company. It has already been held in the preceding paragraphs that the company had come out with preferential allotments and had devised a scheme to manipulate the price of the scrip to benefit the preferential allottees. I note the existence of following facts and circumstances having relevance to the role of the Shri Ramawtar Gupta. The fact that he is senior most executive of the company with substantial powers of management and is responsible for execution of companies policies. Such execution of company's policies is not possible without the knowledge of financial position of the company and the fact that preferential allotments were made by the company

under the preceding circumstance that the shares of ACL had traded only 3 times in a span of almost 9 years prior to the investigation period and there is nothing on record to show that the fundamentals of the company had changed substantially at the time of the preferential allotments which will inspire confidence in the company and even in that circumstances, ACL was able to raise approximately ₹ 19.36 crore from 93 persons other than Promoter at a price of ₹ 15/- per share indicating that this is only possible if there was a prior tacit understanding between the company and the exit providers to benefit the preferential allottees. It is also a fact that Shri Ramawtar Gupta, shares a common phone number (9331110151) with Group- 1 entities namely Kuber Dealcom Private Limited, Vindhya Vasini Agency Private Limited, Vaibhavlaxmi Vanijya Private Limited, Saraswathi Buildhome Private Limited, Samrat Trading Co., Vistaar Infra Property Private Limited and Pinkrise Commercial Private Limited and as noted from the IR, the Group- 1 entities were the counter parties to the trades of preferential allottees. The preponderance of probability of these facts and circumstances clearly indicate that the said scheme is possible only with the knowledge and role of the Managing Director, Shri Ramawtar Gupta. Accordingly, Shri Ramawtar Gupta, Managing Director of the company is responsible for all the deeds / acts of the company during the period of his directorship. Similarly, Shri Pramod Kumar Gupta being the Director of the company was also responsible to discharge his functions with utmost care, skill and diligence. Being the Director of the company, he is involved in running day to day affairs of the company. He was also the CFO of the company. Being a CFO, he is responsible for the financial planning of the company as well as analysing the company's financial strengths and weaknesses and proposing corrective actions. Company had come out with preferential allotments to meet its fund requirements and Shri Pramod Kumar Gupta being the Director and CFO of the company has played an active role in it. He was aware of the financial health of the company including that the shares of the company had hardly traded in the preceding 9 years and the fundamental attributes of the company had hardly changed at the time of the preferential allotments and still the company was able to raise a considerable sum of money from 93 persons. Thus,

as stated earlier, there was a prior tacit understanding between the company and the exit providers to benefit the preferential allottees of the company and Shri Pramod Kumar Gupta being the Director of the company is also responsible for all the deeds / acts of the company during the period of his directorship. It is further noted that Shri Ramawtar Gupta and Shri Pramod Kumar Gupta did not file any reply denying the allegations against them. Considering further that the company being a legal entity cannot act by itself, it can act only through its Directors, it is held that Shri Ramawtar Gupta and Shri Pramod Kumar Gupta were part of the scheme to manipulate the price of the scrip to benefit the preferential allottees.

Issue No. 4 - *If answer to issue No. (iii) is in affirmative, whether company and its Directors (other than Independent and Non-Executive Directors) have violated the provisions of PFUTP Regulations?*

41. Chapter II of PFUTP Regulations prohibit fraudulent and unfair trade practices relating to the securities market. It prevents employing any device, scheme or artifice in connection with dealing with or issuance of securities. It also prevents engaging in any acts or course of business which operates as fraud or deceit upon any one in connection with dealing in or issuance of the securities. Here, it would be noteworthy to quote the observations of Hon'ble Supreme Court of India in the matter of *Securities and Exchange Board of India and Ors. vs. Shri Kanaiyalal Baldevbhai Patel and Ors* (2017 SCC Online SC 1148) wherein it was observed as follows:

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

practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'. "

Further, the Hon'ble Apex Court in the matter of *Securities and Exchange Board of India vs. Rakhi Trading Pvt. Ltd. et.al.* decided on February 8, 2018 observed that *"Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market."*

42. In the extant matter, company had come out with preferential allotment. Thereafter, the price of the scrip was artificially manipulated by price manipulators, connected to the company. A factor that enabled the price manipulators in their manipulation was that the shares available for trading in the demat form was controlled by ACL/ Promoter and its connected entities. At a subsequent stage, the preferential allottees were provided exit at the manipulated price by the exit providers who were also connected to the company (26.35% value of shares traded by preferential allottees). These acts of preferential allotment, price manipulation and subsequent providing of exit constitutes a scheme. The company, its Directors, and price manipulators and exit providers played their respective roles in order to constitute the above scheme to operate as fraud in connection with dealing in securities which undermined the integrity of the trading system of the Exchange hampering the price discovery. The scheme has in effect resulted in benefit to the preferential allottees. Ordinarily, the trading would have taken place between anonymous parties and the price would have been determined by the market forces of demand and supply. In the instant case, the company and the price manipulators connected to the company along with other connected entities not only controlled the supply of the shares and manipulated the price of the scrip but connected entities of the company also provided an exit to the preferential allottees. I therefore, find that company and its

Non-Executive and Non- Independent Directors namely Shri Ramawtar Gupta and Shri Pramod Kumar Gupta have violated Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a) and (e) of PFUTP Regulations.

Issue No. 5 – *If answer to issue Nos. (ii) and (iv) are in affirmative, what directions, if any should be issued against the Noticees?*

43. Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorised to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude. Pursuant to the said objective, PFUTP Regulations have been framed. The said Regulations apart from other things aims to preserve and protect the market integrity in order to boost investor confidence in the securities market. By employing a scheme, as has been done by the Noticees in the instant matter, the price discovery system itself is affected and it also shakes the confidence of the investors in the securities market. It further has an adverse impact on the fairness, integrity and transparency of the stock market. In view of the same and considering the violations committed by the Noticees, I find that it becomes necessary for SEBI to issue appropriate directions against the Noticees.

ORDER

44. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby restrain Aplaya Creations Limited (PAN: AAACG1479J), Shri Ramawtar Gupta (PAN: AGEPG2765Q), Shri Pramod Kumar Gupta (PAN: ABRPG4589Q), Maheswari Financial Services Private Limited (PAN: AAACM9185B) and Vemuri Finvest Private Limited (PAN: AAACV3615M) from accessing the securities market for a period of eight years from the date of this order and further prohibit the Noticees from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any

manner, whatsoever, for a period of eight years, from the date of this order. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing securities holding, including units of mutual funds, of the Noticees shall remain frozen. Further, Shri Ramawtar Gupta (PAN: AGEPG2765Q) and Shri Promod Kumar Gupta (PAN: ABRPG4589Q) are also prohibited from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a Director and key managerial person, directly or indirectly, for a period of eight years.

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

46. A copy of this order shall be served upon all recognised Stock Exchanges, Depositories and the Registrar and Share Transfer Agents to ensure compliance with the above directions.

47. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies for their information and necessary action with respect to the directions/ restraint imposed above against the company and the Directors.

-sd-

DATE: March 27, 2019

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**