BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/ 19863-19864]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

1. **Indian Infotech & Software Ltd.**
   (PAN-AAACI0350E)
2. **Varsha Murarka**
   (Also known as Varsha Poddar)
   (PAN- ARCPM7606B)

In the matter of Indian Infotech & Software Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") was in receipt of a letter from the Ministry of Corporate Affairs (hereinafter referred to as '**MCA'**) wherein MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. In this regard, on August 09, 2017, SEBI advised Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**") and National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") (collectively referred to as "**Stock Exchanges"**) to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of the company like company's compliance with

Companies Act, whether company is a going concern, its business model, status of compliance with listing requirements etc. SEBI, vide its interim order dated September 21, 2017, (hereinafter referred to as **'Interim Order'**) advised Stock Exchanges to appoint Forensic Auditor, for forensic audit of Indian Infotech & Software Ltd (hereinafter referred to as "**Noticee 1/Company/IISL/By Name"**), one of the companies listed in the letter of MCA. Thereafter, SEBI passed a confirmatory order in the matter on February 08, 2018, confirming the directions contained in the Interim Order.

2. BSE, vide its letter dated October 12, 2018, informed SEBI that on December 26, 2017, it had appointed M/s. Chokshi & Chokshi LLP (hereinafter referred to as the "**forensic auditor/ By Name**") as auditors for conducting forensic audit of Noticee 1. The forensic auditor, in its emails dated January 04 and 06 of 2018, requested Noticee 1 to provide contact details of the company officials for conducting the forensic audit. Thereafter, BSE, vide emails dated May 23, 2018 and July 17, 2018, advised Noticee 1 to provide required documents/ clarifications and to cooperate with the forensic auditor, failing which further action would be taken in the matter. Despite various correspondences by the forensic auditor and BSE, it was noted that Noticee 1 failed to furnish the information and documents to the forensic auditor. On account of continuous non co-operation by Noticee 1, BSE issued show cause notice to Noticee 1 on August 30, 2018 to show cause as to why further action, as deemed fit, should not be taken against Noticee 1 for its failure to provide necessary documents / clarifications to the forensic auditor for the purpose of forensic audit. Subsequently, BSE conducted a site inspection at the registered office of Noticee 1 on October 19, 2018 and submitted its inspection report to SEBI on October 23, 2018.

3. On the basis of the examination of the inspection report of BSE, Annual Reports of Noticee 1 for the Financial Years (FYs) 2014-15 & 2015-16 and replies/submissions filed by the Noticee 1 post Interim Order, it was observed by SEBI that Noticee 1 and its directors namely Varsha Murarka, (**Noticee 2),** Kamal Nayan Sharma, Harish Joshi and Mukund Bhardwaj had violated following provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), Securities Contracts (Regulation) Act 1956 (hereinafter referred to as "**SCRA"**), SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") and

SEBI (Prohibition on Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”):

Sl. No.	**Name of the Entity**	**Violations observed**
1	Indian Infotech & Software Ltd.	Section 12A (a) (b) and (c) of the SEBI Act and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations. Regulations 4(1)(c), (e) and (g), and 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6), (12) of LODR Regulations and Section 21 of SCRA. Section 11(2)(i) and 11(2)(ia) of the SEBI Act.
2	Kamal Nayan Sharma	
3	Varsha Murarka	
4	Harish Joshi	
5	Mukund Bhardwaj	Section 12A (a) (b) and (c) of the SEBI Act and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations. Regulations 4(1) (c), (e) and (g) and 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6) & (12) of the SEBI (LODR) Regulations, Clause 49(ix) of the erstwhile Listing Agreement and Section 21 of SCRA.

4. Therefore, SEBI initiated adjudication proceedings against Noticee 1 and its above mentioned directors under provisions of SEBI Act and SCRA, as applicable, for the aforementioned alleged violations by them.

5. Vide Adjudication Order dated June 15, 2022, SEBI concluded adjudication proceedings initiated against Mr. Kamal Nayan Sharma, Mr. Harish Joshi and Mr. Mukund Bhardwaj.

Since settlement applications under SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "Settlement Regulations") were filed by Noticee 1 and 2, the final order with respect to them were kept in abeyance till the disposal of settlement applications filed by them. (Noticee 1 and 2 are hereinafter collectively referred to as "**Noticees"**). Vide email dated July 13, 2022, the concerned department of SEBI intimated Noticees regarding the rejection of settlement applications filed by them. The present Order is to dispose of the adjudication proceedings initiated against Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

6. Vide Order dated January 15, 2019, SEBI appointed Shri. B.J Dilip as the Adjudicating Officer in the matter. Pursuant to the transfer of Shri. B.J Dilip, vide order dated December 29, 2020, SEBI appointed undersigned as the Adjudicating Officer(AO) under Section 19 of SEBI Act read with Section 15I and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as `**SEBI Adjudication Rules'**) and under Sub-section (1) of Section 23-I of SCRA and Rule 3 of (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SCRA Adjudication Rules'**) to inquire into and adjudge the aforementioned alleged violations against Noticee 1 and its directors. [Both SEBI Adjudication Rules and SCRA Adjudication Rules are hereinafter collectively referred to as " **Adjudication Rules"**]

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. A common show cause notice dated March 09, 2021 (hereinafter referred to as '**SCN**') was issued to Noticee 1 and its directors including Noticee 2, under Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be initiated against them and penalty, if any, not be imposed upon them for the aforesaid violations alleged to have been committed by them.

8. The allegations levelled against Noticees in the SCN are as under:

    A. *In respect of the quoted investments of ₹8.47 crore approximately, it was observed that all the shares are sold to a single entity (Dhanaasha Infracon Pvt. Ltd. (hereinafter referred to as '**DIPL**')) in an off-market transaction in the year 2015-16, at the value appearing at balance sheet of ₹8.47 crore. The company* *was still holding the shares as on March 31, 2016. As per the depository records, these shares appear in the name of Company even till September 18, 2017 and no transaction has taken place with respect to these shares during the period April 2015 to March 2017. Noticee 1 (Noticee 1) stated that it had sold the said quoted investment to DIPL and received the entire sale proceed of such quoted investment, which is reflected in the bank account statement. Noticee 1 admitted that the shares are still held with them because DIPL does not have demat account and submitted that DIPL is in the process of opening demat account and Noticee 1 is under an obligation to effect the transfer of said shares in the name of DIPL. It was observed that Noticee 1 had not provided any documents to substantiate its claim of sale of shares. Noticee 1 had also not provided the bank account statement highlighting the receipt of consideration or any documentary evidence showing receipt of sale proceeds. Further, the transaction claimed by Noticee 1 was not in line with any commercially prudent transaction. Hence, it is alleged that there is misrepresentation of financials of the company.*

B. *The company had the goodwill amount appearing in the Balance sheet as on March 31, 2016 amounting to approximately Rs. 51 crore. It is alleged that Noticee 1 had failed to furnish the copy of the Independent Chartered Accountant Valuation report, which was referred in the Amalgamation Order passed by the Hon'ble High Court of Bombay dated May 04, 2012, for the goodwill amount of approximately Rs. 51 crore appearing in the Balance sheet as on March 31, 2016. In view of the same, it is alleged that there is misrepresentation of financials of the company.*

C. *IISL was appearing under the category 'Investment Company' on the RBI Website as on August 31, 2017. However, Statutory Auditor Certificate (SAC) says that the company is a Loan Company. Further, their Annual Report for the year 2015-16 says that approximately 85% of the turnover of the company is from IT and Software Products. Noticee 1 stated that it is a Non-Banking Financial Company (NBFC) carrying as "Loan Company" and it had also submitted the MOA & AOA of the company along with the Reserve Bank of India (RBI) Certificate and Statutory Auditor Certificate (SAC) submitted to RBI in which also it is clearly mentioned that the company is "Loan Company". Further, Noticee 1 also stated that it was carrying out the business activities of lending and there was typographic error in the Annual Report 2015-16 under MGT – 9, but that majority of the revenue* *was generated from lending business activities. The certificate of registration was granted to Noticee 1 by RBI to carry on the business of NBFC without accepting the public deposits. Further, as per the MOA of the company, the main object of the company is "To carry on the business of buying, selling, leasing, letting on hire, hire purchase or easy payment system, all types of industrial, agricultural, commercial and household apparatus, plant equipment, machinery, vehicles, vessels, carriers, household goods and materials, buildings and real estate. AND to finance industrial enterprise and to promote companies engaged in industrial and trading business." It was noted that neither the Certificate granted by RBI nor the MOA of the company specify that Noticee 1 is a Loan Company. It was revealed that there were significant contradictions in respect of the claimed business of the company and hence, it is alleged that Noticee 1 has misrepresented its business.*

D. *In the financial year 2015-16, the income (sales of goods/ services) of Noticee 1 was approximately Rs. 91 crore and the purchase of traded goods is approximately Rs. 106 crore. Further it was observed from the 'Extract of Annual Return' that as on the financial year ended March 31, 2016 attached by the company to the Director's report in the Annual Report 2015-16, the principal business activities disclosed by the company was of "IT & Software Products and Interest Income" and not investment in shares. Further, it was observed from the annual reports of Noticee 1 for the years 2014-15 and 2013-14, that the Revenue from operations schedule shows the income (sales of goods/ services) of companies and purchase of traded goods. The Company stated that in the financial year 2015-16, the company as an NBFC Company also traded in various equity shares of Listed and Unlisted Company both through the Online Platform and Offline mode and the amount of Rd. 91 crore reflect the purchase of shares and not purchase of goods, however, from the Cash flow statement for the year ended March 31, 2016, the Cash flow with respect to purchase of Investments appears to be Rs. 37.50 lakhs only. Further, it was observed that the company stated that there was a typo error in the Annual Report of the Company for Financial Year 2015-16, wherein the "Purchase of Shares" is mentioned as "Purchase of goods", "Sale of Shares" is mentioned as "Sale of Goods". Hence, it* *is alleged that the company had made wrong representation about the business in its annual report and Annual Return for the year 2015-16.*

E. *The company's HDFC bank statement of account no. 00600350115229 and Yes Bank statement of account no 020185700000189 revealed that there were numerous entries of funds received by Noticee 1 from multiple entities and transferred to other entities on the same day, leaving a negligible closing balance in the bank accounts. Noticee 1 stated that as the company was maintaining negligible balance, the transactions made by it cannot be treated as accommodation entries just because it does not maintain the balance in its account. Noticee 1 further replied that it has current account with the bank which does not provide any interest on the amount kept with them, whereas company earns interest if such funds are deployed as loans & advances. Noticee 1 stated that if it maintains heavy balance in the bank account and company cannot generate revenue which may affect shareholders' interests. It was observed that Noticee 1 had not submitted any documentary evidence pertaining to Loans & Advances and therefore, the authenticity of the loans & advances schedule submitted by the company could not be verified and also the claim of the company vide its reply that "….the company earns interest if such funds are deployed as loans & advances…." remained to be substantiated. The company had not provided evidence to substantiate whether the transfer of funds or receipt of funds relate to the loans and advances and that the funds received were "immediately deployed for lending purpose". Hence, it is alleged that the company is being used as a conduit to facilitate accommodation transactions.*

F. *The forensic auditor was appointed by BSE pursuant to SEBI's directions. However, despite affording reasonable number of opportunities to the company by the forensic auditor, the company failed to furnish requisite information / documents essential to conduct the exercise of forensic audit. However, the Noticee 1 had failed to provide information to forensic auditor despite repeated reminders thus has failed to provide information to SEBI. Therefore, it is alleged that the Noticee 1 has failed to provide information and documents sought under Sections 11(2)(i) and 11(2)(ia) of the SEBI Act.*

G. *BSE conducted physical inspection of the registered office of the company on October 19, 2018 at Room No. – 122, Block D, 1st Floor, Sitala Devi Chs. Ltd., D. N. Nagar, Ambivali, Andheri (West), Mumbai – 400 053. BSE in its report dated October 23, 2018, observed the following:*

(a) "Office was situated in a residential complex. Further, there were neither any furniture nor any computers/printers available at the said office.

(b) None of directors of Noticee 1 or company secretary were present at the time of visit. Mr. Sachin Merchande, the only company official who was present there, could not clarify regarding operations carried out from the said premises. According to him, none of the directors visited the office.

(c) As per electricity bills provided to the team for the month of July 2018, August 2018 and September 2018, these bills were in the name of R. K. Developers. Further, it was observed that there was very minimum electricity consumption of 25 units during these 3 months. As per the society maintenance bill provided by Mr. Sachin Merchande, bill is in the name of Mr. Sandeep Rasiklal Sheth & Others. Upon enquiring, Mr. Sachin could not clarify relationship of Mr. Sandeep Rasiklal Sheth with Noticee 1. Thus, it appeared that the premises was on a rent. However, no rent agreement was provided to the team.

(d) As per attendance sheet of the Annual General Meeting ("AGM"), it appeared to have been held at the office for last 3 years, it was observed that, more than 30 shareholders of Noticee 1 have attended these meetings. As per records, company's total area is about 225 sq. ft. which includes a room, kitchen and facilities. In view of the same, there was suspicion as to how such a small room could accommodate more than 30 shareholders in addition to other company directors and officials attending such AGMs."

H. *In view of the aforesaid findings, it is alleged that the Company i.e., Noticee 1 had failed to present true and fair financial statements and had executed transactions which were non-genuine in nature tantamounting to misrepresentation of the accounts/ financials statement and misuse of books of account/ funds of the company. Further, that Noticee 1 had misused funds/ misrepresented books of accounts which are detrimental to the interests of genuine investors and thus, such* *acts are fraudulent in nature. It is further alleged that Noticee 1 did not cooperate with the forensic auditor and failed to furnish requisite information and documents sought under Sections 11(2)(i) and 11(2)(ia) of the SEBI Act.*

I. *The details of the directors and CFO of the company for the relevant period i.e. during the FY 2015-16, are as under:*

Sr. No.	***Noticee No.***	***Name of the Director***	***Designation***
1	*2*	*Kamal Nayan Sharma*	*Executive Director and Managing Director*
2	*3*	*Varsha Murarka*	*Non-Executive Independent Director*
3	*4*	*Harish Joshi*	*Non-Executive Non-Independent Director*
4	*5*	*Mukund Bhardwaj*	*Executive Director and Chief Financial Officer*

J. *SEBI observed that it was the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. The directors of the listed companies have greater responsibility as they have access to inside information such as the financial position of the company, annual accounts, etc., and they take major decisions on behalf of the company, which affects the investors. Further, Noticee 3 and 4, being Independent Directors, had the duty of being vigilant. SEBI, further, observed that it was duty of the Noticee 5, who was Chief Financial Officer (herein after referred to as '**CFO**') of the Company at the relevant time, to certify that the financial results do not contain any false or misleading statement and do not omit any material fact which may make the statements or figures contained therein misleading while placing the financial results. In view of the same, it is alleged that the directors including the CFO of the company have failed to exercise duty of care by misrepresenting the financials. The directors and CFO have failed to discharge their fiduciary responsibility. Therefore, it is alleged that Directors of the Company viz., Noticees 2 to 5 were responsible for all the acts of omission and commission by the company.*

K. *In view of the above, it is alleged that the Noticees failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of* *books of account/ funds of the company and such acts were found to be fraudulent in nature. Thus, it is alleged that the Noticees 1 to 5 have violated the provisions of Section 12A(a), (b) & (c) of the SEBI Act, Regulations 3(b), (c) & (d) and Regulation 4(1), 4(2)(f) & (r) of the PFUTP Regulations, Regulations 4(1)(c),(e) & (g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6) & (12) of LODR Regulations and Section 21 of SCRA. It is further alleged that Noticee 5 has violated Clause 49(ix) of the erstwhile Listing Agreement. It is also alleged that Noticee 1, Noticee 2, Noticee 3 and Noticee 4 have failed to cooperate with the forensic auditor appointed by BSE and did not provide documents requested by the forensic auditor and, therefore, have violated the provisions of Section 11(2)(i) and Section 11(2)(ia) of the SEBI Act.*

9. The SCNs were sent to Noticees through Speed Post Acknowledgement due (herein after referred to as '**SPAD**'). The SCN was sent to Noticee 1 through digitally signed email as well. The SCN was duly served on Noticee 1 through SPAD/ digitally signed email. The SCN sent to Noticee 2 through SPAD returned undelivered. Thereafter, service of SCN to Noticee 2 was attempted through affixture. However, SCN could not be delivered to Noticee 2 through affixture as entity was not available at the address. In the interest of natural justice vide hearing notice dated November 30, 2021, an opportunity of personal hearing was granted to Noticee 1 on January 07, 2022. The aforementioned hearing notice was sent to Noticee through digitally signed email dated November 30, 2021 as well as through SPAD. The hearing notice sent to Noticee 1 through digitally signed email was duly delivered to it. However, the hearing notice sent to Noticee 1 through SPAD returned undelivered.

10. I note that vide email dated Rinku V, Advocate R V Legal, intimated that she was authorized to represent Noticees and submitted authorization letters from Noticees. Vide the said letter, it was also intimated that Noticees were in process of filling settlement application and therefore, it was requested that hearing scheduled on January 07, 2022 and proceedings in the matter be kept in abeyance till the settlement applications were finally decided by the relevant authority. From the perusal of aforementioned email, I find that it can be presumed that Noticee 2 was also delivered SCN in the matter.

11. Due to certain administrative exigencies, the hearing in respect of Noticee 2 in the captioned matter scheduled on January 07, 2022 was adjourned. Thereafter, an opportunity of personal hearing was granted to Noticees on February 04, 2022 vide email dated January 25, 2022. On February 03, 2022, Noticees again reiterated their request to keep proceedings in abeyance till disposal of settlement application filed by Noticees.The hearing in the matter was again adjourned. Vide email dated May 05, 2022, another opportunity of hearing was granted to Noticees on May 11, 2022. Vide the aforementioned email, it was intimated to Noticees that proceedings in the matter cannot be kept in abeyance till disposal of their settlement applications as requested by them.

12. Vide email dated May 10, 2022, Noticees requested adjournment of hearing in the matter fixed on May 11, 2022 so that Noticees can file reply to SCN. In light of the aforementioned request of Noticee, Vide email dated May 20, 2022, hearing with respect to Noticees scheduled on May 12, 2022 was adjourned to May 26, 2022. Further, vide the aforementioned email, Noticees were directed to file their reply to SCN, if any on or before May 26, 2022. Vide emails dated May 25, 2022, Noticees submitted their replies to SCN. On scheduled date of hearing, Authorized Representative of Noticees, Advocate Rinku V, R V Legal, appeared on behalf of Noticees and reiterated contents of earlier replies to SCN submitted by Noticees. Further, during the hearing, on request of AR of Noticees an opportunity of making additional written submissions in the matter was granted to Noticees till May 30, 2022. However, I note that no additional written submissions was filed by Noticees to SCN till date.

13. I am of view that that sufficient opportunities were granted to Noticees in the present proceedings to make their representations with respect to allegations against them in the SCN and the principles of natural justice has been met in the present case.

<u>Summary of Reply of Noticee 1 made vide email dated May 25, 2022</u>

a) *Noticee 1 states that there exists conflict of interest and violation of principles of natural justice in the adjudication proceedings initiated against Noticee 1. With respect to. the cause of action in the captioned SCN, two distinct proceedings: First under Section 11(1), 11(4), 11A & 11 B of SEBI Act, 1992 read with Section 12A of the Securities Contracts (Regulation) Act, 1956 and Second u/s Rule 4 of the Securities Contract Regulation (Procedure for Holding Inquiry and Imposing Penalties) Rules,* *2005 read with Section 23I of Securities Contracts (Regulation) Act, 1956 and Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 r/w section 15-I of the SEBI Act, 1992 have been initiated against the Noticee 1.The Noticee 1 states that the aforesaid proceedings are distinct and separate proceedings independent from each other. However, it is pertinent to note that the Hon'ble AO in the present adjudication proceeding is the same officer who assisted in the WTM proceedings. In fact, the SCN dated April 04, 2019 issued under Section 11(1), 11(4), 11A and 11B of the SEBI Act was issued by the same officer who is appointed AO in the present proceedings. The Hon'ble AO in the captioned SCN will be influenced by the outcome of the WTM proceedings and will not be able to conduct an unbiased proceeding and therefore, this is a clear case of conflict of interest and violation of the principle of natural justice as it causes prejudice to the Noticee 1.*

b) *Noticee 1 states that the period of investigation in question in the present SCN pertains to Financial Years 2015-16 and 2016-17 whereas the present SCN is issued on the basis of the Inspection Report submitted by BSE to SEBI on October 23, 2018 w.r.t. the onsite inspection conducted by BSE on October 19, 2018 at the registered office of the Noticee 1. It is pertinent to note that the Inspection report was submitted by BSE on October 23, 2018 whereas the captioned SCN was issued by SEBI on March 09, 2021 after an inordinate delay of two and a half years. This delay is not explained in the SCN.*

c) *The Noticee reiterates that multiple enforcement actions- one after the other in sequence has been initiated against Noticee 1 w.r.t. the same cause of action. First, the SCN dated April 04, 2019 issued under section 11(1), 11(4), 11A & 11 B of SEBI Act, 1992 r/w Section 12A of the Securities Contracts (Regulation) Act, 1956. Second, the captioned SCN dated March 09, 2021 under Rule 4 of the Securities Contract Regulation (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 read with Section 23I of Securities Contracts (Regulation) Act, 1956 and Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 r/w section 15-J of the SEBI Act, 1992; and then The SCN dated April 04, 2019 issued with respect to proceeding before WTM culminated into passing of final order dated November 12, 2020 whereby Noticee 1 was restrained from accessing the securities market and was further prohibited from buying, selling or otherwise dealing in securities including units* *of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of the Noticee 1 were also frozen. Noticee 1 states that it has already underwent debarment under the WTM order dated November 12, 2020 and therefore, any penalty imposed on the Noticee 1 in addition to the debarment is arbitrarily excessive. In this regard, Noticee 1 placed reliance on the decision of Hon'ble SAT in the matter of P G Electroplast Ltd. & Ors. Vs. SEBI dated 02.08.2019.*

d) *With respect to allegation in the SCN in relation to sale of Investment worth Rs. 8.47 Cr to DIPL (Dhanaasha Infracon Pvt Ltd), Noticee 1 states that at the relevant time the shares were not transferred but now it has been transferred to DIPL. Further, Noticee 1 states that it failed to understand how this transaction prima facie appears to be misrepresentation of financials of the company as the shares were sold at the cost price to the company, it is clear that Noticee 1 sold investment worth Rs. 58.36 Cr in the said financial year to various companies out of which Rs. 8.47 Cr investment were sold to DIPL. The Noticee 1 like to point that no accounting standards or any other law state that the sale is complete only when the shares are transferred to the purchaser (transferee) as such holding such shares does not amount to financial misrepresentation and again the company was able to fetch the entire cost out of such investment and not booked any loss on such shares, then how such transaction is treated as financial misrepresentation? Moreover, the Noticee 1 states that the Noticee 1 being an NBFC company diluted investment as it sees market space in lending business and as such decision was taken to dilute its exposure in investment business and focus on lending business in the financial year 2015-16. Noticee 1 point out that commercial transactions are of infinite varieties and under taken for maximum gain between borrowers and lenders. Such transactions depend on several factors including relationship, trust quotient and then prevailing scenario.*

e) *With respect to the allegation in the SCN relating to the goodwill stated by Noticee 1 in its annual reports, Noticee 1 states that no accounting standard or guidance note state that valuation of goodwill needs to be certified by the Independent Chartered Accountant while booking the same amount as Goodwill. The said goodwill was generated on account of merger order of Hon'ble High Court Mumbai, and Noticee 1* *had duly submitted to BSE the Hon'ble High Court Order copy along with calculation of Goodwill. Noticee 1 further submits that they obtained No Objection/In-Principal Approval from BSE for merger and submitted necessary documents along with valuation report of Independent Chartered Accountant (H.T Merchant & Co, Chartered Accountant) for swap exchange ratio and statutory auditor certificate for post-merger valuation was also submitted to Hon'ble High Court Mumbai and BSE.*

f) *With respect to allegation in the SCN which talks about significant contradiction in respect of the claimed business of Noticee 1, Noticee 1 states that it is registered as NBFC company with Reserve Bank of India and that the certificate issued by the RBI does not state that the Noticee 1 is an Investment Company or Loan Company but instead, the certificate only states that the Noticee 1 is registered under RBI as NBFC company accepting public deposit or non-public deposit. The Noticee 1 is duly registered with RBI and therefore requires submitting yearly Statutory Auditor's Certificate (SAC) certificate furnishing the type of activity carried out by Noticee 1. Noticee 1 states that earlier i.e., prior to FY 2015-16, Noticee 1 was primarily engaged in the business as an "Investment Company" however, in the FY 2015-16, Noticee 1 majorly operated as a "Loan Company" which is mentioned by the Auditor in its SAC. The NBFC Company under the RBI Act, can perform both the activities of Lending and investing. The Noticee has never done any business activity against the law of NBFC and Noticee in timely manner reported and complied with all the compliances of the RBI NBFC Regulation. In the Memorandum of Association submitted by the company taken on record the only major business activity is mentioned in show cause notice but if whole objects along with ancillary object are read with the same the company is eligible to carry business activity of lending and finance.*

g) *Further, Noticee 1 states that there was an inadvertent error that in MGT-9 in Directors Report for FY 2015-16 and the same was a typo error which was copied from the previous year where the Noticee had entered into the business activity of IT & Software Ltd" but the business did not pick up and Noticee 1 continued with the old business of "Investment & Lending". Noticee admits that it had overlooked, and in shareholders in AGM as well and such mistake was not rectified and recorded in the minutes but it cannot lead to misrepresentation of accounts as the Audited Financial Accounts as a whole was prepared as NBFC company and related to accounting* *standards and law applicable to NBFC and which was duly acknowledged by the shareholders in the AGM and thus they were aware.*

h) *With respect to the allegation that Noticee 1 has made wrong representation about the business in its Annual Report and Annual Return for the year 2015-16. Noticee 1 states that inadvertently there was a clerical error in the Noticee 1's Annual Report for the FY 2015-16, where the expression "Purchase and Sale of Goods" is mentioned instead of "Purchase and Sale of Shares". Noticee 1 states that the definition of the term goods also includes shares. Further, Schedule II of Financial Presentation of Profit & Loss Statement also uses the expression "Sale of Goods" and "Purchase of Traded Goods". Thus, in principle, there was no contravention of law or any accounting standard which amounts to misrepresentation/ wrong representation the year 2015-16. Further, in the AGM, the shareholders were duly informed about the business activity carried by the company and there has been no investor complains on such reporting and no competent authority raised such point.*

i) *W.r.t. to the observation made in the SCN that as per the Cash Flow Statement for the year ended March 31, 2016, the Cash Flow w.r.t. purchase of investment was only Rs.37.50 Lakh. Noticee 1 states that for the year ended March 31, 2016, the Purchase of Investment was only Rs. 37.50 Lakh and was duly reported. Further, Rs.57 Crore approximately was reported as Sale of investment in the same cash flow statement. Noticee 1 states that when the company buys or sells shares as stock in trade it is not reported as purchase of investment or sale of investment and should be under Cash Flow from business activity only and Cash flow was prepared as per Accounting Standard — Indirect Method and the company rightly reported the purchase of shares and sale of shares as business activity. Lastly, the company as per various law and compliances applicable to the company has rightly reported its nature of business. No adverse remark from the auditors in FY 2015-16 accounts had been made. Noticee 1 now mentions the expression "Purchase and Sale of Shares" instead of "Purchase and Sale of Goods" in its Annual Report.*

j) *Noticee 1 states that being an NBFC company its main business is to advance loans and hence as soon as the money is reflected in the bank account is it is being lent in order to earn interest on it. Noticee 1 assures it has not hidden any facts from SEBI and have submitted the complete bank statement of the company for the financial* *year 2015-16. Noticee 1 submits that the transactions are numerous as the size of the company is huge. The company receives funds as per requirement and request on the same day and the company lends the same to the parties seeking loan from the company. In the year ended 2016, loans and advances were about INR 235 Cr and the interest income has been around 11 Cr, this amount is reflected on the Asset side of the balance sheet. Noticee 1 further submits that the books of accounts of the company are audited and there is no adverse observation in the Auditors Report/qualification observed in the statutory audit. The company has net worth of approximately 200 Cr and the company invests and does business as per the capital of the company. Noticee 1 has never taken loans from banks or parties. The Noticee fails to understand as to how not maintaining huge bank balance can be treated as misrepresentation or misappropriation in financial statement. On an average, Noticee 1 has lent around 200 Cr to various entities and on an average earned 11 Cr interest which is about 5% return on the capital and interest is the main source of income of the company. Hence, the Noticee 1 is continuously deploying funds which can never be termed as any wrongdoing.*

k) *Noticee 1 denies the allegation that the Noticee 1 did not co-operate with the Forensic Auditor thereby attracting section 15 HB r/w Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992. Noticee 1 states that it had initially objected to the appointment of a Forensic Auditor which was not considered by BSE. Further, the appointed Forensic Auditor "M/s. Chokshi & Chokshi LLP" never contacted any of the directors of the Noticee 1 nor sought any list of documents for the purpose of audit. It is pertinent to note that both the BSE and the Forensic Auditor were silent up until October 12, 2018 when BSE addressed a letter to SEBI and informed about the appointment of the Forensic Auditor on 26.12.2017. Immediately after that, BSE conducted site visitation of the Noticee 1's office on October 18, 2021 and submitted its inspection report on October 23, 2021. This sudden proactiveness and haste on the part of BSE after October 12, 2021 indicates unusual behavior. Noticee 1 states that even today, it is prepared for any kind of audit as required by BSE.*

l) *Noticee 1 states that it shifted its registered address to: Indian Infotech & Software Ltd., Unit No 518, 5 Floor, Anjani complex, Parera Hill Road, Andheri (East) - Mumbai-400 099. The Noticee further states that the change of address of the Noticee is shown* *on BSE/MCA website. Noticee 1 clarifies that old office was on rent and company was operating from that address. When BSE team came for inspection, they were informed that painting work was going on because of Diwali and therefore records were bundled and kept in polythene bags. Noticee 1 confirms that the company is existing, well-functioning, doing business as NBFC and to establish this, we shall submit whatever documents are required by BSE/SEBI.*

m) *As stated above the Noticee 1's registered office was undergoing painting work and therefore, the majority staff of the Noticee 1 was engaged in field work and some of the back office team was on leave and most of directors are from outside Mumbai and generally attend the office eventually and for meeting and rest of the things they manage from their own place and there is no such mandate under any statutory law (ROC/MCA/SEBI/Stock Exchange Guidelines) that the directors of the company should be available every day at the registered office of the company on regular basis. As the Noticee 1's office premises was in residential complex and there were very few electricity points for use. Further, after scrutiny in this matter, Noticee 1 came to know from electrician that there was a defect in the meter and the units of electricity consumption were not recorded properly. That apart, the electricity bill continued in the name of the Builder of the Complex (R. K Developers) and the name of Mr. Sandeep Rasiklal Sheth appeared on the Maintenance Bill of the society as he was the owner of office premises which was taken on rent from him.*

n) *Noticee 1 has conducted all the Annual General Meetings of the company as per scheduled time, date and venue of the AGM given by the company in notice of AGM and it was convened accordingly and all the compliances and the attendance of the shareholders has been recorded in the register of AGM and there is no question about the seating capacity of 30 or more person at the venue (Register office of the company) as Noticee had arranged the chairs at the venue (Register office) for AGM and all the shareholders were offered the seating arrangements on the first come first serve basis and for remaining shareholders necessary arrangements were made as per requirement to conveniently hold the AGM. Noticee 1 states that the aforesaid contention of Noticee 1 can be verified at the instance of the shareholders.*

o) *Noticee 1 states that the captioned SCN is vague as SCN makes blanket statements without providing any reasons or factual data for coming to the conclusion in the SCN.*

The so-called irregularities alleged in the SCN do not point to the facts or evidence on the basis of which SEBI can arrive at the allegations in the SCN. It is respectfully submitted that in absence of a specific charge being spelt out with respect to the alleged non-compliance of the SEBI laws, the SCN stands vitiated and is liable to be set aside. We submit that it is an established principle that a vague allegation which does not specifically set out the reason for such allegation cannot be sustained as the same does not provide an opportunity to a Noticee to counter the charge and the same is counter to natural justice. SCN is silent as to how PFUTP Regulations/ LODR Regulations have been violated by Noticee 1 In this regard, Noticee 1 placed reliance on decision of Hon'ble Supreme Court in Central Excise, Bangalore v. Brindavan Beverages Pvt. Ltd. (2007) 5 SCC 388 and decision of Hon'ble SAT in Vikas Bengani v SEBI (Order dated March 08, 2010). In absence of a specific charge(s) being carved out, Noticee 1 is constrained from addressing SEBI's grievance accurately. It is stated in paragraph 4 of the SCN that SEBI examined findings in the Inspection Report submitted by BSE on October 23, 2018 to, inter alia, arrive at the allegations in paragraph 5 of the SCN. However, at no place is it mentioned as to what was examined by SEBI and why Statements in paragraph 5 of SCN were made.

p) *Requirement of 'intention' is a pre-requisite to prove 'fraud' for violation of PFUTP Regulations. In the present case, there is not a single complaint from the 15000+ public shareholders of the Company. The track record of the Company only shows that it has always acted within the letter and spirit of law. The Noticee's case in so far as the PFUTP violations are concerned is squarely covered by the WTM order dated August 06, 2021 bearing Ref. No. WTM /AB/IVD- ID19/12937/2021-22 passed in the matter of Jaisukh Dealers Ltd.*

q) *It is respectfully submitted that there is not an iota of evidence which supports the allegations in the SCN. In other words, the SCN levels a serious charge of fraud on the basis of mere suspicion, in complete ignorance of the time-tested judicial precedents including rulings of the Hon'ble SAT which cautions against suspicion, conjecture and surmise being passed off as proof especially where fraud is alleged.4 The SCN purports to treat suspicion and evidence as one and the same, and ignores foundational principles of the law of evidence that that the standard of proof for a charge of fraud to be established must be sufficient to overcome the ordinary* *presumption of honesty and good faith in dealings. It is therefore well settled that where fraud and collusion are alleged, it would be incumbent on the authority to set out the nature of the fraud along with full particulars. The SCN is however lacking in material particulars. In this regard, Noticee has placed reliance on the decision of Hon'ble Supreme Court in Chief Engineer, MSEB and Anr. v. Suresh Raghunath Bhokare (2005) 10 SCC 465.*

r) *It is abundantly clear that the LODR regulations envisage that the board of directors of a listed entity is responsible for implementation of the said provisions. In such circumstances, charging, both the Company and its board of directors is illegal. Thus, the allegation against the Company for violation of Regulations 4(1)(c), (e) and (g), and 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6), (12) of LODR Regulations suffers from a vice of illegality and therefore, ought to be dropped at the outset.*

s) *Noticee 1 has not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise. Further, no loss has been caused to any investor or group of investors as a result of alleged default. Present proceeding is the first time that a regulator has questioned Noticee 1.*

Summary of reply of Noticee 2 filed vide letter dated May 22, 2022

a) *Noticee 2 was appointed as a Non-Executive Independent Director of Noticee 1 on 13.02.2012 and Noticee 3 resigned from Noticee 1 on 15.09.2018.*

b) *Noticee 2 reiterated the preliminary objections raised by Noticee 1 in its reply with regard to conflict of interest, violation of principles of natural justice, multiple proceedings and delay in issuance of SCN.*

c) *The principle of vicarious liability has been wrongly applied in the instant matter. In the SCN, SEBI has not demonstrated the exact role or involvement of Noticee 1 in relation to the alleged violations in the SCN. Thus, it appears that SEBI has proceeded against Noticee 2 only on account of her being a Non Executive Independent Director of the Noticee 1 at the relevant time under the principle of vicarious liability. The SCN issued to Noticee 2 is pre- mature, given that allegations against Noticee 1 have not* *been established so far. The Hon'ble Supreme Court has held in the matter of Sunil Bharti Mittal v. Central Bureau of Investigation, that vicarious liability cannot be imposed unless first, it is statutorily provided for, and secondly, there is a specific ad attributable to an individual upon which such liability may be fastened.*

d) *Noticee 2 was acting in the capacity Non- Executive Independent Director and was not involved in the day-to- day affairs of Noticee 1 and therefore, charging the Noticee 2 per se is illegal. Noticee 2 also placed reliance on the decisions of Hon'ble SAT in Souman Chatterjee vs. SEBI (Order dated 7.01.2021 in Appeal No. 27 of 2020)., Pravin N. Gala v. SEBI (Order dated 10.10.2019 in Appeal No. 363 of 2018), P.G. Electroplast Ltd. v. SEBI (Order dated 02.08.2019 in Appeal No. 281 of 2017), Dr. Venkadasamy Venkataramanujan Vs SEBI (Order dated 07. 02.2020 in Appeal No. 254 of 2019, Prita Baig Vs SEBI (Order dated 14.02.2019 in Appeal No. 291 of 2017), Prafull Anubhai Shah vs SEBI (Appeal No. 389 of 2021).*

e) *Noticee 2 states that as per section 149(12) of the Companies Act, 2013, an independent director cannot be held liable for such misfeasance which occurred without her knowledge. An ordinary Non-Executive Independent Director of a company can be deemed to be guilty of the contravention, if it is proved that she was, at the time of the contravention, in-charge of and responsible to the company for the conduct of its business. It has to be alleged and proved by placing material on record that the person sought to be made liable was in charge of and responsible to the company for the conduct of its business at the relevant time. In Girhdarilal Gupta Vs D.N. Gupta, Collector of Customs (AIR 1971 SC 2162) the Supreme Court held that the words "in- charge of' must mean in overall control of the day-to-day business of the company or the firm. In support of her contentions, Noticee 2 also placed reliance on proviso to Section 27 of SEBI Act and Master Circular dated July 29, 2011 on Prosecution of Directors issued by Ministry of Corporate Affairs.*

f) *it is pertinent to mention that the nature and scope of the infirmities mentioned in Para Nos. 5, 6 and 7 of the SCN were not a part of the agenda of the of any of the Board Meetings or AGM which were held at the relevant time and there was no board resolution passed by the Board of Directors to that effect and therefore were not an outcome of Board process. Noticee 2 states that Noticee 1 had a Managing Director and a Chief Financial Officer who used to run the day-to-day affairs of the Noticee 1* *and the infirmities mentioned in Para Nos. 5, 6 and 7 of the SCN fall within their domain of work.*

g) *Noticee 2 has not taken the present regulatory proceedings in a nonchalant manner. The Company is not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law. Noticee 2 has not acted in defiance of law. The actions of Noticee 2 are not in any manner detrimental to the securities market and Noticee 2 has conducted all their operations with integrity and in the best interest of its shareholders. Noticee 2 has not made any disproportionate gain or gained any unfair advantage whether quantifiable or otherwise the alleged violation has not resulted in any harm or loss caused to the securities market. No such allegation sits in the SCN as well. The Hon'ble Supreme Court has held that a penalty should not be imposed for the sake of it and should be utilized to achieve a specific purpose, rather than as an end in itself.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

14. I have carefully perused the charges levelled against Noticees, replies of Noticees and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

    I. Whether Noticees have violated the provisions of

        a. Section 12A(a) (b) and (c) of the SEBI Act and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations,

        b. Regulations 4(1)(c), (e) and (g), and 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6) & (12) of LODR Regulations and Section 21 of SCRA

        c. Section 11(2)(i) and 11(2)(ia) of the SEBI Act?

    II. Do the violations, if any, attract monetary penalty under:

        a. Sections 15A(a), 15HA and 15HB of SEBI Act, for the alleged violations by Noticees?

        b. Section 23E of SCRA and Section 23H of SCR by Noticee 1 and Noticee 2 respectively?

    III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

15. The text of relevant provisions of the law which are alleged to have been violated by the Noticees and relevant extract whereof is reproduced below:

Relevant extract of provisions of SEBI Act:

*"**Functions of Board.***

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

(a).....

(b)....

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market; (ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;...

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 12A: No person shall directly or indirectly, -

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) ...."

Relevant extract of provisions of SCRA:

*"**Conditions for listing.***

Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange."

Relevant extract of provisions of LODR Regulations:

*"**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.

(d)....................

(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.

(f) ....

(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. ....

(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)........................

(b).............

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

(i) Disclosure of information:

(1)..................

(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-

(1) ....

(2)..........

(3)........

(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... ....

(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)................

(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.

(4)......................

....

....

(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.

....

...

***Relevant extract of provisions of PFUTP Regulations**:*

"3. Prohibition of certain dealings in securities No person shall directly or indirectly—

(a) ....

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

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

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

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

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

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

(a).......

(b).......

...

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g)...

(h)...

......

(r) Planting false or misleading news which may induce sale or purchase of securities;

16. Before proceeding into the merits of the case, I find it pertinent to deal with certain preliminary objections raised by Noticees. Noticees in their reply to the SCN have submitted that with respect to the cause of action in the present proceeding, two distinct and parallel proceedings were initiated by SEBI i.e. one under Section 11 B of SEBI Act before the Learned Whole Time Member (WTM), SEBI and other under Rule 4 of Adjudication Rules before the undersigned. In this respect, Noticees in their submissions have contended that the undersigned had assisted in the proceedings before the Learned WTM and had issued the SCN dated April 04, 2019 with respect to the aforementioned proceedings. Noticees in their reply have also contended that the undersigned would be influenced by the outcome of WTM proceedings and will not be able to conduct an unbiased proceedings in the present matter.

17. With regard to the aforementioned contention of Noticees, I note that undersigned's role in the aforementioned WTM proceeding was relegated to only assisting in issuance of SCN in the captioned matter. Further, undersigned had neither assisted nor had any role to in the final order passed by the Learned WTM in the aforementioned proceedings. Moreover, the undersigned was not involved in the investigation of the case nor in the approval of the adjudication proceedings against the Noticees in the present matter. Considering the above, I am not inclined to accept the aforementioned contention of Noticees that undersigned would be influenced by the outcome of WTM proceedings and will not be able to conduct unbiased proceedings.

18. Noticees in their submissions have also contended that there was delay in issuance of SCN. Noticees in their reply to the SCN have submitted that the period of investigation in the matter pertains to FYs 2015-16 and 2016-17 whereas the SCN was issued only on March 09, 2021. Noticees have submitted in their reply to SCN that SCN was issued on the basis of inspection report submitted by BSE w.r.t. the onsite inspection conducted by BSE on October 19, 2018 at the registered office of the Noticee 1. Noticees have further contended that even though BSE submitted its inspection report on October 23, 2018, the SCN was issued by SEBI only after an inordinate delay of two and a half years and this delay was not explained in the SCN. In support of their contentions with regard to delay in issuance of SCN, Noticees have placed reliance on decision of Hon'ble SAT in Rajeev Bhanot & Ors vs. SEBI (Order dated 09th July, 2021 in Appeal No. 396 of 2018) which was later affirmed by Hon'ble Supreme Court vide its Order dated November 08, 2021 in Civil Appeal No(s) 6441-6443/2021.

19. With regard to the aforesaid contention of Noticees regarding delay in issuance of SCN, I note that it is trite law that specific facts and the attending circumstances of each case have to be taken into consideration while deciding whether there has been a delay in issuance of SCN in a particular case. In the judgment cited by Noticees i.e., Rajeev Bhanot (supra), the violation was pertaining to financial year 2005-06 and the SCN was issued in 2017. However, in the instant matter, period of the investigation pertains to the period from 2014 to October 19, 2018 and the SCN in the matter was issued on March 09, 2021. The adjudication proceedings in the matter was initiated on the basis of examination of the inspection report of BSE dated October 23, 2018, analysis of Annual Reports of Noticee 1 for the Financial Years 2014-15 & 2015-16 by SEBI and replies/submissions of Noticee 1 post Interim Order. The adjudication proceedings were initiated against Noticee 1 and its directors on December 26, 2018. As already stated, Shri B. J Dilip was appointed as Adjudicating Officer on January 15, 2019 and pursuant to his transfer, the undersigned was appointed as Adjudicating Officer on December 29, 2020. The SCN in the matter was issued on March 09, 2021. Considering the above, I am of view that there was no inordinate delay in issuance of SCN. Moreover, Noticees also have not shown that any prejudice was caused to them due to such delay in issuance of SCN. In light of the aforesaid, I am unable to accept the preliminary objection raised by Noticees with regard to delay in issuance of SCN.

20. Further, Noticees in their submission has also contended about initiation of multiple proceedings under the same set of facts and allegations by SEBI. Noticees in their reply to the SCN have contended that for the same set of facts and allegations, in addition to present proceedings before the undersigned, proceedings under Section 11 of before Learned WTM was also initiated by SEBI. In this regard, while relying on the judgment of the Hon'ble SAT in the matter of P G Electroplast Ltd. & Ors. Vs. SEBI (Date of Decision: 02.08.2019), Noticees have contended they had already underwent debarment under the WTM order dated November 12, 2020 and any penalty imposed on Noticee in addition to debarment is arbitrarily excessive. In this respect, I note that intent behind initiation of proceedings before Learned WTM under Section 11 of SEBI Act is different from initiation of adjudication proceedings under relevant provisions of SEBI Act. While the adjudication proceedings are initiated under relevant provisions of SEBI Act to determine and levy monetary penalty for violation of securities law, the proceedings under section 11 of SEBI Act is initiated for issuing disciplinary directions like debarment, warning, etc. to protect the interest of investors and securities market as a preventive or remedial measure. The charges against Noticees in the present proceedings before the undersigned and the proceedings before Learned WTM under SEBI relate to violations of PFUTP Regulations, SEBI Act, LODR Regulations and SCRA which are of serious nature. In view of above, I am not inclined to accept the aforementioned contention of Noticees regarding prejudice caused to them due to initiation of multiple proceedings.

21. Noticee 1 has contended in its reply to the SCN that SCN is vague as SCN makes blanket statements without providing any reasons or factual data for coming to the conclusion in the SCN. Noticee 1 has contended that so-called irregularities alleged in the SCN do not point to the facts or evidence on the basis of which SEBI can arrive at the allegations in the SCN. Noticee 1 in this regard has submitted that in absence of a specific charge being spelt out with respect to the alleged non-compliance of the SEBI laws, the SCN stands vitiated and is liable to be set aside. To support its aforementioned contention, Noticee 1 has placed reliance on the decision of Hon'ble Supreme Court in Central Excise, Bangalore v. Brindavan Beverages Pvt. Ltd. (2007) 5 SCC 388 and decision of Hon'ble SAT in Vikas Bengani v SEBI (Order dated March 08, 2010. With regard to aforementioned contentions, I note that SCN has clearly spelled out observations found by SEBI against Noticee 1 and violations alleged against Noticee 1. I also note that Noticee 1 in its detailed reply to the SCN have raised its contentions regarding observations and violations of

regulatory provisions alleged against it. Therefore, I am unable to accept the aforementioned contention of Noticee 1.

Issue I: Whether Noticees have violated the provisions of

a) **Section 12A(a) (b) and (c) of the SEBI Act and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations,**
b) **Regulations 4(1)(c), (e) and (g), and 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6), (12) of LODR Regulations and Section 21 of SCRA**
c) **Section 11(2)(i) and 11(2)(ia) of the SEBI Act?**

22. It has been alleged in the SCN that Noticee 1 had misrepresented in its Annual Report for FY 2015-16 that it had sold shares held by it as an investment to Dhanaasha Infracon Pvt. Ltd (DIPL) for sale price of Rs. 84, 775, 684/-.

23. With regard to aforementioned allegations in the SCN, Noticee 1 has submitted in its reply to SCN that at the relevant time the shares were not transferred to DIPL but at present shares has been transferred to DIPL. Noticee 1 in its reply to the SCN has contended that shares were sold at the cost price to DIPL and thus it was able to fetch the entire cost out of such investment. Thereby, it had not booked any loss on such shares and therefore transaction to DIPL cannot be treated as financial misrepresentation. Noticee 1 has further contended that no accounting standards or any other law state that the sale would be complete only when the shares are transferred to the purchaser (transferee) and such holding of shares does not amount to financial misrepresentation. Noticee 1 also submitted that it being a Non-Banking Financial Company (NBFC) had diluted its investment as it saw market space in lending business. Noticee 1 has stated that such decision was taken to dilute its exposure in investment business and focus on lending business in the financial year 2015-16. Noticee 1 has also contended in its reply that transactions were duly audited and no queries were raised by statutory auditors at the relevant time. Further, Noticee 1 has also contended that commercial transactions are of infinite varieties and under taken for maximum gain between borrowers and lenders and such transactions depend on several factors including relationship, trust quotient and then prevailing scenario.

24. In regard to the aforementioned contentions of Noticee 1, I observe from the Annual Report of Noticee 1 for FY 2015-16 that Noticee 1 had sold its quoted investment of Rs 8.47 Cr

during the year. I note that Noticee 1, vide its letter to SEBI dated September 12, 2017 as well as in its reply to SCN, *inter alia*, had submitted the details regarding the aforementioned sale of investment in the FY 2015-16. On perusal of the same, I note that Noticee 1 had sold shares by way of off -market transfer to a single entity, Dhanaasha Infracon Pvt. Ltd (DIPL) for sale price of Rs. 84, 775, 684/-. The specifics of the aforementioned transactions are as given hereunder:

Sr. No.	Scrip name	No. of shares	Cost price (Rs)	Mode	Sale Price (Rs)
1	Golden Goenka Fincorp Limited	3,50,000	25,82,441	Off-market	25,82,441
2	Kappac Pharma Limited	29,400	74,71,061	Off-market	74,71,061
3	Rajlaxmi Industries Limited	56,370	1,71,153,162	Off-market	1,71,153,162
4	Sulabh Engg & Services Limited	2,57,300	5,75,60,740	Off-market	5,75,60,740
5	Novarlis India Limited	30	8,280	Off-market	8,280
				Total	**8,47,75,684/-**

25. From perusal of the demat statements as obtained from the Central Depository Services (I) Ltd (**CDSL**), I observe that despite the claimed sale of aforementioned shares to DIPL during FY 2015-16, Noticee 1 continued to hold on to the shares in its demat account even after FY 2015-16, i.e., Noticee 1 was holding the aforementioned shares even as on March 31, 2017. In order to determine whether any consideration had been received by Noticee 1 for the aforementioned sale of shares, I have perused the bank statements submitted by Noticee 1 in its reply to SCN as well as in its letter dated September 12, 2017 to SEBI. From the perusal of the aforesaid bank statements, I note that Noticee 1 was in receipt of various amounts from DIPL ranging from Rs. 90,000 to Rs. 1 crore for the period from December 2015 to February 2016. The specifics of sums received by Noticee 1 from DIPL, as submitted by Noticee 1, are as given hereunder:

Sr. No.	Date	Particular	Credit Amount (Rs)

1	22-12-2015	By HDFC Bank Ltd	1,00,00,000
2		By HDFC Bank Ltd	47,00,000
3		By HDFC Bank Ltd	50,00,000
4	23-12-2015	By HDFC Bank Ltd	85,00,000
5	24-12-2015	By HDFC Bank Ltd	20,00,000
6		By HDFC Bank Ltd	30,00,000
7		By HDFC Bank Ltd	30,00,000
8		By HDFC Bank Ltd	20,00,000
9	28-12-2015	By HDFC Bank Ltd	15,00,000
10		By HDFC Bank Ltd	30,00,000
11	29-12-2015	By HDFC Bank Ltd	25,00,000
12		By HDFC Bank Ltd	90,000
13		By HDFC Bank Ltd	20,00,000
14		By HDFC Bank Ltd	50,00,000
15		By HDFC Bank Ltd	65,00,000
16		By HDFC Bank Ltd	50,00,000
17		By HDFC Bank Ltd	16,00,000
18	11-01-2016	By HDFC Bank Ltd	9,50,000
19		By HDFC Bank Ltd	2,00,000
20	12-01-2016	By HDFC Bank Ltd	27,50,000
21	22-01-2016	By HDFC Bank Ltd	9,00,000

26. However, apart from the above details, there is nothing on record to indicate that above sums of money amounting to Rs 8.47 crores, transferred by the DIPL to Noticee 1, were

consideration for sale of shares by Noticee 1 to DIPL. I also note from records that Noticee 1 had not produced any documentary evidence like agreement for sale of shares to prove that it had sold the shares to DIPL and had received the aforesaid amount as a consideration for the same. In this regard, I note that the Learned WTM, SEBI in his Order dated November 12, 2020 has observed with respect to the aforementioned purported sale of shares of Noticee 1 to DIPL as under:

"In *this regard, I note that there is neither an agreement/documentary evidence for the said sale of shares between Noticee 1 and DIPL nor is there any agreement/documentary evidence whereby Noticee 1 has agreed to receive the payment for the shares in such tranches over a period of 3 months, before me. I also note that Noticee 1 vide its detailed reply dated September 22, 2020 has not submitted as to whether the shares have now been transferred to DIPL or submitted any documents to show transfer of shares/delivery of the sharesto the account of DIPL. Hence, it is not clear as to whether the amount of Rs. 8.47 crores transferred by DIPL to the account of Noticee 1 was for the purpose of sale of shares to DIPL as claimed by Noticee 1, as it appears that the shares have not yet been transferred till date to DIPL, whereas the payments have been made by DIPL to Noticee 1 in 2015 itself."*

27. As noted above, there was no transfer of shares to DIPL by Noticee 1 even on March 31, 2017. So even after one year from the alleged sale of shares to DIPL, there was no transfer of quoted shares to DIPL. Moreover, unlike other movable goods, shares of a listed company are subject to price volatility due to market movement. Therefore, claim of Noticee 1 that transfer of shares happened later and after consideration for the shares has been paid does not seem acceptable. Therefore, any later transfer of shares to DIPL is of no relevance for the purpose of adjudging the charge of misrepresentation of sale of shares to DIPL in its Annual Report for FY 2015-2016. Even if I consider Noticee 1's claim that there was transfer of aforementioned quoted shares to DIPL at later stage, Noticee 1 had not submitted the details of such transfer in its reply to SCN. I note that Noticee 1 in its reply to SCN has submitted certain demat statements from the period April 01, 2019 to March 31, 2020. However, I am unable to verify from these demat statements, if there was any transfer of shares to DIPL during the aforementioned period. Therefore, I am unable to accept the contention of Noticee 1 that there was no misrepresentation in the Annual Report for FY 2015-16 with regard to sale of the quoted shares because there was transfer of shares at a later date

28. Considering the fact that there is lack of documentary evidence for such high value sale transactions done by Noticee 1 and the fact that Noticee 1 continued to hold the aforesaid shares in its demat account even after the alleged sale, the authenticity of statement in its annual report for FY 2015-16 that there was a sale of investment to DIPL in the FY 2015-16 is clearly questionable. Therefore, I find that the statement in the Annual Report for FY 2015-16 that there was sale of quoted shares amounting to Rs. 8.47 crores approx. to DIPL in an off-market transaction in the FY 2015-16 is clearly a misrepresentation of financials in the aforesaid Annual Report. Therefore, I find that allegation in the SCN that there was misrepresentation in financials of Noticee 1 stands established.

29. It has also been alleged in the SCN that Noticee 1 failed to furnish to SEBI the copy of the Independent Chartered Accountant Valuation report, which was referred in the Amalgamation Order passed by the Hon'ble High Court of Bombay dated May 04, 2012, for the goodwill amount of approximately Rs. 51 crore appearing in its Balance sheet as on March 31, 2016 due to which it was alleged that there was misrepresentation in financials of Noticee 1.

30. I note from the Annual Report of the Noticee 1 for FY 2015-16 that Noticee 1 has shown an amount of approximately Rs. 51 Cr under the head "Goodwill" in its balance sheet as on March 31, 2016. I also note from the aforementioned Annual Report that the said goodwill amount has been carried over from the previous years starting from March 31, 2012. In this regard, I note that Noticee 1 in its reply to the SCN, has stated that the said goodwill was booked as per the Amalgamation Order dated May 04, 2012 passed by Hon'ble High Court of Bombay. A document indicating the calculation of goodwill formulated as per the said amalgamation scheme has been placed on record by Noticee 1 in its reply to the SCN before the undersigned.

31. On perusal of the records placed by Noticee 1 before the undersigned, I note that Hon'ble High Court of Bombay in its Order dated May 04, 2012, *inter alia* held that "*The networth of the Transferor No. 1 (Lambodar Nirmit Limited) as per the valuation report of Independent Chartered Accountant is Rs, 73,36,96,520/-………The networth of the Transferor No. 2 (Niki Metal Company Limited) as per the valuation report of Independent Chartered Accountant is Rs, 88,16,70,376/-."* However, I note from the reply of the IIFSL dated September 12, 2017 before Learned WTM, that Noticee 1 had failed to furnish the

aforementioned valuation report of the Independent Chartered Accountant during the aforesaid 11B proceedings and had stated that as the calculation of goodwill was done as per the aforementioned High Court Order, no valuation certificate in this regard was required to be obtained by the Company. With regard to allegation in the SCN, I note that Noticee 1 in its reply to SCN in the present proceedings has submitted that it had obtained No Objection/In-Principal Approval from BSE for merger and submitted necessary documents along with valuation report of Independent Chartered Accountant (H.T Merchant & Co, Chartered Accountant) for swap exchange ratio as well as statutory auditor certificate for post-merger valuation to Hon'ble High Court of Bombay and BSE. The Noticee in its reply to the SCN also contended that no accounting standard or guidance note states that valuation of goodwill needs to be certified by the Independent Chartered Accountant while booking the same amount as Goodwill. I note that Noticee 1 even in its reply to the SCN has not furnished independent chartered account certifying the goodwill shown by Noticee 1 in its books of account and it has also not provided any evidence of having submitted the same during the proceedings before Learned WTM, SEBI.

32. Thus, I find that Noticee 1 has not furnished the independent chartered accountant valuation report for the aforesaid goodwill amount for the FY 2015-16. Therefore, in the absence of the aforementioned valuation report of independent chartered accountant, I am unable to ascertain the veracity of the amount shown as "goodwill" in the balance sheet of Noticee 1 for the FY 2015-16.

33. It has also been alleged in the SCN that Noticee 1 has misrepresented its business as there were significant contradictions in respect of the claimed business of the company. The SCN alleges that the company was appearing under the category 'Investment Company' on the Reserve Bank of India (**RBI**) Website as on August 31, 2017 whereas Statutory Auditor Certificate (**SAC**) had stated that the company was a Loan Company. Further, it has been alleged in the SCN that the Annual Report of Noticee 1 for the year FY 2015-16 stated that approximately 85% of the turnover of the company was from IT and Software Products.

34. With regard to aforementioned allegation in the SCN, Noticee 1 in its reply to SCN has contended that it is registered as NBFC with Reserve Bank of India and that the certificate

issued by the RBI does not state that the Noticee 1 is an Investment Company or Loan Company but instead, the certificate only states that the Noticee 1 is registered under RBI as NBFC accepting public deposit or non-public deposit. Noticee 1 has further submitted that it is duly registered with RBI and was required to submit yearly SAC certificate furnishing the type of activity carried out by it and that prior to FY 2015-16, it was primarily engaged in the business as an “Investment Company” however, in the FY 2015-16, Noticee 1 majorly operated as a “Loan Company” which was mentioned by the Auditor in its SAC. Noticee 1 in its reply has also contended that NBFC under the RBI Act, can perform both the activities of lending and investing. Noticee 1 in its reply to SCN also submitted that it had never done any business activity against the law governing NBFC s and Noticee 1 in timely manner had reported and complied with all compliances of the RBI. Further, Noticee 1 has also contended that SCN mentions only the major activities in in the Memorandum of Association of Noticee 1 but if whole objects along with ancillary object are read it is eligible to carry business activity of lending and finance. Further, Noticee 1 has also stated that there was an inadvertent error that in MGT-9 in Directors Report for FY 2015-16, it was a typo error which was copied from the previous year where Noticee 1 had entered into the business activity of IT & Software Ltd” but the business did not pick up and the Noticee continued with the old business of “Investment & Lending”. Noticee 1 in reply to the SCN has admitted that the same had been overlooked by them, but it cannot lead to misrepresentation of accounts as the Audited Financial Accounts as a whole was prepared as NBFC and related to accounting standards and law applicable to NBFC, which was duly acknowledged by the shareholders in the AGM and thus they were aware.

35. At this juncture, I find it pertinent to refer to the “Frequently Asked Questions” (FAQ) section in the website of the RBI. I note from the aforementioned FAQ section that RBI has categorized NBFCs into four categories namely, a loan company, an investment company, an asset finance company and mutual benefit finance company. In this context, in the FAQ, “Loan Company” and “Investment Company” have been defined as under:

- Investment Company (IC): IC means any company which is a financial institution carrying on as its principal business the acquisition of securities.

- Loan Company (LC): LC means any company which is a financial institution carrying on as its principal business the providing of finance whether by making loans or advances or otherwise for any activity other than its own but does not include an Asset Finance Company.

36. I note from the website of the RBI and copy of registration certificate of Noticee 1 from RBI, submitted by Noticee 1 vide its letter dated September 12, 2017 that Noticee 1 falls within the list of Non Deposit Accepting Non-Banking Financial Company (NBFCs) registered with RBI. Further, I note from the website of RBI that Noticee has been categorized as an "Investment Company" by RBI as on August 31, 2017. However, I note that in the Statutory Auditory Certificate (SAC) prepared by Shah Parmar & Mehta, the Company's Chartered Accountants for FY 2015-2016, Noticee 1 had been considered as a "Loan Company". I note that Noticee 1, vide its replies dated September 12, 2017 and October 17, 2017 in the WTM proceedings and in its reply to the SCN before the undersigned, had stated that it was a Loan Company which also did investment activities in accordance with its Memorandum of Association (MoA). Therefore, I observe that there are contradictions in respect of the category of the Company as an NBFC.

37. On perusal of Memorandum of Association (MoA) submitted by Noticee 1 as part of its letter dated September 12, 2017 to SEBI, I note that MoA states principal business activity of the Noticee 1 as "*To carry on the business of buying, selling, leasing, letting on hire, hire purchase or easy payment system, all types of industrial, agricultural, commercial and house-hold apparatus, plant equipment, machinery, vehicles, vessels, carriers, household goods and materials, buildings and real estate. AND to finance industrial enterprise and to promote companies engaged in industrial and trading business.*" However, I note from FAQ section in the RBI website that NBFC is defined as a company which is engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/construction of immovable property. Therefore, I find that MoA of the Company seems to be at variance with the functions of NBFCs as per the aforesaid definition and that Noticee 1 does not adhere to the registration granted by RBI to function as NBFC

38. I further, observe from the Annual Report of the Noticee 1 for the FY 2015-16 that the income on account of sale of goods/service of Noticee 1 for the financial year was Rs. 91 Crore and Purchase of traded goods was approximately Rs. 106 crore. Moreover, I note from the 'Extract of Annual Return' attached by the company to the Director's report in the Annual Report for FY 2015-16, that as on the financial year ended March 31, 2016 the principal business activities disclosed by the company was of "IT & Software Products and Interest Income". I note from the Annual Report of the Noticee 1 for the FY 2015-16 that in the said financial year, 85% of the turnover of the Noticee 1 was generated from sale of IT and software products.

39. I note that Noticee 1, vide its letter dated September 12, 2017 to SEBI and in its reply to the SCN has stated that that there was a typo error in the Annual Report of the Company for FY 2015-16, wherein the "Purchase of Shares" was mentioned as "Purchase of Goods", "Sale of Shares" was mentioned as "Sale of Goods". Noticee 1 in its reply to SCN has also contended that definition of the term goods also includes shares. Further, Noticee 1 has submitted that Schedule II of Financial Presentation of Profit & Loss Statement also uses the expression "Sale of Goods" and "Purchase of Traded Goods". Noticee 1 also submitted that for the year ended March 31, 2016, the Purchase of Investment was only Rs. 37.50 Lakh and was duly reported. Noticee 1 has also contended that Rs.57 Crore approximately was reported as Sale of investment in the same cash flow statement. Noticee 1 further contended in its reply to SCN that when the company buys or sells shares as stock in trade, it is not reported as purchase of investment or sale of investment and should be under Cash Flow from business activity only and Cash flow was prepared as per Accounting Standard — Indirect Method and the company rightly reported the purchase of shares and sale of shares as business activity. Noticee 1 has contended that it had rightly reported its nature of business as per various law and compliances applicable it and that no adverse remark from the auditors in FY 2015-16 accounts had been made against it.

40. In this regard, I note from the Annual Reports of Noticee 1 for FY 2014-15 and 2013-14 that even in the aforementioned years, ''revenue from operations" schedule in the Annual Reports showed income from sales of goods/ services and purchase of traded goods. I also note from available records that though company had submitted that Purchase of

Shares" was mentioned as "Purchase of Goods", "Sale of Shares" was mentioned as "Sale of Goods" due to typo error, Cash flow statement for the year ended March 31, 2016 indicated that the cash flow with respect to purchase of Investments is Rs. 37.50 lakhs only. I also note since the Company has been generating revenue from the sale of IT and Software Products as seen from the Annual Report for the FY 2015-16, the said sale of goods and services could have also referred to the sale of IT and Software products/services. Further, I note that it is not clear from records whether the sale/purchase of shares was a business activity of Noticee 1 or an investment activity of Noticee 1. Therefore, I note that above reasoning provided by Noticee 1 that there was a typo error is not credible and cannot be accepted.

41. I note from FAQ Section in the website of RBI that conducting financial activity as principal business means that a company's financial assets should constitute more than 50 per cent of its total assets and income from financial assets constitute more than 50 per cent of its gross income and a company which fulfils both these criteria will be registered as NBFC by RBI. The financial activity as principle business has been so defined by RBI to ensure that only companies predominantly engaged in financial activity get registered with it as NBFC and are regulated and supervised by it. However, as noted above, for the FY 2015-16, 85% of the turnover of the Noticee 1 was generated from sale of IT and software products, which shows that the Company had deviated from its activities as NBFC.

42. Hence, I note that Noticee 1 had deviated from the principle business of financial activity for which it was registered with RBI as NBFC and had also deviated from the main objects of its formation as given in its MoA by engaging in business other than those stated in its MoA. In light of the foregoing observations, I find that that there are significant contradictions in respect of the claimed business of Noticee 1 and thus Noticee 1 had made incorrect representation about the business in its annual report and Annual Return for the FY 2015-16. Thus, I find that allegation in the SCN that there was misrepresentation of business of Noticee 1 in its financials stand established.

43. It has also been alleged in the SCN that IISL is facilitating accommodation transactions as there are numerous entries of funds received by IISL in its bank account from multiple

entities and transferred to other entities on the same day leaving a negligible closing balance in the bank account.

44. With regard to the aforementioned allegation in the SCN, Noticee 1 in its reply to SCN has contended that it is a NBFC whose main business is to advance loans and hence as soon as the money is reflected in the bank account, it is being lent in order to earn interest on it. Noticee 1 has submitted in its reply to SCN that it had not hidden any facts from SEBI and had submitted the complete bank statement of the company for the financial year 2015-16. Noticee 1 has also contended that the transactions are numerous as the size of the company is huge. Noticee 1 has further stated that it receives funds as per requirement and request on the same day and lends the same to the parties seeking loan from the company. Noticee 1 has submitted in its reply to the SCN that in the financial year ended 2016, loans and advances were about INR 235 Cr and the interest income of Noticee1 has been around 11 Cr, and same amount is reflected in its balance sheet. Noticee 1 has further submitted that in its books of accounts are audited and there is no adverse observation in the Auditors Report/qualification observed in the statutory audit. Further, Noticee 1 has stated that it has net worth of approximately 200 Cr and the company invests and does business as per the capital of the company. Noticee 1 also submitted that it has never taken loans from banks or parties and it fail to understand as to how not maintaining huge bank balance can be treated as misrepresentation or misappropriation in financial statement. Noticee 1 further submitted that continuously deploying funds can never be termed as any wrongdoing.

45. From perusal of Noticee 1's HDFC bank statement of account no. 00600350115229 and Yes Bank statement of account no 020185700000189, I note that there were numerous entries of funds received by Noticee 1 from multiple entities and transferred to other entities on the same day, leaving a negligible closing balance in the aforesaid bank accounts. With regard to submissions made by Noticee 1 in regard to the aforementioned allegation of SCN, I note that no documentary evidence has been submitted by Noticee 1 to indicate that the transfer of funds from its HDFC bank account no. 00600350115229 and Yes Bank Account No. 020185700000189 were in nature of loans and advances as claimed by Noticee 1. Noticee 1 has also not submitted the specific details of these fund transfers purported to be loans and advances like particulars of the loan, details of loan agreement, particulars of borrowers, details of interest, tenure of loans etc. to indicate that the funds

received were deployed for loans and advances. Further, I am of view that mere submission of the bank statements does not suffice as it does not explain the legitimate purpose of the funds transferred or received by Noticee 1. In light of the above, I find that Noticee 1's inability to provide any documentary evidence/specific details regarding the impugned fund transfers combined with its refusal to cooperate with the forensic auditor clearly indicates that the company was facilitating accommodation transactions. In light of the above observations and in absence of evidence to the contrary, I find that Noticee 1 was being used as a conduit to facilitate accommodation transactions.

46. It has been alleged in the SCN that Noticee 1 did not cooperate with the forensic auditor that was appointed by BSE pursuant to the directions in the Interim Order for conducting forensic audit of Noticee 1. With regard to the aforementioned allegations in the SCN, Noticee 1 in its reply has submitted that it had initially objected to the appointment of a Forensic Auditor and the same was not considered by BSE/SEBI. Further, Noticee 1 has contended that the forensic auditor never contacted any of the directors of the Noticee 1. Noticee has also submitted that both BSE and the Forensic Auditor were silent up until October 12, 2018 when BSE addressed a letter to SEBI and informed about the appointment of the Forensic Auditor on 26.12.2017 and immediately after that, BSE conducted site visitation of the Noticee 1's office on October 18, 2021 and submitted its inspection report on October 23, 2021. Noticee 1 has contended that there was sudden proactiveness and haste on the part of BSE after October 12, 2021 and the same indicates unusual behaviour. Noticee 1 in its reply to SCN also submitted that it is prepared for any kind of audit as required by BSE/SEBI.

47. In this regard, I note that SEBI, vide Interim Order dated September 21, 2017, had directed BSE to appoint an independent auditor to conduct forensic audit for verification of credentials/ financials of Noticee 1. The aforementioned direction was confirmed by SEBI vide its confirmatory order dated February 08, 2018. I note from available records that pursuant to the Interim Order, BSE had appointed M/s. Chokshi & Chokshi LLP for conducting forsenic audit of the Noticee 1 on December 26, 2017. I note that BSE, vide its letter dated October 12, 2018, had informed SEBI that M/s. Chokshi & Chokshi LLP had requested Noticee 1 to provide contact details of company officials for purpose of conducting forensic audit but the same had not been provided by Noticee 1. Further, I also note from the aforementioned letter that BSE had, vide letters dated May 23, 2018 and

July 17, 2018, had advised Noticee 1 to cooperate and provide requested documents sought by the forensic auditor and on non -compliance with the said request of BSE, it had issued Show Cause Notice dated August 30, 2018 to the company for its refusal to cooperate with the forensic auditor. I also note from available records that Noticee 1 had not responded to the Show Cause Notice issued by BSE and that the forensic auditor was unable to initiate forensic audit in terms of directions of Interim Order of SEBI due to non-cooperation of Noticee 1. The aforementioned observations has not been disputed by Noticee 1 in its reply to the SCN. Further, I also note that Noticee 1's has admitted that it had objected to forensic audit. Thus, I am of the view that Noticee 1 had failed to provide information and documents sought by the forensic auditor appointed under the direction of SEBI and therefore, had failed to provide information to SEBI. Hence, I find that Noticee 1 has violated the provisions of Section 11(2)(i) and 11(2)(ia) of the SEBI Act as alleged in the SCN.

48. I note from available records that an inspection report dated October 23, 2018 was filed by BSE after conducting a physical inspection of the registered office of Noticee 1 on October 19, 2018 at Room No. 122, Block D, 1st Floor, Sitala Devi Chs. Ltd., D.N. Nagar, Ambivali, Andheri (West), Mumbai 400053. On perusal of inspection report, I note that BSE had observed the following:

1) *There was no name board of the company at the entrance of the premises. However, name of the company was affixed on the plain paper on the side wall of the entrance.*
2) *the office was situated in a residential complex and there were no furniture or any computers/printers available at the said office*
3) *per the company's latest correspondence dated September 27, 2018 with the Exchange, the company letter head carried landline and fax no. 022 – 4295 6833 for its registered office address, however, no such landline telephone/fax instrument was available at the said premises*
4) *During the inspection, none of directors or company secretary of Noticee 1 were present.*
5) *one Mr. Sachin Merchande, the only company official who was present there, could not clarify regarding operations carried out from the said premises and according to him, none of the directors visited the office*
6) *As per electricity bills provided to the team for the month of July 2018, August 2018 and September 2018, these bills were in the name of R. K. Developers. electricity bills*

for the months of July 2018, August 2018 and September 2018 were provided to the inspection team and it was observed that there was minimal electricity consumption of 25 units during these 3 months. As per the society maintenance bill provided by Mr. Sachin Merchande, bill is in the name of Mr. Sandeep Rasiklal Sheth & Others. Upon enquiring, Mr. Sachin could not clarify relationship of Mr. Sandeep Rasiklal Sheth with Noticee 1. Thus, it appeared that the premises was on a rent. However, no rent agreement was provided to the team.

7) *As per attendance sheet of the Annual General Meeting ("AGM"), it appeared to have been held at the office for last 3 years, it was observed that, more than 30 shareholders of Noticee 1 have attended these meetings. As per records, company's total area is about 225 sq. ft. which includes a room, kitchen and facilities. In view of the same, there was suspicion as to how such a small room could accommodate more than 30 shareholders in addition to other company directors and officials attending such AGMs*.

49. With regard to the allegation in the SCN based on the findings of the inspection report filed by BSE, Noticee 1 in its reply to SCN has submitted that when BSE team came for inspection, they were informed that painting work was going on because of Diwali and therefore records were bundled and kept in polythene bags. Noticee 1 in its reply further contended that as the painting work was going on majority staff of Noticee 1 was engaged in field work and some of the back office team was on leave and most of directors are from outside Mumbai and generally attend the office eventually and for meeting and rest of the things they manage from their own. Noticee 1 further contended that there was no mandate under any statutory law that the directors of the company should be available every day at the registered office of the company on regular basis. With regard to the minimal electricity consumption of the premises, Noticee 1 contended that as the Noticee 1's office premises was in residential complex and there were very few electricity points for use. Further, Noticee 1 also contended that there was defect in electricity meter and the units of electricity consumption were not recorded properly. Noticee 1 also submitted that the electricity bill continued in the name of the Builder of the Complex (R. K Developers) and the name of Mr. Sandeep Rasiklal Sheth appeared on the Maintenance Bill of the society as he was the owner of office premises which was taken on rent from him. Noticee 1 also enclosed along with his reply Form INC 22 of MCA, copy of rent agreement as well as telephone bill of Noticee 1 at its aforementioned registered address for period 05/05/2016 to

04/06/2016. Noticee 1 further submitted that it had shifted its registered office to Indian Infotech & Software Ltd., Unit No 518, 5 Floor, Anjani complex, Parera Hill Road, Andheri (East) - Mumbai- 400 099 and the same is shown in BSE/MCA website.

50. Noticee 1 submitted that all the Annual General Meetings of Noticee 1 was as per scheduled time, date and venue of the AGM given by it in notice of AGM and it was convened accordingly and all the compliances and the attendance of the shareholders has been recorded in the register of AGM and there is no question about the seating capacity of 30 or more person at the venue (Register office of the company) as Noticee had arranged the chairs at the venue (Register office) for AGM and all the shareholders were offered the seating arrangements on the first come first serve basis and for remaining shareholders necessary arrangements were made as per requirement to conveniently hold the AGM. Noticee 1 submitted that the aforesaid contention of Noticee 1 can be verified at the instance of the shareholders.

51. With respect to aforementioned contentions of Noticee 1, I note from perusal of the Leave and License Agreement submitted by Noticee 1 in its reply that Licensor has agreed to allow Noticee 1 to use and occupy the premises for residential purposes only. I note that electricity bills for the months of July 2018, August 2018 and September 2018 were provided to the inspection team and it was observed that there was minimal electricity consumption of 25 units during these 3 months. I note that Noticee 1 has claimed that there was a technical mistake in the reading of the meter for the said 3 months. However, I note that IISL has not provided any other electricity bills prior or after the said 3 months to substantiate their contentions that the reading for the said 3 months were due to technical mistake. Further, given that there are no computers/printers etc., and Mr. Sachin Merchande submission that none of the directors visited the office, it appears that it is a non-functional office premises with minimal electricity consumption. With respect to observation regarding conduct of the AGM, I note that Learned WTM in his Order dated November 12, 2020 has held that "*With regard to the AGM, although it is questionable as to how more than 30 shareholders including company officials could have been accommodated in the small office of about 225 square feet area, I find that the attendance sheet duly signed by the shareholders who attended the AGM have been submitted and there are no complaints by the shareholders with regard to the AGM before me*". In light of same and in absence of any other evidence on record to establish that no AGM had

been conducted by Noticee 1, I am inclined to give benefit of doubt to Noticees regarding conduct of AGMs by Noticee 1. However, In light of the other observations in the inspection report of BSE, it appears that no operations were being carried out by Noticee 1 at its registered address.

52. In view of the observations in the preceding paragraphs, I find that Noticee 1 failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financial statements and misused of books of account/ funds of the company.

53. I note that such acts of Noticee 1 fall under the definition of fraud as defined in Regulation 2(1)(c) of PFUTP Regulations. I note that Section 12A(a)(b)(c) of the SEBI Act read with Regulation 3(b)(c)(d) of PFUTP Regulations, *inter alia*, prohibits employment of any manipulative/ deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Regulation 4(1) of PFUTP Regulations provides for prohibition on indulging in fraudulent or unfair trade practices. Regulation 4(2)(f) and (r) of PFUTP Regulations states that dealing in securities by a person shall be deemed as fraudulent if it involves fraud including publishing or causing to publish or reporting or causing to report any information which is not true or planting false or misleading news .

54. I find that Noticee 1 by making misrepresentation in its financial statements, which are available in public domain and by its misusing funds by entering into accommodation transactions had defrauded the investors in securities of Noticee 1.The financial statements of a company are relied upon by investors for making their investment decisions and any misrepresentation in the financials of the company may influence sale or purchase of securities and have adverse impact on interest of investors. In this regard, I find it relevant to note that the Hon'ble Supreme Court in its Order dated April 26, 2013 in the matter of N. Narayanan vs Adjudicating Officer, SEBI, has laid down that "……….*Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote*

the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality"".

55. With regard to allegation of fraud, Noticee 1 in its submissions has further contended that intention is pre-requisite to prove 'fraud' for violation of PFUTP Regulations. Noticee 1 in this regard has contended that there was not a single complaint from its 15000+ public shareholders and the track record of Noticee 1 only shows that it has always acted within the letter and spirit of law. In order to address the aforementioned contention of Noticee 1, I find it pertinent to refer to decision of Hon'ble Supreme Court of India in the matter of SEBI Vs Shri Kanaiyalal Baldevbhai Patel and other connected matters. In the aforementioned judgment, the Hon'ble Supreme Court of India while discussing the ambit of fraud under PFUTP Regulations has held as under:

> *"……………...The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in <u>the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present</u>. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required…………."*

In light of the ratio laid down in the aforesaid judgment of the Hon'ble Supreme Court of India, I am not inclined to accept the contention of Noticee 1, in order to prove fraud in the instant matter, intention on the part of Noticee 1 to commit the said fraud has to be proved.

56. Noticee 1 in its submissions has also contended that so far as charges of PFUTP Regulations against it is covered, the same was squarely covered by the decision of Learned WTM, SEBI in the matter of Jaisukh Dealers Ltd (Decision dated August 06, 2021). In this regard, I note that facts in the instant matter is distinguishable from that in the aforementioned decision of Learned WTM, SEBI. Therefore, in the instant matter, in light of the observations in preceding paragraphs, I note that Noticee 1 has violated Section 12A (a) (b) and (c) of the SEBI Act and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations.

57. It has been observed in the preceding paragraphs that Noticee 1 had failed to ensure that information provided to BSE and investors was not misleading and also failed to comply with the conditions of listing agreement. In this regard, I note that Regulation 4(1) of LODR Regulations require a listed entity to refrain from misrepresentation and ensure that information provided to recognized stock exchange(s) and investors is not misleading. In light of the above, I find that allegation in the SCN that Noticee 1 has violated Regulation 4(1)(c), (e) and (g) of the LODR Regulations stands established.

58. Regulation 4(2) of LODR Regulations requires the listed entity to comply with corporate governance provisions. Regarding the violations of Regulations 4(2) (f) (ii) (6) & (7) and4 (2)(f)(iii) (1), (3), (6) & (12) of the LODR Regulations by Noticee 1, as alleged in the SCN, Noticee 1 in its reply to SCN has contended that obligation under aforementioned Regulations lies on board of directors of listed company and charging both the directors and company for the violation of Regulation 4(2)(f) of LODR Regulations is illegal. In this regard, I find that Regulation 4(2)(f) enlists the responsibilities of board of directors of listed entities. Clause (ii) of Regulation 4(2)(f) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Any liability arising out of the violation of these principles, is of the board of directors of the listed entity. In light of the above, I find that Noticee 1 cannot be said to be in violations of Regulation 4(2)(f)(ii) (6) & (7) and 4(2)(f)(iii) (1), (3), (6) & (12) of the LODR Regulations which pertain to obligations of the board of directors.

59. Further, Section 21 of SCRA, states that where securities are listed on the application of any person on any recognized stock exchange, such person shall comply with the conditions of the listing agreement with the stock exchange. I note that securities of Noticee 1 are listed on BSE. The relevant extract of the two of the conditions, as contained in uniform listing agreement, as mandated by SEBI Circular No. CIR/CFD/CMD/6/2015 dated October 13, 2015, is as under:

"................1. That the Issuer shall comply with the extant provisions of all the applicable statutory enactments governing the issuance, listing and continued listing of securities.

2. That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following:—

i. the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/circulars as may be issued by SEBI from time to time.

ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time.iii. such other directions, requirements and conditions as may be imposed by SEBI/Exchange from time to time.............". Above two are the conditions of listing agreement which every issuer company, whose securities are listed on a recognised stock exchange, is required to comply. As can be seen from the above-quoted conditions, one of the condition is compliance with LODR Regulations. In the present case, Noticee 1 is a company whose securities are listed on BSE Ltd. which is a recognised stock exchange. Noticee 1 being a company having its securities listed on BSE was also required to sign the said uniform listing agreement with BSE and in view of the provisions of Section 21 of SCRA, 1956, Noticee 1 is bound to comply with the conditions of the uniform listing agreement, as extracted above. Noticee 1 has been found to be in violation of the provisions of the LODR Regulations as discussed above, therefore, Noticee 1 is in violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956. In light of the same, I find that Noticee 1 has violated Section 21 of SCRA.

60. I now proceed to examine the role of the Noticee 2 in respect of the aforementioned findings against Noticee 1. In this regard, I note that Noticee 2 in her reply to the SCN has contended that she was acting in the capacity of Non-Executive Independent Director and was not involved in the day-to- day affairs of Noticee 1. In support of her contentions, Noticee 2 has placed reliance on the decisions of Hon'ble SAT in the matters of Souman

Chatterjee vs. SEBI (Order dated 7.01.2021 in Appeal No. 27 of 2020)., Pravin N. Gala v. SEBI (Order dated 10.10.2019 in Appeal No. 363 of 2018), P.G. Electroplast Ltd. v. SEBI (Order dated 02.08.2019 in Appeal No. 281 of 2017), Dr. Venkadasamy Venkataramanujan Vs SEBI (Order dated 07. 02.2020 in Appeal No. 254 of 2019, Prita Baig Vs SEBI (Order dated 14.02.2019 in Appeal No. 291 of 2017), Prafull Anubhai Shah vs SEBI (Appeal No. 389 of 2021). Noticee 2 has also contended that principle of vicarious liability has been wrongly applied in the instant matter and SEBI has proceeded against Noticee 2 only on account of her being a Non-Executive Independent Director of the Noticee 1 at the relevant time. Noticee 2 has submitted that in the SCN, SEBI has not demonstrated the exact role or involvement of Noticee 2 in relation to the alleged violations in the SCN and thus, SCN issued to Noticee 2 was pre- mature, Noticee 2 in support of her contentions has placed reliance on the judgment of Hon'ble Supreme Court of India in the matter of Sunil Bharti Mittal v. Central Bureau of Investigation. Further, Noticee 2 has submitted that as per section 149(12) of the Companies Act, 2013, an independent director cannot be held liable for such misfeasance which occurred without his/her knowledge. Noticee 2 also placed reliance on proviso to Section 27 of SEBI Act and Master Circular dated July 29, 2011 on Prosecution of Directors issued by Ministry of Corporate Affairs in support of her aforementioned contention. Further, Noticee 2 in her submissions has contended that infirmities mentioned in the paragraphs 5,6 and 7 of the SCN were not part of agenda of any of the Board Meetings or AGMs of Noticee held at the relevant time. Noticee 2 further contended that Noticee 1 had a Managing Director and CFO who used to run day to day affairs of Noticee 1 and the infirmities mentioned in the paragraphs 5, 6 and 7 of the SCN fall within their domain of work.

61. I note that Noticee 2 was a Non-Executive Independent Director of Noticee 1 from 13.02.2012 to 15.09.2018. I note that Noticee 2 was associated with Noticee 1 as Non Executive Independent Director for almost six years. In this regard, I have perused the decisions quoted by Noticee 2 with regard to liability of independent directors. I note that it is now settled position of law that liability of independent directors is limited to such acts of omission or commission by the listed entity which had occurred with his/her knowledge, attributable through processes of board of directors, and with his /her consent or connivance or where he /her had not acted diligently with respect to the regulatory provisions. In light of the aforesaid, I note that it is important to determine whether Noticee 2 was aware of the misstatements in the financials of Noticee 1. I note

that in terms of LODR Regulations, the financials of a listed company are approved by the board of directors. In this regard, I note from the Annual Report for FY 2015-16, which is annexed as part of the SCN that Noticee 2 was the Chairperson of the Audit Committee during the FY 2015-16 and she had attended all the four audit committee meetings held during the aforesaid year. I note that Noticee 2 was also the Chairperson of the Risk Management Committee and attended the sole meeting of risk management committee held in the FY 2015-16. In this regard, I note that Section 177 (4) of the Companies Act, 2013 lays down as follows:

"*Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall,inter alia, include, -*

(i)......

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

(iii)approval or any subsequent modification of transactions of the company with related parties;

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

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

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

(vii)......"

62. Thus, members of the audit committee are responsible for the aforesaid financial aspects of a company. For the instances of misrepresentation of the financials and misuse of funds of Noticee 1 pertaining to the investigation period, I find that Noticee 2 being Independent Director and Chairperson of the Audit Committee during the relevant period was required to act in accordance with the terms of reference, as enlisted in Section 177 of the Companies Act, 2013. I also note that Noticee 2 as part of its board of directors reviewed and approved the financial statements of Noticee 1. In view of the same, I find that failure to raise any concern regarding the financials of Noticee 1, shows that Noticee 2 as Chairperson of the audit committee as well as the board of directors of Noticee 1 had the knowledge of such misrepresentations in financials and misuse of funds of Noticee 1 especially considering long association of Noticee 2 as independent director with Noticee 1. In this context, I find it pertinent to refer to decision of Hon'ble SAT in Mr. Rajendra Gothi vs. SEBI (Date of Decision: 02.08. 2021), wherein Hon'ble SAT has held as under:

" 14. We are of the opinion, that the appellant being a Director had access to inside knowledge especially with regard to the financial position of the company as he was the Chairman of the Audit Committee. Admittedly, the annual reports which were prepared for

the financial year 2011-2012 and 2012-2013 was based on misstatements. The glaring fact which has come is that the loans and advances which was indicated in the financial statement as on March 31, 2012 at Rs. 169 crores was incorrect and that it should have been Rs. 1284.13 crores. Prior to March 31, 2012 the appellant was a Director and Chairman of the Audit Committee for the financial year 2011-2012 and though he may not have signed of that financial year nonetheless he was aware of the wrong doings."

63. In light of the aforementioned judgment of Hon'ble SAT and observations in the preceding paragraph, I find that Noticee 2, as independent director and Chairperson of Audit Committee and Risk Management Committee of Noticee 1, is responsible for the failure of the Noticee 1 to present true and fair financial statements and executing transactions which were non-genuine in nature resulting in misrepresentation of the accounts/financial statements and misuse of account/funds of the company which would tantamount to fraud and are detrimental to the interests of genuine investors, as observed in foregoing paragraphs. Further, with respect to contention of Noticee 2 that she had no knowledge of misrepresentations in the financials of Noticee 1, I find that aforesaid misrepresentations in the financials of Noticee 1 like alleged sale of quoted shares to DIPL amounting to Rs 8.47 crores, contradictions with respect to claimed business of Noticee 1 are glaring facts which should not have escaped the sight of Noticee 2. Therefore, I am not inclined to accept the aforementioned contention of Noticee 2.

64. In view of above, I find that Noticee 2, being the independent director and Chairperson of Audit Committee of Noticee 1 is also responsible for misrepresentation in the financials and misuse of books of account/funds of Noticee 1. Therefore, I find that allegation in the SCN that Noticee 2 has violated provisions of Section 12A(a), (b) & (c) of the SEBI Act, Regulations 3(b), (c) & (d), Regulation 4(1), 4(2)(f) & (r) of the PFUTP Regulation stands established.

65. In light of observations in preceding paragraphs, I find that Noticee 2 being director of Noticee 1 has failed to comply with the obligations laid down in Regulations 4(2)(f) of the LODR Regulations with respect to board of directors. Further, I note that Regulations 4(2)(f) of the LODR Regulations creates specific duty on the whole board of directors without making any distinction on the basis of designation of the directors, viz: independent/ non-executive/ additional directors. In light of the same, I find that allegation

in the SCN that Noticee 2 has violated 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6), (12) of LODR Regulations stands established.

66. It has already been established that Noticee 1 has violated Regulations 4(1)(c), (e) and (g), and Section 21 of SCRA. In this regard, I noted Noticee 2, being the Chairperson of Audit Committee and Risk Management Committee of Noticee 1 is also responsible for the aforementioned violations of Noticee 1. In light of the above, I find that allegation in the SCN that Noticee 2 has violated Regulations 4(1)(c), (e) and (g), and Section 21 of SCRA stands established.

67. It has been observed earlier in the Order that the documents as requested by the forensic auditor were not provided by Noticee 1. In this regard, Noticee 2 in her reply to SCN has contended that cooperation/information sought by forensic auditor were not part of agenda of any of the Board Meetings and there was no board resolution passed by the Board of Directors to that effect and therefore the same was not an outcome of Board process. Noticee 2 has contended that Noticee 1 had a Managing Director and a Chief Financial Officer who used to run the day-to-day affairs of the Noticee 1 and cooperation with forensic auditor would fall within their line of work. I have taken note of the aforementioned contentions of Noticee 2. In this regard, I note that there is no evidence available on record to indicate that cooperation/information sought by forensic auditor were part of agenda of any of the Board Meetings and there was board resolution passed by the Board of Directors to that effect. In light of the same, I find that Noticee 2 cannot be held liable for the failure of Noticee 1 to provide information and documents sought by the forensic auditor. Therefore, allegation in SCN that Noticee 2 has violated the provisions of Section 11(2)(i) and 11(2)(ia) of the SEBI Act does not stand established.

Issue II: Do the violations, if any, attract monetary penalty under:

A. **Sections 15A(a), 15HA and 15HB of SEBI Act and Section 23E of the SCRA, for the alleged violations by Noticee 1?**

B. **Sections15HA and 15HB of the SEBI Act and Section 23H of SCRA for the alleged violations by Noticee 2?**

68. It has been established in preceding paragraphs that Noticee 1 has violated Section 12A (a) (b) and (c) of the SEBI Act, Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, Regulation 4(1)(c), (e) and (g) of the LODR Regulations, Section 21 of SCRA and Section 11(2)(i) and 11(2)(ia) of the SEBI Act. Further, it has also been established in the preceding paragraphs that Noticee 2 has violated Section 12A(a) (b) and (c) of the SEBI Act, Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, Regulations 4(1)(c), (e) and (g), and 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6), (12) of LODR Regulations and Section 21 of SCRA. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had 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...….*"

69. Therefore, in view of the findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violations committed by Noticee 1 would attract monetary penalty under Sections 15A(a), 15HA and 15HB of SEBI Act and Section 23E of SCRA and violations committed by Noticee 2 would attract monetary penalty under 15HA and 15HB of SEBI Act and Section 23H of the SCRA. The aforesaid provisions are reproduced as under:

Section 23H of SCRA: *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognized stock exchange or directions issued by the Securities and Exchange Board of India 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*.

Section 15A SEBI Act: *If any person, who is required under this Act or any rules or regulations made thereunder,—*
(a)to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books orother documents, he shall be liable to a penalty which shall not be less than one lakh rupees but

which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

…………………………………………………………………...

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

Section 15HB of SEBI Act : *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.*

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds*.*

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.*

70. With regard to imposition of penalty on Noticee 1 under Section 23E of SCRA for violation of listing agreement, I note that imposition of monetary penalty under Section 23E of SCRA by a adjudicating officer of SEBI was set aside by Hon'ble SAT in Suzlon Energy Ltd and Anr vs. SEBI (Decision dated May 03, 2021, Appeal No. 201 of 2018). I note that the said order has been challenged by SEBI in its appeal before the Hon'ble Supreme Court in Civil Appeal No. 4741 of 2021 titled SEBI vs. Suzlon Energy Ltd & Anr and the matter is pending. I also note that Hon'ble SAT in its earlier decisions in the matters of M/s. NDTV vs. SEBI (Appeal No. 358 of 2015 –Hon'ble SAT's order dated 07.08.2019) and Oasis Securities Ltd. & Ors. vs. SEBI (Appeal No. 316 of 2018 –Hon'ble SAT's order dated 17.03.2020) had upheld the imposition of penalty under Section 23E of SCRA on the appellant companies therein for violation of clauses of Listing agreement. Since the legal issue regarding Section 23E of SCRA is under appeal, the enforcement of penalty under Section 23E of SCRA on Noticee 1 shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court of India.

<u>Issue No.3 - What should be the quantum of monetary penalty</u>?

71. While determining the quantum of penalty under Sections 15A(a),15HA and 15HB of the SEBI Act and Sections 23E and 23H of SCRA , it is important to consider the factors as stipulated in Section 15J of the SEBI Act and Section 23J of SCRA, which read as under:-

<u>SEBI Act</u>

Factors to be taken into account by the adjudicating officer.

Section 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.

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

<u>SCRA</u>

Factors to be taken into account by adjudicating officer.

Section 23J. -While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

72. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the aforesaid default of Noticees or the consequent loss caused to investors as a result of the default. Further, material on record also do not show that violations of Noticees are repetitive in nature. However, Noticee 1 had failed to present true and fair financial statements and had executed transactions which were non-genuine in nature tantamounting to misrepresentation of the accounts/financial statements and misuse of account/funds of the company and Noticee 2, being Chairperson of Audit Committee and Risk Management Committee, is also responsible for the aforementioned acts of Noticees. I find that such serious laches on the part of Noticees amount to an act of misleading the investors and would have an adverse impact on investor interests. Therefore, I am of the view that such serious lapses on part of Noticees deserve penalty commensurate with the gravity of charges.

73. Further, the Hon'ble SAT in P.G Electroplast Ltd. vs. SEBI(Appeal No. 281 of 2017), dated August 02, 2019, has held that an order passed in corresponding proceedings before the whole time member should be factored in while fixing the quantum of penalty. In this regard, As already noted in the Order, a separate and parallel proceeding was initiated against the Noticees under the provisions of sections 11(1), 11(4) and 11B (1) of the SEBI Act under the same facts pursuant to which Learned WTM has passed the order dated November 12, 2020, Vide the aforementioned Order, Learned WTM of SEBI had restrained Noticee 1 from accessing the securities market and further prohibited it from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year from the date of the said order. Further, vide the aforesaid Order, Noticee 2 was restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 months from the date of the date of the aforementioned order.

ORDER

74. Having considered all the facts and circumstances of the case, the material available on record and also the factors mentioned in Section 15J of the SEBI Act and Section 23J of the SCRA, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act and Section 23I read with Rule 5 of the Adjudication Rules, hereby impose following penalties on :

Name of the Noticees	Penalty under	Penalty Amount
Indian Infotech & Software Ltd.	Section 15A(a) of SEBI Act	Rs. 2,00,000/-(Rupees Two Lakh Only)
	Section 15HA of SEBI Act	Rs. 5,00,000/-(Rupees Five Lakh Only)
	Section 15HB of SEBI Act	Rs 1,00,000/-(Rupees One Lakh Only)
	Section 23E of SCRA.	Rs 5,00,000/-(Rupees Five Lakh Only)
Varsha Murarka	Section 15HA of the SEBI Act	Rs 5,00,000/-(Rupees Five Lakh Only)
	Section 15HB of the SEBI Act	Rs 1,00,000/-(Rupees One Lakh Only)
	Section 23H of SCRA	Rs 1,00,000/-(Rupees One Lakh Only)

75. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticees.

76. Noticees shall remit / pay (excluding the penalty under Section 23E of SCRA by Noticee 1) the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the 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, Noticee may contact the support at portalhelp@sebi.gov.in.

77. Noticees shall forward said Demand Draft or the said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, 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)	

78. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

79. As noted earlier in the Order, enforcement of penalty under Section 23E of SCRA shall be subject to the outcome of the appeal in Suzlon Energy Ltd and Anr vs. SEBI before the Hon'ble Supreme Court.

80. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

Place: Mumbai | **SOMA MAJUMDER**
Date: September 30, 2022 | **ADJUDICATING OFFICER**