BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. ORDER/VV/PSS/2022-23/22968-22973

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

In respect of:

Noticee No.	Name of the Noticee	Address
1	**S Ravi Chandran** (PAN – ATCPR1127L)	15, 6th Cross Street, Karpagam Garden, Adyar, Chennai - 600020
2	**Dinesh Raja Punniamurthy** (PAN – ALIPD6880G)	No.125/63 , Jammi Buildings, Royapettah High Road, Mylapore, Chennai – 600004
3	**Babita Singaram** (PAN - BTJPS5403E)	1&2/9a , Abinav Palace, Jeth Nagar, 1st Main Road, A Puram, Chennai – 600028
4	**Swasti Bhowmick** (PAN – AGPPB9005K)	South City Residence, Tower 2, Flat 24C, 375 PA Shah Road, Kolkata – 700068
5	**R Thyagrajan** (PAN – ACDPT1217H)	Kashyap Apart, First Floor, No.32 , Giri Road, T.Nagar, Chennai – 600017
6	**G Sri Vignesh** (PAN – GOAPS3552D)	No.10/13 , Norton 3rd Street, Mandalveli, Chennai - 600028

In the matter of **Securekloud Technologies Limited**.

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*(Noticees no. 1 to 6 are individually known by their respective name or Noticee no. and collectively referred to as the "**Noticees**")*

A. BACKGROUND

1. Pursuant to receipt of certain complaints alleging *inter alia* financial mis-reporting/ irregularities by promoters and management of Securekloud Technologies Ltd (hereinafter referred to as **"STL/the Company/Noticee no.1/Securekloud"**), a public listed company, and the resignation of the Company's statutory auditor, *viz*. Deloitte Haskins and Sells ("**Deloitte**"), citing various corporate governance issues including fraud relating to irregularities and inconsistencies in financial statements and books of accounts of the Company, Securities & Exchange Board of India ("**SEBI**") had initiated an investigation in the affairs of the Company for the period covering four financial years from April 01, 2017

to March 31, 2021. The focus of the said investigation was broadly to investigate into the manner of alleged misstatement in the books of accounts of STL, so as to ascertain if any provision of Securities & Exchange Board of India Act, 1992 ("**SEBI Act**"), Securities Contracts (Regulation) Act, 1956 ("**SCR Act**"), SEBI (Listing Obligations and Disclosure Requirements), 2015 ("**LODR Regulations**"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**") etc., had been violated. The period of investigation is four financial years i.e. FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21.

2. During the course of investigation, it was observed that:

   a) Deloitte were appointed as statutory auditors of the Company on September 30, 2017. For the FY 2018-19, Deloitte in its audit report brought out various irregularities and inconsistencies in financial statements and books of accounts of the Company and indicated that suspected offences including fraud have been committed in the Company. Deloitte, citing various irregularities and inconsistencies in financial statements of the Company filed a report with Ministry of Corporate Affairs on September 13, 2019 under Section 143(12) of the Companies Act, 2013 ("**Deloitte Report**") and subsequently, resigned as statutory auditors of the Company on November 15, 2019.

   b) To look into the observations on irregularities and inconsistencies in the books of accounts of the Company as pointed by Deloitte, the Company appointed PKF Sridhar & Santhanam LLP ("**PKF**") on July 23, 2019, to conduct a forensic review of the books and accounts of the Company. SEBI vide email dated February 12, 2020 advised the Company to place the summary of observations received from Deloitte before Audit Committee to examine, whether, there were any violations of the provisions of the SEBI Act, 1992 and Rules/Regulations made thereunder. It was further mentioned that Audit Committee may provide its views/recommendations. Also, the Company was advised to provide findings of PKF in respect of forensic audit undertaken by them. Chairperson of Audit Committee, Mr. Dinesh Raja Punniamurthy (**Noticee no. 2**), vide letter dated February 29, 2020 replied to aforesaid SEBI email and stated that "*the committee noted that there was no specific violation mentioned in the summary of observations with references given by Deloitte to the company with respect to provisions of SEBI Act and Rules/Regulations made thereunder*". It was also mentioned in said reply that since PKF could not complete the report within stipulated time, the Company had disengaged their services in the meeting held on November 06, 2019.

c) The Company, however, failed to provide its reply on each observation of Deloitte. Further, it was observed from the disclosure made by the Company on March 1, 2020 while declaring its financial results for the quarters ended June 30, 2019 and September 30, 2019 that the Company had received the draft report from PKF, as it had disclosed that the report would be made available to the Audit Committee shortly upon review by the management of the Company. Vide SEBI email dated March 13, 2020, the Company was again advised to provide its point-wise reply on the summary of observations made by Deloitte and was also advised to share the draft report of PKF. The Company sought extension of time on several occasions due to the COVID-19 pandemic and submitted its reply, vide letter/email dated July 13, 2020, wherein it submitted *inter alia* that the Company disengaged the services of PKF for the inordinate delay in submitting the report and thus, appointed KPSN & Associates LLP ("**KPSN**"). It also forwarded a copy of report of KPSN. It was observed that KPSN in its report had disagreed with most of the issues reported by Deloitte and concluded that there was no impact on financial statements for the FY 19 in most of the instances, except with regard to the issue of non-consolidation of the accounts of the two subsidiary companies in Singapore and UK.

d) SEBI then decided to conduct a detailed examination of the books of accounts of the Company and to conduct forensic audit of books of accounts of the Company. Accordingly, SEBI vide letter dated March 25, 2021 appointed M/s Grant Thornton Bharat LLP ("**Forensic Auditor/GT**") to undertake forensic audit of the books of accounts of the Company for FY 2017-18, FY 2018-19, FY 2019-20 and nine months ending December 2020. In pursuance of the same, the GT conducted a forensic audit of standalone financial statements of STL and submitted a report to SEBI dated June 14, 2022.

e) The Forensic Audit Report by GT contained the following observations as produced in the SCN: -

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Suspicious Transactions with customers and Vendors:

22.1. M/s Grant Thornton Bharat LLP (GT) identified that for FY 2017-18 and FY 2018-19, Nationstar IT Services Limited ('NSIT') was the largest vendor of the Company, with expenses aggregating to INR 1692.59 Lakhs (approximately 35.71% of the total standalone expenses) and INR 1462.63 Lakhs (approximately 25.97% of the total standalone expenses) respectively, charged by way of 'consultancy charges' and 'business referral charges'.

22.2. Similarly, on the revenue side, three entities: Ensys Technologies Inc. ('ETI'), Idol Solutions Inc.('ISI/Idol') and Intuit Micro Technology LLC ('IMTL'), accounted for INR 2063.69 lakhs (approximately 40.81%) and INR 2428.69 lakhs (approximately 42.64%) of the total standalone revenue of the Company, for FY 2017-18 and FY 2018-19 respectively. However, during the review period, approx. only 26% of receivables from the aforesaid three customers had been realized by the Company. While a sizable proportion i.e. approx. 37% of outstanding receivables, was set off against amount payable to NSIT, another sizable proportion i.e. approx. 37% of outstanding receivables was written off as bad debts.

22.3. The Company failed to provide Information regarding transaction deliverables (i.e., proof of the services rendered by NSIT and rendered to ETI, ISI, and IMTL). Also, during site visit at the Company's premises by GT, on seeking email correspondences between the Company and four entities: NSIT, ETI, ISI, and IMTL, the Company's representatives stated that email communications with the said entities were being handled by individual employees through their official ID and there was no common email ID / group email ID on which emails from these entities were sent / received. As on the date of site visit, all the employees corresponding/liasoning with the said entities had left the Company's employment and all the employees' data (including their emails) were subsequently purged / deleted by the Company within 30-60 days of their leaving the organization. Accordingly, the Company did not have records of any e-mail communication with the said parties.

22.4. Further, the aforesaid four entities, namely NSIT, ETI, ISI and IMTL appeared to be indirectly linked to the Company by virtue of common KMPs/individuals and common business premises.

22.5. In view of above-mentioned findings, GT doubted the genuineness of the transactions with these four entities. The details of the findings for each entity are mentioned below:

(a) Suspicious Transactions with Nationstar IT Services Limited:

22.6. The largest expense head of the Company was 'Outsourced Consultants' which represented 36.83% and 27.29% of the total expenses incurred by the Company for FY 18 and FY 19, respectively. In FY 2019-20, the said expenses charged to 'Outsourced Consultants' decreased drastically by 97.95% when compared to FY 2018-19. On analysis, it was noted that out of the total expenses incurred by the Company under the said head, 96.97% and 95.16% of such expenses pertained to consultancy charges from a single entity, Nationstar IT Services Limited ('NSIT') for FY 2017-18 and FY 2018-19 respectively. For the remainder of the review period (1 April 2019 to 31 December 2020), no expenses pertaining to NSIT had been booked by the Company.

*22.7. Based on the "Master Services Agreement" ('**MSA**') and "Certificate of Good Standing" made available by the Company to GT, it was observed that NSIT is organized under the laws of RAK Offshore Provisions, UAE and is registered under the UAE's RAK ICC Business Companies Regulations, 2016. It was observed that for a company registered under RAK ICC, the following protocols are applicable:*

(i) No requirement to submit the financial statements.

(ii) Neither owner nor the director is required to visit the UAE premises in person.

(iii) Audit of the financial statements is not required to be conducted.

(iv) Further, no public record of the shareholders/directors is maintained.

(v) Personal presence by a representative is not required during the incorporation of such company.

22.8. Based on the MSA signed between NSIT and the Company, as well as sample invoices of NSIT, GT noted that authorized signatory of NSIT was Ms. Gayatri Ramaswamy Nurani Iyer. GT further noted that the Social Media account of 89.4 Tamil FM Radio (Dubai) contained the photographs of its employees and one such employee appeared to look similar to Ms. Gayatri Ramaswamy Nurani Iyer. As per a LinkedIn profile appearing in the name of Ms. Gayatri Iyer, she was employed with 89.4 Tamil FM Radio on a fulltime basis since March 2018. GT also observed that as per social media post of 89.4 Tamil FM Radio (Dubai), Mr. R. S. Ramani was its Managing Director. As per annual report of the STL for FY 2017-18 and FY 2018-19, Mr. R. S. Ramani was Promoter and shareholder of the Company, holding 7.07% (21,57,506 shares) and 1.52% (465,000 shares) of the outstanding shares of the Company as on April 01, 2017 and March 31, 2019, respectively. He was also the CFO of the Company till November 30, 2018 and Director of the Company from August 13, 2011 to November 2, 2019. Therefore, GT observed that NSIT was linked with the Company by virtue of a common individual- Ms. Gayatri Ramaswamy Nurani Iyer.

22.9. Further, the Company failed to provide to GT the supporting documents pertaining to transactions with NSIT, which included weekly reports to be shared between the vendor and the Company, delivery confirmations issued by NSIT, email/other communications between the contract coordinators representing vendor and the Company, etc. As already stated above, the Company stated that it did not have records of any e-mail communication with NSIT.

22.10. In view of aforesaid observations, GT concluded that in the absence of complete information regarding proof of the services rendered by the NSIT, they were unable to comment on the appropriateness / correctness / completeness / genuineness of the expense and the corresponding liability recorded in the standalone financial statements.

(c) Suspicious Transactions with Ensys Technologies Inc., Idol Solutions Inc. and Intuit Micro Technology LLC:

22.11. The vendor NSIT was engaged to provide services to three customers of the Company, namely Ensys Technologies Inc. ('ETI'), Idol Solutions Inc. ('ISI'), and Intuit Micro Technology LLC ('IMTL'). It was observed that 63.98% and 40.90% of the total standalone revenue of the Company for FY 2017-18 and FY 2018-19 respectively was concentrated in the segment 'International Project Revenue', which drastically fell by 99.50% in FY 2019-20 (compared to FY 2018-19). Ensys Technologies Inc., Idol Solutions Inc., and Intuit Micro Technology LLC, which were major customers of the Company, collectively accounted for 40.81% and 42.64% of the total revenues of the Company for FY 2017- 18 and FY 2018-19 respectively. For the remainder of the review period (1 April 2019 to 31 December 2020), no income from ETI, ISI, and IMTL was booked by the Company.

Ensys Technologies Inc ("ETI"):

22.12. The address of Ensys Technologies Inc. is 19 Noa Ct, Hamilton Township, NJ 08690-3643. The said address belonged to Mr. P. K. Chandrasekher. who was a senior employee of a disclosed subsidiary of *the Company, viz. Securekloud Technologies Inc. ('STI'). In the Inter-Company Services agreement signed between Securekloud Technologies Inc. ('STI') and the Company dated 14 February 2018, Mr. P K Chandrasekhar was listed as Vice President of STI. Moreover, Dun and Bradsteet (D&B) profile for STI lists Mr. P. K. Chandrasekher as its Vice President. D&B profile for 8K Miles Cloud Services Inc. lists Mr. P. K. Chandrasekher as its Office Manager. A Securities and Exchange Commission ('SEC') filing for 8K Miles Media Group mentions Mr. P. K. Shekhar and Mr. Suresh Venkatachari as its Executive Officers. Mr. Suresh Venkatachari is promoter, shareholder, Chairman as well as Managing Director of the Company. It thus appeared that ETI was indirectly linked with the Company through a common individual- Mr. P. K. Chandrasekher.*

Idol Solutions Inc ("ISI"):

22.13. *The address of Idol Solutions Inc. is 666 Plainsboro Rd Ste 1023 Plainsboro, NJ, 08536-3044 United States. The D&B profile of ISI mentioned the same address along with ISI's contact number as: (609) 865-4316. Further, on ZoomInfo – a website which lists a company's contact data, the same address has been mentioned as ISI's address and one Mr. Shibu Kizhakevilayil has been mentioned as its Vice President.*

22.14. *As per public domain searches on MyVisaJobs – a website which lists labor applications filed by U.S. employers for H1-B visa jobs, Mr. Shibu Kizhakevilayil has been mentioned as ISI's Vice President. Further, Annual Reports of the Company from FY 2017-18 to FY 2020-21 list Mr. Shibu Kizhakevilayil as its President – Global Healthcare. LinkedIn Profile of Mr. Shibu mentions him as Global Healthcare President of SecureKloud Technologies Inc. (a disclosed subsidiary of the Company) since January 2015. The LinkedIn profile further mentions him as a director and Head of M&A of Healthcare Triangle Inc., a step down subsidiary of the Company. Bloomberg profile for Mr. Shibu listed his current designation as M&A head at Healthcare Triangle Inc. and previous designation as Global Healthcare President of SecureKloud Technologies Inc. Further, the website of Healthcare Triangle Inc. lists Mr. Shibu as its director. It thus appeared that ISI was indirectly linked with the Company by virtue of a common KMP- Mr. Shibu Kizhakevilayil.*

22.15. *As per website of Idol Solutions Inc. and other public domain searches conducted on D&B website, MyVisaJobs and ImmiHelp (websites which lists labor applications filed by U.S. employers for H1-B visa jobs), another address of ISI was identified as: 2 Tower Center Blvd FL 8 East Brunswick, NJ, 08816-1100 United States. ISI also appeared to be linked with the Company through the abovementioned address in the following ways:*

- *Website of the Company appears to mentions its US address as: 8th Floor, 2 Tower Center Blvd, East Brunswick, NJ 08816, USA.*
- *D&B profile for STI, lists its address as '2 Tower Center Blvd East Brunswick, NJ, 08816-1100 United States'.*
- *A Securities and Exchange Commission filing for 8K Miles Media Group Inc. lists its address as "2 TOWER CENTER BLVD., FLOOR 8, EAST BRUNSWICK, NEW JERSEY – 08816 and Mr. Suresh Venkatachari as its Executive Officer.*
- *D&B profile for 8K Miles Media Holding Inc. lists its address as '2 Tower Center Blvd FL 8 East Brunswick, NJ, 08816-1100 United States' and Mr. Suresh Venkatachari as its owner.*

- *Website for 8K Miles Health Cloud Inc. lists its US address as "2 Tower Center Blvd, 8th Flr, Suite#804, East Brunswick, NJ-08816", and Indian address as "Srinivasa Towers, New No.5, Old No. 11, Cenotaph Road, Alwarpet, Chennai – 600 018", which is the registered address of the Company.*

Intuit Micro Technology LLC ("IMTL"):

22.16 It was found that an entity, Intuit Micro Technology Private Limited ('IMTPL'), which is based out of Chennai, is connected to the Company's Dubai based customer, IMTL. As per D&B profiles of IMTL and IMTPL and IMTPL's filing with MCA, one Mr. Giri Rajan Mohan Babu was IMTL's Managing Director and Chief Executive Officer as well as Director of IMTPL. Furthermore, Agreement signed between IMTL and the Company, dated February 02, 2017, lists Mr. Giri Rajan as IMTL's authorized signatory. Further, it was found that CA J. Gurumurthi (Membership No.: 019584), who is Noticee no. 4 and was Independent Director as well as Chairman of Audit Committee of the Company during the investigation period, was also the statutory auditor of IMTPL from FY 2015-16 onwards. Thus, it appeared that IMTL was connected to the Company.

(d) Anomalies w.r.t. customers namely Ensys Technologies Inc., Idol Solutions Inc. and Intuit Micro Technology LLC:

22.17. As already stated above, the Company did not provide to GT the supporting documents pertaining to transactions with ETI, ISI and IMTL and stated that it did not have records of any e-mail communication with the said parties.

22.18. GT also observed that old CIN of the Company was appearing on certain invoices of ETI and ISI provided by the Company. Further, inconsistencies were noted in Tripartite agreements provided by the Company, which were entered between the Company, its vendor namely NSIT and three customers, namely ETI, ISI, and IMTL. It was observed that the Company had signed two agreements with each of the three customers wherein one agreement was executed between the Company and the respective customer and subsequently, a tripartite agreement was executed between the Company, NSIT, and respective customer. On examination of these agreements, it was noted that the Scope of work as per 'Agreement executed by the Company with ETI' and 'Tripartite agreement executed between the Company, NSIT, and ETI' was different. Furthermore, scope of work as per the tripartite agreement was verbatim copied from the tripartite agreement with IMTL. Further, based on the metadata analysis of all the three tri-party agreements, it was observed that the tri-party agreements had been created by the Company in December 2021 i.e. just after SEBI had advised the Company to furnish copies of agreements, indicating that the Company was trying to mislead SEBI by submitting forged documents. The details of same are as follows:*

Customer Name	***Date of file creation***	***Date of file modification***	***File Author***
ETI	*December 02, 2021*	*December 06, 2021*	*R.S. Ramani*
IMTL	*December 02, 2021*	*December 06, 2021*	*R.S. Ramani*
ISI	*December 02, 2021*	*December 06, 2021*	*R.S. Ramani*

** Metadata analysis includes information about the document and its contents, such as the author's name, keywords, and copyright information, that can be used by search utilities. Thus the objective of this analysis is to identify document authenticity such as creation date, author etc. The metadata analysis is done online through various available tools.*

22.19. In view of aforesaid observations, GT concluded that in the absence of complete information regarding proof of the services rendered to the three customers, namely ETI, ISI and IMTL, they were unable to *comment on the appropriateness / correctness / completeness / genuineness of the expense and the corresponding liability recorded in these standalone financial statements.*

(e) Inter linked financial transactions between the Company, NSIT, ETI, ISI and IMTL:

22.20. It was observed that less than 25% of the total sales made to the aforesaid three customers during the review period was realized. Credit period was 30 days, which was increased to 90 days from December 31, 2018. It is pertinent to note that despite not being able to realize sales consideration within credit period, the Company continued making further sales to these customers. Post April 01, 2019, no sales were made to any of the said three customers. Further, no amount had been recovered from any of these three customers for sales made in FY 2017-18 and FY 2018-19. Further, as on 31 March 2020, a sizeable proportion of the outstanding receivables from these three customers was written off as well as set-off against amount payable to NSIT. Further, despite receivables not being recovered from the ETI, ISI, and IMTL; payments were still being made to NSIT. The Company paid more than 60% of NSIT's dues (including business referral charges).

(f) Anomalies with respect to salary payments made to employees mapped to Ensys Department, Idol Department, and Intuit Department:

22.20. The Company had a practice of recording "Salary" expenses in its books on a department-wise basis. The names of employees were not mentioned in the Tally backup, but salary expenses were merely recorded department-wise in tally backup. Salary expenses were charged under Ensys department, Idol Department and Intuit Department. However, on the basis of employee data provided by the Company, no employees were identified to be mapped to above mentioned three departments. Also, anomalies were noted in salary register and tally backup w.r.t. salaries recorded for the said three departments i.e. as per tally backup, salary was shown as being paid for aforesaid three departments, however, as per salary register, no actual salary was paid.

(g) Sales made to other customers

22.21 The company recognizes revenue in three segments i.e. inter-company revenue (sales made to subsidiary namely Securekloud Technologies Inc), International project revenue (Sales made to international customers i.e. ETI, ISI etc,) and Domestic revenue (Sales made to domestic customers). The company recognized revenue of Rs. 13.85 Crore in FY 2017-18 from seven international customers namely Novartis Services Inc, GE Tech, Oracle, Cyberflow Analtics Inc, Shire Pharmaceuticals LLC, Google and Genome International Corporation. Majority of the sales made to aforesaid international customers in FY 2017-18 were assigned by the Company to its subsidiary Securekloud Technologies Inc, with a negligible proportion of sales being realized in cash. Subsequently, in FY 2019-20 all such assigned sales have been realized from Securekloud Technologies Inc.

22.22 On analysis of two invoices of Novartis Services Inc. it was identified that Address of the customer as appearing on one of the invoices of the Company was: 6549, South Freeway, Fort Worth, Texas – 76134, USA. However, website of Novartis Services Inc., it appears that the actual address is: 6201, South Freeway Fort Worth, Texas – 76134-2099, USA. In another invoice, address was mentioned as 666, Plainsboro Road, Suite 1023, Plainsboro, New Jersey – 08536, USA. However, it does not have any business operations on the said address. Moreover, as iterated previously and basis review of invoices of the customer Idol Solutions Inc. on a sample basis, the said address is of Idol Solutions Inc.

(h) Potential Impairment of independence of certain independent directors

22.23 Section 149(6)(e) of the Companies Act, 2013 mandates that relative of the Independent Director shall not be an employee of the company or its holding, subsidiary or associate company. Furthermore, Section 2 (77) of the Companies Act, 2013 read with Rule 4 of the Companies (Specification of definitions details) Rules, 2014, states that "relatives" includes son(s) as well as spouse. Therefore, son or husband of an independent director cannot hold employment with the company or its holding, subsidiary or associate company.

22.24 As per annual reports of the company for FY 2017-18, FY 2018-19 and FY 2019-20 Mr. Gurumurthi Jayaraman and Mrs. Padmini Ravichandran were independent directors of the company. Mr. Gautham Gurumurthi (Son of Mr. Gurumurthi Jayaraman) was identified to be employed as Principal Technical Program Manager with the subsidiary of the company from November 2015 till December 2021 and Principal Technical Program Manager with Healthcare Triangle Inc., a step-down subsidiary of the Company from January 2020 till December 2021.

22.25 Further, Mr. S. Ravichandran (Husband of Mrs. Padmini Ravichandran), was identified to be employed with Company from August 12th, 2015 till date. Mr. S. Ravichandran's current designation is EVP and Head – HR and Operations. Furthermore, as per LinkedIn profile in the name of Mr. Ravi Chandran he has been employed with the Company from August 2015 till date. In view of the aforesaid, independence of the independent director Mrs. Padmini Ravichandran and Mr. Gurumurthi Jayaraman was impaired.

(i) Premises rented from Promoter: Mr. Suresh Venkatachari at rates that appear to be higher than the market rate:

22.26 The Company has rented 11,265 sq. ft. premises from the promoter Mr. Suresh Venkatachari situated at 168, Eldams Road, Alwarpet, Chennai – 600 018 at the rental of Rs. 14 lakhs per month (i.e. at the rate of Rs. 125/- per sq. ft.). The company also paid a security deposit of Rs. 1.40 Crore for aforesaid rent agreement. The same was leased from October 2016 onwards with a lock in period of nine years. However, on March 31st, 2019, the Company liquidated the lease agreement.

22.27 In Annual Report of FY 2018-19 following disclosure was made by company:

> *"The Board of Directors of the Company in their meeting held on 10 April 2019, approved the termination of the lease agreement entered into with Suresh Venkatachari, Key Managerial Personnel (KMP) with effect from end of day on 31 March 2019. The termination terms as approved and agreed with Suresh Venkatachari, KMP included adjustment of capital work in progress of Rs. 101.55 lakhs, capital advances of Rs. 141.65 lakhs and rental deposits of Rs. 140.00 lakhs, aggregating to Rs. 383.20 lakhs against the outstanding borrowing, as included in Note 15, due to Suresh Venkatachari, KMP"*

22.28 Based on the public domain searches on property website (www.99acres.com), it was identified that the average rental rates for office space in Alwarpet is around INR 51.44 / sq. ft. (basis comparison with 36 office premises listed on www.99acres.com). Therefore, the rental rates paid by the Company to its promoter Mr. Suresh Venkatachari was higher than the market rate. Further, on the basis of Employee Master (specifying every employee's base office location/ branch) and Detailed Fixed Asset register for the review period (along with physical verification reports of such fixed assets), GT were unable to ascertain whether the rented premises were lying vacant during the review period or were in fact occupied by the employees/ representatives of the Company.

22.29 Furthermore, it was identified that after renting of the premises by the Company, improvements aggregating to INR 243.20 lakhs were undertaken by the Company for FY 2017-18 and FY 2018-19 on the said *premises. Such improvements were in nature of interior designing and interior works, electrical works, elevator works, tiling, cement purchase, installation of security systems, plumbing work, amongst others. Also as per vendor invoices pertaining to such improvements, it was identified that the improvements were of such nature that the premises could not have been under occupation while such improvements were on-going. Further, on site visit of the premises it was identified that building was incomplete and under construction. Further, in the vicinity of this premises, after making source inquiries in and around the premises regarding the status of the property it was identified that the building was sealed by State Bank of India approximately six years ago. No office of the Company named Securekloud Technologies Limited or 8K Miles Software Services Limited existed in the building. Few years ago, alteration of building began but was suddenly stopped. However, it was not ascertained that which entity initiated construction/alteration. Few years ago, few entities like Pan-Oro X-ray Centre & The Travel Lounge India Private Limited, occupied the ground floor of the building but they have now shifted their offices elsewhere.*

22.30 In view of above, GT concluded that Security Deposit of Rs. 1.40 Crore and improvements of Rs. 2.43 Crore was adjusted against outstanding loan of Rs. 13.95 crore of MD and promoter Mr. Suresh Venkatachari.

(j) Potential encumbrance of shares by the promoter: Mr. Suresh Venkatachari without required disclosures:

22.31 On examination of bank statements of Suresh Venkatachari, it was identified that he had received INR 3,050.00 lakhs from Quantum Global Securities Limited during the period 26 March 2018 to 16 May 2018. Also on examination of financial statements of the Quantum Global Securities Limited, it was identified that for FY 2017-18, Rs. 6 Crore was disclosed as 'Unsecured loan to Suresh Venkatachari'. It was also identified from BSE website that on October 12th, 2018, Mr. Suresh Venkatachari has sold 25,70,000 shares (8.42% shareholding) of the Company through an off-market transaction conducted on September 17th 2018. Resultant to this transaction, his shareholdings in the Company had come down to 47.38%.

22.32 It was identified through news articles that Suresh Venkatachari alleged that his shares have been sold by brokers Quantum Global Securities Limited and Kumar Sharebrokers fraudulently and without his permission. However, Mr. Bhavesh Singh, Promoter and Managing Director of Quantum Global Securities Limited stated that this was a trigger of margin call". Considering the details presented above it appears that Mr. Suresh Venkatachari may have obtained a loan from his broker by potentially offering shares as security collateral, thereby potentially violating Regulation 31 of SEBI (SAST) Regulations, 2011 by not disclosing the encumbrance."

Findings of SEBI's investigation:

f) The company filed its quarterly financial results for quarters ending June 2019 and September 2019 with exchanges on March 01, 2020. In the said financial results, with regard to the auditor's observation that "*We are informed that as on the date of this report, the investigation report of the external firm of Chartered Accountants for the matters reported u/s 143(12) not received by the Company and hence the same has not been made available to us.*", the Company made the following management response: "*We have received the draft report. The report, management is reviewing it and will be made available to the Audit Committee shortly and for further* *noting by the Board*." In respect of the above, vide email dated March 13, 2020, SEBI advised the Company to provide the draft report of PKF in respect of the forensic investigation undertaken by them on the issues raised by Deloitte. Vide emails dated March 23, 2020, April 15, 2020, May 04, 2020, May 19, 2020, June 03, 2020, June 15, 2020 and July 02, 2020, the Company sought extension of time on seven instances, on the grounds of Covid-19 lockdown and subsequently imposed restrictions. On every occasion, extension of time was granted to the Company by SEBI.

g) Subsequently, the Company vide email dated July 13, 2020 replied to SEBI's email dated March 13, 2020. Vide the said email, the Company did not provide any report of PKF but submitted a report of another Auditor, namely, M/s KPSN & Associates. However, the Company in its previous replies and in aforesaid seven emails had never mentioned about appointment of another auditor, namely, M/s KPSN & Associates. Further, even the audit committee in its letter dated February 29, 2020 had not mentioned that in place of PKF they had appointed KPSN as "*special auditors*". Also, vide email dated March 25, 2022, PKF was advised to provide copy of report submitted by them to the Company. In this regard, vide email dated March 28, 2022, PKF provided copies of email conversations with the Company and the copy of forensic audit report. On examination of same, it was noted that final forensic audit report was submitted by PKF to the Company on January 09, 2020 by addressing the same to the Chairman of the Audit Committee – Mr. Dinesh Raja Punniamurthy (Noticee no.2). Therefore, it shows that there was no draft report submitted by KPSN to the company. Also, the company had intentionally hidden the fact of submission of report by PKF because of adverse findings of PKF. In fact, at the time of disclosure of quarterly financial results, final reports from forensic auditors were available with the company, still company intentionally made false disclosure to shareholders in quarterly financial results.

h) Chairperson of Audit Committee, Mr. Dinesh Raja Punniamurthy (Noticee no.2), vide letter dated February 29, 2020 (Annexure-3) stated that *"the committee noted that there was no specific violation mentioned in the summary of observations with references given by Deloitte to the company with respect to provisions of SEBI Act and Rules/Regulations made thereunder"*. It was also mentioned in said reply that since PKF could not complete the report within stipulated time, the company had disengaged their services in the meeting held on November 06, 2019. However, as discussed above, it was clear from copies of email provided by PKF that vide email dated January 09, 2020 PKF had submitted forensic audit report to him. This shows that Noticee no. 2 had made false submissions to SEBI.

i) Further, on seeking draft report of PKF from company, company intentionally did not submit the report to SEBI and sought repeated extensions. At the end, they made false representations before SEBI, vide letter dated July 13, 2020 and April 15, 2021, stating that PKF were dis-engaged as they could not submit the report within 30 days of their engagement. However, it was observed from copies of emails provided by PKF that their report was ready well before their dis-engagement, and the audit process was still going even after 30 days of audit engagement as company was providing data to them. Most of the data was provided by company to PKF almost after 30 days of audit engagement only, therefore, the audit was delayed by company and not by auditors. PKF also discussed their findings with management and as the findings were adverse against management, this made them to dis-engage them and hide the facts from SEBI and shareholders about the report submitted by them. Therefore, the disclosure of company in quarterly financial results for quarters ending June 2019 and September 2019 was false and representation made by company vide letters dated February 29, 2020, July 13, 2020 and April 15, 2021 were also false.

j) SEBI appointed GT to conduct independent forensic audit of standalone financial statements of company on March 25, 2021. However, company did not co-operate with them, instead made a representation dated April 15, 2021 before SEBI to drop the forensic audit *inter-alia* in light of KPSN report and again re-iterated that PKF could not submit report timely. It was identified that GT wrote multiple emails to company to provide the information to them. However, company either did not provide the information or provided incomplete information. Therefore, summons and letters were issued to company. However, again company did not provide complete information. As company did not co-operate, CFO and Compliance officer's statements were also recorded on oath on December 06, 2021 and December 07, 2021, respectively. Even after that, company did not co-operate in SEBI investigation and forensic audit conducted by SEBI. Further, GT vide email dated March 04, 2022 wrote to CFO of company to provide the pending information. It was identified that the pending information was sought from company for 13th time. On previous 12 occasions company either did not provide the information or provided incomplete information. This shows that company did not co-operate in present investigation. In view of aforesaid, it was alleged that company did not co-operate in investigation and made false submissions before SEBI vide letters dated February 29, 2020, July 13, 2020 and April 15, 2021. Therefore, by making false submissions, company its CFO, CEO/MD and compliance officer violated provisions of SEBI Act, 1992.

k) The quarterly financial statements for quarter ending June 2019 and September 2019 were signed by audit committee chairman and independent director Mr. Dinesh Raja Punniamurthy (Noticee no. 2). Therefore, he violated provisions of SEBI (LODR) Regulations, 2015. Further, he also made false representation to SEBI vide letter dated February 29, 2020 and violated provisions of SEBI Act, 1992. Company vide letter dated March 29, 2021 informed SEBI that compliance officer will be single point contact for forensic audit conducted by SEBI. Further, MD/CEO and Compliance officer of company have duties to discharge their duties in true and fair manner. Therefore, CFO, CEO and Compliance officer are also held liable for making false representation before SEBI and thus, they have violated provisions of SEBI Act, 1992.

l) SEBI appointed GT to conduct independent forensic audit of standalone financial statements of company for FY 2017-18, FY 2018-19, FY 2019-20 and nine months ended December 2020. The same was communicated to company vide letter dated March 25, 2021. Compliance officer of company vide letter dated March 29, 2021 acknowledged the receipt of SEBI's letter and intimated that CFO of company Mr. R Thyagarajan (Noticee no. 5) will be point of contact for aforesaid audit. In terms of Regulation 30(2) of SEBI (LODR) Regulations, 2015, company was required to make disclosure of initiation of such forensic audit to exchanges. However, instead of making disclosure, company vide letter dated April 15, 2021 made false representation before SEBI to drop the proceedings. Further, company wrongfully took a plea of non-receipt of SEBI's response as an excuse of non-making disclosure of aforesaid forensic audit. In view of aforesaid, company, its compliance officer, its CFO, and its directors are alleged to have violated provisions of Regulation 30(2) of SEBI (LODR) Regulations, 2015 by not disclosing initiation of forensic audit to exchanges.

m) Company made false representation before SEBI vide letters dated February 29, 2020, July 13, 2020 and April 15, 2021 *inter-alia* intimating that PKF could not complete audit assignment within 30 days and therefore, they were dis-engaged. However, from the emails provided by PKF, it was observed that the audit was going even after 30 days as most of the data was provided to PKF almost after one month of audit engagement. Further, as per the email communications provided by PKF, the findings of PKF were also discussed with the management. Company intentionally concealed the fact of conclusion of forensic audit by PKF and misled SEBI in investigation. Therefore, company, its CFO, CEO and compliance officer violated provisions of SEBI Act, 1992 by making false representation dated July 13, 2020 and April 15, 2021 and Audit committee chairman violated provisions of SEBI Act, 1992 by making false representation dated February 29, 2020.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. The Undersigned is appointed as the Adjudicating Officer vide order dated August 25, 2022 under section 15I of the Securities and Exchange Board of India Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') to inquire into and adjudge under sections 15A(a) and 15HB of the SEBI Act.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice dated September 27, 2022 (hereinafter be referred to as the "**SCN**") was duly served upon the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticees under the provisions of section sections 15A(a) and 15HB of the SEBI Act. The contents of the SCN relating to violations alleged with respect to the Noticees are reproduced as under: -

"(a) S Ravi Chandran, Whole Time Director (Noticee no.1)

42. It was observed that being Whole time director of company, he was duty bound to ensure disclosure of initiation of forensic audit by SEBI to Exchanges, however, he failed to do so. As director of the Company, Noticee no.1 failed to discharge duties in an effective manner by principles governing disclosures and obligations, which was required in the best interest of the listed company and its shareholders. Therefore, Noticee no.1 has violated Regulation 30(2) of LODR Regulations, 2015.

(b) Mr. Swasti Bhowmick, Erstwhile CFO (Noticee no.4)

42. Noticee no.4 was signatory to financial statement for FY 2018-19. The CEO/CFO certificate signed by Mr. Swasti Bhowmick in the Annual Reports of company for FY 2018-19 inter-alia stating that "the financials of securekloud presented true and fair view of its affairs and not contained any misleading statement" and "no transactions entered into by the Company during the year which are fraudulent, illegal or violative of the Company's code of conduct", as the facts revealed now it was grossly misleading. As CFO of the Company, Noticee no.4 failed to discharge duties in an effective manner by principles governing disclosures and obligations, which was required in the best interest of the listed company and its shareholders. Therefore, by giving false CEO/CFO certification, Noticee *no.4 has violated Regulation 17(8) r/w Part B of Schedule II of of SEBI (LODR) Regulations, 2015.*

(c) R Thyagrajan, CFO (Noticee no.5)

44. *Noticee no.5 was signatory to financial statement for FY 2018-19. The CEO/CFO certificate signed by Mr. R Thyagarajan in the Annual Reports of company for FY 2019-20 inter-alia stating that "the financials of securekloud presented true and fair view of its affairs and not contained any misleading statement" and "no transactions entered into by the Company during the year which are fraudulent, illegal or violative of the Company's code of conduct", as the facts revealed now it was grossly misleading. As CFO of the Company, Noticee no.4 aslo failed to discharge his duties in an effective manner by principles governing disclosures and obligations, which was required in the best interest of the listed company and its shareholders. Therefore, by giving false CEO/CFO certification, Noticee no.4 has violated Regulation 17(8) r/w Part B of Schedule II of SEBI (LODR) Regulations, 2015.*

45. *Being CFO of company, Noticee no.5 was duty bound to ensure disclosure of initiation of forensic audit by SEBI to Exchanges. However, he failed to do so. Therefore, by not disclosing the fact of initiation of forensic audit by SEBI to Exchanges, Noticee no.5 has violated Regulation 30(2) of LODR Regulations, 2015.*

46. *Noticee no.5 also made false representation before SEBI vide letters dated July 13, 2020 and April 15, 2021 and, thereby, violated Section 11(2)(ia) of SEBI Act, 1992.*

(d) G Sri Vignesh, Company Secretary and Compliance Officer (Noticee no.6)

47. *It was observed that being CS and Compliance Officer of company, Noticee no.6 was duty bound to ensure disclosure of initiation of forensic audit by SEBI to Exchanges but Noticee no.6 has failed in his duty to do so.. Therefore, by not disclosing the fact of initiation of forensic audit by SEBI to Exchanges, Noticee no.6 has violated Regulation 30(2) of LODR Regulations, 2015.*

48. *Noticee no.6 also made false representation before SEBI vide letters dated July 13, 2020 and April 15, 2021 and, thereby, violated Section 11(2)(ia) of SEBI Act, 1992.*

(e) Dinesh Raja Punniamurthy, Independent Director and Member of Audit Committee (Noticee no.2)

49. *It was observed that Noticee no.2 did not discharge his duties independently and made false representation before SEBI. He was acting in conduit with management and the same is evident from letter dated February 29, 2020 wherein in capacity of chairman of Audit Committee he stated that "since PKF could not submit the report the committee had dis-engaged their services in the meeting held on November 06, 2019. The same was intimated to them on November 08, 2019." However, from the copies of emails dated November 29, 2019 and December 02, 2019 provided by PKF it was observed that Deloitte sought update on the matter of Forensic Audit conducted by PKF from him with cc to PKF, he did not respond to them. However, PKF responded to Deloitte, inter-alia stating the following:*

    "We have completed the forensic assignment and prepared a detailed report. The contents were broadly discussed with the management. Obviously the management was not comfortable with the findings of

our report. For obvious reasons, the Management not only did not pay our final bill, but they also proceeded to write a letter to us saying we have been disengaged

We hereby confirm that final report was ready on 2nd Nov 2019. We can release the report upon receipt of our payment or to Statutory authorities as and when they may require."

50. *Further, PKF had sent their forensic audit report to Noticee no.2 as he was chairman of Audit Committee at that point of time. The same is evident from copy of email dated January 09, 2020 provided by PKF wherein forensic audit report was sent to him stating that they had released the report awaiting processing of payment.*

51. *Further, PKF had sent their forensic audit report to Noticee no.2 as he was chairman of Audit Committee at that point of time. The same is evident from copy of email dated January 09, 2020 provided by PKF wherein foresinc audit report was sent to him stating that they had released the report awaiting processing of payment.*

52. *During the statement recording, Mr. Dinesh Raja Punniamurthy was asked that less than 25% of sales proceeds was realized from the entities (Ensys, Idol and Intuit) and most of the amount was written off or adjusted against NSIT. As the audit committee member what due diligence exercise he had taken. In response, he stated that "I have never questioned management on this. I have not done any due diligence for this". This shows that Noticee no.2 never questioned management even for such an important issue which directly impacted financial statements of the company and he just acted as an agent of management.*

53. *Further, during the statement recording, Noticee no.2 was asked about due-diligence exercise taken by him w.r.t. major customers and vendors and non-payment of outstanding dues from customers, in response he stated that he was not aware about any major customers and transactions done with them he had not done any due-diligence for outstanding amount from these customers i.e. seeking comments from management etc.*

54. *The audit committee is expected to be independent and has duty to protect the interest of the minority shareholders of the company against the abuses of the promoters/ executives. However, in the case of Securekloud, the audit committee not only failed to live up to the expectations of the minority shareholders but appears to have been reduced to a rubber-stamp committee blindly approving the proposals presented by the management.*

55. *Thus, the audit committee of Securekloud failed in its role as an expert committee to oversee efficacy and veracity of financial reporting function and, thereby, the members of the Audit Committee (Mr. Dinesh Raja Punniamurthy and Ms. Babita Singaram) have not complied with provisions of SEBI (LODR) Regulations, 2015.*

56. *Being member/chairman of the Audit Committee since beginning of the investigation period, Noticee no.2 failed to carry out adequate due diligence, acted like an agent of the company and also failed to exercise independent judgment as member of the Audit Committee of a listed Company and, thereby, Noticee no.2 violated Regulation 25(5) and Regulation 18(3) read with Part C of Schedule II of SEBI (LODR) Regulations, 2015.*

57. *Noticee no.2 also failed to discharge his responsibility and committed oversight of company's financial reporting process and disclosure of its financials and failed in his duty to ensure that financial statements is correct, sufficient and credible. By making false disclosure in quarterly financial*

statements for quarters ending June 2019 and September 2019, Noticee no.2 violated Regulations 4(1)(c) of SEBI (LODR) Regulations, 2015.

58. Further, Noticee no.2 made false representation to vide letter dated SEBI February 29, 2020 and, thereby, violated Section 11(2)(ia) of SEBI Act, 1992.

(f) Babita Singaram, Independent Director and Member of Audit Committee (Noticee no.3)

59. It was observed from statement recording that Babita Singaram is daughter of friend of Mr. Suresh. She was working in Dubai and was appointed as member of Audit Committee of Securekloud as she was daughter of family friend of Mr. Suresh. She stated that she was just an observer in Audit committee as it was run by a certified auditor and her understanding of roles and responsibilities as a member of the Audit committee was limited. This shows that she did not perform her duties independently as she did not even fully understand her roles and responsibilities. She was just an observer to committee and relied only on other member (Mr. Gurumurthi Jayaraman) of the committee.

60. She also stated that she had never heard the names of Ensys, Idol and Intuit and she doesn't know what is Arms' Length Price. This shows that being member of Audit committee she did not discharge her duties independently.

61. Being member of the Audit Committee since beginning of the investigation period, Noticee no.3 failed to carry out adequate due diligence and failed to exercise independent judgment as member of the Audit Committee of a listed Company Thus, Noticee no.2, being member of the Audit Committee, failed to exercise due due-diligence and did not discharge her duties independently and, thereby, violated Regulation 18(3) read with Part C of Schedule II of SEBI (LODR) Regulations, 2015."

5. I note, from available records, that the SCN was duly delivered to all the Noticees. I note that all the Noticees have filed separate reply to the SCN. Opportunity of personal hearing in the matter was given to the Noticees on November 16, 2022. The authorized representative ("**AR**") of the Noticees vide email dated November 11, 2022 requested for adjournment of hearing scheduled on November 16, 2022. After seeking adjournments, the AR availed the personal hearing on December 14, 2022 on behalf of all the Noticees and made submissions. Accordingly, hearing proceedings concluded in the matter on December 14, 2022. I note that principles of natural justice have been fully complied with in the matter.

6. The Noticees in their respective written replies have *inter alia* submitted as follows:

I. <u>Noticee no. 1 (reply dated November 4, 2022)</u>

a) On April 15, 2021, the Company made a detailed representation to the SEBI to drop the forensic audit, wherein the Company mentioned that it had strengthened its corporate governance and has restructured its Board. On May 24, 2021, the Company made another representation to the SEBI to drop the forensic audit on justifiable grounds. In the absence of any response from SEBI to the Company's representations, on June 30, 2021, the Company filed the annual Secretarial Compliance Report for financial year 2020—21 to the stock exchanges. The initiation of forensic audit has been disclosed in the said report.

b) I respectfully submit that I cannot be held vicariously liable for the disclosure violation of the Company. The charging provision invoked is Regulation 30(2) of the LODR Regulations which cast an obligation on the Company to disclose events, which in their opinion is material. I respectfully submit that the Company has its reasons for not disclosing initiation of forensic audit upon receipt of the intimation of forensic audit which are required to be taken into consideration before fastening any liability on me. I respectfully submit that the Notice mechanically foists the allegations against me.

II. <u>Noticee no. 4 (reply dated November 7, 2022)</u>

a) The Respondent ought to appreciate that there were no red flags even raised by the auditors of the Company, there was no reason for me to suspect any irregularities and provide declarations. As such to arrive at fallacious conclusions is absurd and devoid of merit. A comprehensive examination of the transactions would clearly reveal that even the auditor which was appointed by the Company i.e., KPSN ruled out the irregularities. Therefore, in absence of an independent investigation and when the charges against the Company are pending judicial review, to hold me accountable is not tenable.

b) I further submit that all transactions entered by the company are genuine, legitimate and in the ordinary course of business. Further, the books of accounts as well as the financial results of the Company have been prepared in the manner prescribed under the LODR Regulations. Also, there is no misrepresentation of the accounting treatment adopted by the Company and the same is in line with the applicable accounting standards.

c) I further submit that every accounting decision taken by the Company are in line with relevant accounting standards and all business decisions have been taken in a bonafide manner and in the best interest of the stakeholders of the Company, including the shareholders. Thereby, it has been demonstrated above that the Company has prepared its financial statements according to the accounting standards as applicable, at all times. Therefore, it is humbly submitted that the Company has always been in compliance with the obligations under law and have been making regular periodical disclosures as required to be made by a listed company in accordance with LODR Regulations.

d) Regulation 17(8) of the LODR Regulations states that *"The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II."* Therefore, in the absence of any manipulation of financial statements, the charge that of false CFO certification is entirely baseless and merits no consideration. Thus, it is humbly submitted that the charge for violation of Regulation 17(8) read with Part B of Schedule II of LODR Regulations is not maintainable.

e) Without prejudice to the submissions that there is no manipulation of financial statements of the Company, it is respectfully submitted that I cannot be held vicariously liable for the acts of the Company. This principle has been enunciated by the Hon'ble Supreme Court in the matter of (1) *Ravindranatha Bajpe v Mangalore Special Economic Zone Ltd. & Ors*; and (2) *Sunil Bharti Mittal v Central Bureau of Investigation*.

III. <u>Noticee no.5 (reply dated November 4, 2022)</u>

a) I respectfully submit that SEBI has failed to carry out an independent investigation and issued the present Notice without any application of mind. An independent investigation would clearly reveal that I was appointed in the company with effect only on July 01, 2020 and hence, could not have been a signatory to the financial statements for FY 2018-2019 as stated in paragraph 44 of the SCN.

b) I respectfully submit that the SCN has been mechanically and routinely issued overlooking the fact that the transactions are not *mala-fide*. The Respondent ought to appreciate that there were no red-flags even raised by the auditors of the Company, there was no reason for me to suspect any irregularities and provide declarations. As such to arrive at fallacious conclusions is absurd and devoid of merit. A comprehensive examination of the transactions would clearly reveal that even the auditor which was appointed by the Company i.e., KPSN ruled out the irregularities. Therefore, in absence of an independent investigation and when the charges against the Company are pending judicial review, to hold me accountable is not tenable.

c) I further submit that all transactions entered by the company are genuine, legitimate and in the ordinary course of business. Further, the books of accounts as well as the financial results of the Company have been prepared in the manner prescribed under the LODR Regulations. Also, there is no misrepresentation of the accounting treatment adopted by the Company and the same is in line with the applicable accounting standards.

d) Regulation 17(8) of the LODR Regulations states that "*The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.*" Therefore, in the absence of any manipulation of financial statements, the charge that I gave false CFO certification is entirely baseless and merits no consideration. Thus, it is humbly submitted that the charge for violation of Regulation 17(8) read with Part B of Schedule II of LODR Regulations is not maintainable.

e) I respectfully submit that I cannot be held vicariously liable for the disclosure violation of the Company. The charging provision invoked is Regulation 30(2) of the LODR Regulations which cast an obligation on the Company to disclose events, which in their opinion is material. I respectfully submit that the Notice has failed to analyze whether there were any shortcomings regarding my role in ensuring to disclose initiation of forensic audit. I respectfully submit that I have adhered to my responsibility at all times and ensured conformity with the LODR Regulations at all times. I respectfully submit that there has been no disclosure violation by the Company and hence to hold me vicariously liable is not tenable. As such, the Notice deserves to be set aside.

f) SEBI till date has not acknowledged the KPSN Report which was submitted by the Company. SEBI, instead appointed GT, on March 25, 2021, to undertake forensic audit of the Company's books of accounts for FY 2017-18, FY 2018-19, FY 2019-20- and nine months ending December 2020. I respectfully submit that SEBI has failed to carry out any independent investigation and merely relied on reports prepared by external auditors and arrived at such fallacious observations.

g) SEBI has failed to examine the representations dated April 15, 2021 and May 24, 2021 in its entirety and on this ground alone, the Notice deserves to be set aside. I respectfully submit that in light of the pending representations as mentioned hereinabove, a disclosure regarding initiation of forensic audit would have been counter-productive to the interest of shareholders, whose interest is sought to be protected. Without prejudice, initiation of forensic audit by SEBI was disclosed as a part of the Annual Secretarial

Compliance Report disseminated to the stock exchange on June 30, 2021 which was never acknowledged by SEBI.

h) I respectfully submit that no false representation has been made before SEBI. It is submitted that the communication sent out to SEBI on July 13, 2020 is with respect to submission of the forensic audit report received by the Company, i.e., the report of KPSN along with management response. In view thereof, I submit that no false representation has been made with regards to the email dated July 13, 2020.

i) Further, with respect to April 15, 2021, the communication sent out to SEBI is with regard to the initiation of forensic audit by SEBI, wherein the company has stated the sequence of events which took place. It is further reiterated that, no part of the representation made on April 15, 2021 is false and the Company made the representation in good faith requesting SEBI to drop the forensic audit. However, SEBI never acknowledged the same.

IV. Noticee no. 6 (reply dated November 4, 2022)

a) On April 15, 2021, the Company made a detailed representation to the SEBI to drop the forensic audit. On May 24, 2021, the Company made another representation to the SEBI to drop the forensic audit on justifiable grounds. In the absence of any response from SEBI to the Company's representations, on June 30, 2021, the Company filed an annual Secretarial Compliance Report for financial year 2020 – 21 ("**SCR**") to the stock exchanges. The initiation of forensic audit has been disclosed in the said report. The above events will clearly reflect *bona-fide* conduct. Hence, to allege that I was duty bound to ensure disclosure of initiation of forensic audit merits no consideration.

b) I respectfully submit that parallel proceedings have been initiated by SEBI for the same violation. I respectfully submit that I have already been implicated for *inter-alia* violation for failure to disclose initiation of forensic audit vide the order of Hon'ble Adjudicating Officer dated September 14, 2022 ("**AO Order**"). In terms of the AO Order, a penalty has also been imposed upon me. Thus, the principle of *Res Judicata* is squarely applicable to this matter, since a parallel proceeding on the same issue under this Notice has already been initiated against me for which a penalty has been imposed. The doctrine of *res judicata* has been explained by the Hon'ble Supreme Court in the matter of *Satyadhyan*

Ghosal v. Deorjin Debi[1], wherein it has been held that "*7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again.*" The same was reiterated in the matter of *Arjun Singh v Mohindra Kumar*.

c) I respectfully submit that no false representation has been made before SEBI. I respectfully submit that SEBI has misplaced the contents of the emails dated July 13, 2020 and April 15, 2021 and arrived at fallacious conclusions to hold me liable in any manner whatsoever.

d) It is submitted that the communication sent out to SEBI on July 13, 2020 is with respect to submission of the forensic audit report received by the Company, i.e., the report of KPSN along with management response. In view thereof, I submit that no false representation has been made with regards to the email dated July 13, 2020. Further, with respect to April 15, 2021, the communication sent out to SEBI is with regard to the initiation of forensic audit by SEBI, wherein the company has stated the sequence of events which took place. It is further reiterated that, no part of the representation made on April 15, 2021 is false and the Company made the representation in good faith requesting SEBI to drop the forensic audit. However, SEBI never acknowledged the same. In view of the above, I respectfully submit that I cannot be said to be in violation of Section 11(2)(ia) of SEBI Act, 1992.

e) Noticee has relied on the judgment of the Hon'ble Supreme Court passed in (1) *Siddharth Chaturvedi vs SEBI* and (2) *Adjudicating Officer, SEBI vs Bhavesh Pabari*. Noticee has also relied on order of the Hon'ble Securities Appellate Tribunal ("**SAT**") dated May 15, 2019 passed in *Piramal Enterprises Limited vs SEBI*.

V. <u>Noticee no. 2 vide (reply dated November 4, 2022)</u>

a) It is respectfully submitted that SEBI has relied on specific facts and proceeded to issue the SCN without providing an opportunity of hearing or cross-examining the parties. No fruitful end will be achieved if the opportunity of cross-examination is provided after the filing of the response to the Notice.

b) In this regard, Noticee no. 2 has relied on judgments of the Hon'ble Supreme Court passed in (1) *Meenglas Tea Estate vs Its Workmen*, (2) *SEBI vs Price Waterhouse & Ors* and (3) *Rana Kapoor vs SEBI*.

c) The SCN records that on January 09, 2020, I was in receipt of the PKF report. However, I respectfully submit that I am not in receipt of any email enclosing the copy of the PKF Report as alleged herewith. I respectfully submit that I have seen a copy of the PKF Report only when the same was made available at the stage of issuance of the present Notice.

d) I respectfully submit that I have acted in a bona fide manner and also diligently. I also state that I have fulfilled my responsibilities in a fair manner and have exercised independent judgement as a member of the Audit Committee. I categorically deny that I have acted like an agent of the Company as alleged in the Notice. The Notice mechanically foists the allegations against me without producing any shred of evidence.

e) I respectfully submit that the SCN has been routinely issued to me overlooking the fact that transactions undertaken by the Company were always in the ordinary course of business. There was nothing suspicious about the transactions or the financial accounts of the Company when the same were presented before me and the audit committee. Moreover, while the Audit Committee maybe considered to be an expert committee it is not a committee constituted of experts. The auditors who were reviewing the financials of the Company were responsible for ascertaining the background of the transactions. Thus, at the material time since there were no red flags from the auditors, there was no reason for the Audit Committee or its members including myself to suspect any irregularities.

f) Further, on a comprehensive examination of these transactions, KPSN has ruled out any irregularities, therefore to take the adverse reports into consideration without consideration of report of another auditor and making that the sole basis of the charge against me is untenable. In any event, the charges with respect to the conduct of the company is itself a matter pending judicial review before the Ld. Whole Time Member.

g) The audit committee is responsible for looking into the matters which are brought before it, basis the material which is presented by the Company. Thus, my role as a member of the Audit Committee must be examined from the lense of what was presented before the Audit Committee by the Company. By failing to undertake this analysis, the Notice deserves to be set aside.

h) It is a trite law that an independent director cannot be held liable for day-to-day affairs of a company. In this regard, attention is invited to the decision of Hon'ble SAT in the matter of *Vijay Remedies Ltd. v Securities and Exchange Board in India*[5], wherein while considering the role of two directors pleading that they were independent directors and not associated with the day-to-day management and control of the company, it was held "*Therefore, having held that the appellant No. 4 and 5 i.e., Shri Mehan and Dr. Satia have not had anything to do with the day-to-day affairs of the company, we do not think that these two appellants can be fastened with any liability*."

i) It is also a trite law that liability depends on the role one plays in the affairs of the company and not on designation or status. Therefore, the mere fact that I was a chairperson of the Audit Committee cannot mechanically have attributed that I acted as an agent of the Company and blindly approved the proposals presented by the management.

j) I respectfully submit that I have discharged my responsibilities and duties in a fair manner. There has been no oversight in company's financial reporting process and disclosure of financials. I submit that the financial statements are correct, sufficient and credible. The allegation that I made false disclosures in its quarterly financial statements is baseless and merits no consideration.

k) Without prejudice to the aforesaid, I respectfully submit that the charging provision is incorrect and misplaced. Regulation 4(1)(c) of the LODR Regulations cast an obligation on the listed entity (*and not on any individual*) to refrain from misrepresentation and ensure that the information provided to the recognised stock exchange and investors is not misleading. The SCN completely errs in invoking this provision against me without appreciating the fact that I was appointed as an independent director in the Company and was not involved in day-to-day affairs of the company. In view thereof, the violation of Regulation 4(1) (c) of SEBI LODR Regulations cannot sustain.

l) I respectfully submit that the allegation that I have made a false representation to SEBI vide letter dated February 29, 2020 is incorrect and misplaced.

m) I respectfully submit that the contents in the letter dated February 29, 2020 are not false. As stated above, I had received the report of PKF only as an Annexure to the Notice and not on January 09, 2020 as contested. I humbly submit that a careful analysis of the facts and circumstances would clearly reflect my bona-fides and the fact that there was no false submission on my part.

VI. Noticee no.3 (reply dated November 4, 2022)

a) I humbly submit that; at all times I have discharged my duties independently and diligently. Hence, the allegation that I failed to exercise due diligence and did not discharge my duties independently being a member of the audit committee of the listed company is not true and merits no consideration.

b) I further submit that it is a trite law that an independent director cannot be held liable for dayto-day affairs of a company. In this regard, attention is invited to the decision of Hon'ble Securities Appellate Tribunal in the matter of *Vijay Remedies Ltd. v Securities and Exchange Board in India*, wherein while considering the role of two directors pleading that they were independent directors and not associated with the day-to-day management and control of the company, the following was held, "*Therefore, having held that the appellant No. 4 and 5 i.e. Shri Mehan and Dr. Satia have not had anything to do with the day-to-day affairs of the company, we do not think that these two appellants can be fastened with any liability*".

c) In view of the aforesaid, the observations contained in para 59 to 61 of the SCN is demonstrably untenable and the Noticee has not committed any violation of Regulation 18(3) read with Part C of Schedule II of the SEBI (LODR) Regulations, 2015, for this reason alone, the same ought to be quashed.

With regard to imposition of penalty, all the Noticees have relied on the judgment of the Hon'ble Supreme Court passed in (1)*Siddharth Chaturvedi vs SEBI* and (2) *Adjudicating Officer, SEBI vs Bhavesh Pabari*. Noticees have also relied on order of the Hon'ble SAT dated May 15, 2019 passed in *Piramal Enterprises Limited vs SEBI*.

D. REVELANT PROVISIONS

7. It is relevant to reproduce the provisions of laws which have been attracted and invoked in the SCN and the same are quoted here under:

SEBI Act, 1992

*"**11(2)(ia)** : calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities."*

SEBI (LODR) Regulations, 2015

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

……

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

……."

*"**17(8)** The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II."*

*"**18(3)** The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II."*

Obligations with respect to independent directors;

"25(5) An independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his/ her knowledge, attributable through processes of board of directors, and with his/her consent or connivance or where he/she had not acted diligently with respect to the provisions contained in these regulations."

*"**Disclosure of events or information.***

***30(2)** Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events."*

"Schedule II - PART B: COMPLIANCE CERTIFICATE

[**See **Regulation 17(8)]

The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

(1) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

(2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.

C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or *operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.*

D. They have indicated to the auditors and the Audit committee
(1) significant changes in internal control over financial reporting during the year;
(2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
(3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting."

"Part C of Schedule II: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE

A. The role of the audit committee shall include the following:
(1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
……..
(4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

(a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;
(b) changes, if any, in accounting policies and practices and reasons for the same;
(c) major accounting entries involving estimates based on the exercise of judgment by management;
(d) significant adjustments made in the financial statements arising out of audit findings;
(e) compliance with listing and other legal requirements relating to financial statements;
(f) disclosure of any related party transactions; (g)modified opinion(s) in the draft audit report

(5) reviewing, with the management, the quarterly financial statements before submission to the board for approval
(7) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process.
(11) evaluation of internal financial controls and risk management systems;
(12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;
(13) reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit."

E. ISSUES

8. I have carefully perused the allegations levelled against the Noticees in the SCN, the replies of the Noticees and also the documents/evidence available on record. The following issues arise in the matter: -

   i) Whether the Noticees have violated the provisions as alleged in paragraph 4 of this order.

ii) If the answer to Issue No.(i) is in affirmative, do the violations, if any on the part of the Noticees would attract monetary penalty?

iii) If the answer to Issue No.(ii) is in affirmative, what would be quantum of the monetary penalty that should be imposed upon the Noticees?

F. CONSIDERATION AND FINDINGS

9. I note that the Noticees have raised certain preliminary objection and it would be first appropriate to deal with certain preliminary objections raised by Noticees in the matter as under: -

SEBI has not undertaken independent investigation

10. Noticees have contended that SEBI has failed to carry out any independent investigation and has merely relied on reports prepared by external auditors and arrived at such fallacious observations. In this regard, it is pertinent to note that section 11C of the SEBI Act provides power to SEBI to direct any person to investigate the affairs of any intermediary or person associated with the securities market. In the instant matter, SEBI has directed M/s Grant Thornton Bharat LLP (**GT**) to carryout forensic audit of the books and accounts of the Company. GT was appointed in order to provide assistance to the investigating authority appointed by SEBI under Section 11C of SEBI Act, 1992 and thereafter, investigating authority, on the basis of its own findings and on the basis of observations made in GT Report, has prepared investigation report and on the basis of same the SCN in the matter was issued to the Noticees. In view of this, I note that the contention made by the Noticees is legally as well as factually, untenable.

SEBI has not acknowledged report of KPSN

11. Noticees have contended that, SEBI till date has not acknowledged the KPSN Report, which was submitted by the Company to SEBI, instead SEBI has appointed GT on March 25, 2021, to undertake forensic audit of the books of accounts of the Company. I note that in the present matter a "*fraud report*" was filed by Deloitte under Section 143(12) of the Companies Act, 2013, thereafter, a forensic audit report was prepared by PKF and another forensic report was prepared by KPSN. Subsequently, on SEBI's direction another forensic audit report was prepared by GT, which was appointed by SEBI. An investigation in the matter was also undertaken by SEBI. The SCN in the matter has been issued after taking into account the various facts collected during the investigation. I note that observations/ findings made in the KPSN Report have not been accepted in the SCN and reasons, for not

accepting the said observations/findings of the said report, have also been outlined in the SCN. I note from the SCN that Company had previously appointed PKF to carry out forensic audit of the issues raised by Deloitte. Subsequently, the Company disengaged the services of PKF stating the reason that it could not complete the report within stipulated time. It is alleged in the SCN that it was observed from copies of emails provided by PKF that their report was ready before their dis-engagement, and the audit process was going even after 30 days of audit engagement as company was providing data PKF and most of the data was provided by company to PKF almost after 30 days of audit engagement, therefore the audit was delayed by company and not by auditors. It is also alleged that company had intentionally hidden the fact of submission of report by PKF because of adverse findings of PKF. After disengaging PKF, Company appointed KPSN which in its report had disagreed with most of the issues reported by Deloitte and concluded that there was no impact on financial statements for the FY 19 in most of the instances. I note that vide email dated March 13, 2020, SEBI had advised the Company to provide the draft report of PKF. The Company sought extension of time on seven instances which was granted by SEBI. Subsequently, vide email dated July 13, 2020, Company replied to SEBI. Vide the said email, the Company did not provide any report of PKF but submitted a report of another Auditor, namely, M/s KPSN & Associates. However, the Company in its previous replies had never mentioned about appointment of another auditor, namely, M/s KPSN & Associates. Further, even the audit committee in its letter dated February 29, 2020 had not mentioned that in place of PKF they had appointed KPSN as "*special auditors*". In view of the aforesaid conduct of the Company, the appointment of KPSN as special auditors is seen with suspicion and the credibility of the report submitted by KPSN is questionable. It is pertinent to note that SEBI has appointed an independent forensic auditor i.e. GT to conduct forensic audit of the Company and the allegations in the SCN are based on the forensic audit report of GT and SEBI's own investigation. In view of the above, the contention of the Noticees is devoid of any merit.

Opportunity of cross-examination not provided

12. Noticee no. 2 has contended that SEBI has relied on specific facts and proceeded to issue the SCN without providing an opportunity of hearing or cross-examining the parties and no fruitful end will be achieved if the opportunity of cross-examination is provided after the filing of the response to the SCN. In this regard, Noticee no. 2 has relied on judgments of the Hon'ble Supreme Court passed in the matters of - (1) Meenglas Tea Estate vs Its

Workmen, (2) SEBI vs Price Waterhouse & Ors , (3) Rana Kapoor vs SEBI and (4) Olga Tellis v Bombay Municipal Corporation.

13. I note that the facts of the cases relied upon by Noticee no. 2 are different from the facts of the instant case. Further, it is pertinent to reproduce here the wordings of the Hon'ble Supreme Court in the case of SEBI vs Price Waterhouse & Ors as quoted by Noticee no. 2 in his reply:

> *"2... The authors of such statements (recorded during investigation), which are to be relied (against the respondents), shall be offered for cross examination to the respondents. Only thereupon, it will be permissible to rely upon the same".*

14. I note that the SCN has not relied on any statement so far as Noticee no. 2 is concerned. In light of the aforesaid judgment of the Apex Court, since no statement has been relied upon by the SCN to level allegations against the Noticee No. 2, there arises no question of cross-examination of any person. Further, Noticee no. 2 himself has not mentioned as to which person he seeks to cross-examine. This also shows that the request for cross examination was made by the Noticee no. 2 in a cavalier manner in order to create a ground for challenging the order in case such a request is denied by the authority. Further, the contention of Noticee No. 2 that cross-examination has resulted into violation of principle of natural justice is purely academic and not tenable, in the facts and circumstances of the present case.

15. The preliminary submissions of the Noticees have been dealt with. Accordingly, I now proceed to deal with other issues in the matter. I note that, the allegations in the SCN against the Noticees can be grouped in the following categories:

a) **Non-disclosure of initiation of forensic audit** (by Noticee no.1, 5 and 6) violating Regulation 30(2) of LODR Regulations, 2015.
b) **False CEO/CFO Certificate** (by Noticee no.4 and 5) violating Regulation 17(8) r/w Part B of Schedule II of of SEBI (LODR) Regulations, 2015.
c) **False representations to SEBI** (by Noticee no.2, 5 and 6) violating Section 11(2)(ia) of SEBI Act, 1992.
d) **Failure to exercise independent judgment as members of the Audit Committee** (by Noticee no.2 and 3) violating Regulation 25(5) and 18(3) read with Part C of Schedule II of SEBI (LODR) Regulations, 2015.

e) **False disclosure in quarterly financial statements** (by Noticee no.2) violating Regulation 4(1)(c) of SEBI (LODR) Regulations, 2015.

Non-disclosure of initiation of forensic audit

16. In this regard, I note that the forensic auditor i.e. GT was appointed by SEBI on March 25, 2021 and intimation regarding the appointment was sent to the Company on March 25, 2021. In terms of the relevant provision of LODR Regulations, the disclosure regarding initiation of forensic audit, which is a material event under Para A of Part A of Schedule III of LODR Regulations, is required to be disclosed within 24 hours from the occurrence of event or information, i.e. the disclosure regarding initiation of forensic audit was required to be done by March 26, 2021, which was not done. It is alleged in the SCN that Noticee no.1, 5 and 6 being the Whole Time Director, CFO and Compliance Officer, respectively, were duty bound to ensure disclosure of initiation of forensic audit by SEBI to Exchanges.

17. In this regard, Noticee no. 6 has submitted in his reply as follows: -

> *"I respectfully submit that Parallel proceedings have been initiated by SEBI for the same violation. I respectfully submit that I have already been implicated for inter-alia violation for failure to disclose initiation of forensic audit vide the order of Hon'ble Adjudicating Officer dated September 14, 2022 ("**AO Order**"). In terms of the AO Order, a penalty has also been imposed upon me. Thus, the principle of* Res Judicata *is squarely applicable to this matter since a parallel proceeding on the same issue under this Notice has already been initiated against me for which a penalty has been imposed."*

18. I have perused the said adjudication order dated September 14, 2022 and I find that the allegation of non-disclosure of forensic audit has already been adjudicated upon in the said order with respect to Noticee no. 6, wherein, a penalty of Rs. 4 lakhs have been imposed upon Noticee no. 6. Considering the aforesaid fact, I conclude that Noticee no. 6 is absolved of the allegation of non-disclosure of forensic audit in present proceedings.

19. I further note that Noticees no. 1 and 5 have not disputed the allegation that they did not make disclosure about initiation of forensic audit by SEBI. Noticee no. 1 and 5 have contended that, since they were already in receipt of KPSN Report, the Company made representation before SEBI to drop off the forensic audit. The contention of these Noticees is that the disclosure regarding forensic audit was not made as they were waiting for SEBI's reply to their representation. I note that the forensic auditor i.e. GT was appointed by SEBI on March 25, 2021 and intimation regarding the appointment was sent to the Company on March 25, 2021. In terms of the relevant provision of LODR Regulations, the disclosure

regarding initiation of forensic audit is a material event, which is required to be disclosed within 24 hours from the occurrence of event or information, i.e. the disclosure regarding initiation of forensic audit was required to be done by March 26, 2021, which was not done. The contention of the Noticees that they did not make disclosure due to pendency of their representation dated April 15, 2021, is devoid of any merit as the said representation was made 21 days after such disclosure ought to have been made. Further, assuming the Noticees were awaiting response from SEBI on their representation, as contended by them, this does not mean that requirement under Regulation 30 of LODR Regulations is wiped off or kept in abeyance. I note that Regulation 30 of LODR Regulations itself does not make any exception for disclosure in case a representation is made to SEBI regarding initiation of forensic audit. In such a scenario ideal course of action for the Noticees would have been to make the disclosure along with the fact that the Company had made a representation to SEBI and its outcome was awaited. The Noticees were in no case at liberty to not make the disclosure under the garb of pending representation with SEBI. In view of the above, the contention of these Noticees is not acceptable.

20. Noticee no. 1 and 5 have also contended that they cannot be held vicariously liable for the disclosure violation of the Company and that the charging provision invoked is Regulation 30(2) of the LODR Regulations which casts an obligation on the Company to disclose events, which in their opinion is material. In this regard, I find it appropriate to reproduce relevant provision of the SEBI Act and LODR Regulations:

> ***"Disclosure of events or information.***
> ***30.*** *(1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.*
> *(2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events."*
>
> ***"4. (2)*** *The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.*
> …………….
> *(f) Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:*
> …………….
> *(ii) Key functions of the board of directors-*
> …………….
> *(8) Overseeing the process of disclosure and communications.*
> ……………..***"***

SEBI Act, 1992

"Contravention by companies.

***27.** (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:"*

21. In view of the aforesaid provision of section 27 of the SEBI Act, Noticee no.1 being the whole time director was involved in day to day affairs of the Company and thus, was duty bound disclose the initiation of forensic audit to Exchanges. Further, it is observed from the aforesaid provisions of LODR Regulations that although Regulation 30 has used the words '*listed entity*', Regulation 4(2)(f)(ii)(8) casts specific responsibility on the board of directors of the company to oversee the process of disclosure and communications. In light of the aforesaid provisions, the contention of the Noticee no. 1 that he cannot be held vicariously liable for the disclosure violation of the Company, cannot be accepted. In view of the aforesaid, I conclude that Noticee no. 1, by not disclosing initiation of forensic audit by SEBI to Exchanges, has violated Regulation 30(2) of LODR Regulations, 2015.

22. Noticee no.5 has also averred that he cannot be held vicariously liable for the disclosure violation of the Company. Noticee no. 5 was the CFO of the Company at the time of initiation of forensic audit. In this regard, I have perused the relevant provisions of the LODR Regulations and I have observed that the said regulations cast the responsibility on the board of directors and compliance officer to make disclosures of the nature referred to in the SCN. None of the provisions of the LODR Regulations impose the responsibility on the CFO to disclose such events to the Exchanges. I note that being CFO of company, Noticee no. 5 was not duty bound to ensure disclosure of initiation of forensic audit by SEBI to Exchanges. In view of the above, I am inclined to conclude that Noticee no. 5 has not violated Regulation 30(2) of LODR Regulations, 2015.

False CEO/CFO Certificate

23. Noticee no. 4 and 5 were CFO of the Company and were signatory to financial statements of the Company for the financial years 2018-19 and 2019-20, respectively. It has been noted that in the aforesaid Annual Reports, the CEO/CFO in their certificate stated that "*the financials of securekloud presented true and fair view of its affairs and not contained any misleading statement*" and "*no transactions entered into by the Company during the year which are fraudulent, illegal or violative of the Company's code of conduct*". However, in the SCN it has been alleged that the

content of the aforesaid certificates was grossly misleading and by giving false CEO/CFO certification, Noticee no. 4 and 5 have violated provisions of the Regulation 17(8) r/w Part B of Schedule II of SEBI (LODR) Regulations, 2015.

24. Noticee no. 4 and 5 in this regard have contended as follows: -

> "*The Respondent ought to appreciate that there were no red flags even raised by the auditors of the Company, there was no reason for me to suspect any irregularities and provide declarations. As such to arrive at fallacious conclusions is absurd and devoid of merit. A comprehensive examination of the transactions would clearly reveal that even the auditor which was appointed by the Company i.e., KPSN ruled out the irregularities. Therefore, in absence of an independent investigation and when the charges against the Company are pending judicial review, to hold me accountable is not tenable.*"

25. The submission of aforesaid Noticees relating to absence of independent investigation and non-reliance on report of KPSN has already been dealt with in preceding paragraphs and the same is not being repeated here for the sake of avoiding repetition. Further, both the said Noticees have relied on audit reports in their defence to aver that there were no red flags for them to suspect any irregularities. In this regard, I find it appropriate to reproduce provisions of Regulation 17(8) of LODR Regulations:

> *"**17(8)** The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II."*
>
> ***"Schedule II - PART B: COMPLIANCE CERTIFICATE***
> ***[**See **Regulation 17(8)]***
> *The following compliance certificate shall be furnished by chief executive officer and chief financial officer:*
> *A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:*
> *(1) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;*
> *(2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.*
> *B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.*
> *C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.*
> *D. They have indicated to the auditors and the Audit committee*
> *(1) significant changes in internal control over financial reporting during the year;*
> *(2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and*

(3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting."

26. A perusal of the aforesaid provisions goes to show that the CEO and CFO of the Company are required to give the certificate declaring that that they have reviewed financial statements and the cash flow statement for the year and that the statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading and also that the said statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations. The Regulations pose responsibility on the CEO and CFO to independently verify the truthfulness of financial statements and the said responsibility is not to be exercised in a cursory manner. In view of the same, the contention of the Noticees is not acceptable and thus, rejected hereby.

27. Further, Noticee no. 4 and 5 in their separate replies have also contended as under:

"I further submit that all transactions entered by the company are genuine, legitimate and in the ordinary course of business. Further, the books of accounts as well as the financial results of the Company have been prepared in the manner prescribed under the LODR Regulations. Also, there is no misrepresentation of the accounting treatment adopted by the Company and the same is in line with the applicable accounting standards……. Therefore, in the absence of any manipulation of financial statements, the charge that I gave false CFO certification is entirely baseless and merits no consideration."

28. I note that the forensic audit report of GT and investigation of SEBI have unearthed a series of serious irregularities and violations in respect of the Company as mentioned in paragraph 2 of this order. Noticee no. 4 and 5 have made a bald statement that there is no manipulation of financial statements, however, they have not provided any explanation or information as to how their statements are correct. It is open to the Noticees to falsify forensic audit report of GT and investigation of SEBI, but the Noticees must lead evidence in support of their claims and it would not suffice to make a bald statement that all transactions entered by the company are genuine and legitimate. Therefore, the contention of the Noticees is untenable.

29. Noticees have also contended that when the charges against the Company are pending judicial review, to hold them accountable is not tenable. These Noticees have made the said averment in relation to proceedings against the Company and three other officials of the Company which were pending before the Learned Whole Time Member ("**WTM**") at time of filing of reply by the Noticees. I note that the proceedings which were pending before

the Ld. WTM with respect to the Company and three others have been disposed of vide order dated December 16, 2022. Vide the said order, suitable directions have been issued against the Company and 3 other entities and commensurate penalties have been imposed upon them by the Ld. WTM on the basis of charges made against them in the proceedings before the Ld. WTM.

30. Noticee no. 4 has further contended that he cannot be held vicariously liable for the acts of the Company. In this regard, Noticee has relied on judgments of the Hon'ble Supreme Court in the matter of *(1) Ravindranatha Bajpe v Mangalore Special Economic Zone Ltd. & Ors and (2) Sunil Bharti Mittal v Central Bureau of Investigation.*

31. I have perused the judgments quoted by the Noticee no. 4 and I note that the instant case is factually different from the ones relied upon by him. Nonetheless, it would be appropriate to quote below the part of the judgment passed in *Ravindranatha Bajpe v Mangalore Special Economic Zone Ltd. & Ors* as relied upon by him: -

> *"28...Merely because respondent Nos. 2 to 5 and 7 & 8 are the Chairman/Managing Director/Executive Director/Deputy General Manager/Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect to their individual role. "*

32. In view of the aforesaid judgment, I note that there are specific allegations against Noticee no. 4 and 5 in the SCN regarding their role in the matter. LODR Regulations requires CEO and CFO to provide certificate under Regulation 17(8) and the said two Noticees have provided the said certificate for the financial years 2018-19 and 2019-20, respectively. The allegation against Noticee no. 4 and 5 is neither an indirect allegation nor any vicarious liability is being imposed upon these Noticees. Considering the above fact, the contention of Noticee no. 4 is unacceptable and thus, rejected hereby.

33. I note that the forensic audit report of GT and investigation of SEBI have unearthed a series of serious irregularities and violations in respect of the Company as mentioned in paragraph 2 of this order. Despite the irregularities, Noticee no.4 and 5 made false declaration in the CFO certificate and said that "*the financials of securekloud presented true and fair view of its affairs and not contained any misleading statement*" and "*no transactions entered into by the Company during the year which are fraudulent, illegal or violative of the Company's code of conduct*". I note that Noticee no. 4 and 5 have failed to provide any reasonable explanation to the allegation of providing false certificate under Regulation 17(8). I conclude that Noticee no. 4 and 5 have provided false

CEO/CFO certificate in the Annual Reports of company for FY 2018-19 and 2019-20, respectively, and thereby, Noticee no. 4 and 5 have violated Regulation 17(8) r/w Part B of Schedule II of SEBI (LODR) Regulations, 2015.

False representations to SEBI

34. It has been alleged in the SCN that Noticee no. 2 made false representation to SEBI vide letter dated February 29, 2020. Further, it is alleged that Noticee no. 5 and 6 have made false representation before SEBI vide letters dated April 15, 2021 and July 13, 2020 respectively. It is alleged that by making false representations Noticee no. 2, 5 and 6 have violated Section 11(2)(ia) of SEBI Act, 1992.

35. In relation to the allegation of false representation by Noticee no. 2, it is stated in the SCN as follows:-

> *"49. It was observed that Noticee no.2 did not discharge his duties independently and made false representation before SEBI. He was acting in conduit with management and the same is evident from letter dated February 29, 2020 wherein in capacity of chairman of Audit Committee he stated that "since PKF could not submit the report the committee had dis-engaged their services in the meeting held on November 06, 2019. The same was intimated to them on November 08, 2019." However, from the copies of emails dated November 29, 2019 and December 02, 2019 provided by PKF it was observed that Deloitte sought update on the matter of Forensic Audit conducted by PKF from him with cc to PKF, he did not respond to them. However, PKF responded to Deloitte, inter-alia stating the following:*
>
> > *"We have completed the forensic assignment and prepared a detailed report. The contents were broadly discussed with the management. Obviously the management was not comfortable with the findings of our report. For obvious reasons, the Management not only did not pay our final bill, but they also proceeded to write a letter to us saying we have been disengaged*
> > *We hereby confirm that final report was ready on 2nd Nov 2019. We can release the report upon receipt of our payment or to Statutory authorities as and when they may require."*
>
> *50. Further, PKF had sent their forensic audit report to Noticee no.2 as he was chairman of Audit Committee at that point of time. The same is evident from copy of email dated January 09, 2020 provided by PKF wherein forensic audit report was sent to him stating that they had released the report awaiting processing of payment."*
>
> *"25…….Further, even the audit committee in its letter dated February 29, 2020 had not mentioned that in place of PKF they had appointed KPSN as "special auditors".*

36. In response to the aforesaid allegation, Noticee no. 2 has contended as follows: -

> *"The Notice records that on January 09, 2020, I was in receipt of the PKF report. However, I respectfully submit that I am not in receipt of any email enclosing the copy of the PKF Report*

as alleged herewith. I respectfully submit that I have seen a copy of the PKF Report only when the same was made available at the stage of issuance of the present Notice.
I respectfully submit that the allegation that I have made a false representation to SEBI vide letter dated February 29, 2020 is incorrect and misplaced."

37. I have perused the said email dated January 9, 2020 and I note that the said email was sent from PKF to **dineshpunniamurthy79@gmail.com** with ***CC*** to Suresh V Chari, Swasti Bhowmick and others. Noticee no. 2 has not disputed the fact that the said e-mail id belongs to him, which shows that the said email id is correct. Further, I note that PKF had also sent a previous email dated December 02, 2019 to Deloitee and Noticee no. 2 with ***CC*** to Suresh V Chari, Swasti Bhowmick and others. Noticee no. 2 has not disputed the fact of this e-mail, which was sent to his same e-mail id. In the said email PKF has *inter alia* mentioned as follows: -

"We have completed the forensic assignment and prepared a detailed report. The contents were broadly discussed with the management. Obviously the management was not comfortable with the findings of our report. For obvious reasons, the Management not only did not pay our final bill, but they also proceeded to write a letter to us saying we have been disengaged (mail dated 8th Nov 2019). A copy of the mail written to the management in response to the disengagement is enclosed (mail dated 15th Nov 2019). The contents of the letter are self-explanatory. Incidentally, our letter has not yet been replied. We have also written to the new firm of Chartered Accountants appointed to do the same job, as they contacted us."

38. I note from the contents of the aforesaid e-mail dated December 02, 2019 that Deloitte and Noticee no. 2 were informed by PKF that they have completed the forensic assignment and prepared a detailed report. I note that, there is no reason for me to believe that Noticee has received email dated December 02, 2019 from PKF but he did not receive email dated January 09, 2020. Noticee no. 2 has made a bald and sweeping statement in his defence that he did not receive the said e-mail, which cannot be accepted. The fact that Noticee no. 2 was aware about PKF's report is also proved from PKF's e-mail dated December 02, 2019. Considering the same, I am of a view that Noticee no. 2 deliberately concealed the fact of receipt of PKF's report vide email dated January 09, 2020.

39. It has also been alleged in the SCN that Audit Committee in its letter dated February 29, 2020 had not mentioned that, in place of PKF they had appointed KPSN as "*special auditors*". I note that KPSN was appointed by the Company on November 7, 2019 and this fact has been concealed by Noticee no. 2 in his letter dated February 29, 2020. Noticee no. 2 has not given any explanation with regard to concealment of this fact.

40. In view of the above, I conclude that Noticee no. 2 has provided false and incomplete information to SEBI vide letter dated February 29, 2020 and thereby, has violated Section 11(2)(ia) of the SEBI Act, 1992.

41. It is alleged in the SCN that Noticee no. 5 and 6 have made false representation before SEBI vide letters dated April 15, 2021 and July 13, 2020 respectively. From the perusal of these two letters it is noted that letter dated July 13, 2020 was signed by Noticee no. 6 whereas letter dated April 15, 2021 was signed by Noticee no. 5. In relation to the aforesaid allegation, it is stated in the SCN as follows: -

> ***"****In respect of the above, vide email dated March 13, 2020 (****Annexure 9****), SEBI advised the Company to provide the draft report of PKF in respect of the forensic investigation undertaken by them on the issues raised by Deloitte. Vide emails dated March 23, 2020, April 15, 2020, May 04, 2020, May 19, 2020, June 03, 2020, June 15, 2020 and July 02, 2020, the Company sought extension of time on seven instances, on the grounds of Covid-19 lockdown and subsequently imposed restrictions. On every occasion, extension of time was granted to the Company by SEBI.*
> *Subsequently, the Company vide email dated July 13, 2020 (Annexure 5) replied to SEBI's email dated March 13, 2020. Vide the said email, the Company did not provide any report of PKF but submitted a report of another Auditor, namely, M/s KPSN & Associates. However, the Company in its previous replies and in aforesaid seven emails had never mentioned about appointment of another auditor, namely M/s KPSN & Associates. Further, even the audit committee in its letter dated February 29, 2020 had not mentioned that in place of PKF they had appointed KPSN as "special auditors".****"***
>
> ***"****As discussed in above paragraphs, company made false representation before SEBI vide letters dated February 29, 2020, July 13, 2020 and April 15, 2021 inter-alia intimating that PKF could not complete audit assignment within 30 days and therefore they were dis-engaged. However, from the emails provided by PKF, it was observed that the audit was going even after 30 days as most of the data was provided to PKF almost after one month of audit engagement. Further, as per the email communications provided by PKF, the findings of PKF were also discussed with the management. Company intentionally concealed the fact of conclusion of forensic audit by PKF and misled SEBI in investigation.*
> *Therefore, company, its CFO, CEO and compliance officer violated provisions of SEBI Act, 1992 by making false representation dated July 13, 2020 and April 15, 2021 and Audit committee chairman violated provisions of SEBI Act, 1992 by making false representation dated February 29, 2020.****"***

42. Noticee no. 5 and 6 have denied the allegation and stated that no false representation has been made in their respective letters dated April 15, 2021 and July 13, 2020. I note that, SEBI had sought report of PKF from the Company vide email dated March 13, 2020, which was addressed to Noticee no. 6 i.e. the Compliance Officer. In reply to the said email,

Noticee no. 6 vide his letter dated July 13, 2020 replied that Audit Committee at its meeting held on 6th November, 2019 decided to dis-engage the services of PKF for the inordinate delay in the submission of the report. The fact of receipt of PKF's report by the Company has already been proved in the previous parts of the order and is found to be correct. Further, I note that from the copies of emails provided by PKF that their report was ready well before its dis-engagement and the audit process was still going even after 30 days of audit engagement as company was providing data to them. Most of the data was provided by company to PKF almost after 30 days of audit engagement only and same was the reason for delay, thus, the audit was delayed by company and not by auditors, as claimed by the Noticee. Hence, I note that the alleged delay in submission of report by PKF is due to delay caused by the Company.

43. Now, instead of submitting the report of PKF received by Company to SEBI, Noticee no. 6 and 5 vide their letters dated July 13, 2020 and April 15, 2021 respectively, made misleading statement that PKF's services had been disengaged because PKF could not submitted report within stipulated timeline. Further, they intentionally did not submit report of PKF to SEBI, which was already available with the Company (*received vide email dated January 9, 2020*). In view of the above, I conclude that Noticee no. 5 and 6 have concealed facts and made false submissions before SEBI vide their letters dated April 15, 2021 and July 13, 2020 respectively and thereby, have violated Section 11(2)(ia) of SEBI Act, 1992.

Failure to exercise independent judgment as members of the Audit Committee

44. In relation to this allegation, it has been alleged against Noticee no. 2 in the SCN as follows:-

> *"49. It was observed that Noticee no.2 did not discharge his duties independently and made false representation before SEBI. He was acting in conduit with management and the same is evident from letter dated February 29, 2020 wherein in capacity of chairman of Audit Committee he stated that "since PKF could not submit the report the committee had dis-engaged their services in the meeting held on November 06, 2019. The same was intimated to them on November 08, 2019." However, from the copies of emails dated November 29, 2019 and December 02, 2019 provided by PKF it was observed that Deloitte sought update on the matter of Forensic Audit conducted by PKF from him with cc to PKF, he did not respond to them. However, PKF responded to Deloitte, inter-alia stating the following:*
>
> > *"We have completed the forensic assignment and prepared a detailed report. The contents were broadly discussed with the management. Obviously the management was not comfortable with the findings of our report. For obvious reasons, the Management not only did not pay our final bill, but they also proceeded to write a letter to us saying we have been disengaged*

We hereby confirm that final report was ready on 2nd Nov 2019. We can release the report upon receipt of our payment or to Statutory authorities as and when they may require."

50. Further, PKF had sent their forensic audit report to Noticee no.2 as he was chairman of Audit Committee at that point of time. The same is evident from copy of email dated January 09, 2020 provided by PKF wherein forensic audit report was sent to him stating that they had released the report awaiting processing of payment.

51. Further, PKF had sent their forensic audit report to Noticee no.2 as he was chairman of Audit Committee at that point of time. The same is evident from copy of email dated January 09, 2020 provided by PKF wherein foresinc audit report was sent to him stating that they had released the report awaiting processing of payment.

52. During the statement recording, Mr. Dinesh Raja Punniamurthy was asked that less than 25% of sales proceeds was realized from the entities (Ensys, Idol and Intuit) and most of the amount was written off or adjusted against NSIT. As the audit committee member what due diligence exercise he had taken. In response, he stated that "I have never questioned management on this. I have not done any due diligence for this". This shows that Noticee no.2 never questioned management even for such an important issue which directly impacted financial statements of the company and he just acted as an agent of management.

53. Further, during the statement recording, Noticee no.2 was asked about due-diligence exercise taken by him w.r.t. major customers and vendors and non-payment of outstanding dues from customers, in response he stated that he was not aware about any major customers and transactions done with them he had not done any due-diligence for outstanding amount from these customers i.e. seeking comments from management etc.

56. Being member/chairman of the Audit Committee since beginning of the investigation period, Noticee no.2 failed to carry out adequate due diligence, acted like an agent of the company and also failed to exercise independent judgment as member of the Audit Committee of a listed Company and, thereby, Noticee no.2 violated Regulation 25(5) and Regulation 18(3) read with Part C of Schedule II of SEBI (LODR) Regulations, 2015."

45. In relation to this allegation, it has been alleged against Noticee no. 3 in the SCN as follows:-

"59. It was observed from statement recording that Babita Singaram is daughter of friend of Mr. Suresh. She was working in Dubai and was appointed as member of Audit Committee of Securekloud as she was daughter of family friend of Mr. Suresh. She stated that she was just an observer in Audit committee as it was run by a certified auditor and her understanding of roles and responsibilities as a member of the Audit committee was limited. This shows that she did not perform her duties independently as she did not even fully understand her roles and responsibilities. She was just an observer to committee and relied only on other member (Mr. Gurumurthi Jayaraman) of the committee.

60. She also stated that she had never heard the names of Ensys, Idol and Intuit and she doesn't know what is Arms' Length Price. This shows that being member of Audit committee she did not discharge her duties independently.

61. Being member of the Audit Committee since beginning of the investigation period, Noticee no.3 failed to carry out adequate due diligence and failed to exercise independent judgment as member of the Audit Committee of a listed Company Thus, Noticee no.3, being member of the Audit Committee, failed to exercise due due-diligence and did not discharge her duties independently and, thereby, violated Regulation 18(3) read with Part C of Schedule II of SEBI (LODR) Regulations, 2015."

46. In reply to the aforesaid allegations, Noticee no. 2 and 3 have submitted that they have fulfilled their responsibilities in a fair manner and have exercised independent judgement as a member of the Audit Committee. I note that Noticees have again made a bald and sweeping statement which cannot be accepted.

47. Noticee no.2 has further contended as under: -

"There was nothing suspicious about the transactions or the financial accounts of the Company when the same were presented before me and the audit committee. Moreover, while the Audit Committee maybe considered to be an expert committee it is not a committee constituted of experts. The auditors who were reviewing the financials of the Company were responsible for ascertaining the background of the transactions. Thus, at the material time since there were no red flags from the auditors, there was no reason for the Audit Committee or its members including myself to suspect any irregularities."

48. The aforesaid submission of Noticee no. 2 whereby he has offloaded his responsibility on the auditors is untenable. In this regard, I find it appropriate to reproduce Part C of Schedule II of LODR Regulations as under: -

"Part C of Schedule II: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE

B. The role of the audit committee shall include the following:

(1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;

……..…..

(4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

(a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;

(b) changes, if any, in accounting policies and practices and reasons for the same;

(c) major accounting entries involving estimates based on the exercise of judgment by management;

(d) significant adjustments made in the financial statements arising out of audit findings;

(e) compliance with listing and other legal requirements relating to financial statements;

(f) disclosure of any related party transactions; (g)modified opinion(s) in the draft audit report

(5) reviewing, with the management, the quarterly financial statements before submission to the board for approval
(7) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process.
(11) evaluation of internal financial controls and risk management systems;
(12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;
(13) reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
(14) discussion with internal auditors of any significant findings and follow up there on;
(15) reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;
…………..”

49. I note from the aforesaid provisions of LODR Regulations that Part C of Schedule II casts specific responsibilities on the Audit Committee. Further, I note that PKF had submitted its report to the Company by emailing it to Noticee no. 2. I note that the PKF report inter-alia observed potential overstatement of the consolidated financial statements for the FY 2018-19. Further, the said reports also observed that most of the revenue and expenditure in consolidated profit and loss statements and intangible assets in balance sheet were overstated. I note that there were serious issues raised in the report of PKF, however, Audit Committee intentionally concealed the fact of receipt of report of PKF as it was unfavourable to them. In such circumstances, the submission of Noticee no. 2 that, since there were no red flags from the auditors, there was no reason for the Audit Committee or its members including to suspect any irregularities, is devoid of any merit.

50. Further, Noticee no. 2 and 3 have contended that an independent director cannot be held liable for day-to-day affairs of a company. In this regard, Noticees have relied on decision of Hon'ble SAT in the matter of *Vijay Remedies Ltd. v SEBI* wherein it is held, "*Therefore, having held that the appellant No. 4 and 5 i.e., Shri Mehan and Dr. Satia have not had anything to do with the day-to-day affairs of the company, we do not think that these two appellants can be fastened with any liability*".

51. I note that the aforesaid order of SAT cannot be of any help to the Noticees because the instant case is factually different from the one quoted by the Noticees. In the present, Noticee no. 2 and 3 are not only the independent directors, they are also members of Audit

Committee. Further, I note that Noticee no. 2 became Chairman of Audit committee for the period July 19, 2019 till June 30, 2021. It is clear from Part C of Schedule of LODR Regulations that Audit Committee has an active role to play in day to day affairs of the Company. Therefore, the contention of these Noticees that they were not involved in the day-to-day affairs of the Company is misplaced and not tenable.

52. I note that Noticee no. 2 and 3 have failed in providing any reasonable explanation to the allegation levelled against them in the SCN. I hold that the allegations levelled against them are proved, and accordingly, I conclude that Noticee no. 2 and 3 being members/chairman of the Audit Committee since beginning of the investigation period, failed to carry out adequate due diligence, acted like an agents of the company and also failed to exercise independent judgment as members of the Audit Committee of a listed Company and thereby, Noticee no. 2 has violated Regulation 18(3) read with Part C of Schedule II and Regulation 25(5) of SEBI (LODR) Regulations, 2015 and Noticee no.3 has violated Regulation 18(3) read with Part C of Schedule II of SEBI (LODR) Regulations, 2015.

False disclosure in quarterly financial statements

53. In relation to this allegation, it is stated in the SCN that -

> *"23. The company filed its quarterly financial results for quarters ending June 2019 and September 2019 with exchanges on March 01, 2020. In the said financial results, with regard to the auditor's observation that "We are informed that as on the date of this report, the investigation report of the external firm of Chartered Accountants for the matters reported u/s 143(12) not received by the Company and hence the same has not been made available to us.", the Company made the following management response: We have received the draft report. The report, management is reviewing it and will be made available to the Audit Committee shortly and for further noting by the Board………*
>
> *…………………..*
>
> *26. In this regard, vide email dated May 19, 2022, KPSN was advised to provide copies of draft reports, if any, submitted to the Company along with delivery proof. In response, KPSN vide email dated May 20, 2022 (**Annexure 10**) informed that they did not submit any draft report to the Company and that the final report was submitted to the Company on December 31, 2019 and the same was signed on January 04, 2020.*
>
> *…………………..*
>
> *27. Further, vide email dated March 25, 2022 PKF was advised to provide copy of report submitted by them to the Company. In this regard, vide email dated March 28, 2022 (**Annexure 11**), PKF provided copies of email conversations with the Company and the copy of forensic audit report. On examination of same, it was noted that final forensic audit report was submitted by PKF to the Company on January 09, 2020 by addressing the same to the Chairman of the Audit Committee – Mr. Dinesh Raja Punniamurthy (Noticee no.2). Therefore, it shows that there was no draft report submitted by KPSN to company. Also the*

company had intentionally hidden the fact of submission of report by PKF because of adverse findings of PKF. In fact, at the time of disclosure of quarterly financial results, final reports from forensic auditors were available with the company, still company intentionally made false disclosure to shareholders in quarterly financial results.

…………………..

33. The quarterly financial statements for quarter ending June 2019 and September 2019 were signed by audit committee chairman and independent director Mr. Dinesh Raja Punniamurthy (Noticee no.2). Therefore, he violated provisions of SEBI (LODR) Regulations, 2015."

……………………

57. Noticee no.2 also failed to discharge his responsibility and committed oversight of company's financial reporting process and disclosure of its financials and failed in his duty to ensure that financial statements is correct, sufficient and credible. By making false disclosure in quarterly financial statements for quarters ending June 2019 and September 2019, Noticee no.2 violated Regulations 4(1)(c) of SEBI (LODR) Regulations, 2015."

54. In response to the aforesaid allegation, Noticee no.2 has submitted as under: -

> "*Regulation 4(1)(c) of the LODR Regulations cast an obligation on the listed entity (and not on any individual) to refrain from misrepresentation and ensure that the information provided to the recognised stock exchange and investors is not misleading. The Notice completely errs in invoking this provision against me without appreciating the fact that I was appointed as an independent director in the Company and was not involved in day-to-day affairs of the company."*

55. I note that although Regulation 4(1)(c) has used the words "*listed entity*", specific responsibility has been casted upon the Audit Committee under Part C of Schedule II of LODR Regulations. The said provisions provide one of the role of audit committee as "*oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible*;" In light of the aforesaid provisions, wherein, specific responsibility has been defined for Audit Committee, the contention of Noticee no. 2 cannot be accepted.

56. I note that the said quarterly financial statements for quarters ending June 2019 and September 2019 were published on March 1, 2020. At this point of time, Noticee no. 2 was aware of reports of PKF and KPSN and the same were available with him. Despite being aware of and in possession of the final version of the said reports, Noticee no. 2 in quarterly financial statements stated that – "*they have received the draft report and that the management is reviewing it and will be made available to the Audit Committee shortly and for further noting by the Board*". This shows that the disclosures made by Noticee no. 2 in the said quarterly financial

statements were false. In view of the above, I conclude that Noticee no. 2 has violated Regulations 4(1)(c) of SEBI (LODR) Regulations, 2015.

Issue no. II

57. Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.*"

58. In the instant case, the following violations have been established against the Noticees: -

Noticee no.	**Name**	**Violations established**	**Penalty Section of SEBI Act, 1992**
1	S Ravi Chandran	Regulation 30(2) of LODR Regulations	15HB
2	Dinesh Raja Punniamurthy	• Section 11(2)(ia) of SEBI Act, 1992 • Regulation 18(3) read with Part C of Schedule II and Regulation 25(5) of LODR Regulations • Regulation 4(1)(c) of LODR Regulations	15A(a) & 15HB
3	Babita Singaram	Regulation 18(3) read with Part C of Schedule II of LODR Regulations	15HB
4	Swasti Bhowmick	Regulation 17(8) r/w Part B of Schedule II of LODR Regulations	15HB
5	R Thyagrajan	• Regulation 17(8) r/w Part B of Schedule II of LODR Regulations • Section 11(2)(ia) of SEBI Act, 1992	15HB & 15A(a)
6	G Sri Vignesh	Section 11(2)(ia) of SEBI Act, 1992	15A(a)

59. In view of the above discussion, I conclude that the Noticee no. 1, 3, and 5 are liable for monetary penalty under section 15HB of SEBI Act, 1992. Noticee no. 2 and 5 are liable for monetary penalty under section 15A(a) & 15HB of SEBI Act, 1992. Noticee no. 6 is liable for monetary penalty under Section 15A(a) of the SEBI Act, 1992.

Issue no. III

60. While determining the quantum of penalty SEBI Act it is important to consider the factors stipulated in Section 15J of SEBI Act, which reads as under:

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation:

For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F,15G,15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

61. Regarding the factors to be considered under Section 15J of SEBI Act, 1992, I note that the SCN does not indicate the amount of disproportionate gain or unfair advantage made by the Noticees, as a result of the aforesaid violations. In fact no such assessment is possible in facts of the present case. Further, the SCN also does not specify the amount of loss caused to investor or group of investors. It is practically impossible to quantify the loss caused to investors in the event of misrepresentation of financial statements. I note that there is no material on record to indicate that the Noticees have been found to have committed similar violations any time in the past.

62. I note that the violations against the Noticees are inter-alia of non-disclosure, false disclosures, false representations and misrepresentation in financial statements which are serious violations in the securities market. The disclosures in securities market are necessary to bring about transparency and enable the investors to take an informed investment or disinvestment decision. Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014),* has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Further in the matter of *Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI*–the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

63. In the facts and circumstances of this case, the quantum of penalty has to be adjudged taking into account the conduct of the Noticees as found in this case and the principle of proportionality. The violations as established in this case, have clearly defeated the purposes of the Regulations i.e. investor protection and ensuring market integrity. Considering the role and responsibility of the Noticees in these regards and obligations cast upon them under the Regulations, in my view, the default is grave and the gravity of this matter cannot be ignored. Therefore, no lenient view should be taken in this matter and the case deserves imposition of monetary penalty proportionate to the default as found in this case.

G. ORDER

64. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose following penalty on Noticees no. 1 to 6 for the aforementioned violations, as discussed in this order.

Noticee No.	Name of the Noticee	Penalty Provision of SEBI Act	Penalty (Rs.)
1	S Ravi Chandran	Section 15HB	10,00,000 (Rs. Ten Lacs)
2	Dinesh Raja Punniamurthy	Section 15A(a)	5,00,000 (Rs. Five Lacs)
		Section 15HB	15,00,000 (Rs. Fifteen Lacs)
3	Babita Singaram	Section 15HB	5,00,000 (Rs. Five Lacs)
4	Swasti Bhowmick	Section 15HB	5,00,000 (Rs. Five Lacs)
5	R Thyagrajan	Section 15A(a)	5,00,000 (Rs. Five Lacs)
		Section 15HB	5,00,000 (Rs. Five Lacs)
6	G Sri Vignesh	Section 15A(a)	5,00,000 (Rs. Five Lacs)

In my view, the aforementioned penalty is commensurate with the violations committed by the Noticees in this case.

65. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

66. The Noticees shall forward the said demand draft or the details/ confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-1, DRA-2, SEBI, in the format given in table below:

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

67. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under Section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

68. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order shall be sent to the Noticees and also to the Securities and Exchange Board of India.

Date: January 20, 2023
Place: Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER