BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. ORDER/AK/BS/2023-24/28876-28879

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:

Name of Noticee (PAN)	**Address**
Noticee No. 1: Binoy Gupta (PAN: ACTPG5263E)	1101, Shiromani Tower, Raj Kamal Lane, Parel, Mumbai - 400 012.
Noticee No. 2: Subrata Kumar Dey (PAN: ABZPB2302G)	A205, Renaissance Aero 10, 3, Jakkuru Main Road, Byatarayanapura, Bengaluru - 560 092.
Noticee No. 3: Subir Kumar Banerjee (PAN: AFTPD0266P)	Flat No. 3, Plot No. 300, Ground Floor, Archana CHS Ltd, Sher E Punjab Society, Andheri (East), Mumbai- 400 093.
Noticee No. 4: Ramesh M. Joshi (PAN: ACMPJ1824D)	D-1303, 13th Floor, Panchsheel Heights, Mahavir Nagar, 90 Ft Road, Kandivali West, Mumbai - 400 067.

In the matter of Excel Realty N Infra Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination in the matter of Excel Realty N Infra Limited (hereinafter referred to as **'The Company/ "Excel"'**) for the period FY 2016-17 to FY 2020-21 (hereinafter referred to as **'Examination Period or EP'**) to ascertain violation of the provisions of SEBI Act, 1992 (hereinafter referred to as **'SEBI Act'**) and/ or SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **'LODR Regulations'**), if any, during the examination period.

APPOINTMENT OF ADJUDICATING OFFICER

2. Upon being satisfied that Noticees viz. Binoy Gupta – **Noticee No. 1**, Subrata Kumar Dey **- Noticee No. 2**, Subir Kumar Banerjee- **Noticee No. 3** and Ramesh Multanchand Joshi - **Noticee No. 4,** (hereinafter collectively referred to as **"Noticees"**), who were the members of the Audit Committee of "Excel", have violated various provisions of LODR Regulations and SEBI Act, SEBI, in exercise of powers u/s 19 r/w sub-section (1) of section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **"Adjudication Rules"**) appointed the undersigned as Adjudicating Officer (AO), vide order dated October 19, 2022 to inquire into and adjudge u/s 15 I r/w section 15HB of SEBI Act, the alleged violations by the Noticees.

SHOW CAUSE NOTICE AND PERSONAL HEARING

3. A common Show Cause Notice Ref. No. EAD-6/AK/VP/00075/1-4/2023 dated January 02, 2023 (hereafter referred to as "**SCN"**) was issued to the Noticees in terms of the provisions of rule 4(1) of the Adjudication Rules requiring the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under the provision of Section 15HB of SEBI Act, for the alleged violation(s) stated in the SCN. SCN was sent through Speed post AD and digitally signed copy of SCN was sent through email. SCN was duly served upon the Noticees in terms of Adjudication Rules.

4. The allegation made against the Noticees as per SCN was that they failed in their role as audit committee members with regard to the following, which led to publication of fraudulently manipulated financial statements of Excel, which contained untrue figures which operated as a device/ scheme/ artifice to deceive and defraud the investors/ shareholders dealing in equity shares of Excel;
   - **4.1.** Misrepresentation by continuously showing the balance outstanding from the struck off and defaulter companies;
   - **4.2.** Misrepresentation by Non- Disclosure of balance outstanding from related parties;

4.3. Misuse of funds and misrepresentation through long outstanding balance of loan and advances and non-provisioning for 9 years:

4.4. Misuse and diversion by providing Interest free loans to the Subsidiary

4.5. Role of Audit Committee Members

5. In view of the above it was alleged in the SCN that the Noticees have violated the provisions of Regulations 4(1)(a),(b),(c),(e),(g),(h),(i),(j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2)(6)(7)(8), 4(2)(f)(iii)(1)(2)(3)(6) (12), & Regulation 33(1)(a) (c), 33(2)(a), Regulation 48 and Regulation 18(3) r/w Para A of Part C of Schedule II of LODR Regulations r/w section 27 (1) of SEBI Act.

6. Noticee Nos. 1, 2, 3 & 4 filed their reply to SCN on merits, vide letter/email dated March 21, 2023, March 28, 2023, March 06, 2023 and February 24, 2023 respectively.

7. In the interest of justice, vide letter dated January 23, 2023, Noticees were granted an opportunity of personal hearing on February 09, 2023. Noticee No. 1 did not avail the opportunity of hearing scheduled on February 09, 2023. Noticee No. 1, vide letter dated February 27, 2022 requested for extension of time to file reply. Noticee No. 4, vide email dated February 08, 2022 sought adjournment of hearing scheduled on February 09, 2023 and requested for extension of time to file reply to the SCN.

8. Vide hearing notice dated March 14, 2023, Noticees were granted opportunity of personal hearing on April 24, 2023. Noticee nos. 1 and 2 failed to appear before me on the scheduled date of hearing.

9. Noticee no. 3 along with his authorized representative (AR) appeared before me on April 24, 2023 and reiterated the submission made vide email dated March 06, 2023. During the course of hearing, AR of Noticee no. 3 sought copies of minutes of Audit Committee held in the year 2019-20 and 2020-21.

10. Hearing scheduled on April 24, 2023 was rescheduled to April 25, 2023 on the request of AR of Noticee no. 4. AR of the Noticee no. 4 appeared before me on April 25, 2023 and made his submissions which were in line with his reply dated February 24, 2023. AR of Noticee no. 4 submitted that the lapses pertaining to the Noticee no. 4 are for two years only though it is not admitted. It was further submitted that unless the charges against the Company and its management are established, the charges against the member of the Audit Committee cannot be established.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have taken into consideration the allegations made in the SCN, replies filed by the Noticees, submissions made during the hearing and material available on record. The issues that arise for consideration in the present case are as follows:

ISSUE No. I: Whether Noticees violated provisions of Regulations 4(1)(a),(b),(c),(e),(g),(h),(i),(j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2)(6)(7)(8), 4(2)(f)(iii)(1)(2)(3)(6) (12), & Regulation 33(1)(a)(c), 33(2)(a), Regulation 48 and Regulation 18(3) r/w Para A of Part C of Schedule II of LODR Regulations r/w section 27 (1) of SEBI Act?

ISSUE No. II: Do the violations, if any, attract monetary penalty u/s Section 15HB, of SEBI Act?

ISSUE No. III: If so, what should be the monetary penalty that should be imposed upon the Noticees, after taking into consideration the factors stipulated in Section 15J of the SEBI Act?

12. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticees, as applicable during the examination period, and the same are reproduced below:

<u>LODR Regulations</u>

<u>Regulation 4 (1) & (2)</u>

Principles governing disclosures and obligations.

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

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

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

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

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

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

(h)The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.

(i)Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.

(j)Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

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

(a) to (e) ……

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

(i)Disclosure of information:

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

(ii) Key functions of the board of directors-

(2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.

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

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

(8) Overseeing the process of disclosure and communications.

(iii)Other responsibilities:

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

(2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.

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

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

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

Regulation 33(1) & (2)

Financial results.

33.(1) While preparing financial results, the listed entity shall comply with the following:

(a)The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.

(c)The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India: Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board

(2) The approval and authentication of the financial results shall be done by listed entity in the following manner:

(a)The quarterly financial results submitted shall be approved by the board of directors: Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

Regulation 48

Accounting Standards.

48.The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.

SEBI ACT

Section 27 (1)

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:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

ISSUE No. I: Whether Noticees violated provisions of Regulations 4(1)(a),(b),(c),(e),(g),(h),(i),(j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2)(6)(7)(8), 4(2)(f)(iii)(1)(2)(3)(6)(12), & Regulation 33(1)(a) (c), 33(2)(a), Regulation 48 and Regulation 18(3) r/w Para A of Part C of Schedule II of LODR Regulations r/w section 27 (1) of SEBI Act?

13. I now proceed to deal with the allegations made in the SCN. I note that the following was alleged in the SCN;

13.1. Misrepresentation by continuously showing the balance outstanding from the struck off and defaulter companies

13.1.1. The following are the details of the investments/ advances made by Excel during the EP in the companies that are either struck off/ declared default by the MCA:

Table 1 **(Rs. in Lakhs)**

Sl. No:	Name of the party	Investments/ Advances as on the year ending					Date of Strike off or declared default by MCA
		2016–17	2017-18	2018-19	2019-20	2020-21	
1	Duflon International Ltd	919.00	919.00	919.00	919.00	919.00	June 23, 2017
2	Jaihind Mercantile Pvt. Ltd	984.00	984.00	984.00	984.00	984.00	December 04, 2018
3	Nayan Trade Resources Pvt. Ltd*	849.00	926.00	944.00	898.00	898.00	April 23, 2016
4	Everlike Vincom Pvt. Ltd.	79.00	79.00	79.00	-	-	NA
5	N & J Mercantile Pvt. Ltd.*	253.00	253.00	253.00	253.00	253.00	September 11, 2018

Sl. No:	Name of the party	Investments/ Advances as on the year ending					Date of Strike off or declared default by MCA
		2016–17	2017-18	2018-19	2019-20	2020-21	
6	Solari Home Textile Pvt. Ltd.	237.50	141.50	141.50	141.50	0.00	September 11, 2018
7	Spring Fab And Tex Pvt. Ltd.	212.50	187.50	137.50	0.00	0.00	September 11, 2018
8	Twin Best Multi Trade Pvt Ltd (TBMTPL)	0.00	0.00	0.00	0.00	713.50	September 11, 2018
	Total (a)	**3534.0**	**3490.0**	**3458.0**	**3195.50**	**3767.50**	
	Total Assets (b)	**17465.28**	**17655.82**	**17407.24**	**17574.91**	**17669.59**	
	% of a of b	**20.23%**	**19.77%**	**19.87%**	**18.18%**	**21.32%**	

*declared as defaulter company by MCA.

13.1.2. It was observed that the Company had invested in TBMTPL in the FY 2020-21 i.e. two years after TBMTPL was struck off by MCA.

13.1.3. The outstanding from the above-mentioned entities, as on February 28, 2022, are as under:

Table 2 **(Rs. in Lakhs)**

S. No.	Name of the Company	Balance outstanding as on February 28, 2022
1	Duflon International Ltd.	816.00
2	Jaihind Mercantile Pvt. Ltd.	727.00
3	Nayan Trade Resources Pvt. Ltd.	761.00
4	Twin Best Multi Trade Pvt Ltd	632.50
	Total	2936.50

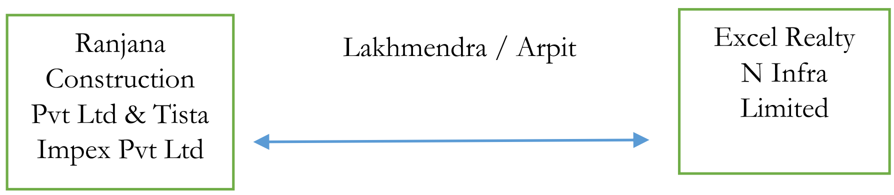
13.1.4. As per Press Release (Posted On: 05 SEP 2017 4:37PM by PIB Delhi), Department of Financial Services had advised all the banks to take immediate steps to put restrictions on the bank accounts of stuck off companies. Hence, it indicates that once a company is struck off in the record of ROC, then those bank accounts of companies cannot be under operation till such companies are legally restored u/s 252 of the Companies Act 2013 by an order of National Company Law Tribunal. The restoration, as and when it happens, shall be reflected by the change in the status of the company from 'Struck off' to 'Active'. A list of such companies, Registrar of Companies wise, has been published on the website of the Ministry of Corporate Affairs.

13.1.5. In view of the above, the above mentioned transactions should not have taken place and are legally not tenable, most importantly credit transactions to these accounts by Excel. In case of TBMTPL, the outstanding liability of Rs 7.13 Cr has been created in 2020-21, two years subsequent to TBMTPL being stuck off by MCA (11/09/2018).

13.1.6. Also, no disclosures were made in the annual report/ quarterly financials (all the quarters in examination period) stating the fact that the investments both carried forward and fresh investments made in the entities are struck off/ declared defaulter by MCA. Considering the materiality of the amount outstanding i.e. approx. 20% of the total assets of the company, "Excel" should have disclosed/ informed the facts to the investors. This non-disclosure kept investors in dark on actual financial affairs of the company. Additionally, by not providing for the provisioning or writing off those investments, the Company mis-stated its financial results by inflating the assets, thereby misleading its investors and lenders on the actual financial condition of the Company.

13.2. Misrepresentation by Non- Disclosure of balance outstanding from related parties

13.2.1. It was alleged in the SCN that Transactions had been undertaken between Ranjana Construction Private Limited (**RCPL**) and Tista Impex Private Limited (**TIPL**). Both RCPL and TIPL are related parties, through the common directors viz Mr. Lakhmendra Chamanlal Khurana ('**Lakhmendra'**) and Mr Arpit Lakhmendra Khurana ('**Arpit**'). Both of them are promoters in Excel.



13.2.2. The Company confirmed that it had an outstanding balance of Rs. 2,27,60,000/- in the FY 2018-19 and FY 2019-20 and TIPL had an outstanding balance of Rs. 4,14,50,000/- in FY 2018-19. These outstanding balances have not been disclosed under related party transactions in the Annual reports from FY 2017-18 to FY 2019-20

13.2.3. The above non-disclosure resulted in annual report not showing a true and fair view of state of affairs of the company from FY 2017-18 to FY 2019-20.

13.3. Misuse of funds and misrepresentation through long outstanding balance of loan and advances and non-provisioning for 9 years

13.3.1. Excel had entered into agreements of investment in property since FY 2010-11. Also, Excel had advanced interest free loans to various entities. A brief summary of investments and loan & advances from past many years are as under:

Table 3 **(Rs. in Lakhs)**

S. No.	Name of the party	Investments and Loans & Advances as on year ending				
		2016 – 17	2017- 18	2018- 19	2019- 20	2020 -21
1	Bloomdale Finvest Pvt Ltd	736.00	928.00	937.00	934.00	934.00
2	Divyadhwani Investment Pvt Ltd	942.00	942.00	942.00	942.00	942.00
3	Image Developers	425.00	425.00	425.00	425.00	425.00
4	Intellect Developers Pvt Ltd	2,550.00	2,550.00	2,550.00	2,550.00	2,550.00
5	Lalita Exports Pvt Ltd	707.50	839.50	836.50	564.50	565.50
6	Ranjana Construction Pvt Ltd	227.60	227.60	227.60	227.60	-
7	Sailee Developers	-	-	-	819.60	819.60
8	Samath Erectors & Devlopers	-	-	-	31.00	75.83
9	Shubhangi Deshmukh	-	-	-	80.78	-

10	Tinal Pharmaceuticals Pvt Ltd	784.60	915.60	868.60	868.60	868.60
11	Tista Impex Pvt Ltd	490.50	490.50	414.50	-	-
12	R.M. Realty Pvt. Ltd.	150.00	120.00	120.00	150.00	150.00
13	Harmeet Kaur Anand	60.00	60.00	60.00	-	-
14	Maa Shakumbari Devi Charitable trust	176.17	272.85	289.75	309.28	309.28
15	Makrina Construction Pvt. Ltd.	375.00	375.00	375.00	375.00	375.00
16	Meeti Developers Pvt. Ltd.	7.30	7.30	7.30	-	-
17	Sallee Developers	819.60	819.60	819.60	-	-
18	Samarth Erectors & Developers	31.00	31.00	31.00	-	-
19	Karbhari Investment Pvt. Ltd.	131.00	131.00	131.00	131.00	-
20	Safal Infraprojects	-	-	-	20.34	20.34
	Total (a)	8613.27	9134.95	9037.85	8428.70	8034.15
	Total Assets (b)	**17465.28**	**17655.82**	**17407.24**	**17574.91**	**17669.59**
	% of a of b	49.32%	51.74%	51.92%	47.96%	45.47%

Note- In the above table investment and loan & advances to struck-off and defaulter companies are not included since same are already covered in Table no. 1.

13.3.2. It was observed that the entities Bloomdale Finvest Pvt Ltd, Solari Home Textile Pvt Ltd, Spring Fab & Tex Pvt Ltd, TBMTPL, Karbhari Investment Pvt Ltd, Divyadhwani investment Pvt Ltd, N & J Mercantile Pvt Ltd, Nayan Trade Resources Pvt Ltd, Tinal Pharmaceuticals Pvt Ltd and Lalita Exports Pvt Ltd were connected through common directors viz., Naynesh Parikh Thakorlal and Jasmina Parikh Naynesh. Naynesh Parikh Thakorlal is also a director in Jai Hind Merchantile Private Limited.

13.3.3. It was also observed that most of the property agreements were not registered under the Transfer of Property Act, 1882 making such agreements null and void after so many years and not acceptable under any court of law.

13.3.4. It was also observed that, the nature of business of all the companies from whom the amount was due to “Excel” does not include dealing in the purchase/sale of land or property, infrastructure or developer activities etc. and does not seem to be in the normal course of business transactions.

13.3.5. "Excel", vide letter dated March 05, 2022, submitted, *inter alia*, the following:

13.3.5.1. The registration of agreements pertaining to properties falls under the ambit of the Transfer of Property Act, 1882. The same, the Company further submits, is dehors the jurisdiction of SEBI. However, it is submitted that the Company had entered into an agreement for sale of the properties as owned by the aforementioned companies. Section 54 of the Transfer of Property Act, 1882, which regulates the matters dealing with the sale and transfer of property, defines the contract for sale or an agreement for sale as under:

> *"A contract for the sale of immovable property, is a contract that a sale of such property shall take place on the terms settled between the parties." Section 54 further provides that" It does not, of itself, create any interest in or charge on such property." Such an agreement thus falls under the ambit of Section 17(2) (v) of the Registration Act 1908 which states that "Any document other than the documents specified in sub-section (IA) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest".*

13.3.5.2. "Excel" was confronted with difficulties, of an unforeseeable, unprecedented nature, while making full payments towards its investments, owing to the recession in its business activities. Having made only part-payments, the Company decided to revoke its investments and hence called back for the said part-payments made towards the properties. Accordingly, the Company has, nevertheless, been receiving regular payments from the two aforementioned entities, and is continually in the process of recovering the money rightfully owed to it.

13.3.5.3. Entities have a common director does not, in any manner, suggest that the transactions undertaken with these entities are sham or non-genuine, for that matter. The amount as paid to these entities as advance have been duly recovered from these entities in toto from Solari Home Textile Pvt Ltd, Spring Fab & Tex Pvt Ltd, Karbhari Investment Pvt. Ltd. and N & J Mercantile Pvt Ltd. The Company is also in process of recovering the advance paid to the other companies also and has been able to recover substantial amounts from these companies.

13.3.6. Following observations were noted by the examination team

13.3.6.1. Listed entity acts on behalf of all stakeholders. However, the fact that these amounts were carried forward in the books of accounts for 8-9 years and they have been cancelled in FY 2019-20 questions the intention of the company to complete these transactions. Hence, the company's reply that due to financial difficulties, it couldn't execute its agreements and hence cancelled those agreements seems to be insupportable. Also, it is impractical and unlikely that a project has been underway for more than 8 years and is still available for completion of transactions.

13.3.6.2. No provisioning was done for these loans and advances and carrying forward these in the books of accounts indicates that company continued to maintain the confidence level of the investors with respect to their investments. The company has not disclosed to the investors that owing to the financial difficulties, the company is unable to execute those transactions. The said investments/ loans and advances constitute more than 45% of total assets all those years, thus making it a material information. By not doing so, the company has kept the investors at dark and investors unaware of the state of affairs both operationally and financially.

13.3.6.3. It does not seem to be coincidence that most of the companies to whom the company has made loans and advances are related to each other through common directorship and interest free advances have been given and have been outstanding for more than 8-9 years with no provisioning being done.

13.4. Misuse and diversion by providing Interest free loans to the Subsidiary

13.4.1. "Excel" has stated that it had set up a Wholly Owned Subsidiary (WOS) namely Excel Info FZE at RAK Free Trade Zone, Ras Al Khaimah, United Arab Emirate (UAE), on December 16, 2009, to explore new avenues of business opportunities and augment its income.

13.4.2. Since the incorporation of the WOS, "Excel" had advanced it a total sum of USD 49,78,000 (Rs. 22.91 Cr) by way of an interest-free loan during the FY 2009-10 to FY 2012-13 for which details are as under:

Table 4

Financial Year	Amount (USD)	Amount (INR)*
FY 2009-10	29,60,000	14,04,32,168
FY 2010-11	18,28,000	8,32,88,433
FY 2012-13	1,00,000	54,40,990
Total	**49,78,000**	**22,91,61,591**

*****Average conversion exchange rate during the respective years is taken for conversion from USD to INR.

13.4.3. Excel has stated that it had received back only Rs. 98,58,831 from its WOS in February 2012. The current outstanding as on March 31, 2021 is Rs. 34.90 Crores and it was observed that no interest has been charged for the said amount.

13.4.4. On analysis of the financials of WOS, following observations were noted:

13.4.4.1. The loans so received from the company, were transferred to other party/ parties and shown as "trade receivables" for which no details are available in the financials of both the company and its WOS.

13.4.4.2. Also, the loans advanced by the company were shown as "trade payable" in the books of accounts of WOS.

13.4.4.3. On analysis of the financials of WOS, it was found that there was either "nil" or very less turnover during the FY 2009-10 to FY 2012-13 as under:

Table 5 **Figures in AED**

Year	Trade Receivables O/s balance	Trade payables O/s balance	Turnover during the year
FY 2009-10	1,08,60,495	1,08,63,200	Nil
FY 2010-11	1,78,63,187	1,79,01,269	Nil
FY 2011-12	1,71,33,187	1,71,71,269	Nil
FY 2012-13	1,75,02,195	1,75,40,277	25,400

Table 6 *Figures are converted in INR- year end exchange rate is taken for respective yrs.*

Particulars	FY 2009-10	FY 2010-11	FY 2011-12	FY2012-13
Balance O/s of Loan given to WOS in the books of the company	13,36,14,400	21,92,53,100	23,96,99,649	26,08,91,104
Trade Receivables balance in the books of WOS	13,31,46,410	21,89,97,313	21,00,47,732	21,45,71,660
Trade payables balance in the books of WOS	13,31,79,573	21,94,64,187	21,05,14,606	21,50,38,534
Turnover in the books of WOS	-	-	-	3,11,396

13.4.4.4. On the analysis of facts and figures from the above tables (Table no. 5 & 6), it was found that WOS have transferred the funds received from the company (shown as trade payables) to other party/parties (shown as Trade receivable). It was also observed that the balance as on March 31, 2013 of trade receivables and trade payables continued to be carried forward till FY 2020-21 in the books of WOS, which indicated a clear intention and deliberate attempt on the part of the company to misrepresent the financials and misuse and divert funds.

13.4.4.5. It was also observed that the company has been showing the said loans to WOS as non-Current Assets under long-term loans and advances in the financials till FY 2016-17. From FY 2017-18, these loans have been reclassified as current assets and Loan.

13.4.5. It was also observed that the existence of the WOS i.e., Excel Info FZE in UAE is under question due to following reasons:

13.4.5.1. Upon verification done by NSE of Trade License Number (5004599) (refer below screen shot-1) & P.O. Box number (refer below screen shot-2) of its subsidiary on UAE Website, no such company was found.

13.4.5.2. Upon checking on Google map also, such name was not found.

13.4.6. On analysis of the financials of WOS, following observations were made:

13.4.6.1. "Excel" had granted interest free loan to the WOS which was further advanced to other entities.

13.4.6.2. The company has been showing the said loans to WOS as non-Current Assets under long-term loans and advances in the financials till FY 2016-17. From FY 2017-18, these loans were reclassified as current assets and Loan. This treatment of accounts was in violation of Para 66 of IND AS 1 Presentation of Financial Statements.

13.4.6.3. Also, the fact that the loans have been advanced to WOS with no revenue and its doubtful existence clubbed with the fact that it was further advanced to unknown parties and has been misappropriated and also the fact that the only approx. 2.8% has been returned during a period of 11 years indicated that it was an intentional act on the part of the company without the shareholders not being aware of the actual financial position of the company.

13.5. Role of Audit Committee Members

13.5.1. Noticees were the members of the audit committee during the examination period (i.e. FY 2016-17 to FY 2020-21). The details of their attendance in the committee meetings (year wise) is given below:

Table 7

FY	Particulars of the meetings	Mr. Binoy Gupta (Chairman)	Mr. Subir Kumar Banerjee (appointed w.e.f. May 29, 2019)	Mr. Ramesh Joshi	Mr. Subrata Kumar Dey (appointed w.e.f November 09, 2015)
2016-17	Held	4	NA	4	4
	Attended	4	NA	4	4
2017-18	Held	4	NA	4	4
	Attended	4	NA	4	4
2018-19	Held	4	NA	4	4
	Attended	4	NA	4	4
2019-20	Held	5	4	5	4
	Attended	4	4	5	4
2020-21	Held	5	5	5	5
	Attended	5	5	4	5
Total Meeting held		**22**	**9**	**22**	**21**
Total Meeting attended		**21**	**9**	**21**	**21**

14. Considering that the Noticees had attended majority of meetings as evident from the above table, it was alleged that the Audit Committee of Excel failed to perform its duties and hence Noticees violated provisions of Regulations 4(1)(a),(b),(c),(e), (g),(h),(i),(j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2)(6)(7)(8), 4(2)(f)(iii)(1)(2)(3)(6)(12), & Regulation 33(1)(a) (c), 33(2)(a), Regulation 48 and Regulation 18(3) r/w Para A of Part C of Schedule II of LODR Regulations r/w section 27 (1) of SEBI Act.

15. Reply filed by Noticees

15.1. Noticee No. 1 vide letter dated February 27, 2022 acknowledged the receipt of SCN and requested for extension of time to submit his reply to the SCN on medical grounds. Vide letter dated March 21, 2023, Noticee No. 1 submitted his reply as follow:

15.1.1. I have gone through the documents available and discussed the matter with the Managing Director

15.1.2. I feel there has been no default or lapse on the part of the Excel Realty N Infra Ltd. The Company has clarified and given their explanation on the defects pointed out in the SCN

15.1.3. I rely on the replies and explanations furnished by Excel in respect of the said proceedings. I would not like to add anything at this stage.

15.1.4. Apart from this, I was not concerned with the day-to-day affairs of Excel and cannot be held responsible for lapses, (If any) in their day-to-day working.

15.2. Noticee No. 2, vide email dated March 28, 2023 submitted his reply to SCN as follow:

15.2.1. I have gone through the documents available and discussed the matter with the Managing Director.

15.2.2. I feel that there has been no default or lapse on the part of the Excel Realty N Infra Ltd. The Company has clarified and given their explanation on the defects pointed out in the SCN

15.2.3. I rely on the replies and explanations furnished by Excel in respect of the said proceedings and would not add anything at this stage.

15.2.4. Apart from this, I was not concerned with the day-to-day affairs of Excel and cannot be held responsible for lapses, if any, in their day-t-day working.

15.3. Noticee No. 3, vide email dated February 04, 2023 acknowledged the receipt of SCN and requested for extension of time to file reply to the SCN. Noticee No. 3 vide letter dated March 06, 2023 filed reply to the SCN. Extract of reply is given below:

15.3.1. I would like to humbly draw your attention to the fact that I was appointed as an Independent Director of the Company only on September 27, 2019. This information has been wrongly recorded in the SCN to show that I was appointed as a Director on September 02, 2016 and/or May 25, 2019. Hereto annexed and marked as Annexure A and A1 my appointment letter dated September 27, 2019, *and the extract of my Director master data from the MCA website, to reflect the correct date of my appointment.*

15.3.2. *Please note that prior to my appointment, Managing Director and Chairperson, i.e., Mr. Lakhmendra Khurana assured me that utmost transparency would be maintained during my tenure as an independent director. However, upon being appointed, I was never even provided access to any of the books of the Company and was never informed about any investments of the Company.*

15.3.3. *I say that there were limited board meetings held since my appointment. I say that the Minutes of the Meeting were never shared with me for my records. .I say that no matters related to funds advanced by the Company were ever discussed in the board meetings. Thereafter, due to the global Covid-19 pandemic, access to the Company's data was even more limited.*

15.3.4. *I say that the SCN refers to several alleged transactions that occurred prior to my appointment in the Company and I was never in any way involved in any of activities that may be in violation of the law. I say that I was never involved in the transactions related to companies that were struck off/ declared default by the MCA such as (i) Duflon International Limited, (ii) Jaihind Mercantile Pvt. Ltd. (iii) Nayan Trade Resources Pvt. Ltd., (iv) Everlike Vincom Pvt. Ltd., (v) N&J Mercantile Pvt. Ltd., (vi) Solari Home Textile Pvt. Ltd., (vii) Spring Fab And Text P\t. Ltd. and others mentioned in para 8.1 of the SCN. I say that as mentioned in the SCN itself, this information was never disclosed in the annual reports of the Company. I was and am completely unaware of the alleged transactions, have taken place prior to my appointment.*

15.3.5. *I say with respect to the loan advanced to Twin Best Multi Trade Pvt. Ltd. ('TBMTPL") that the decision to do so, was taken by the managing director of the Company. I was informed that this decision was made on the basis of the misrepresentation by TBMTPL that it was active corporate entity and that TBMTPL never disclosed that it was a struck-off entity. I say that the Mr. Lakhmendra Khurana disclosed vide letter dated March 5, 2022 to SEBI in para no. 22, that there was no reason to doubt the entity TBMTPL, and that the Company had a long-standing relation with the said entity. I however was never directly involved in the loan given to TBMTPL.*

15.3.6. I reiterate with respect to the allegations in para 8.2. that I was only appointed on September 27, 2019, and was never made aware that the parties RCPL and TIPL are related parties to the Company. I say further that with respect to the allegations of non-disclosure of outstanding balance and long outstanding balances, that I was provided limited access to the books of the Company and was only aware of what was informed to me in the meetings of the Board of Directors. The liabilities of the Company were wrongly informed to me, and I was never made aware of the transactions referred to in para 8.3 of the SCN.

15.3.7. I say that the Company had set up a wholly owned subsidiary ("WOS") viz. Excel Info FZE at RAK Free Trade Zone, Ras - Al - Khaimah, UAE in 2009 which is almost a decade prior to my appointment. I say that I am not aware of the details of the WOS and was never dealing with the WOS directly. I was never provided access to inspect the books of accounts of the Company and am not aware of the loans advanced to the WOS.

15.3.8. I say that the allegations in para 8.5 against me are prima facie wrong. The number of Audit Committee meetings, even as per the SCN, attended by me were 9. The total meetings held during the Examination Period in question, from FY 2016-2017 till were 21 as per the information provided in the SCN. I say that I do not have the exact details of the meetings held or the number of meetings held as I was never provided the final minutes of any of the meetings. I say that I was never provided correct, adequate information during the Audit Committee Meetings and was constrained to limited information available before me. Furthermore, the remaining two independent directors were always in contravention of my inputs, and accordingly, my inputs were never considered in the Audit Committee Meetings. However, as a majority decision, the decision of the other two independent directors would always prevail and I was constrained by the same. I accordingly deny that I have violated any provisions of the SEBI Act.

15.3.9. I have tendered my resignation as an independent director of the Company due to my medical condition on March 6, 2023 and the same stands effective from March 6, 2023. Hereto annexed and marked Annexure B is my letter of resignation.

15.3.10. In this regard, I would like to draw your kind attention to the recent Hon'ble Supreme Court judgment dated 28th February 2019 in the matter of Adjudicating Officer vs. Bhavesh Pabari, wherein the Hon'ble Apex Court has upheld that the Adjudicating Officer shall not be constrained by the minimum extent of penalty laid in the SEBI Act and may, where circumstances so warrant, either waive off the penalty completely or may assign a penalty less than the so called minimum. Moreover, in the said judgment, the Hon'ble Apex Court has emphasised that the adjudicating officer shall have due regard to the factors stated in Section I 5J of the SEBI Act as stated above.

15.4. Noticee no. 4 vide email dated February 24, 2023 forwarded his reply to SCN. Extract of his reply is given below:

15.4.1. I have since resigned as Independent Director of Excel Realty N Infra Ltd, since 05.03.2019. Only the company and the Directors of the company will be in a position to revert to the details of the allegations made in the Show Cause Notice. The Show Cause Notice refers to period of FY 2016-17 to 2020-21 and for part period I was never part of the company. It appears that the company has filed detailed representation to the inquiry caused vide letters dated 12.07.2021 and 10.02.2022, to which there is no reference in the Show Cause Notice. The Show Cause Notice has not distinguished the representations made by the company, which itself shows that the Show Cause Notice has been issued without taking into consideration the same. The representations/replied filed by the Company clearly absolves me from any further proceedings. The Company has given effective reply to all the allegations forming part of the Show Cause Notice. Having failed to discuss or distinguish the detailed replies of the company, the Show Cause Notice appears to be misleading in nature and therefore none of the allegation in the Show Cause Notice stands substantiated as such vis-à-vis me.

15.4.2. The company has not imputed any breach or violation committed by me, while performing duty as its Director. Hence, the Show Cause Notice seeking to allege violation of the provisions of SEBI Regulation is completely improper.

15.4.3. The burden under the Regulation 4 is upon the listed entity i.e. the company, only and not upon the Directors of Audit Committee as such. It is apparently clear that *in the first instance, it is the Company which is responsible to comply with the formalities. Thus, when the Company is the offender, vicarious liability of the Directors that too of Audit Committee cannot be imputed automatically. It is the cardinal principle that there can be no vicarious liability unless the statutes specifically provides for it.*

15.4.4. *Hon'ble Apex Court in the case of Himanshu v. B.Shivamurthy and another [(2019) 3 SCC] has held that in the absence of company being arraigned as an accused, a complaint against the director is not maintainable. It was held further that the commission of the offence by the company is an express condition precedent to attract vicarious liability of Director. Hence indubitably I could not have been arraigned as a noticee, when the Company has not been made a noticee, nothing survives in the impugned Show Cause Notice.*

15.4.5. *Noticee No. 4 relied on the order dated 09.08.2019 passed by Hon'ble Securities Appellate Tribunal in the case of Sayanti Sen*

15.4.6. *Section 27 of SEBI Act is similar to that of Section 141 of the Negotiable Instruments Act, 1881. Section 27 of SEBI Act also deals with situations where Directors of the company are liable for the offences by the company.*

15.4.7. *Hon'ble Supreme Court of India in the Sahara Case, observed and highlighted the fact that Companies Acts and SEBI Act will have to work in tandem, in the interest of investors, especially when public money is raised by the issue of securities from the people at large. It is noted that one of the situations in which the liability of Directors spring up under Section 27 of the SEBI Act is when the offence committed is attributable to the neglect of the Director or knowledge of the Director of the violation. Therefore, even under Section 27 of the SEBI Act, Noticee as a Director would have liability if acts of neglect can be found against him. While dealing with the acts of neglect and knowledge. Therefore, even on the ground of knowledge or neglect, there is no such allegation made in the Show Cause Notice. It may be noted the liability discussed under Section 27 of SEBI Act is independent of the liability arising out of Section 5 of the Companies Act, 1956 only against an officer in relation to the default committed.*

15.4.8. *Hon'ble Supreme Court in the matter of K.K.Ahuja Vs. V.K.Vora, reported in (2009) 10 SCC 48 with respect to the vicarious liability of the Noticee for the* *conduct of affairs of the company. In this regard it is noted that the said matter dealt with the issue of persons who can be said to be "in charge of and was responsible to the company for the conduct of business of the company" as referred to in Section 141 of the Negotiable Instruments Act, 1881. The Apex Court observed that to be vicariously liable under sub Section (1) of Section 141 of the Negotiable Instruments Act, 1881, a person should fulfil the "legal requirement" of being a person in law (under the statute governing the companies) responsible to the company for the conduct of the business of the company and also fulfil the "factual requirement" of being a person in charge of the business of the company. The said observation of Apex Court was in terms of the express provision / language of the Section 141 of the Negotiable Instruments Act, 1881, which would squarely apply in the present case, as the person responsible for compliance were the management and directors, who have not been issued any notice.*

15.4.9. *Hence it is apparent that the provisions cast duty upon the Listed entity and the Board of Directors who were at the helm of the affairs to make disclosure in the manner prescribed. Though the Show Cause Notice refers to that entities mentioned in the Chart have violated the provisions of law. The entities word can only be referred to company and cannot in any manner be equated to the Directors, who were part of the Audit Committee. The Show Cause Notice has not been able to distinguish or carve out any fortified reasons for not considering the explanation given by the entity i.e. the company. If the representation made by the company has not been rejected, thereby deriving that the contentions of the company has been accepted by your office in toto and having accepted the explanation offered by the company, the entire exercise of issuance of Show Cause Notice is completely improper.*

15.4.10. *I say that the provisions of the Regulations alleged to have been violated has no relation to the responsibilities of the Audit Committee, the compliance in relation to reporting and other duties to the public always remained on the persons making the disclosure and that will be only the Directors at the helm of the affairs of the company. Surprisingly such Directors, who were responsible for the working and functioning of the company have not been made noticees and no action has been caused against them.*

15.4.11. I say that the provisions of the Regulations alleged to have been violated has no relation to the responsibilities of the Audit Committee, the compliance in relation to reporting and other duties to the public always remained on the persons making the disclosure and that will be only the Directors at the helm of the affairs of the company. Surprisingly such Directors, who were responsible for the working and functioning of the company have not been made noticees and no action has been caused against them.

*15.4.12. That role of the audit committee is limited to the functions reproduced in the notice and pertinently it boils down to (4) wherein it is required to carry out review, **with the management**, the **annual financial statement and auditor's report** thereon before submission to the board for approval, with particular reference, which includes:*

disclosure of related party transaction, major accounting entries, compliance of listing and other legal requirement relating to financial statement, reviewing with the management, the statement of uses/application of funds raised through an issue, evaluation of internal financial controls and risk management, discussion with statutory auditors and others .

Hence, in a nutshell, the powers of Audit Committee is making report and presenting the same to the Management and Board of Directors all the details and scope mentioned in the Schedule relating to the scope of Work of the Audit Committee. However, the ultimate responsibility towards the public and compliance of the statutory provisions rests only upon the Management and Board of Directors at the helm of the affairs, who have not been made noticees and hence the Show Cause Notice is completely bad-in-law for non-joinder of necessary parties and on this ground alone, the Show Cause Notice deserves to be discharged.

15.4.13. Apart therefrom, Section 27(1) also refers to Contravention by companies, and it provides that every person who at the time of 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. I state that I was never at the helm of the affairs of the company and *was never conducting the business of the company at any point of time and hence the Show Cause Notice is completely misdirected and the same deserves to be dropped in the interest of justice.*

15.4.14. So also section 27(1) refers to proceed against the company for any contravention committed, however no action has been proposed to be taken against the company. In absence of any action proposed to be taken against the company in the Show Cause Notice, none of the allegation in the Show Cause Notice against me would subsist and hence the Show Cause Notice deserves to be dropped.

15.4.15. For invoking monetary penalty under section 15 HB of the Act, the Show Cause Notice should have been able to show that the responsibility towards the public and shareholders rested only with the Audit Committee and that no other Board of Directors or the Company was responsible for the alleged contravention. It is apparent that Audit Committee is being held responsible and no action has been proposed against the Directors who were at the helm of the affairs of the company, which shows that the Show Cause Notice has been issued in an unfair manner.

15.4.16. The Regulation and the Act undoubtedly cast duty and burden upon the Management responsible for the working of the company. I was merely an independent Director and was never responsible for working of the Company as regards, its Management and functioning. The proposed action for imposition of penalty is sought to be made against the Audit Committee Members only, who were never at the helm of affairs of the Company. Therefore, the Show Cause Notice is misdirected, improper and deserves to be dropped.

16. I note that proceedings under section 11 and 11 B of SEBI Act, were also initiated in the matter of Excel Reality N Infra Limited on the same facts of the matter against the company and its Chairman/Directors/CFO. I note that, vide order of Whole Time Member, SEBI, dated July 28, 2023, the charges of misrepresentation of financial statements were established and following directions, *inter alia* (monetary penalty), were issued:-

"Directions and monetary penalties:

18. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 11(1), 11(4), 11(4A), and 11B(1), 11B(2) of SEBI Act, 1992 read with Section 19 and Rule 5 of the SEBI (Procedure for holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 1995, direct as under:

(i) Noticee no. 1 (Excel Realty N Infra Limited) shall take all steps to bring back the balance amount of funds outstanding from the WOS of Excel within a period of one (1) year from the coming into force of this order. The Audit Committee of Excel shall review the compliance of this direction at regular intervals;

(ii) Noticee no. 1 is restrained from accessing the securities market for a period of six (6) months, from the date of coming into force of this order;

(iii) The Noticee no. 2 (Mr. Lakhmendra Chamanlal Khurana) is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of two (2) years, from the date of coming into force of this order;

(iv) The Noticee no. 3, 4 and 5 (Mrs. Ranjana Khurana Lakhmendra, Mr. Arpit Lakhmendra Khurana and Mr. Pramod Yeshwant Kokate respectively) are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of one (1) year, from the date of coming into force of this order;

(v) Noticee no. 2 is restrained from being associated with the securities market including as a director or Key Managerial Personnel in a listed company or an intermediary registered with SEBI or any Market Infrastructure Institution, for a period of one (1) year, from the date of coming into force of this direction."

17. I note that Noticees were members of Audit Committee of "Excel" during the examination period. Noticees have attended meetings of Audit Committee and SCN contains the detail of their attendance in the meetings of Audit committee held during the examination period.

18. I note that Regulation 18 of LODR Regulations deals with the constitution, composition and role of Audit Committee. Role of Audit Committee and information to be reviewed by the Audit Committee is specified in Part C of Schedule II as follows:

Provisions of Para A of Part C of Schedule II

PART C: 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;

(2) recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity;

(3) approval of payment to statutory auditors for any other services rendered by the statutory auditors;

(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;

(6)reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the

statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the board to take up steps in this matter;

(7) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;

(8) approval or any subsequent modification of transactions of the listed entity with related parties;

(9) scrutiny of inter-corporate loans and investments;

(10) valuation of undertakings or assets of the listed entity, wherever it is necessary;

(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;

(16) discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;

(17) to look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;

(18) to review the functioning of the whistle blower mechanism;

(19) approval of appointment of chief financial officer after assessing the qualifications, experience and background, etc. of the candidate;

(20) Carrying out any other function as is mentioned in the terms of reference of the audit committee.

(21) reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the

subsidiary, whichever is lower including existing loans / advances / investments existing as on the date of coming into force of this provision.

(22) consider and comment on rationale, cost-benefits and impact of schemes involving merger, demerger, amalgamation etc., on the listed entity and its shareholders.

19. Further, in terms of Section 177 of the Companies Act, 2013, the terms of reference of every Audit Committee shall, *inter alia*, include the following:

(i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;

(ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;

(iii) examination of the financial statement and the auditors' report thereon;

(iv) approval or any subsequent modification of transactions of the company with related parties:

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;

(v) scrutiny of inter-corporate loans and investments;

(vi) valuation of undertakings or assets of the company, wherever it is necessary;

(vii) evaluation of internal financial controls and risk management systems;

(viii) monitoring the end use of funds raised through public offers and related matters.

20. In view of the above, I note that duties of Audit Committee, *inter alia*, include 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, reviewing with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, disclosure of any related party transactions, scrutiny of inter-corporate loans and investments etc.

21. I find that Noticees were member of Audit Committee and were responsible for ensuring financial statements being disclosed to the public are correct. Order passed by WTM, SEBI on July 28, 2023 brought out that financial statements were manipulated and significantly mis-stated and publication of manipulated financial results during FY 2016-17 to FY 2020-21, which were untrue and misleading, operated as deceit on the shareholders of “Excel”. Had the information regarding misrepresentation of financials known to the investors, there would have been a fall in share price of “Excel”.

22. Noticee nos. 1 & 2 have filed similar replies wherein they have stated that they were not concerned with day-to-day affairs of “Excel” and cannot be held responsible for lapses, if any, in its (“Excel”) day-to-day working. Contention raised by said Noticees is misplaced as the Noticees were part of the audit committee and were entrusted with the responsibilities of oversight of financial statements and reviewing the same with the management of listed entity. Further, sub clause (c) of Clause 2 of Regulation 18 of LODR expressly gives powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary. However, there is nothing on record to show that Noticees, being Audit Committee members, had raised any objections on the wrong doings regarding misrepresentation of financial statements of “Excel”.

23. Noticee no. 3 in his reply dated March 06, 2023 stated that prior to his appointment he was assured by company’s MD that utmost transparency would be maintained. Noticee no.3 further stated that upon being appointed, he was never even provided access to any of the books of the company and was never informed about any investment of the company. Contention raised by Noticee no. 3 is not acceptable. Audit Committee is entrusted with the responsibilities of oversight of financial statements and reviewing the same with the management of listed entity. With regard to appointment of Audit Committee members, it is specified in the Regulations that all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise. The criteria prescribed for appointment of Audit committee members is to ensure that they shall perform their responsibilities effectively. Member of the

Audit committee cannot abdicate from liability merely by stating that he was not provided access to books of the company or was never informed about any investment of the company or minutes of meetings were not shared with him. There is nothing on record to show as to what steps were taken by Noticee no. 3 in case of non-cooperation by the management of “Excel”. Noticee no. 3 ought to have shown due diligence by raising red flag by asking the management about investments made by the company. Noticee no. 3 remained silent on the violations committed by “Excel” during his tenure and tendered his resignation on March 06, 2023 (i.e. after the issuance of SCN) in an afterthought to prevent any regulatory action against him.

24. Noticee no. 3 during the course of hearing made a request to provide copies of minutes of Audit Committee for the meetings held in the year 2019-20 and 2020-21. As confirmed by concerned operation department of SEBI, such documents were not relied upon for examination in this matter. I note that all necessary documents were provided to Noticee no. 3 along with SCN.

25. Noticee no. 4 in his reply dated February 24, 2023 submitted that the burden under Regulation 4 (of LODR) is upon the listed entity i.e. the company only and not upon the Directors of Audit Committee as such. Noticee no. 4 further emphasised in his reply that it is apparently clear that in the first instance, it is the company which is responsible to comply with the formalities. Noticee no. 4 during the course of hearing reiterated that unless the charges against the company and its management are established the charges against the member of Audit Committee cannot be established. In this regard, I note that WTM, SEBI vide order dated July 28, 2023 had already established the charges against the company and its management and also passed necessary direction including imposition of monetary penalty on the erring entities in the matter of Excel Realty N Infra Limited.

26. Noticee no. 3 in his reply disputed the date of his appointment as independent director of “Excel”. Date of his appointment, as recorded in SCN, is May 29, 2019, whereas, Noticee no. 3 submitted that he was appointed as Director of the company on September 27, 2019. Noticee no. 3 provided a copy of his appointment letter dated September 27, 2019. Further, Noticee no. 3 also argued in his reply that SCN refers to several alleged transactions that occurred prior to his appointment. I note that details of several fraudulent transactions/investments/ advances made by "Excel" during the examination period i.e. FY 2016-17 to FY 2020-21 were provided to Noticees in the SCN. Even if Noticee no. 3 was appointed on September 27, 2019, he had attended all meetings of Audit Committee held during FY 2019-20 and FY 2020-21 as alleged in SCN. Noticee no. 3 has not disputed the said fact and never raised any red flag regarding the misrepresentation of financial statements of "Excel". There is no material/evidence available on record which might suggest the due diligence carried out by Noticee no. 3, being member of Audit Committee, to prevent the fraudulent disclosure of bloated financial statements of the company. Noticee no. 3 cannot escape his liability by tendering his resignation on March 06, 2023. Therefore, contention raised by Noticee no. 3 is rejected. Similarly, contention raised by Noticee no. 4 regarding not being associated with "Excel" during entire examination period since he had resigned on March 05, 2019, is also devoid of merit and liable to be rejected since he has not produced any proof of resignation and has attended most of the meetings of the Audit Committee, held during the examination period.

27. In view of the above, I note that Noticees had attended majority of meetings of Audit Committee held during the examination period and they were entrusted with the responsibility of oversight of financial reporting process and disclosure of correct financial information. However, Noticees failed to perform their duty of keeping oversight on the financial reporting and also failed to review financial statements and failed to disclose related party transactions. Therefore, it is established that Noticees have violated the provisions of Regulations 4(1)(a), (b),(c),(e),(g),(h),(i),(j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2)(6)(7)(8), 4(2)(f)(iii)(1)(2)(3) (6) (12), & Regulation 33(1)(a) (c), 33(2)(a), Regulation 48 and Regulation 18(3) r/w Para A of Part C of Schedule II of LODR Regulations r/w section 27 (1) of SEBI Act.

ISSUE No. II: Do the violations, if any, attract monetary penalty u/s Section 15HB, of SEBI Act, as applicable?

28. In light of findings and observations made against the Noticees brought out in the foregoing paragraphs, it is evident that the Noticees have violated the provisions of SEBI Act and LODR Regulations as alleged in the SCN. Thus, Noticees are liable for monetary penalty u/s 15 HB of SEBI Act. The contents of said provision of law are reproduced herein below:

> ***Penalty for contravention where no separate penalty has been provided.***
> *15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

ISSUE No. III: If so, what should be the monetary penalty that should be imposed upon the Noticees, after taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

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

> ***15J – Factors to be taken into account by the adjudicating officer***
> *While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or 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.*

30. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the non-compliance committed by Noticees, is not available. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violation by the Noticee. No material is available on record to indicate repetitive nature of violations committed by Noticees.

ORDER

31. After taking into consideration the facts of the matter, violations established against Noticees, I impose the following penalty on them:

Name of Noticees (PAN)	Provisions Violated	Sections attracted	Penalty (in Rs.)
Binoy Gupta (PAN: ACTPG5263E)	Regulations 4(1)(a),(b),(c),(e),(g), (h), (i),(j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2)(6)(7)(8), 4(2)(f)(iii) (1)(2) (3)(6) (12), & Regulation 33(1)(a)(c), 33(2)(a), Regulation 48 and Regulation 18(3) r/w Para A of Part C of Schedule II of LODR Regulations r/w section 27 (1) of SEBI Act.	Section 15 HB of SEBI Act	Rs. 2,00,000 (Rs. Two Lakhs Only
Subrata Kumar Dey (PAN: ABZPB2302G)			Rs. 2,00,000 (Rs. Two Lakhs Only
Subir Kumar Banerjee (PAN: AFTPD0266P)			Rs. 2,00,000 (Rs. Two Lakhs Only
Ramesh M Joshi (PAN: ACMPJ1824D)			Rs. 2,00,000 (Rs. Two Lakhs Only

I find that the said penalty is commensurate with the violations committed by Noticees in this case.

32. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

33. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act and Section 23JB of the SCRA for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

34. In terms of Rule 6 of the Adjudication Rules, 1995 a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

PLACE: MUMBAI	**AMIT KAPOOR**
DATE: AUGUST 23, 2023	**ADJUDICATING OFFICER**