BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO. Order/SS/RK/2023-24/29290-29291]**

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

In respect of

S.No	Name of Noticees	PAN
1.	Mr.Vishal Ahuja	ATKPA0926E
2.	Mr.Prashant Prabhakar Gadkari	AKQPG5006N

In the matter of "Setubandhan Infrastructre Limited"

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) had conducted an investigation in the matter of Setubandhan Infrastructure Limited., (**'SIL' / 'company'**) (Formerly known as Prakash Constrowell Ltd.), a company listed on Bombay Stock Exchange **("BSE")** and National Stock Exchange **("NSE"),** on the receipt of a complaint alleging that despite the company posted repeated losses, based on the disclosure made after 2016, the share price went life time high and the promoters off-loaded their shares in the market. Further it was also alleged that the manner of provisioning of bad debts made by the company was suspicious for the FY 2019-2020.

2. Based on the said complaint, a preliminary examination *prima facie, revealed that* there were financial irregularities such as misrepresentation of financial statements, diversion and misutilisation of funds of SIL. Pursuant to which, the matter was taken up for a detailed investigation, for four financial years from FY 2016-17 to 2019-20 (hereinafter referred to as **"Investigation Period" / "IP"**), to ascertain the possible violation of provisions SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, (**LODR Regulations**). However, wherever deemed necessary, references have been made to the events/timeframes outside the IP.

3. In this respect, an independent forensic auditor, BDO India LLP was appointed. The scope of the forensic audit was for the years ending March 31, 2017- 2020 with a special focus on provisioning for bad debts, genuineness of trade receivables, diversion of funds and disclosed/potential related party transactions etc. Thus, BDO India was to examine/verify, inter alia, the followings:

    a. Manipulation of Books of Accounts;
    b. Misrepresentation including of consolidated financials and/or business operations;
    c. Wrongful diversion/siphoning of company funds by promoters/ directors/ key managerial persons;
    d. Provisioning for bad debts, genuineness of trade receivables and disclosed/potential related party transactions.

4. Accordingly, the forensic auditor submitted the report on July 11, 2022.

5. Pursuant to the observations made in the forensic audit report, annual reports of SIL and submission made/statement (recorded) given by the former Independent Directors and members of the Audit committee of SIL Mr. Vishal Mukesh Ahuja (**Noticee No.1**) and Mr. Prashant Prabhakar Gadkari (**Noticee No.2**) (hereinafter collectively referred to as "the **Noticees**") during the IP, a detailed investigation report (hereinafter referred as **'IR'**) was prepared whereby the investigation observed the following financial irregularities:

   a) Misrepresentation of financials by fictitious purchases & sales and diversion of funds to connected entities by making payment towards fictitious purchases.
   b) Misrepresentation of closing balances
   c) Non-disclosure of Related Party Transaction in Annual Report.
   d) Transactions with connected vendors at nominal profit or at loss.
   e) Diversion of funds by improper write off of payments and balances.
   f) Unreasonable write off for project Work in Progress (WIP).
   g) Non-recovery of High ageing advances resulting in misutilisation of funds.
   h) No documentation for purchase and sale of fixed assets with connected entities.

6. As the aforesaid financial irregularities observed during the Noticees' tenure as a member of the Audit Committee, the Noticees were alleged to have violated the provisions of Regulation 18 (3) r/w clause A (1), (4), (11) under Part C of Schedule II of LODR Regulations for the failure in discharging their duties of overseeing the

financial reporting process and ensuring the disclosure of financial information of SIL.

APPOINTMENT OF ADJUDICATING OFFICER

7. In this regard, SEBI initiated Adjudication Proceedings against the Noticees and had appointed Shri G. Ramar as the Adjudicating Officer (AO) vide order dated October 13, 2022, communicated vide communique dated October 13, 2022 under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 *(*hereinafter referred to as '***Adjudication Rules')*** to inquire into and adjudge under Section 15HB of the SEBI Act, 1992 for the aforesaid violation alleged to have been committed by the Noticees as specified in the SCN. However, pursuant to the transfer of the erstwhile said AO, undersigned was appointed as the AO in the matter vide Order dated July 25, 2023 communicated by communique dated July 31, 2023.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. A common Show Cause Notice dated January 17, 2023 (hereinafter referred to as ***SCN***) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty, if any, under Section 15HB of the SEBI Act, be not imposed upon the Noticees.

9. The said SCN was issued to the Noticees via SPAD and was duly delivered. The proof of service is on record. In response, the Authorized Representative (AR) of the Noticee No.1 vide email dated February 03, 2023 had sought inspection of

documents relied upon in the matter. Accordingly, vide email dated March 15, 2023, the said AR was granted an opportunity to inspect the documents relied upon in respect of Noticee No.1 on March 17, 2023 along with an advice to file reply within 7 days from the date of inspection. However, the said AR sought more time to file reply. In this regard, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted on March 27, 2023 vide Hearing Notice dated March 17, 2023 served through email on the same day with a further advice to file reply on or before March 26, 2023 considering the request of the AR. In response to this, the AR of the Noticee No.1 vide email dated March 25, 2023 submitted his reply to the SCN which is summarized as under:

- *The Noticee mentioned that his appointment was made on the condition that he will not be involved in any manner whatsoever in the affairs of SIL. Noticee never attended any board meeting or Audit committee meeting during my tenure as Director of SIL. Noticee never received any Notice or Agenda of such meetings and hence never received any remuneration for the same. If any document shows otherwise than that is fictitious and forged.*
- *Certain documents were requested during the adjudication proceedings which were not provided. It includes:*

  a) Notice of Board Meetings and Audit Committee Meetings along with proof of Service of such Notices to Noticee No.1.

  b) Attendance Sheets of such meetings.

  c) Minutes of 27 Board Meetings and 17 Audit Committee Meetings.

d) Proof of Service of Draft Minutes of 27 Board Meetings and 17 Audit Committee Meetings.

- *Noticee No. 2 in the present case Mr. Prashant Prabhakar Gadkari has also mentioned in his statement recoding before SEBI that he never attended any Board Meeting or Audit Meeting of SIL during FY 2016-17 to 2018-19 nor any remuneration was paid to him for said purpose.*
- *The statements recorded by SEBI of other Directors and Audit Committee members of SIL during the same time period corroborates that I never attended any such meeting either of Board or Audit Committee.*
- *The SCN issued relied heavily on the Forensic Audit Report submitted by BDO India LLP. However, despite requests the copy of same was not provided due to which I am unable to defend myself and submit effective reply. In this regard, the Noticee referred to the judgment of Supreme Court in* ***T. Takano vs SEBI*** *in Civil Appeal Nos. 487-488 of 2022 dated 18.02.2022 and another order of Hon'ble SAT in* ***Smitaben N Shah vs SEBI*** *(decided on 30th July, 2010).*
- *Since the Noticee never attended any such meetings the irregularities observed in the financials of the company like Round tripping of funds through circular transactions, Misrepresentation of closing balances, Non-disclosure of RPT etc. cannot be attributed to the Noticee and he was not aware of the same.*
- *Further during hearing the Noticee submitted that Mr. Prafulla Bhat is behind the entire manipulation and fraud.*

10. The said hearing was attended by AR of the Noticee No.1 wherein the AR reiterated the submissions made by him vide its aforesaid email dated March 25, 2023.

11. In respect of Noticee No.2 on the captioned matter, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted on March 24, 2023 vide Hearing Notice dated March 17, 2023 served through email on the same day with a further advice to file reply on or before March 23, 2023. In this regard, Noticee No. 2 vide email dated March 25, 2023 submitted his brief reply to the SCN wherein he stated the following. However he failed to appear for the scheduled personal hearing.

   i. *Firstly, I would like to draw your kind attention towards the fact that I had clearly told you during my visit to your office on last occasion that I do not have any information to provide you in relation to the said company and hence, I am not entitled to file any reply thereof. Hence, I have not filed any reply in reference thereto.*

   ii. *I repeat and reiterate that I was not attending the office of Setubandhan Infrastructure Limited on day-to-day basis and I was not part of the day-to-day business affairs of the said company, which I have already told you when I visited your office on last occasion. Hence, I am not at all connected with any of the transactions and /or deals of the said company.*

   iii. *I repeat that I am nowhere concern with any of the transactions and/or deals of Setubandhan Infrastructure Limited. Hence, kindly relieve me from the aforesaid proceedings.*

12. Pursuant to the transfer of the Adjudication proceedings from the erstwhile AO as detailed above and in order to conclude the proceedings, another opportunity of hearing in the matter was granted to both the Noticees on September 08, 2023 vide email dated August 28, 2023. The said hearing was attended to by the AR of the Noticee No.1 who reiterated the submissions as mentioned hereinabove. The said

AR again made repetitive submission in the matter vide email dated September 14, 2023 as detailed above. However, Noticee No.2 didn't attend the said hearing nor made any submission in the matter.

13. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticees ample opportunities for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and reply submitted by the Noticees.

CONSIDERATION OF ISSUES AND FINDINGS

14. I have carefully perused the submissions made by the Noticees and documents available on record, and the issues that arise for consideration in the present case are:

    (a) Whether Noticees have violated the provisions of Regulations 18(3) read with clause A(1), (4), (11) under Part C of Schedule II of SEBI (LODR) Regulations, 2015 ?

    (b) Does the violation, if any, on the part of the Noticees attract penalty under Section 15HB of the SEBI Act?

    (c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

15. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI (LODR) Regulations alleged to have been violated by the Noticees. The same are reproduced below:

- ***LODR Regulations***

Audit Committee.

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.

SCHEDULE II: CORPORATE GOVERNANCE
PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE
[**See Regulation 18(3)**]

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;

……….

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

Preliminary Issue

16. Noticee No.1 in his submission has contended that by not providing copy of the forensic audit report, principle of natural justice has been breached by SEBI and he also stated that he deprived of from free and fair opportunity to defend his case. To substantiate the said claim, the Noticee has relied upon the judgments of Hon'ble Supreme Court and Hon'ble SAT, like:

- ***T. Takano vs SEBI*** *(supra)*
- ***Smitaben N Shah vs SEBI*** *(supra)*
- ***SEBI vs Price Waterhouse*** *(decided on 10th January, 2017)*
- ***Vikas Gourihar Narnavar vs SEBI*** *(decided on 15th June, 2010)*

17. In respect of the above contention of the Noticee that the copy of the forensic Audit Report has not been provided to him, I note that a copy of Investigation Report of the present case was provided to the Noticee and also the SCN was duly served upon him. Further I note that the aforesaid Investigation Report is nothing but it is an extract of the content of the Forensic Audit Report. In addition to that it also contains some of the relevant material information of the Annual Report of SIL as well as the relevant admitted facts made by the Noticee while making submission/given (Recorded) statement during the investigation to the Investigating Authority. It is therefore, the said facts of receipt of Investigation report and other relevant documents such as Recorded Statement cannot be denied by the Noticee.

18. In view of the above, I note that all the relevant observations made in the forensic audit report were already captured in the investigation report, which was provided in the form of SCN to the Noticee. Hence, I note that the principle laid by Hon'ble Supreme Court in *T. Takano i.e. "all information that is relevant to the proceedings must be disclosed in adjudication proceedings"* was duly followed.

19. Further, I note that the Noticee in his reply has merely made a bald statement that "non-disclosure of such report has deprived him of a free and fair opportunity to

defend himself”. However, in this regard, nothing specific has been brought out by him in support of the said claim and he has also not sufficiently demonstrated how this ground of non-availability of such document has caused prejudice to him. Hence, the instant contention raised by the said Noticee is not tenable and accordingly rejected.

Issue a: Whether Noticees have violated the provisions of Regulations 18(3) read with clause A (1), (4), (11) under Part C of Schedule II of SEBI (LODR) Regulations, 2015?

20. In this regard, I note from the IR that there were observation with regards to the financial irregularities such as misrepresentation of financials/ closing balance by fictitious purchases & sales, diversion of funds to connected entities by making payment, non-disclosure of Related Party Transaction in Annual Report as well as transactions with connected vendors at nominal profit or at loss, Diversion of funds by improper write off of payments and balances, Unreasonable write off for project Work in Progress, Non-recovery of High ageing advances resulting in misutilisation of funds and No documentation for purchase and sale of fixed assets with connected entities etc. Further I note that the aforesaid irregularities are financial in nature and the details of the said irregularities mentioned below were observed during the tenure of Noticees as a member of the Audit Committee and therefore the Noticees have been alleged to have violated the provisions of LODR.

Misrepresentation of financials by fictitious purchases & sales and diversion of funds to connected entities by making payment towards fictitious purchases:

21. With respect to the captioned alleged violation, I note from IR that the SIL had accounted trading transactions of purchase and sale of materials with various entities which were not supported by any documentary evidence (except invoices in some cases). Further, I note from IR that on reviewing the customer receivable balance, which were provisioned in FY 2019-20, the sales to those customers (whose balances were provisioned) were trading transactions. In this regard, though the company was into construction business, I note that voluminous trading transactions were booked during the period from FY2016-17 to FY2019-20 as purchase and sale of TMT bars, steel, metal channels, M S Angles, etc.

The summary of select party-wise ledgers of trading of such purchase and sale transactions is given in the table below.

Party Name	**Opening on 01-04-16**	**Sales**	**Receipts**	**Purchases**	**Payments**	**Adjustment**	**Closing on 31-03-20**	**Provision for bad debts**	**Balance o/s from****
Aikya Infra-Projects Pvt Ltd	-	37.83	(29.25)	-	-	0.07	8.64	10.02	July 2018
Stance Synergy Pvt Ltd	-	11.84	(5.96)	-	-	-	5.88	1.13	Nov 2017
Naolin Infrastructure Pvt Ltd	-	9.65	-	(13.03) **$**	13.87	(0.84)	9.65	9.65	Aug 2017
Plconmat Supplier Pvt Ltd (connected with SIL)	0.11	7.34	(9.42)	(5.38)	7.92	0.84	1.41	1.02	Feb 2019
Erman Metals Pvt. Ltd	-	7.16	(4.49)	(2.70)	2.70	-	2.67	2.67	Nov 2018
Flyhigh Infra-Projects Pvt Ltd	-	6.65	(2.53)	-	-	-	4.12	4.12	Sept 2018
Sanmukh Fab Industries Pvt Ltd	-	4.26	(2.09)	-	-	-	2.17	2.17	Oct 2018
Sadbhav Engineering Limited	-	3.67	(2.32)	-	-	-	1.35	-	Oct 2018
SPA Technical Services Pvt Ltd	-	2.82	(2.48)	-	-	-	0.34	0.34	Mar 2019

Sorority Traders Pvt Ltd	-	2.78	(2.51)	-	-	-	0.26	0.26	Oct 2018
Pioneer Trading Company	-	0.95	(0.85)	-	-	-	0.10	-	July 2018
Galina Consultancy Services Pvt Ltd	-	0.63	(0.62)	-	-	0.52 @	0.53	0.53	Jan 2018
Hi-tech Infra #	-	0.61	-	-	-	-	0.61	0.61	May 2017
Nevecea Infraspace Pvt Ltd	-	1.04	-	-	-	(0.02)	1.02	1.02	March 2019
Seam Industries Ltd	-	40.31	-	-	-	(40.31)	-	-	
Saisons Trade & Industry Pvt Ltd	-	-	-	(63.26)	65.87	(2.61)	-	-	-
Skyfall Trading Pvt Ltd (connected)	-		(5.05)	(26.69)	32.59	(0.84)	-	-	-
Damani Multitrade Pvt Ltd (connected)	(0.15)		(9.64)	(108.46)	76.27	41.98	-	-	-
Total (top customers)	**(0.04)**	**137.54**	**(77.21)**	**(219.52)**	**199.22**	**(1.17)**	**38.75**	**33.54**	

Rs. in Crore

$ Purchase from Naolin Infrastructure pertains to service contract and not material purchase.

** In the absence of debtors ageing report, the Balance outstanding is calculated basis FIFO method of sales bill outstanding.

The balance of Hi Tech Infra is of Debtor ledger. Apart from said debtor ledger, there is also a creditor ledger wherein work execution expenses is booked (project cost).

@ Adjustment with Galina Consultancy is on account of transfer of Rs.0.52 crore from Naolin Infrastructure to Galina Consultancy and therefore, a receivable balance of Rs.0.52 crore from Galina Consultancy.

22. From the aforesaid table, I note that while Rs.184.53 crores (Rs.199.22 crore – Rs.5.05 crore – Rs.9.64 crore) were paid towards purchases of Rs.219.52 crores, only Rs.62.52 crores (Rs.77.21 crore – Rs.5.05 crore – Rs.9.64 crore) were received towards sales of Rs.137.54 crores. Further, Provision for bad debts was made for Rs.33.54 crores. Moreover, these sale and purchase transactions were not supported by adequate documents and were without any business rationale. Further, I note that payments were made to trading vendors through Letter of Credit (LC) facility though trading sales remained uncollected, thereby, indicating that the

LC facility was mis-used and the uncollected sales of Rs.33.54 crore (bad debts) corroborate the booking of fictitious sales.

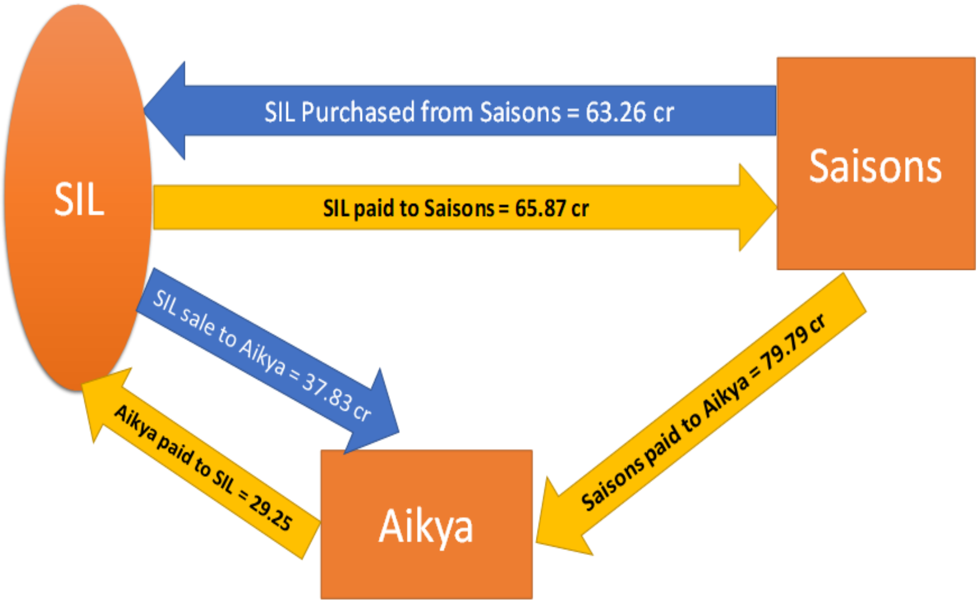
23. I further note from IR that the materials purchased from Sasisons Trade & Industy Pvt Ltd., ("Saisons"), Damani Multitrade Pvt Ltd ("Damani") and Skyfall Trading Pvt Ltd ("Skyfall") were sold on the same day or within two days to few entities viz Alkya Infra-Projects Ltd ('Aikya"), Stance Synergies Pv Ltd ("Stane"), Flyhigh Infra-project Pvt Ltd (Flyhigh, Eramn Metals Pvt Ltd ("Erman"), and Sanmukh Fab Insursties Pvt Ltd ("Sanmukh") etc. In this regard, I note that that the payments to vendors were made, but a significant part of the receivables from the said entities were not collected and were either written off as bad/doubtful debts in FY 2019-20 or adjusted with outstanding payable balance of other entities and that the outstanding receivables shown from these entities as on March 31, 2018 and 2019 were also fictitious as there was no actual sales to these entities.

24. This apart, the detailed analysis of the payments made to vendors indicated as under:

I. Round tripping of funds through circular transactions:

25. As regards captioned observation, I note from IR that the analysis of bank statements of Aikya shows that Aikya had received funds worth Rs.79.79 crores from Saisons during the period July 20, 2017 to June 18, 2019, out of which and Aikya paid Rs.28.65 crore to SIL during the period December 11 to October 29, 2017. Further, I note that the payments made by SIL to Saisons towards purchases of materials was observed to be transferred from Saisons to Aikya and that Aikya

paid SIL Rs. 29.25 crores towards the sales transactions booked by SIL from the said bank statements. Thus, the fund flow among SIL, Saisons and Aikya shows that the fictitious purchases and sales among SIL, Saisons and Aikya was predominantly funded by SIL only and the same is corroborated by the lack of supporting documents.



II. <u>Non-collection of receivables and write off as bad / doubtful debts:</u>

26. With regard to the above observation, I note from IR that:

   a. The amount of provision for bad debts was Rs.35.35 crore whereas income from operations was Rs.154 crore,
   b. Trade receivables reduced from Rs.57 crore to Rs.13 crore from 31.03.2019 to 31.03.2020.
   c. Profit before Tax (PBT) in 2019-20 was a loss of Rs.44 crore.

27. In addition to the above, I note from IR that the provision for bad debts during the said year contributed to 80% of loss from operation (i.e., Rs.35.35 crore / Rs.44 crore) and 61% of Trade receivables as on beginning of the year (i.e., Rs.35.35

crore /Rs.57 crore). Further, I note that no provision for doubtful debts was made during the period 2016-19. In this regard, the following 9 debtors accounted for almost 93% (32.88 crore/35.35 crore) of the total bad debts provision amount during the FY 2019-20:

Rs. in crore

Sr. No.	**Name of Receivables**	**Amount Receivable as on March 31, 2020**	**Provision made in FY 2019-20 amount in**	**Period (in Years) as on March 2020**
1	Naolin Infrastructure Pvt. Ltd.	9.64	9.64	2.66
2	Aikya Infra-Projects Pvt Ltd	8.64	10.02	1.72
3	Flyhigh Infra-Projects Pvt Ltd	4.12	4.12	1.53
4	Erman Metals Pvt. Ltd.	2.67	2.67	1.41
5	Sanmukh Fab Industries P Ltd	2.17	2.17	1.46
6	PLCONMAT Supplier Pvt Ltd	1.02	1.02	1.16
7	Nevecea Infraspace Pvt. Ltd.	1.02	1.02	1.00
8	Stance Synergies Pvt. Ltd.	5.88	1.13	2.34
9	Networth Management Services	1.09	1.09	7.21
	TOTAL	**36.25**	**32.88**	

28. However, in this regard, the company, during investigation, failed to provide balance confirmation letters, adequate supporting documents for follow up on recovery and any legal action taken against debtors whose balances were written off. Since, the company has failed to provide proper documentation and to justify the value written off within 1 to 3 years, I note from IR that the write off was towards fictitious transactions recorded in the previous years.

III. Fictitious trading transactions with major vendors:

29. I note from IR that there were fictitious trading transactions done by SIL with major vendors such as Saisons, Damani, Skyfall, Aikya, Naolin, PLconmat, Flyhigh, Sanmukh and Erman. The details of such transactions are as under:

a) **Saisons Trade & Industry Pvt Ltd. (Saisons):** During the IP, SIL had accounted for purchase of materials from Saisons for Rs.63.26 crore and paid Rs.65.87 crore. The excess payment of Rs.2.61 crore to Saison adjusted with "Rate, Diff. & Discount A/c", instead of receiving back the same. No documentation for the said adjustment was provided. Thus, the excess payment was written off in the books.

b) **Damani Multitrade Pvt. Ltd. (Damani):** On review of ledger of Damani Multitrade Pvt Ltd, it was observed that the receivable balance of Seam Industries Ltd. (Debtor) was adjusted with Damani, amounting to Rs.40.31 crore. Narration of adjustment entry stated as "being assignment of debtor made to Damani"). No details and basis of such assignment was provided. During FY 2016-17, total sales made to Seam Industries was Rs.40.31 crore of "M.S.Angle". No other transactions with Seam Industries were observed for entire IP. However, the entire receivable balance of Seam Industries was adjusted with Damani. Therefore, it appears that the entire sale to Seam Industries of Rs.40.31 crore was fictitious and hence the sales revenue of FY 2016-17 was inflated by Rs.40.31 crore. Subsequent to the said adjustment, funds of Rs.9.64 crore were received from Damani in FY 2017-18 and FY 2018-19. Even if assumed that these receipts were against receivables from Seam Industries, still the remaining receivable balance of Seam Industries was set off against the payable balance of Damani, which appear to be fictitious in nature.

c) **Skyfall Trading Pvt Ltd. (Skyfall):** On review of ledger of Skyfall Trading Pvt Ltd, I note from IR that out of total purchases of material "M

S Angle (Trading)" of Rs.25.27 crore, purchase transactions of Rs.14.93 crore were in FY 2016-17 and Rs.10.34 crore in FY 2017-18. No purchases are made in FY 2018-19 and FY 2019-20. Out of total payments of Rs.32.59 crore, Rs.30.59 crore was paid to Skyfall in FY 2017-18 and Rs.1.98 crore was paid in FY 2018-19. No payments were made in FY 2016-17. Supporting documentations for purchase and adjustment entries were sought from SIL, however, the company could not provide any documentary evidences or justifications. Considering the above, the purchase transactions of Rs.25.27 crore with Skyfall appear to be fictitious in nature.

d) **Aikya Infra-Projects Pvt Ltd (Aikya):** During the IP, SIL had accounted sale of materials to Aikya for Rs.37.83 crore and received only Rs.29.25 crores. In this regard, Rs.10.02 crore (provisioning higher than the outstanding balance of Akiya) is provisioned for bad debts in FY 2019-20 against the total outstanding of Rs.8.64 crores from Aikya. Provisioning an amount higher than the total outstanding from the customer is without any logic. The company could not provide any reasons / supporting for provisioning of such higher amount.

e) **Naolin Infrastructure Pvt Ltd. (Naolin):** On review of ledger of Naolin, it is noted that there were no receipts against the total sale transactions of Rs.9.65 crore. However, the payments of Rs.13.87 crore were made against the purchase of Rs.13.03 crore.

f) **PLconmat Supplier Pvt. Ltd (PLconmat):** In FY 2018-19, total material consumed as per financials of PLconmat is Rs.7.03 crore, however, total sales by SIL to PLconmat is Rs.7.34 crore indicating it transact only with SIL. The company was requested during investigation to provide the supporting documents such as Agreement/contract, invoice, Purchase order, Weighment slip, lorry receipt, delivery challan, etc. for sample transactions. However, the company did not provide these documents except Tax invoice and E-way bill.

g) **Flyhigh Infra-projects Pvt Ltd. (Flyhigh) and Sanmukh Fab Industries Pvt Ltd (Sanmukh):** The receivable amount from Flyhigh as on March 31, 2020 was Rs.4.12 crore and the entire amount was written off in FY 2019-20. The receivable amount from Sanmukh as on March 31, 2020 was Rs.2.17 crore and the entire amount was written off in FY 2019-20. On analysis of financial statements of Sanmukh, in FY 2018-19, total trade payable of Sanmukh is Rs.0.80 crore and Receivable of SIL from Sanmukh is Rs.2.17 crore. Thus, there is mismatch in payable/receivable balances raising suspicion on genuineness of these transactions.

h) **Erman Metals Pvt Ltd. (Erman):** The receivable amount from Erman as on March 31, 2020 was Rs.2.67 crore and the entire amount was written off in FY 2019-20. The company was requested during investigation to provide the supporting documents such as Agreement/contract, invoice, purchase order, weighment slip, lorry receipt, delivery challan, etc. for sample transactions. However, the company did not provide these documents except Tax invoice and E-way bill.

30. The following is the comprehensive impact on financial statement through fictitious transactions and the amount of misrepresentation and writing off:

S. No.	Particulars	FY 16-17 & FY 17-18	FY 18-19 & FY 19-20	Total
A	Inflation of revenue by Fictitious Sales	72.17	65.37	137.54
B	Inflation of expenses by fictitious Purchases	170.08	50.16	220.24
C	Total revenue from operations as per Annual Reports	509.42	412.68	922.10
D	Total purchases as per Annual Reports	237.58	92.91	330.49
E	Misrepresentation of sales as % of total revenue (A/C)	14.16%	15.84%	14.91%
F	Misrepresentation of purchases as % of total purchases (B/D)	71.58%	54.00%	66.64%
G	Writing off Bad debts resulting out of fictitious sales.	-	33.54	33.54
H	Adjustments between Damani and Seam	40.31	-	40.31

Revenue from operations includes revenue from both sales of materials and project revenue.

31. As stated in the preceding paragraphs, though the company was into construction business, I note that voluminous trading transactions were booked during the period from FY 2016-17 to FY2019-20 as purchase and sale of TMT bars, steel, metal channels, M S Angles, etc and it has been inflating its sales and purchases during the IP by booking fictitious trading transactions. Further, I note from IR that the funds of the company were diverted to connected entities by making payment for fictitious transactions.

Misrepresentation of closing balances

32. As regards captioned violation, I note from IR that the payment entries of Rs.26.44 crore in the ledger of Damani Multitrade Pvt. Ltd. in FY 2016-17 were reversed in FY 2017-18 by passing receipt entries with narration "cheque stale so reversed". Thus, the balance payable to Damani (liability) was understated in FY 2016-17 and the company did not provide any clarification / documents in this regard. None of the said entries were appearing in the bank statements of SIL. Similarly, on March 31, 2018, the closing receivable balance of Rs.5.98 crore of Damani was adjusted with payable balance of Ami Steel Corporation.However, opening brought forward balance of Rs.5.98 crore was observed in FY 2018-19 though there was no carried forward balance in previous year. Thus, both receivable and payable balance in FY 2017-18 was understated and misrepresented.

33. In view of the aforesaid, I note that the Noticees failed in their duty to oversee the Misrepresentation of the closing balances and this ultimately proved detrimental to the market/investors at large.

Non-disclosure of Related Party Transactions

34. I note from IR that Damani was a related party to SIL on account of common directorship of Mr. Prafulla Bhat during FY 2017-18, but it was not disclosed as related party of SIL. Table with details of transactions entered by SIL with Damani and Skyfall during FY 2016-17 and FY 2017-18 are given as under;

35. As per ledger accounts of Damani, the following transactions were entered by SIL with Damani during FY 2016-17 and FY 2017-18:

Table 3:

Transaction type	**Amount in Rs. crore**	
	FY 2016-17	FY 2017-18
Purchases	108.46	0
Payments	66.60	35.77
Receipts	0	31.34 **@**
Journal Adjustment with Seam Industries Ltd	40.31	0
Other Journal adjustments	1.83	9.15

@ Includes Rs. 28.02 crore as stale cheque reversal

36. As per ledger accounts of Skyfall, the following transactions were entered by SIL with Skyfall during FY 2016-17 and FY 2017-18:

Transaction type	**Amount in Rs. crore**	
	FY 2016-17	FY 2017-18
Purchases	14.93	10.34

Payments	0	28.09
Receipts	0	3.62
Journal Adjustments	2.94	2.50

Table-4

37. Consequently, the payment and receipt transaction of Rs.35.77 crore and Rs.31.34 crore respectively with Damani were not disclosed as Related Party Transaction in the Annual Report for FY 2017-18.

38. In view of the above, I note that the Noticees erred in their duties as members of Audit committee by overlooking the non- disclosure of related party transaction by the company.

Transactions with connected vendors at nominal profit or at loss and diversion of project income

39. With regard to the captioned transactions, I note from IR that SIL had been sub-contracting the project to various connected entities at around 1% margin on a back to back basis and vendors were assigned these contracts without vendor evaluation or without seeking comparative quotation. Party-wise ledgers of 4 connected entities and their connection with SIL is provided as under;

Rs. in crore

Party Name	Relationship with SIL	Opening on 01.04.16	Invoice booking	Payments	Sales	Receipts	Stale cheque reversal	Adjust.	Closing on 31.03.2

Atal Realtech Pvt. Ltd	Connected Party	(6.84)	(120.26)	129.48	9.66	(22.19)	(10.58)	21.38	1.8
Mohini Buildwell Pvt	Connected Party	(4.09)	(65.20)	95.96	4.23	(22.76)	(7.84)	2.58	3.92
Univastu India Ltd	Disclosed Associate as	-	(141.19)	150.61	13.15	(40.10)	-	14.65	(3.18)
Kanak Agro Pipes Pvt	Connected Party	0.02	(36.59)	34.94	-	(0.55)	-	1.19	(0.98)
Total		(10.90)	**(363.24)**	410.99	27.04	(85.60)	-18.42	39.80	1.56

40. The above table indicates that the project income of SIL was diverted to these related/connected vendors (i.e., margin at arm's length pricing on work execution value of Rs.363.24 crores – margin earned by SIL by subcontracting these projects) by subcontracting at minimal margin and also by SIL incurring expenses on such projects. Further, I note from IR that sales of material of Rs.27.04 crore was also made to these parties and as per the agreement provided they were entirely back-to-back contracts to the vendors, signifying that the sale of material to these parties is unreasonable. Consequently, on review of vendor ledgers of these parties, it is noted that various adjustment entries are passed in these ledgers thereby adjusting the balances with other party ledgers. However, no justification or supporting documents have been received to validate the basis of such adjustment entries.

41. Hence, I note that the Noticee1 and Noticee No.2 being Chairperson and Member of Audit Committee respectively failed in their duty to oversee the diversion of the Income of the company to the connected entities and also failed to block the projects being subcontracted to the connected entities. Accordingly, from the aforesaid facts, I note that the said Noticees failed in their duties as mentioned above.

Diversion of funds by improper write off of payments and balances

42. Further, I note from IR that the payments and receivable balances amounting to Rs.11.23 crore were written off by SIL in the expense ledger viz. "rate, diff & discount a/c" and in most of these party ledgers, there was no invoice booking and neither there was any payable opening balances as on April 01, 2016. Since, the company did not provide any documentation or explanation to corroborate the genuineness of these transactions or justification for its writing off, the payment to these parties with no underlying basis/transactions and subsequent write off to expense ledger is observed to be diversion of funds.

43. From the aforesaid facts I note that the Noticees failed to monitor the diversion of funds by improper write off of payment and balances and accordingly, failed in their duties.

Unreasonable write off of Project Work In Progress (WIP)

44. With regards to the above, I note from IR that there were six projects in which WIP of previous period was neither billed to client nor reflected in the closing balance of the subsequent period and the variance between opening and closing WIP was expensed off to the extent of Rs.25.76 crore. The table for year on year movement in inventories is as under;

Rs. in crore

Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Inventories	69.28	67.83	54.19	49.72

45. Since the company failed to provide any clarification in this regard, I note that the project WIP balances shown in the financial statements were fictitious and the writing off of the same had resulted to increase in gross loss by Rs.25.76 crore. Table with instances wherein closing WIP of projects/sites is booked at loss is provided as under:

Rs. in crore

Party Ledger Name	Adjusted with (Ledger name)	Narration	Debit am	Credit am
Univastu India Ltd (Trding Cetr.Pune)WE	Shalaka Infra-Tech India PL(TradAPMC Pune)Dr	JV passed for Bill Debt as Univastu India Ltd. and I Amount Discounted.	6.29	-
Atal Realtech Pvt. (Project Supply)	Sri Kubera Constructions Pvt	being Debtor assigned to c Discount given to debtor tran to Rate Difference.	6.98	-

46. From the above, it can be seen that the Noticees failed to monitor the irregularities with respect to the work in progress.

Non-recovery of high ageing advances resulting in misutilisation of funds

47. I further note from IR that as per the financial statement, the high value of advances was shown under the category “other current assets”. In absence of linked trial balance with ledger groupings, it was difficult to identify the exact party wise break up and ledgers for such balances disclosed in the financial statements:

Rs. in crore

Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Advances against Lease of Premise	4.12	1.15	12.21	12.08
Other Advances	49.73	45.64	56.34	33.59

48. Further, I note from IR that majority of the party balances are opening balances as on 01 April 2016, which are high ageing receivables balances with no transactions during the investigation period. Further, in FY 2019-20, provision for doubtful advances of Rs.4.21 crore was created. Table depicting balances of some parties (above 1 crore) classified as advances (current assets) in tally is as under:

Rs. in crore

Party name	**Group**	**Opening (01.04.16)**	**Invoice booking**	**Payments**	**Receipts**	**Adjustments**	**Diff. in carry forward of bal.**	**Closing (31.03.20)**
Dhvani Arcade Pvt Ltd.	Advance to Work Executors	10.00	-	-	-	-	-	10.00
High Ground Enterprises Ltd	Advances to Suppliers	-	(24.75)	28.80	-	(4.05)**	4.05**	4.05
Shitanshu Bipin Vora	Advances Against Land	4.90	-	0.50	(1.90)	-	-	3.5
Univista Contractors Limited	Advances to Suppliers	-	-	1.75	-	-	-	1.75
Blue Sea Commodities Pvt Ltd	Advances to Suppliers	-	-	1.70	-	-	-	1.70
Sagar Infrastructure Pvt Ltd	Advance Against Land Commercial Premises	1.65	-	-	-	-	-	1.65
Ariana Softect Pvt Ltd	Security Advance Against Lease of Premises	1.15	-	-	-	-	-	1.15
Jaikumar Real Estate Pvt Ltd	Other Advances	3.69	-	-	(2.62)	-	-	1.06
Keshvi Developers Pvt Ltd	Security Advance Against Lease of Land	1.00	-	-	-	-	-	1.00
Total		**22.39**	**(24.75)**	**32.75**	**(4.52)**	**(4.05)**	**4.05**	**25.86**

* *Apart from above mentioned parties, Rs.2.05 crore was outstanding as advances against land given to multiple parties "Advances Against Land Survey No. (Near Shahapur).*

***As per High Ground Enterprises Ltd ledger of FY 2017-18, Rs.24.75 crore was booked as work execution expense and Rs.28.80 crore was paid. The excess payment of Rs. 4.05 crore was adjusted with payable balance of Ami Steel Corporation and thereby nullifying the said balances to nil in FY 2017-18 which was then restated in FY 2018-19 to Rs.4.05 crore. These restating of balances in FY 2018-19 raises suspicion on the entries passed and the balances carried forward from 31st March 2018 to 1st April 2018.*

49. From the above, I note that advances of Rs.27.91 crore (Rs.25.86 and Rs. 205 crore) were paid to multiple parties wherein there is no expense booking and subsequent recovery during the IP and that in FY 2019-20, provision for doubtful advances of Rs.4.21 crore was created against these advances and no details were provided to the clarifications sought from the company. In addition to above, I note that the payment to these parties were outstanding with high ageing and appear to have resulted in misutilisation of funds.

50. In view of the aforesaid, it is construed that the Noticees failed to monitor the Non-recovery of high ageing advances resulting in misutilisation of funds by the company.

No documentation for purchase and sale of Fixed Assets with connected entities:

51. I note from IR that on review of fixed assets ledgers, it was observed that SIL purchased land and building (Floor No. 2 & 3 of Pinnacle Mall) from Silver Key Developers Pvt. Ltd (Erstwhile Atal Buildcon. Pvt. Ltd), an Associate company of SIL on 30th June 2019 amounting to Rs.22 crores. This property is built by Prakash Construwell Ltd as per its website. Further, SIL sold Maserati - Gran Turismo Sports Car to Prafull Bhat (a past director of SIL) on 31 July 2019 amounting to Rs.0.83 crore. I further note from IR that a DG set was sold to Atal Buildcon Pvt Ltd of Rs.0.12 crore on 28th June 2018 and that for all the above transactions, supporting documents such as Transfer Agreement, Valuation Reports, Invoices etc were not provided and the company also did not provide physical verification and valuation

reports of fixed assets and therefore, it was unable to comment on closing balance of Property, plant and equipment of Rs.31.33 crore as on 31-03-2020.

52. The company, during investigation, was also not able to prove the ownership and failed to produce any supporting documents for the transaction.

53. With regard to the aforesaid, the Noticees have contended that though they were members of the Audit Committee, they never attended any such meeting and also never received any Notice of the said Audit meetings further the minutes of such meetings were also not signed by them and hence they were never aware about such violations and other activities going within the company. The contention of Noticees is not tenable as the Annual Report of the company not only confirms that the Noticees were member of the Audit Committee but also confirm attending the meeting and the receipt of remuneration for the said purse as well. If the Noticees are claiming the information provided in the Annual Report as wrong, then they could have produced relevant documents to substantiate their claims and also for any action taken against the company for publishing untrue information in the annual report regarding the Noticees. It is pertinent to mention that the Annual Report of a company is a public document and easily available in the public domain and considering the Noticees being directors in SIL, it must be accessible to them.

54. The aforesaid acts, as detailed above, without the supporting documents for trading transactions, correspondences, absence of responses sent by customers, the response from the statutory auditors and non-delivery of forensic auditor's balance

confirmation to customers transactions, etc., indicate the non-genuineness of these transactions and therefore, the said financials transactions and the books of accounts of the company cannot be relied upon as they do not give a true and fair picture of both the financials and operations of the Company. They also failed to monitor the advances being netted off with some other entities rather than the same being adjusted with the respective entities. It is therefore the said acts of booking fictitious purchases and sales, inflated payables and receivables, writing off of balances, etc, in the books of accounts of the company which reflected in the financial statements for the FYs from 2016-17 to 2019-20, amounts to defrauding the shareholders. I also note that Noticees being members of the audit were vested with responsibility of proper disclosures being made by the company which is instrumental to the investors in decision making

55. Accordingly, in view of the above it stands established that the Noticees failed to monitor the fictitious trading activities being carried out by the company leading to inflation of sales. Also it establishes that the Noticees failed in their duty to create impediment in execution of such fraudulent transactions, which were not backed by proper documentation.

Role of the Audit Committee:

56. I note from IR that as per annual reports of the company, following are the details of number of audit committee meetings held and attended by the directors of SIL including the Noticees during the FY 2016-17 to FY 2019-20:

FY	Particulars meetings	Mr. Prakash Laddha	Mr. Vishal Ahuja (Chairman-Audit committee)	Mr. Prashant Gadkari (till 11.7.2019)	Mr Ramniwas Rathi	Ms. Jyoti Rathi (w.e.f. 11.7.2019)
206-17	Held	7	7	7	7	NA
	Attended	7	3	7	4	NA
2017-18	Held	5	5	5	NA	NA
	Attended	5	5	5	NA	NA
2018-19	Held	5	5	5	NA	NA
	Attended	5	5	5	NA	NA
2019-20	Held	4	4	4	NA	4
	Attended	4	4	1	NA	3
Total Meeting held		**21**	**21**	**21**	**7**	**4**
Total Meeting attended		**21**	**17**	**18**	**4**	**3**

57. The role of the Audit Committee is defined in SEBI (LODR) Regulations, 2015, wherein, the Audit Committee is required to exercise 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 the instant case, it was observed that the Audit Committee has failed to ensure that the published financial statements were in accordance with the applicable accounting standards and presented a true and fair view of the company's affairs, during the IP.

58. I further note that the Noticee No.1 (former Independent Director and chairman of Audit Committee) who had attended all the 27 board meetings held during FY 2016-17 to FY 2019-20 and all 17 audit committee meeting held during his tenure, was summoned for personal appearance before Investigating Authority (IA) on April 11, 2022. During the said personal appearance, he made the following statements.

i. He was introduced by Mr. Prafulla Bhat in 2016 and was doing small assignments as a practicing chartered accountant. He has visited Nashik approx. 3 – 4 times and he has been told orally that he is a member of audit committee.

ii. He did not attend any Board Meeting or Audit Committee meeting during the tenure of his directorship, never received any remuneration or sitting fees from the company and was also not shared any information or records regarding affairs of the company

iii. He was neither aware that he was the chairman of audit committee any time nor was aware of the responsibilities of an Independent Director or Audit Committee member of a listed company or concerned regulations.

59. In addition to the above, I note from IR that the Annual Reports of the company clearly shows that Noticee No.1 was the audit committee chairman for the financial years 2016-17, 2017-18, 2018-19 and 2019-20 and consequentially during the IP. Further I note that, as an Independent Director and chairman of Audit committee of a listed company, he had attended all the board meetings and audit committee meetings during his tenure, was paid sitting fees every year and also is responsible to protect the public interest. Noticee No1's submission that he was unaware of the irregularities and that his appointment was made on the condition that he would not be involved in any manner whatsoever in the affairs of SIL shows his lax attitude towards his profession and does not absolve him of his duty towards the interest of investors and that he being a Chartered Accountant i.e a qualified professional should have taken due care and caution while being Chairperson of the Audit Committee and cannot feign ignorance contending that he was not aware of the affairs of the Company since he had a formidable responsibility with respect to the presentation of true picture of financials and should have raised probing questions with regard to the aforementioned irregularities which he failed to do. Therefore,

statement of Noticee No.1 that he was not aware of the responsibilities of independent director or audit committee member is not acceptable.

60. Similarly, I note from IR that Noticee No.2 (Independent Director and member of Audit Committee) who had also attended 22 board meetings held during FY 2016-17 to FY 2018-19 and all 18 audit committee meeting held during his tenure, was summoned for personal appearance before IA on June 21, 2022. During the said personal appearance, he made the following statements:

i. He joined SIL in 2013 as Independent Director and he knows Mr. Prakash Laddha since 2009.
ii. He was never a member of audit committee, never got any communication from the company for appointing him as a member of audit committee and never called for any audit committee meeting.
iii. He had never attended any meeting of the company nor remembers receiving any notice for the meetings. Possibly, he would have signed some papers / minutes which was brought to his residence and has never visited company office at all.
iv. He never received any sitting fee or any other amount from the company.
v. Mr. Prakash Laddha was the chairman of the company and also the sole decision maker in the company.
vi. Noticee No.2 didn't know that the company had ever ventured into trading transactions and as per his knowledge, the company was only into construction contracts and not into any trading business.
vii. He has not gone through any financial statements of the company.

61. In this regard, Noticee No.2 made a blanket statement that he was not attending the office on day-to-day basis and was not part of the day-to-day business affairs of the

said company. In this regard, I note that Noticee cannot absolve himself and do away with the daunting task of him being a member of Audit committee which casts immense responsibility which as detailed above he failed to do. Further, I note from IR that the Annual Reports of the company clearly shows that Noticee No.2 was audit committee member for the financial years 2016-17, 2017-18 and 2018-19 and consequentially during the IP. As per Annual Reports, he has attended all the 22 board meetings and 18 Audit Committee meetings held during his tenure. Since he was the independent director and audit committee member of SIL, his statements and reply that he was not aware of the responsibilities of independent director or audit committee member and that he has not gone through any financial statement of the company indicates that he was grossly negligent in discharge of his responsibilities to the stakeholders and therefore, cannot be accepted as a valid ground to discharge from his responsibilities.

62. I also find it pertinent to rely at this juncture on the Hon'ble SAT order in the matter of **Mr. Kishore Hegde Vs SEBI** (Appeal No.300 of 2019) decided on November 05, 2019 wherein it was held that

*"**13.**The contention of this appellant that he was not involved in the day to day running of the company cannot be accepted as he was found to be part of the resolution process of the company and his involvement in the issuance of the GDR proceeds. Apart from the above, we also find that the appellant was also the Chairman of the audit committee of the company. The WTM found that being the Chairman of the audit committee, he did not place any objection as to why the GDR proceeds did not reach the company and how the proceeds were utilized. We are*

thus, of the opinion that in the light of the findings given by the WTM, the appellant Kishore Hegde was part of the scheme through which issue of GDR by the company was effected through a fraudulent arrangement of loan agreement and pledge agreement. We are also of the opinion that the conduct of the appellant Kishore Hegde was inimical to the interest of the company, to the investors, as well as to the shareholders and, the action of the appellant Kishore Hegde was in violation of Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations. The order of the WTM debarring the appellant Kishore Hegde from accessing the securities market, etc. for a period of two years does not suffer from any error of law.

63. Apart from the above, I note that the decision of the Supreme Court in Official ***Liquidator v. P.A. Tendolkar, [(1973) 1 SCC 602]*** is squarely applicable in the instant case wherein the Supreme Court held:-

""*It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so he could be held liable for dereliction of duties undertaken* *by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company."* ***(emphasis supplied).***

64. In view of the aforesaid as brought out in the preceding paragraphs and in line with the aforesaid Supreme Court's decision and SAT order, it is observed that the Noticee No.1, as the former independent director and chairman of audit committee, has failed to comply with the provisions of the LODR Regulations with regard to the irregularities detailed above and accordingly has violated Regulation 18(3) read with clause A (1), (4), (11) under Part C of Schedule II of SEBI (LODR) Regulations, 2015 and Noticee No.2, has failed to comply with the provisions of the LODR Regulations with regard to the irregularities detailed above and accordingly has violated Regulation 18(3) read with clause A (1), (4), (11) under Part C of Schedule II of SEBI (LODR) Regulations, 2015.

Issue (b) - Does the violation, if any, attract penalty under Section 15HB of the SEBI Act, 1992?

65. As it has been established in the paragraphs above that the Noticees have violated the provisions of SEBI (LODR) Regulations. Accordingly, I note that the Hon'ble Supreme Court of India in the matter of ***SEBI v/s Shri Ram Mutual Fund*** [2006] 68 SCL 216 (SC) 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………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."

66. In view of the foregoing, I am convinced that the Noticees are liable for monetary penalty under Section 15HB of SEBI Act for violation of the above mentioned SEBI (LODR) Regulations.

SEBI Act, 1992

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 (c) - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

67. While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995 which read as under:

SEBI Act, 1992

Factors to be taken into account by the adjudicating officer

15J 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.

68. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors as a result of their failure. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Bringing about true and fair picture of the financials is essential whereas misrepresentation of financials in respect of the vital information of any company forfeits the purpose of dissemination of information to the investors and acts detrimental to the interest of the investors thereby hampering their ability to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is required to oversee/present true and fair picture of financials of a company and is not able to do so and engages in manipulating/misrepresenting (directly or indirectly) financials of a company then such person is depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default

made by the Noticees and their failure in fulfilling their responsibility endowed upon them by virtue of them being audit committee members. Hence, I note that the Noticees failed to present true and fair picture of financials of the company and thereby have violated the relevant provisions SEBI (LODR) Regulations, as mentioned above.

ORDER

69. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act 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, 1995, I hereby impose the following penalties under Section 15HB of SEBI Act, 1992, on the Noticees for the violations as specified in this order:

Name of the Noticee	Penal provisions	Penalty(Rs)/Violations
Vishal Ahuja (Chairman of Audit Committee)	Section 15HB of the SEBI Act, 1992	Rs 25,00,000/- (Rupees Twenty Five Lakhs Only);
Prashant Prabhakar Gadkari (Member of Audit Committe)	Section 15HB of the SEBI Act, 1992	Rs 25,00,000/- (Rupees Twenty Five Lakhs Only)

		For violation of Regulation 18(3) read with clause A (1), (4), (11) under Part C of Schedule II of SEBI (LODR) Regulations, 2015 respectively by the Noticees.

70. The 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. In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

71. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-I DRA -IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:-tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	

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)	

72. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

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

Date: September 18, 2023 **SANTOSH KUMAR SHARMA**

Place: Mumbai **ADJUDICATING OFFICER**