BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[Adjudication Order No: Order/GR/BM/2022-23/23985-23989]

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

In respect of:

S. No.	Name of the Noticees	PAN
1	Pankaj Kumar	AAHPS2438K
2	Prashant Mulekar	AACPM1058Q
3	Kiran Kulkarni	AAKPK6962F
4	Vinod Sethi	BSEPS5774Q
5	Nitin Potdar	ACJPP2824Q

In the matter of Geodesic Ltd.

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted an investigation into the alleged irregularities in the books and accounts of Geodesic Limited (hereinafter referred to as **'GL/Company'**), to find out the veracity of the company's books and accounts, during the period April 01, 2012 to March 31, 2013 (hereinafter referred to as '**Investigation Period/IP'**) to ascertain whether there were any violation of the provisions of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**'), and SEBI (Prohibition of Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**), alleged to have been committed

by the Noticees. Further, wherever deemed necessary, reference has been made to the period outside the IP.

2. In order to examine the financial irregularities in the books of accounts of GL, M/s Sarath and Associates ("Sarath") were appointed by SEBI for forensic auditing and examination of books of accounts relating to inflation of turnover and booking of accommodation entries. The observations as per the audit report was that the audited balance sheet fails to provide a true and fair view of the status of affairs of the company on existence of its investments, profits and reserves. Further, Kiran Kulkarni, Noticee No. 3 (Managing Director) and Pankaj Kumar, Noticee No. 1 (Chairman) being signatories to the annual report of the Company containing manipulated financials, mislead the investors by not providing a true and fair picture of its quarterly and yearly financials. Thereafter, it was observed that Prashant Mulekar, Noticee No. 2 (Director and compliance officer) and independent directors viz. Vinod Sethi, Noticee No. 4 and Nitin Potdar, Noticee No. 5, who were also members of audit committee failed to oversee the correctness of the financial statement, which were false and misleading, and thereby failed to discharge their duties as members of audit committee. Hence the Chairman, Managing Director, Director/compliance officer and independent directors of GL i.e. the Noticees had engaged in manipulation in books of accounts for the FY 2011-12 by publishing annual report which was not true, planted false/ misleading news and misled the investors by not providing a true and fair view of its quarterly and yearly financials. Therefore, it was alleged that these actions of the Noticees are in contravention of Section 12A(a), (b), (c) of SEBI Act, 1992 and Regulation 3(b), (c), (d) and 4(1), 4(2)(f), (k) & (r) of PFUTP Regulations, 2003.

3. It was also observed that the Audit Committee has failed to discharge its duties diligently and the duty cast upon them as specified in Clause 49 of the Listing Agreement for FY 2011-12 by failing to ensure oversight of the Company's financial reporting process and failing to ensure that the financial statements were correct, sufficient and credible. Hence, it was alleged that the directors of the company who were also members of audit committee viz. Shri Vinod Sethi, Shri Nitin Potdar and Shri Prashant Mulekar (i.e. Noticee no. 2, 4, and 5) have violated the provisions of Clause 49 of the Listing Agreement read with section 21 of SCRA, 1956.

APPOINTMENT OF THE ADJUDICATING OFFICER

4. Accordingly, SEBI appointed Shri S. Biju, as Adjudicating Officer ('**AO**') vide communique dated November 27, 2017 under Section 19 read with 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') and under Section 23-I of the SCRA and Rule 3 of the Securities contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ("SCR Adjudication Rules") read with Section 19 of SEBI Act, 1992 to inquire into and adjudge the violations alleged to have been committed by the Noticees as mentioned above. Subsequently, Shri Satya Ranjan Prasad, CGM was appointed as the AO in the matter in the place of Shri S. Biju. Thereafter, pursuant to the resignation of Shri Satya Ranjan Prasad, the undersigned was appointed as the AO vide communique dated May 22, 2019 in the present matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice dated June 11, 2018 (hereinafter referred to as 'SCN') was issued by the erstwhile AO, Mr. Biju S to the Noticees in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act, 1992 and Noticee under Rule 4(1) of the SCR Adjudication Rules read with Section 23 I of the SCRA, to show-cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15 HA of the SEBI Act, 1992 and 23H of SCRA on the Noticees for the alleged aforesaid violation as specified in the SCN. The Show Cause Notice *inter-alia* alleges the following:

   a) In order to examine the financial irregularities in the books of accounts, M/S Sarath and Associates were appointed by SEBI for forensic auditing and examination of books of accounts relating to inflation of turnover and booking of accommodation entries. Key Observations of Forensic Auditor were as below:

      i. The company had raised funds from overseas investors during January 2008 by issuing FCCB bonds for USD 125 Million. The redemption due date for the FCCBs was 18.01.2013. Subsequently the company had failed to redeem the bonds to investors on the due date. The company was ordered for liquidation by Bombay High court and also one of the main overseas company, GTSL and official liquidators were appointed for liquidation process.

ii. Since the time of initial issue of the FCCB bonds which were to be used only for overseas acquisitions and investments in joint ventures/wholly owned subsidiaries and or for any other purpose as may be permitted by RBI, WERE DIVERTED by giving loan to Eland Crawn, Lasdun Ventures, Sharp Long Consultants through Emiloto & Zomo, the subsidiary company Geodesic Holding Limited. The parent company had violated the RBI norms by relending which were supposed to be invested in the overseas companies, and joint ventures to earn business income.

iii. During the liquidation process, the assets which were in form of investments as per the audited balance sheets were probed and based on the information and documents, confirmed investments were available as reported in the balance sheets based on the bank statements submitted by the company. Further probe into the investments statements, mail communications of directors Mr. Prashant Mulekar, Mr. Kiran Kulkarni, Mr. Pankaj Kumar, and beneficiary owner Mr. Dinesh Jajodia (the purported tax consultant of the Company) and banker were indicating that the investments are diluted and diverted into other investments.

iv. On further probing the investments and the background of the companies in which the monies were transferred were indicating that the monies were invested or given as loan to companies in which Mr. Dinesh Jajodia is personally interested as director.

v. The investigative audit of the books of accounts for the availability of the reserves created by the company, debtors and creditors for realisation had revealed that they are non-realisable as they all are shell companies and outstanding amounts against these companies are generated by bogus entries.

vi. Regarding the Audited Balance Sheets of the company, it was revealed that the forensic audit of the books of accounts for the years 2010-11, 2011-12 and 2012-13 were examined in detail, and the status of sales, purchases, returns, reserves and surpluses were non-existent. The details of the same areas under:

   - The sales returns booked over the two years are only adjustment entries-based on the ledger copies
   - Recoveries shown from GTSL debtors in June 2012, are not actually realised and are only cheques in hand which were never processed and cleared in the bank - based on the ledgers, sundry written back statements given by auditors.
   - The sales as claimed in the books are, except few to certain Indian companies, for overseas clients are non-existent- based on the findings of certain samples.
   - The GTSL fixed assets are non-existent as per the company's statutory auditor.
   - The huge Inter corporate Deposits given are written off.

- The list of companies of sundry debtors are shell companies
- The renunciation of the recoveries in huge amounts by these shell companies.
- Huge software expenses booked against the shell companies
- The non-existence of reserves and surpluses created due to reversals of the sales booked over previous years.

vii. Regarding the modus operandi adopted by the Company the report submitted by Sarath revealed as under:

- On the availability of the investments in the subsidiaries:-.

  The company had raised funds for USD 125 Million through redeemable FCCB from overseas investors in 2008 for the purpose of investing in companies including wholly owned subsidiaries. These funds were invested primarily through the subsidiaries GTSL, Hong Kong and Geodesic Holding Limited Mauritius.

  Subsequent investments were observed to be as under:-

  GHL invested in Emiloto- USD 29 M □ HSBC Bank □ Loan to Audrain Commercial Corp□ Clariden Leu Bank □ Further details not known

  Zomo Technologies- USD 87 M □ Absolute Diversified Growth Funds □ Eland Crown□ Lasdun Ventures.

  GTSL- USD 82 M □ BSI Bank □ Enterprise Emerging Marketing Fund□ Yvette Investments Limited□ Mr. Dinesh Jajodia –sole director

  GHL- USD 20.10 M□ Spokn Communications Pte Ltd□ Prashant Mulekar-director

  GHL- USD 17.1 M □ Sharp Long Consultants□ Mr. Dinesh Jajodia –sole director

  GHL- USD 3 M □ Alpha Holding Limited.

  As per the Audited Balance Sheet of GHL and GTSL, they had incurred huge losses and there was diminution of investments made through these companies. GTSL is under liquidation and no assets are available as per the receiver, Axis Bank, hence investments shown in audited balance sheets for USD 87 Million are not available. GHL invested in Zomo for USD 87 Million were reinvested in Absolute Diversified Growth Funds which in turn invested in Eland, Lasdun are lost as both the companies are under liquidation. GHL also invested in the Spokn Communications, Sharp Long Consultants, Alpha Holdings Limited in which Mr. Prashant Mulekar and Mr. Dinesh Jajodia were directors respectively in first two companies.

- Diversion of funds

GL, on 17.01.2008, issued US $ 125 million Zero Coupon Convertible Bonds due 2013, which will bear no interest, except in certain circumstances and the bonds matures on 18.01.2013. As on the date, the nominal value of outstanding FCCB were USD 113.5 Million. The company had obtained RBI's approval to use the proceeds from the offering for overseas acquisitions and investments in the joint ventures or wholly owned subsidiaries. These funds however was to be parked overseas and not to be remitted to India.
Subsequently, GL had invested in GTSL, GHL its wholly owned subsidiary companies and further in its step down subsidiaries Emiloto, Zomo Technologies, Spokn Communications Ltd during the period from 2008-2010 for the purpose of acquisition.
On the date of redemption, the parent company GL, failed to redeem the monies to the overseas investors. In this regard Sarath revealed the following:-

- Monies lent to Lasdun, Eland, Sharp Consultants, Yvette Investments for loan purpose through the Standard Chartered Bank account, which were not for the purpose of acquisitions or investments in joint ventures but for re-lending activity, which is prohibited by RBI.
- The diversion of funds took place during the very first year of the collection of the funds i.e., 2008 in which the company paid to Sharp Long consultants, Yvette investments, GTSL as loan without prior permission of RBI.
- Booked huge bogus sales, purchase and software development expenses, non-existent fixed assets and utilised funds for paying the no-existent creditors and diverted the monies in paying the liabilities, writing off of the debtors, creditors and inter corporate deposits in the parent company in India.
- Part of the diverted funds were invested into other companies in which GL directors are common.

Furthermore, directors of the Geodesic Mr. Pankaj Kumar, Mr. Prashant Mulekar, Mr. Kiran Kulkarni along with Mr. Dinesh Jajodia of the company and its subsidiary companies had fraudulently and intentionally siphoned off funds with a strategic planning, layering techniques of the funds raised through FCCB issue from overseas investors and further found part of the funds utilised for acquiring the assets in the names of the companies in which they were directors.

The company had further raised loans and other facilities from Indian bank and failed to repay in time and facing the liquidation and legal charges in various matters in the Bombay High Court.

It was also revealed that Geodesic had diverted FCCB funds and also booked bogus entries for creditors, software development expenses and manipulated the figures in the audited balance sheets. Directors of the company had committed fraud intentionally by diverting the funds and failing to redeem bonds and failed to repay loans to banks and also misrepresented the facts about the sundry debtors, fixed assets, investments, creditors and software development expenses. The Audited Balance sheet fails to provide a true and fair view of the status of affairs of the company on existence of its investments, profits and reserves.

b) Thus, it was revealed that the audited balance sheet fails to provide a true and fair view of the status of affairs of the company on existence of its investments, profits and reserves. Further, Kiran Kulkarni (Managing Director) and Pankaj Kumar (Chairman) being signatories to the annual report of the Company containing manipulated financials, mislead the investors by not providing a true and fair picture of its quarterly and yearly financials. Further, Prashant Mulekar (Director and compliance officer) and independent director viz. Vinod Sethi and Nitin Potdar, who were members of audit committee failed to oversee the correctness of the financial statement, which were false and misleading, and accepted the same thereby failing to discharge their duties as members of audit committee.

c) Hence it was alleged that the Company, and its directors namely, Kiran Kulkarni, Pankaj Kumar, Prashant Mulekar, Vinod Sethi and Nitin Potdar engaged in manipulation in books of accounts for the FY 2011-12 by publishing annual report which was not true, planted false/ misleading news and misled the investors by not providing a true and fair view of its quarterly and yearly financials and these actions of the Company and Board of Directors of Geodesic were in contravention of Sections of SEBI Act, 1992 and PFUTP Regulations, 2003.

6. The details of the status of the SCNs served on the Noticees and the date of replies filed are as under;

Table -1:

Sr.No	Name of Noticees	SCN Delivery status	Reply Received date
1	Pankaj Kumar	Yes	26.06.2018, 21.08,2018, 28.09.2018, 03.10.2018, 29.10.2018 & 21.11.2022
2	Prashant Mulekar	Yes	Nil
3	Kiran Kulkarni	Yes	30.07.2018, 28.09.2018, 29.10.2018, 16.06.2021 & 21.11.2022
4	Vinod Sethi	Yes	25.06.2018 & 12.07.2018 14.11.2022
5	Nitin Potdar	Yes	16.06.2021, 02.07.2021 & 07.12.2022

7. The SCNs were issued to the Noticees, by way of SPAD/Affixture and were duly delivered. Pursuant to the service of the SCN, an opportunity of personal hearing was granted to the said Noticees. The details of dates of hearing, delivery status of the hearing notices and their status of attendance are specified in the table below;

Table -2

Noticee No.	Name of Noticees	HN Date	HN Delivery status	Status of attendance
1	Pankaj Kumar	23.08.2018 04.10.2018 05.07.2021	Delivered	Attended
2	Prashant Mulekar	17.07.2018 23.08.2018	Delivered (Affixture)	Did not attend
3	Kiran Kulkarni	23.08.2018 04.10.2018 05.07.2021	Delivered	Attended
4	Vinod Sethi	16.07.2018 27.07.2018	Delivered	Attended

		24.03.2021 15.06.2021		
5	Nitin Potdar	16.07.2018 11.06.2021 18.11.2022	Delivered	Attended

8. From the above table, it is observed that Noticee No. 2 has neither attended the said personal hearing nor submitted his reply in the matter though the notices were served to him through affixture.

9. In view of the above, I am of the view that principles of natural justice have been duly complied with as SCN and hearing Notice were duly served upon Noticee No.2 and sufficient opportunity was also granted to him to reply to the SCN and appear for the personal hearing. Thus, in the facts and circumstances of this case, I am of the view that he has nothing to submit and in terms of Rule 4(7) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and the matter can be proceeded ex parte on the basis of material available on record. In the absence of any response from hiim to the SCN, I presume that Noticee No. 2, has admitted to the charges levelled against him.

10. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed that, "......*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*".

11. Further, the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: "*........... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*"

12. Additionally, the same position reiterated by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Dave Harihar Kirtibhai vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:
"*...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent*

and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...".

13. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against Noticee No. 2 *ex-parte*, based on the material available on record and in absence of response from him, presume that the allegations have been admitted by him.

14. While deciding the case, I also cannot lose sight of settled position of law that the charge should be established with valid reasons and in accordance with law. I, therefore, deem it necessary to examine the charges levelled against the Noticees and supporting material as provided in the SCN.

15. The response/replies submitted by the Noticee Nos 1, 3, 4 and 5 are summarized as under:

<u>Common reply of Noticee No. 1 and 3</u>

16. The Noticee nos. 1 and 3, in response to the SCN, have filed a common reply dated September 28, 2018. The submissions made in the aforesaid replies are summarized hereunder:
    i. The documents required for preparing the detailed and comprehensive reply to the said SCIN arc in the custody of the Provisional Liquidator appointed by the Bombay High Court and therefore the said Noticees do not have access to the records pertaining to the Company. As the said Noticees are not permitted to access the record of the Company, the present reply has been filed based on the limited records/information available with the said Noticees.
    ii. SEBI never communicated to Geodesic Limited that M/S Sarath & Associates, Chartered Accountants, had been appointed to conduct a forensic audit of the books of account of the Company. The letter dated October 17, 2014 issued by SEBI to M/S Sarath & Associates, was not copied them and they became aware of the said letter and the terms of appointment of M/S Sarath & Associates and the scope of audit for the first time in January 2017 only when they were given an

opportunity to inspect the documents and records relied on by SEBI in the course of proceedings initiated against them under Section 11 and 11B of the Securities and Exchange Board of India, Act ("the SEBI Act") in respect of the very same allegations made in the said SCN.

iii. The Forensic Audit Report is based on incomplete information and records gathered by them and the same is incomplete, contains inaccuracies, is devoid of relevant facts and is therefore, not credible or reliable.

iv. It was not disclosed what documents alleged to have been seized at the office of said alleged Tax Consultant; Mr. Dinesh Jajodia were seen by the Forensic Auditors or by whom, when and under what provision of law.

v. The Company had raised USD 125 million (INR 492 Crore) by issuance of FCCBs in January, 2008. The said funds were to be used for overseas acquisitions and investment in joint ventures/wholly owned subsidiaries and other purposes as permitted by RBI. The FCCBs were listed on Singapore Stock Exchange.

vi. There were a total of 11 such subsidiaries/step down subsidiaries which included GTSL, Hong Kong, Zomo Technologies and Emiloto Associated Inc (British Virgin Islands). The 100% shareholding of GTSL was with the Company and shareholding of rest of the aforesaid two companies was with Geodesic Holding Limited, Mauritius (a subsidiary of Geodesic Limited).

vii. The aforesaid three subsidiaries/step down subsidiaries had invested part of the money raised through FCCB issue in various funds outside India through certain foreign banks and details of such investment are tabulated herein below:

Table no. 2

Sr. No.	Name of subsidiary	Name of fund	Amount in USD	Through/Managed by	NAV (million USD) On Date
1.	GTSL, Hong Kong	Enterprise Emerging Market Fund	82 Million	BSI Bank Singapore	82.02 22.02.2013
2.	Zomo Technologies Limited	Absolute Diversified Growth Fund	87 Million	Credit Suisse Bank, Zurich	94.18 31.01.2013

3.	Emiloto Associated Inc.	Various liquid assets including Government securities and bonds#	29 Million	HSBC, Zurich	29.05 23.01.2013
Total			**198 Million**		**205.25**

A sum of USD 29.03 Million was invested by Emiloto in Audrain Commercial Corp., Belize ("Audrain") in the form of a loan. As per agreement dated July 31, 2012 executed between Emiloto and Audrain, this loan was to be used by Audrain to search out for companies with innovative products and acquire them. If Emiloto was convinced about the validity of the product/technologies, they would acquire the companies in lieu of the loan/part thereof. Copy of agreement has also been filed in support.

viii. The said Noticees are not able to obtain copies of bank account statement to show the fund flows for the aforesaid transactions, copy of statements issued by aforesaid banks to show the Net Asset Value of aforesaid investment, as USD 205 Million which have been filed. Besides, the Company also estimated to collect revenue of USD 28 Million from GTSL's business as on September 30, 2012 and as on September 30, 2012, the NAV of the investments made with HSBC was USD 29 Million.

ix. Since the Company and its subsidiaries were not able to liquidate their investments, the Company could not comply with the directions of the Hon'ble Bombay High Court, which led to appointment of Provisional Liquidator for the Company. Due to the said fact, the business of the Company got terminated abruptly causing loss of revenue to the Company.

x. As expressed in its Annual General Meeting of shareholders of the Company held on February 11, 2013, the shareholders including Foreign Funds had expressed confidence in the management of the Company. However, the impulsive and avoidable action by the Trustees for the FCCB Holders led to appointment of Provisional Liquidator and consequently, the business of the Company got shut and the interest of the shareholders were prejudiced.

xi. The Forensic Audit Report erroneously mentions that norms stipulated by RBI were violated by the Company. RBI, in its letter addressed to EOW Mumbai had intimated that there was no contravention of FEMA guidelines in respect of the FCCBs issued by the Company.

xii. The Forensic Audit Report does not specify the details of investment statements, emails etc., which led to the observation that the investments were diluted or diverted.

xiii. The Noticees were not involved in the usage of funds by the companies in which subsidiaries of Geodesic Limited had made investments.

xiv. The losses suffered by the subsidiaries of the Company were disclosed in the balance sheets of the Company. The loss was suffered by the Company due to reasons beyond its control.

xv. The Annual Return for the year 2012-13 and revised Annual Return for the year 2011-12 were finalized in the AGM held on May 10, 2014 but not filed with MCA as Provisional Liquidator had seized the records on May 13, 2014. From the said fact, it is not clear from where the Forensic Auditor has taken the records.

xvi. The Company had raised USD 125 million (INR 492 Crore) by issuance of FCCBs in January, 2008. The said funds were to be used for overseas acquisitions and investment in joint ventures/wholly owned subsidiaries and other purposes as permitted by RBI. The FCCBs were listed on Singapore Stock Exchange.

xvii. The proceeds of FCCBs were immediately used in making investments in overseas subsidiaries and by such subsidiaries for acquiring other companies. The said investments etc., have been duly shown in the financial statements of the Company and its subsidiaries.

xviii. The winding up proceedings of the Company have been initiated on the applications filed by the trustees of the FCCBs and some of the creditor banks of the Company. Due to appointment of Provisional Liquidator, the business of Company has stopped.

xix. There was no fraudulent intention behind default in redemption of FCCBs. The same happened due to wrong advice by Investment Managers.

xx. The Noticee nos. 1 and 3 were not member of Audit Committee of the Company.

17. In addition to the above submissions, Noticee no. 1 and Noticee no. 3 vide their separate letters dated November 21, 2022, have made the following identical submissions in response to the Supplementary SCN:

i. There is a substantial delay in the proceedings.

ii. The Noticee is prejudiced by denying him the relevant documents and records.

iii. Since the Hon'ble Supreme Court is now seized of the matter, the present proceeding be kept in abeyance until the Supreme Court decides the appeal.

18. Further, I note that the Noticee no. 4 vide his letters dated July 12, 2018 and mail dated November 11, 2022 and Noticee no. 5 vide his letters dated June 16, 2021, July 02, 2021 and December 7, 2022 have vehemently contested the charges made against them in the SCN by taking various common pleas and arguments which are summarized in brief as below:

i. There is a delay in the present proceedings.

ii. The relevant documents are not in possession so as to defend themselves properly and such documents were provided only during the meetings of the Audit Committee.

iii. No specific role has been attributed and only sweeping allegations have been made, therefore, the allegation of fraud is not sustainable. The charges of having failed to oversee the financial is contradictory with the charges of having committed a fraud. Further, in order to prove the charges of "fraud", some kind of element of "inducement" must be shown, which is lacking in the present case.

iv. Being independent Directors, Noticees were not responsible for day to day affairs of the Company and had insight only through Board processes. It needs to be indicated that being Independent Directors, the said Noticees participated in fraud or fraud took place with their connivance/consent or the said Noticees have not acted with diligence despite having knowledge of fraud through Board processes. Such standards have also been codified under SEBI (LODR) Regulations, 2015 as well as under various Circulars of Ministry of Corporate Affairs.

v. The Audit Committee was presented with the facts of only first leg of transactions, through which funds were transferred to subsidiaries and group companies and there is no allegation with respect to the said transactions. The funds were further diverted from such subsidiaries/group companies to other entities where the Executive Directors and Mr. Dinesh Jajodia are alleged to be personally interested, and the Noticees were not aware of such transactions forming basis of the allegations. The material available on record indicates that the relevant documents pertaining to the affairs of the subsidiaries companies were never placed before the Board of Directors.

vi. The Forensic Audit report admits that the investments made in Sharp Long Consultants, Eland Crown and Alpha Holdings are not mentioned in the Audited Balance Sheet for the FY 2011-12. Further, the said reports also record that: *"On further investigations and analysis, following facts were surfaced based on the records available. There are investments in properties, shares and bank deposits in shell companies in which Mr. Dinesh Jajodia and his family members, Mr. Kiran Kulkarni, Mr. Prashant Mulekar, Mr. Pankaj Kumar are directors and shareholders…." and "..Directors of the Geodesic Limited Mr. Pankaj Kumar, Mr. Prashant Mulekar, Mr. Kiran Kulkarni along with Mr. Dinesh Jajodia of the company and its subsidiary companies had fraudulently and intentionally siphoned off funds with strategic planning, layering techniques of the funds raised through FCCB issue from overseas investors and further found part of the funds utilized for acquiring the assets in the names of the companies in which they are directors …."*

vii. Similarly, a report dated November 23, 2015, prepared by the Ministry of Corporate Affairs also point out towards complicity of the Executive Directors cum Promoters in taking all the financial decisions of the Company and also towards the fact that the said Directors were also the Directors of the Geodesic Holding Limited (Mauritius) and Geodesic Technology Solutions Limited (Hong Kong), and were thus knowing about all the investment business carried out by the subsidiaries as well as the step down subsidiaries. The said report also indicates that by falsifying the accounts and showing healthy balance sheet, the Executive Directors of the Company have been able to collect funds from the banks/Financial Institutions.

viii. There was no obligation on the Audit Committee Members to review the accounting entries itself for which internal and statutory auditors were appointed. The test that needs to be applied is what would a person with reasonable prudence would have commented on the documents presented during the meetings.

ix. SCN and Supplementary SCN treats all the Directors as guilty of fraud only due to their directorship and, the law laid down under various *judgments [SMS Pharmaceuticals v Neeta Bhalla (2005) 8 SCC 49; Chintalapati Srinivasa Raju v SEBI (2018) 7 SCC 443; Prita Bag v SEBI (SAT Appeal No. 291 of 2017, Order dated February 14, 2019), Prafull Anubhai Shah v. SEBI (Appeal No. 389 of 2021, Order dated June 28, 2021) etc.],* have been ignored.

x. Noticee no. 5 had resigned on December 04, 2012 and Noticee no. 4 had resigned on May 16, 2013 from the Directorship.

xi. The Noticee no. 4 had resigned on January 16, 2013 from the Audit Committee, as he was dissatisfied with the Management's inability to answer the questions raised by him. Copy of emails have been filed including email dated May 16, 2013 addressed to Noticee no. 1 and 3 which mentions the reason for resignation inter alia as:

> "- *Fccb payout: I was repeatedly told that the fccb will be paid out in full on the due date in January. It is now mid may and there still isn't clarity. I have repeatedly asked for a bi-weekly update and a clear PERT of balance steps. I keep getting vague answers despite visiting geodesic every week over last 5 months".*

xii. The Management's accounts and audit confirmations provided to the Statutory Auditor and the Statutory Auditor's report dated December 03, 2012 did not contain any findings of fraud. The financial statements were recast on February 14, 2014, by the time, both of the said Noticees had resigned from the directorship.

xiii. Copy of minutes of meetings of Audit Committee for FY 2011-12 based on which allegations have been made are neither discussed nor furnished with the SCN and such documents are also not in possession of SEBI.

xiv. The said Noticees have not been implicated by the Forensic Auditors nor have they been named as complicit by any other agency. In terms of the Affidavit filed by Joint Commissioner of Police before the Hon'ble Bombay High Court, the criminal conspiracy was hatched by the three Directors of the Company and Mr. Dinesh Jajodia. Infact, a SCN to the Noticee no. 4 was issued by Ministry of Corporate Affairs with respect to the irregularities in the financial statements, however, ultimately, MCA vide its letter dated November 09, 2016 has exonerated the Noticee no. 4 from the charges by inter alia observing as: "*your reply dated 8.8.2016 has been examined and found to be satisfactory considering the fact that the accounts for the year 2011-12 and 012-13 were revised in the year 2014 and considering that the relevant Director's Report (containing non-compliance) was dated 17.4.2014 which was subsequent to your cessation as director on 16-05-2013 and accordingly you were not an officer in default in this specific case. ..*"

xv. The materials available on record do not indicate that the Independent Directors could have detected the fraud by the management and being Independent

Directors, the said Noticees had insight into the affairs of the Company only though Board processes. The Independent Directors could not have unearthed the complex modus operandi deployed by Directors who were also the persons having personal interest being the Promoters of the Company. Reliance has been placed on the order dated September 09, 2019 passed by the Hon'ble SAT in the matter of *Price Waterhouse & Co. Vs. SEBI (Appeal No. 6 of 2018),* to contend that even a Statutory Auditor (leave alone Audit Committee Member) cannot unearth a complex fraud.

xvi. There were no unusual changes in the financial statements of FY 2011-12 from the previous year so as to raise any red flag. The Supplementary SCN and its annexures more particularly in the Rejoinder Affidavit filed by Mr. Dinesh Jajodia before the Hon'ble Bombay High Court, it has been admitted that the key perpetrators of the fraud are the Executive Directors of the Company along with Mr. Dinesh Jajodia. Further, the trail of bank account entries also indicate that funds have been diverted to foreign companies having Mr. Dinesh Jajodia is a Director or beneficial owner.

xvii. Reliance has been placed on the following judgments/orders to support the submissions: *SEBI Vs. Guarav Varshney and Anr. [(2016) 14 SCC 4 30]; Uppal D. Kumar Vs. SEBI (SAT Appeal no. 220 of 2017); Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector [(2011) (1) SCC 176], G. Unnikrishnan Nair Vs. SEBI (SAT Appeal no. 05 of 2018), Order dated December 31, 2014 passed in the matter of Cals Refineries Limited,* etc.

CONSIDERATION OF ISSUES

19. I have carefully perused the charges levelled against the Noticees and the documents / material available on record. The issues that arise for consideration in the present case are:

Issue I: Whether the Noticees have violated the provisions of Section 12 A (a), (b), (c) of SEBI Act, Regulations 3(b), (c), (d), 4(1) and 4(2)(f), (k) & (r) of PFUTP Regulations, 2003, as alleged in the SCN and whether Noticee No. 2, 4 & 5 have violated the provisions of Clause 49 of the Listing Agreement read with Section 21 of SCRA?

Issue II: Does the violation, if any, attract monetary penalty under Section 15 HA of SEBI Act and section 23H of SCRA for the Noticees, as applicable?

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act and 23J of SCRA?

20. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of PFUTP Regulations, SEBI Act, Listing Agreement and SCRA, alleged to have been violated by the Noticees. The same are reproduced below:

<u>SEBI Act, 1992</u>

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

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 recognized 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;

SEBI (PFUTP) Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

……

(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.

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:—

…

(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;

..

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

….

(r) planting false or misleading news which may induce sale or purchase of securities.

Listing Agreement
49. CORPORATE GOVERNANCE
The company agrees to comply with the following provisions:
II Audit Committee
..
(D) Role of Audit Committee
The role of the audit committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.

21. Before proceeding to deal with the merits of the case, I wish to settle the following preliminary objections raised to this proceeding by Noticee No. 1 to 3:
    a) There is a substantial delay in the proceedings and it caused prejudice.
    b) The Noticee is prejudiced by denying him the relevant documents and records.
    c) Since the Hon'ble Supreme Court is now seized of the matter, the present proceeding be kept in abeyance until the Supreme Court decides the appeal.

22. With regards to the contention of the Noticees regarding delay in the proceeding and that it caused prejudice to the Noticees, I note that the Noticees at no point of the present proceedings, have demonstrated successfully as to how exactly their interest in defending their case stands prejudiced due to any delay in the matter. SEBI initiated the investigation as soon as information regarding the issue came to its notice. Further, under the SEBI Act there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder. Further, these do not prescribe any fixed limitation period for completion of the proceedings. Without prejudice to the above,

I note that pursuant to the completion of investigation, SCN has been issued on July 11, 2018. Thereafter, after issuance of multiple hearing notices during 2018-2022, hearings were concluded. However, the proceedings in the present matter have been affected due to spread of Covid-19 Pandemic. Further, I note that the investigation as regards violation of PFUTP Regulations, 2003, is an exhaustive and time consuming process, which may require detailed analysis of the case facts. In this regard, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019 decided on March 17, 2020) held that, *"The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same"*.

I also note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI (decided on March 22, 2006) held that, *"As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market"*.

In view of the above, and considering the facts and circumstances, the contention of the Noticees does not hold any ground for granting discharge from the serious charges as alleged in the SCN, so the contentions of the Noticee in this regard are without merits.

23. Further, with regards to the contention of the Noticees that certain documents requested were not provided and that it caused prejudice to them, I note that the copies of all the documents relied upon in the SCN to make the allegations, have been duly made available to the Noticees in the form of annexures to the SCN and the Noticees have also duly filed their written replies to the allegations made in the SCN. I further note that, the Noticees have not explained as to how the copies of documents provided to them have caused prejudice to them in defending their interest and contesting the allegations made against in the SCN by producing evidence if any to the contrary. As far as the contention of the

Noticees against not providing a copy of the investigation report is concerned, I note that the Noticees having already been provided with all the relevant findings of investigation against them in the body of the SCN itself alongwith supporting annexures, have not been able to explain as to what prejudice has been caused to their interest by not receiving the entire copy of the investigation report. Since the SCN has extracted and incorporated all the findings of the investigation report based on which the charges have been made against the Noticees, it is for the Noticees to examine, analyse and respond or rebut those findings and charges based on the explanations and evidences they have in their possession.

24. Hence, asking for the entire copy of investigation report is entirely irrelevant unless the Noticees specifically show that non-receipt of the said report has caused prejudice to their interest in defending themselves in the present proceedings. Further, as has been held by the Hon'ble Supreme Court in the matter of **SEBI Vs. Monarch Networth** (C.A. no. 282/2014), providing relevant extract of trade logs showing the offending transactions is a sufficient compliance of principles of natural justice. In the present case, the relevant documents have already been served upon on the Noticees. Since all relevant and requisite facts on the basis of which charges have been crystallised against the Noticees are contained in the SCN and Annexures thereto, and no reliance has been placed on any fact extraneous to the SCN (alongwith Annexure thereto) while levying the charges against the Noticees, I find that principles of natural justice, equity and good conscience have been met with. In view of the above, I do not see any violation of principles of natural justice qua the Noticees in this regard, as contended by the Noticees.

25. I also note that the Noticee no. 1 and 3 have requested to keep the instant proceedings in abeyance till an appeal preferred before the Hon'ble Supreme Court of India is disposed of. In this respect, it has been argued that SEBI had issued another show cause alleging that the misleading announcements of buy-back as well as declaration of dividend by the Company is in violation of provisions of SEBI Act, r/w PFUTP Regulations. In this context, it is noted that the said show cause notice has been disposed of vide an order dated April 19, 2021 of SEBI, holding the Noticees therein liable for the alleged violations, and consequently restraining them from buying, selling or otherwise dealing with securities including mutual funds, in any manner, for a period of two years. Appeals No. 609-10 of 2021 preferred before the Hon'ble SAT against the above order of SEBI got dismissed

vide an order dated September 29, 2021 and against the above order of the Hon'ble Tribunal, a Civil Appeal vide Diary no. 30325/2021 has been filed before the Hon'ble Supreme Court of India. It has been submitted that since some of the facts and allegations made in the said show cause notice that resulted in passing of the aforesaid order dated April 19, 2021 and the facts and allegations made in the SCNs issued in the instant proceedings are overlapping, the present proceedings should be kept in abeyance till the issues raised by the Noticees in their appeal before the Hon'ble Supreme Court of India are decided. I find no merit in the above submission and observe that the present proceedings are distinguishably separate from the proceedings which culminated in passing of the earlier order dated April 19, 2021, and mere reference of certain common facts/allegations in the Supplementary SCN would not confer a right on the Noticee to get the present proceedings stalled due to the pendency of a statutory appeal. I find the no merit in the above contention of the Noticees.

26. Now that all the preliminary objections raised to this proceeding are settled, I would proceed to deal with the merits of the case.

<u>Issue I:</u> Whether the Noticees have violated the provisions of Section 12 A (a), (b), (c) of SEBI Act, Regulations 3(b), (c), (d), 4(1) and 4(2)(f),(k)&(r) of PFUTP Regulations, 2003, as alleged in the SCN and whether Noticee No. 2, 4 & 5 have violated the provisions of Clause 49 of the Listing Agreement read with Section 21 of SCRA?

27. From the Investigation report, I note that in order to examine the financial irregularities in the books of accounts, M/S Sarath and Associates were appointed by SEBI for forensic auditing and examination of books of accounts relating to inflation of turnover and booking of accommodation entries. Key Observations of Forensic Auditor were as below-

    i. The company had raised funds from overseas investors during January 2008 by issuing FCCB bonds for USD 125 Million. The redemption due date for the FCCBs was 18.01.2013. Subsequently the company had failed to redeem the bonds to investors on the due date. The company was ordered for liquidation by Bombay High court and also one of the main overseas company, GTSL and official liquidators were appointed for liquidation process.

ii. Since the time of initial issue of the FCCB bonds which were to be used only for overseas acquisitions and investments in joint ventures/wholly owned subsidiaries and or for any other purpose as may be permitted by RBI, WERE DIVERTED by giving loan to Eland Crawn, Lasdun Ventures, Sharp Long Consultants through Emiloto & Zomo, the subsidiary company Geodesic Holding Limited. The parent company had violated the RBI norms by relending which were supposed to be invested in the overseas companies, and joint ventures to earn business income.

iii. During the liquidation process, the assets which were in form of investments as per the audited balance sheets were probed and based on the information and documents, confirmed investments were available as reported in the balance sheets based on the bank statements submitted by the company. Further probe into the investments statements, mail communications of directors Mr. Prashant Mulekar, Mr. Kiran Kulkarni, Mr. Pankaj Kumar, and beneficiary owner Mr. Dinesh Jajodia (the purported tax consultant of the Company) and banker were indicating that the investments are diluted and diverted into other investments.

iv. On further probing the investments and the background of the companies in which the monies were transferred were indicating that the monies were invested or given as loan to companies in which Mr. Dinesh Jajodia is personally interested as director.

v. The investigative audit of the books of accounts for the availability of the reserves created by the company, debtors and creditors for realisation had revealed that they are non-realisable as they all are shell companies and outstanding amounts against these companies are generated by bogus entries.

vi. Regarding the Audited Balance Sheets of the company, it was revealed that the forensic audit of the books of accounts for the years 2010-11, 2011-12 and 2012-13 were examined in detail, and the status of sales, purchases, returns, reserves and surpluses were non-existent. The details of the same areas under:

- The sales returns booked over the two years are only adjustment entries-based on the ledger copies
- Recoveries shown from GTSL debtors in June 2012, are not actually realised and are only cheques in hand which were never processed and cleared in the bank - based on the ledgers, sundry written back statements given by auditors.
- The sales as claimed in the books are, except few to certain Indian companies, for overseas clients are non-existent- based on the findings of certain samples.
- The GTSL fixed assets are non-existent as per the company's statutory auditor.
- The huge Inter corporate Deposits given are written off.
- The list of companies of sundry debtors are shell companies

- The renunciation of the recoveries in huge amounts by these shell companies.
- Huge software expenses booked against the shell companies
- The non-existence of reserves and surpluses created due to reversals of the sales booked over previous years.

vii. Regarding the modus operandi adopted by the Company the report submitted by Sarath revealed as under:

- On the availability of the investments in the subsidiaries:-.

  The company had raised funds for USD 125 Million through redeemable FCCB from overseas investors in 2008 for the purpose of investing in companies including wholly owned subsidiaries. These funds were invested primarily through the subsidiaries GTSL, Hong Kong and Geodesic Holding Limited Mauritius.

  Subsequent investments were observed to be as under:-

  GHL invested in Emiloto- USD 29 M □ HSBC Bank □ Loan to Audrain Commercial Corp□ Clariden Leu Bank □ Further details not known

  Zomo Technologies- USD 87 M □ Absolute Diversified Growth Funds □ Eland Crown□ Lasdun Ventures.

  GTSL- USD 82 M □ BSI Bank □ Enterprise Emerging Marketing Fund□ Yvette Investments Limited□ Mr. Dinesh Jajodia –sole director

  GHL- USD 20.10 M□ Spokn Communications Pte Ltd□ Prashant Mulekar-director

  GHL- USD 17.1 M □ Sharp Long Consultants□ Mr. Dinesh Jajodia –sole director GHL- USD 3 M □ Alpha Holding Limited.

  As per the Audited Balance Sheet of GHL and GTSL, they had incurred huge losses and there was diminution of investments made through these companies. GTSL is under liquidation and no assets are available as per the receiver, Axis Bank, hence investments shown in audited balance sheets for USD 87 Million are not available. GHL invested in Zomo for USD 87 Million were reinvested in Absolute Diversified Growth Funds which in turn invested in Eland, Lasdun are lost as both the companies are under liquidation. GHL also invested in the Spokn Communications, Sharp Long Consultants, Alpha Holdings Limited in which Mr. Prashant Mulekar and Mr. Dinesh Jajodia were directors respectively in first two companies.

- Diversion of funds

GL, on 17.01.2008, issued US $ 125 million Zero Coupon Convertible Bonds due 2013, which will bear no interest, except in certain circumstances and the bonds matures on 18.01.2013. As on the date, the nominal value of outstanding FCCB were USD 113.5 Million. The company had obtained RBI's approval to use the proceeds from the offering for overseas acquisitions and investments in the joint ventures or wholly owned subsidiaries. These funds however was to be parked overseas and not to be remitted to India.

Subsequently, GL had invested in GTSL, GHL its wholly owned subsidiary companies and further in its step down subsidiaries Emiloto, Zomo Technologies, Spokn Communications Ltd during the period from 2008-2010 for the purpose of acquisition.

On the date of redemption, the parent company GL, failed to redeem the monies to the overseas investors. In this regard Sarath revealed the following:-

- Monies lent to Lasdun, Eland, Sharp Consultants, Yvette Investments for loan purpose through the Standard Chartered Bank account, which were not for the purpose of acquisitions or investments in joint ventures but for re-lending activity, which is prohibited by RBI.
- The diversion of funds took place during the very first year of the collection of the funds i.e., 2008 in which the company paid to Sharp Long consultants, Yvette investments, GTSL as loan without prior permission of RBI.
- Booked huge bogus sales, purchase and software development expenses, non-existent fixed assets and utilised funds for paying the no-existent creditors and diverted the monies in paying the liabilities, writing off of the debtors, creditors and inter corporate deposits in the parent company in India.
- Part of the diverted funds were invested into other companies in which GL directors are common.

viii. Furthermore, directors of the Geodesic Mr. Pankaj Kumar, Mr. Prashant Mulekar, Mr. Kiran Kulkarni along with Mr. Dinesh Jajodia of the company and its subsidiary companies had fraudulently and intentionally siphoned off funds with a strategic planning, layering techniques of the funds raised through FCCB issue from overseas investors and further found part of the funds utilised for acquiring the assets in the names of the companies in which they were directors.

ix. The company had further raised loans and other facilities from Indian bank and failed to repay in time and facing the liquidation and legal charges in various matters in the Bombay High Court.

x. It was also revealed that Geodesic had diverted FCCB funds and also booked bogus entries for creditors, software development expenses and manipulated the figures in the audited balance sheets. Directors of the company had committed fraud intentionally by diverting the funds and failing to redeem bonds and failed to repay loans to banks and also misrepresented the facts about the sundry debtors, fixed assets, investments, creditors and software development expenses. The Audited Balance sheet fails to provide a true and fair view of the status of affairs of the company on existence of its investments, profits and reserves.

28. In view of the above, the investigation noted that the audited balance sheet failed to provide a true and fair view of the status of affairs of the company on existence of its investments, profits and reserves. Further, Kiran Kulkarni (Managing Director) and Pankaj Kumar (Chairman) being signatories to the annual report of the Company containing manipulated financials, mislead the investors by not providing a true and fair picture of its quarterly and yearly financials. Investigation further noted that Prashant Mulekar (Director and compliance officer) and independent director viz. Vinod Sethi and Nitin Potdar, who were members of audit committee failed to oversee the correctness of the financial statement, which were false and misleading, and accepted the same thereby failing to discharge their duties as members of audit committee.

29. Hence it was alleged that the Company, and its directors namely, Kiran Kulkarni, Pankaj Kumar, Prashant Mulekar, Vinod Sethi and Nitin Potdar engaged in manipulation in books of accounts for the FY 2011-12 by publishing annual report which was not true, planted false/ misleading news and misled the investors by not providing a true and fair view of its quarterly and yearly financials.

30. I note that Noticee No. 1 and 3 have raised objections on the Forensic Audit Report stating that it suffers from several deficiencies. The said deficiencies include not informing the said Noticees about appointment of M/s Sarath & Associates as forensic auditors of their Company, to the assertion that the Forensic Audit Report was never shared with the said Noticees, when it was submitted to SEBI. In this regard, I note that all the arguments attempting to diminish the sanctity and credibility of whole Forensic Audit Report, are mostly peripheral in nature and have no persuasive value in these. I note that it is the responsibility of the said Noticees to counter the factual findings of the said Forensic Audit Report so as to vindicate themselves from the charges of fudging the books of accounts

as alleged in the SCN instead of raising fingers at procedural points as raised above. The above tactics of raising technical objections like above, would not absolve the Noticees from the liability of answering the factual findings of such report which reflected acts and omissions in conduct of the business of the Company Geodesic, which was under the active control of Noticee nos. 1, 2 and 3 being its Directors. In view of the same, the said arguments are devoid of any merits.

31. It is also noted that the Noticee nos. 1 and 3 have relied upon a letter dated November 06, 2015 addressed by RBI to Economic Offences Wing, Mumbai Police, wherein it has been stated that there has not been any contravention of FEMA guidelines in respect of the issuance of FCCBs by the Company. In this connection, I note that the current proceedings are for adjudging the allegations of violations of securities laws as have been made in the SCN against the Noticees, therefore, Noticee nos. 1 and 3 have to establish a case in their favour with supporting evidences and the letter of RBI on a standalone basis may not be sufficient enough to drop the charges, and the Noticees ought to dispel the charges made against them by making concrete submissions to rebut the charges made in the SCN. As stated above, the allegations in the SCN mainly revolve around fudging and manipulating the books of account through wrong, false and fake transactions and consequently, by making wrong, misleading and distorted disclosure in the Annual Report to the investors at large. In view of the above, the submission that the Economic Offences Wing has not found any contravention of FEMA guidelines, has no bearing on the instant proceedings, so as to grant exoneration any of from the allegations.

32. It is further noted that Noticee No. 1 and 3 have submitted that by issuing FCCBs, the Company was able to gather USD 123.894 Million in its bank account (after deducting expenses etc.). The said amount was utilised by the Company to make acquisitions through three subsidiaries and step down subsidiaries, as detailed below:

Sr. No.	Name of the Company	Amount
1.	Geodesic Holdings Limited (**GHL**), Mauritius (wholly owned subsidiary of the Geodesic Limited)	USD 93.19 Million

2.	Geodesic Technology Services Limited, Hong Kong (**GSTL**)(wholly owned subsidiary of the Geodesic Limited)	USD 26.80 Million
3.	Expenses towards the FCCB	USD 3.529 Million

33. They further submitted that GL in total invested/lent an amount of USD 115.977 Million (approx.). Out of the said amount, an amount of USD 46.893 Million was invested in various companies, and loans of USD 69.085 Million was lent to a few entities. The details of such onward investments/lending by GHL and the submissions made in this regard by the *Noticees* are being tabulated herein below:

Sr. No.	**Details of investment**	**Amount**	**Submissions of Noticees pertaining to this investment**
1.	Acquisition of 100% shares of **Spokn Communications Pte Limited, Singapore**, from	USD 20.10 Million	The value of the investment worked out to be USD 20 per user as the said company was having a user base of 1 Million. Spokn was also having an internet telephony license issued by the Singapore Government.

	Sharp ong and Consultant Alpha Hold Pty Limited		The said company (Spokn) was offering IT based solutions like Voice Over Internet Protocol, which improved the products of Geodesic. Further, other products that were being made by Geodesic, could also be sold to the customers of Spokn. Similar such acquisitions like acquisition of Skype done by Microsoft etc., were done at far higher valuation. The Forensic Auditor's Report has given a finding that no share capital/share premium has been received by Spokn in terms of Balance Sheet of Spokn. The said findings are erroneous as the shares of Spokn were purchased from existing shareholders and were not subscribed afresh.
2.	Emiloto Associated Inc. Panama ("**Emiloto**")	USD 15 Million	The Company Emiloto, was acquired by GHL earlier. The said amount of USD 15 Million was further invested by Emiloto into Government Treasury Bonds through HSBC Zurich. In November, 2009, the investment Manager of HSBC introduced Emiloto/GHL/Geodesic to a company namely Audrain Commercial Corp, which was in the business of providing consultancy regarding acquisition and sharing of technology. An agreement was entered into between Emiloto and Audrain whereby Audrain agreed to obtain appropriate technologies for Geodesic Limited and Emiloto would guarantee a loan given to Audrain by HSBC Zurich for such acquisition. In pursuance of the same, HSBC advanced a loan to Audrain and as it was unable to repay the same, the maturity proceeds of the investments in Government Securities were

			appropriated in the loan outstanding of Audrain. As per the agreement
			between Emiloto and Audrain, the loan amount (with interest) was then payable to Emiloto. As per the information available at the time of Takeover of the *Company* by the Official Liquidator, Audrain had agreed to repay the said loan amount (against payment of which the investment of Emiloto had been appropriated by HSBC), to Emiloto in instalments within a period of 6-12 months.
3.	Interactive Inc. Networks ("**INI**")	USD 8.135 Million	INI was a company providing instant messaging services to several telecom companies in South America and it had an annual revenue of USD 1.35 Million. The IT solutions offered could be offered to the clients of INI. GHL acquired INI for the said sum which comes at a valuation of USD 6 per subscriber which was relatively low when compared to other acquisitions. By acquisition of INI, the *Company* was able to establish a foothold in South America and after such acquisition, the value of INI increased by around 15% as of 2013.
4.	Geodesic Information System Inc. USA	USD 2.247 Million	
5.	Geodesic Technology FZE	USD 0.10 Million	

6.	Geodesic (Hong Kong) Limited	USD 0.808 Million	
7.	Zomo Technologies Limited, BVI	USD 1000	
8.	Arrow Point Technologies Ltd.	USD 0.502 Million	
Loans by GHL to various companies (USD 69.085 Million)			
9.	Interactive Networks Inc.	USD 3.50 Million	
10.	Zomo Technologies Ltd. ("**Zomo**")	USD 64.805 Million	Zomo invested the said amount in Absolute Diversified Growth (**ADG**) Fund managed by Credit Suisse, Zurich. As of December 31, 2014, the said amount was available for redemption.
11.	Geodesic (Hong Kong) Limited	USD 0.78 Million	

34. Apart from the above, GHL borrowed a sum of USD 9.555 Million from Emiloto Associates Inc., and after netting off the said loan amount, the total investment of the Company comes to USD 106.422 Million (USD 115.977- USD 9.555 Million) (in the reply this amount is mentioned as 103.435 Million). It has been contended that not all the investments made by GHL were made from the FCCB proceeds.

35. In this regard, I note that there is a substantial lack of cohesiveness and clarity in the submissions of the Noticee nos. 1 and 3. It is noted that they contended that Emiloto had invested in Government Securities (through HSBC), maturity amount of which has been appropriated against the loan given to Audrain Commercial Corp., as the said loan was Guaranteed for by Emiloto. Strangely, after stating about the aforesaid transaction and stating that Zomo (another company) had made investments in ADG Fund; a common

submission has been made that both Emiloto and Zomo had made investments in ADG Fund. Though, no details whatsoever pertaining to the purported investments made by Emiloto in ADG funds have been furnished and only the details of the investment claimed to have been made by Zomo in ADG Funds have been provided. It is further submitted on behalf of the said Noticees that funds invested in 'ADG Fund' are reflected in the Portfolio Statement provided by Credit Suisse Bank as on December 31, 2014 and it was the discretion of ADG Fund to invest such funds as per its investment policies. It has also been contended that such an activity is not disallowed by RBI and also that it is beyond the purview of RBI to monitor Foreign subsidiaries' investments.

36. I have carefully considered the aforesaid submissions made by Noticee No. 1 and 3 and in my considerate view, the said explanations are nothing but superfluous claims, evasiveness, contradictions and do not have any substance to counter the allegations that have been levelled against them in the SCN for the reasons as detailed below:

a) It has been stated that after deducting the expenses for the FCCB issue, an amount of USD 123.894 Million were credited to the account of the Company, out of which USD 93.19 Million came to be invested in GHL and USD 26.80 Million came to be invested in GTSL (Ref. Serial no. 1 and 2 in Table no. 3 above). However, I note that the details of end use of the investments made in GTSL amounting to USD 26.80 Million and what GTSL did with this money from its end are conspicuously absent in the said submissions. This leaves with an unexplained gap of USD 26.80 Million which were admittedly transferred to GTSL out of the FCCB proceeds. Under the circumstances, it is imperative to highlight such a silence (with respect to around 25% of the total amount of FCCB issue) on the part of Noticee nos. 1 and 3, who were the Executive Directors of Geodesic Limited at the relevant times, and the same raises questions about their conduct while they were at the helm of the affairs of the Geodesic Limited.

b) The next explanation given by Noticee No. 1 and 3 pertains to the investment of USD 20.10 Million made by GHL for acquiring the 100% shares of Spokn Communications Pte Limited from Sharp Long Consultant and Alpha Holdings Pte Ltd. In this respect, I note that the Forensic Auditor has observed that as per the Balance sheet of Spokn, there is no introduction of capital/share premium into Spokn. The Noticees have tried to reject the above observation of the Forensic Auditor by stating that the shares of Spokn were acquired from its existing shareholders viz., Alpha Holdings and Sharp Long via a share purchase agreement, therefore, no additional capital was issued by Spokn. I note that the above explanation has no merit as neither the details of the number of shares held by each of the sellers viz., Alpha Holdings and Sharp Long held in Spokn and the date/details of share purchase agreement have been furnished in support of their claim of purchasing shares of Spokn from existing shareholders nor any documentary evidence suggesting that Geodesic Holding Limited (subsidiary of Geodesic Limited) was the sole shareholder of Spokn, (after it acquired those shares from the existing shareholders) has been furnished. I further note that the above submission is also not backed by any independently verifiable evidence either in the form of a Share Purchase Agreement, with corresponding disclosure in the books of the GL or a consequent and disclosure to the shareholders through Stock Exchanges. In view of the aforesaid facts and in the absence of any such details/documents to support such a claim, I find no merit in the said submission of the Noticees more so when the Forensic Audit has clearly revealed that Sharp Long Consultant (one of the purported seller of shares of Spokn) had only one Director namely Mr. Dinesh Jajodia, the CA of the company who allegedly was hand in glove with the Directors of the company especially the *Noticee no. 2* in manipulation of the Books of accounts of GL. Since Mr. Dinesh as the Tax consultant of GL is himself allegedly found to have acted in collusion with the *Noticee nos. 1, 2* and *3* so as to be a part of the entire scheme and assisted them in generating false and frivolous bills against the purchases of GL*,* the aforesaid claim of the *Noticees* that GHL purchased shares of Spokn from Sharp Long Consultant all the more becomes a dubious claim which is sans any corroborative evidence. Further, I note that nothing has been brought on record to furnish the justification of utilisation of money in the hands of GHL, that was raised from the investors in the form of FCCB. As regards the investment in Spokn is concerned, I note that Noticee No. 1 and 3 have only narrated as to how the funds were invested in the said company Spokn and have also attempted to justify as to how valuable the said investment was, however, the said submissions besides not being supported by any concrete evidence do not explain if any profit at all was accrued to Geodesic Holding Limited/Geodesic Limited, out of the so called promising investment made out of the proceeds of those FCCBs through GHL. Looked with the fact that GL ultimately defaulted in repaying to FCCB bond holders, the said act of GL looks more suspicious. Under the circumstances, the aforesaid explanation from the Noticee no. 1 and 3 has no substance in it.

c) The next investment in question is of USD 15 Million made in Emiloto Associated Inc. Panama ("Emiloto") which is stated to have been further invested by Emiloto in Government Treasury Bonds through HSBC, Zurich. The explanation that has been furnished for this investment by Noticee no. 1 and 3 to begin with falls short of USD 14 Million as the explanation furnished pertaining to only an amount USD 15 Million (the SCN records that USD 29 Million were transferred to Emiloto). Notwithstanding the same, the explanation of Noticees that the "said investment in Government Treasury Bonds has appropriated in value against the loan taken by Audrian". In this regard, I note that that Audrain was supposed to provide consultancy services to Emiloto/Geodesic Holdings Limited/Geodesic Limited, a claim which is also not credible, due to multiple reasons viz., limited information regarding the purported consultancy services have been provided; details of any such consultancy services actually rendered by Audrain or any acquisition made for Emiloto (Step down Subsidiary of Geodesic Limited)/Geodesic Holding Limited (Subsidiary of Geodesic Limited) have not been furnished; instead of paying consideration to Audrain, strange way of arranging loan for Audrain from HSBC Zurich making the client/vendee company (Geodesic Holdings Limited) as the Guarantor of such loan has been used. Apart from the aforesaid glaring discrepancies which are inferred from the reply of the said *Noticees*, the page 13 of the Forensic Audit Report records that both the vendor and vendee companies viz., Audrain and Emiloto had common Directors namely Francessco Castellazzi, Tamara Schelapfer and Rene Sigrist, which shows a common thread running through both the companies, thereby further weakening the claim of the said *Noticees.*

d) In order to further assess the claims of the *Noticee nos. 1* and *3,* I deem it relevant to refer to the proceedings before the Hon'ble Bombay High Court, in the petition filed by the Trustees of FCCB holders (Company Petition no. 471 of 2013, Citibank N.A. London Branch Vs. Geodesic Limited). In the said proceedings, a similar claim of investment with Audrain were made by GL has been, which mentioned in the orders dated April 03, 2014 and April 07, 2014 passed by the Hon'ble High Court. The order dated April 03, 2014 records a statement made on behalf of Mr. Prashant Mulekar (*Noticee no. 2* herein) and Mr. Kiran Kulkarni (*Noticee no. 3* herein), stating therein that:

> *"a) In the account of Emiloto Associated Inc, with HSBC Zurich, there is an amount of US $ 29.056 million;*
>
> *b) In the account of Zomo Technologies Limited with Credit Suisse Zurich, there is an amount of US*
> *$ 92.597 million; and*
>
> *c) In the account of Geodesic Technology Solutions Limited, with Clariden Leu Zurich, there is an amount of US $ 82.01 million."*

e) I also note that the Hon'ble Bombay High Court had directed to explain these investments by way of an affidavit along with other relevant details like whether such investments are realizable or not.

f) From the order passed by the Hon'ble High Court during the hearing held on April 07, 2014, following is noted:

2.Pursuant to that order, an affidavit has been filed today. That affidavit makes for the most unfortunate reading. In paragraph 3 of the affidavit, there is a tabulation. This reveals that the amount of US$ 29.06 million earlier stated on instructions to be in an investment account with HSBC Zurich, was actually given on a loan to one Audrain Commercial Corp, Belize. This was also not recent. This loan was, it seems, given in July 2012. There is absolutely no possibility that the gentleman who was present in Court giving instructions on 3rd April 2014, and who is also present today, could have been unaware of this fact.

3.Paragraph 6 of the affidavit now filed only makes matter worse. It says that this loan was placed at a interest rate of 4.75% per annum, to mature in July 2014. Given the dire financial straits in which this respondent-company seems now to flounder, the affidavit raises distressing questions. Who is this Audrain Commercial Corp of Belize? Why was it thought to be worthy of such a loan and at this rate of interest in 2012? The second sentence of paragraph 6 only exacerbates matters:

"6. … Say that the said loan was given in respect of certain projects which may generate business worth approximately 50-60 million US$ and this was purely by way of a strategic investment made by Emiloto". (underline supplied)

g) From the aforesaid two orders (dated April 03, 2014 and April 07, 2014) passed by the Hon'ble Bombay High Court, I note that the amount of money involved in loan to Audrain was indeed USD 29 Million, as against of USD 15 Million as mentioned by Noticee no. 1 and 3 in their submissions in the present proceeding. Further, it is also noted that the stand of Noticee no. 1 and 3 herein taken in the present proceedings that the transfer of funds to Audrain emanated from some purported strategic alliance with Audrain, is clearly contradicted by the details recorded in the affidavit filed before the Hon'ble Bombay High Court, as extracted & reproduced in the previous paragraphs. Thus, on the one hand the Noticees have attempted to classify the amount as investment in Audrian whereas on the other hand, the same was explained as a loan in the affidavit filed before the Hon'ble High Court of Bombay. Thus, the aforesaid observations of the Hon'ble Bombay High Court and the inferences with respect to common Directors between Emiloto and Audrain recorded in the previous paras, I reject the aforesaid contention made by the said Noticees.

h) Noticee no. 1 and 3 have also submitted that USD 8.135 Million were invested for acquiring Interactive Networks Inc. ("**INI**") and have also tried to explain the reasons for making such investment. However, even after considering the reasoning offered by them like synergy created out of the acquisition of INI and consequent increase in the value of INI, the question arises that what ultimately happened to the said investment made by the GL through its foreign based subsidiary. It is further noted that with respect to the rest of the investments/loans, Noticee nos. 1 and 3 have provided limited information about the amount of such investment/loan and the name of the entity to which such an amount was extended. I note that no details and supportive documents in this regards have been submitted. In view of the same, I find no merit in such claims made by Noticee No. 1 and 3.

i) I note that the next explanation relevant for the present proceedings pertain to the amount of USD 64.805 Million given as loan by Geodesic Holding Limited (a subsidiary of Geodesic Limited) to Zomo Technologies Limited (Zomo). The aforesaid Noticees 1 and 3 have stated in their representations that the aforesaid loan of USD 64.805 Million received by Zomo was further invested by it in Absolute Diversified Fund (ADF) which was managed by Credit Suisse, Zurich and the said amount was available for redemption as on December 31, 2014. In this regard, I note from the observation of the Forensic Auditor that the funds so invested in Absolute Diversified Funds were further invested by ADF in Eland Crown and Lasdun Ventures, and eventually the said two companies (Eland Crown and Lasdun Ventures) have gone into liquidation. No submission has been made by Noticee no. 1 and 3 with respect to any payment if any, whatsoever received from Zomo or from ADF out of the said investment made by Zomo in the ADF. Further, it is relevant to mention here that a feeble defence has been taken by Noticee nos. 1 and 3 by stating that the investments were made by ADF (in the said two companies) as per its own investment policies. However, when the aforesaid statement is seen in the conspectus of facts governing such investment, such a defence is rendered as completely devoid of merit, as the Forensic Audit Report also records that it was Mr. Dinesh Jajodia, who was the Director of Eland Crown (one of the companies to whom ADF transferred the funds). This fact itself leaves no *iota* of confidence in the defence taken and submission made by the Noticees. Thus, in light of the facts that the investment made in ADF was onward made in a company which had one of the alleged complicit persons as the sole Director and also the fact that the said investment never turned back to ADF and in turn to Zomo, I find no merit in the aforesaid contention of Noticee No. 1 and 3.

j) I also couldn't lose sight of the fact that though the Noticees have time and again made claims that the investment made out of the funds raised through FCCB were diligently invested and the amount invested are available for redemption, however, despite providing sufficient opportunities and despite, directions passed by the Hon'ble High Court of Bombay, GL and its Noticee Directors have failed to bring even a part of the amount so invested, which clearly demonstrates the illicit intent behind making those investments. The above noted failure of GL can't be seen in isolation as a mere coincidence of having made bad investment decision and the same needs to be seen from the perspective of GL going into liquidation in the backdrop of fact that on majority of occasions, the investee companies were found to be associated with Mr. Jajodia and on each of such instances, the investee company had defaulted in making repayment to the investor company and consequently, the Company i.e., Geodesic finally failed in fulfilling its redemption obligations for the FCCBs. The said failure read with the evasive and contradicting replies furnished by the Noticees sufficiently suggests that GL through its Executive Directors have consciously made such investments and have also knowingly recorded and shown in its books the investment as profitable ones, though in reality, they were very much aware of the fact that these investments will not come back to GL and to cover up their misdeeds to some extent, the Noticees indulged in making fake and fictitious purchases in the accounts of GL as unearthed during the investigation conducted by SEBI and as already mentioned in this order above.

37. To sum the aforesaid observations, Noticee nos. 1, 2 and 3 being Chairman/Director; Director & Compliance Officer; and Managing Director, of GL, respectively, failed to explain that how the data contained in the audited books of accounts of GL was reflecting the wrong/false financial health of GL, grossly failed in explaining not only the genuineness in the investments made out of the FCCB procedures but also have failed to make out a case in their favour, or to inspire even an iota of confidence in the integrity of those audited Accounts of GL that have been found to be false, concocted and misleading by the investigation of SEBI and by the forensic auditors as well.

38. In view of the above, I note that the Noticees are charged in the SCN for their alleged manipulation and fraudulent acts on account of which the Audited Balance Sheet and Annual Report of GL for the FY 2011-12 failed to provide a true and fair view of the affairs of GL. In this regard, I note that Noticee nos. 1 and 3 who were controlling the

affairs of GL during the relevant period being its Promoter-Directors, failed to defend the aforesaid allegations which could have been done with strong rebuttals by furnishing the specifics of the investments made by them in the interest of GL and true account of all the expenses carried out by it. I note that though the said Noticees raised their defence and provided some information regarding investments made by the Company through its foreign subsidiaries and step down subsidiaries and have also tried to project as to how, those investments had the potential of giving high returns, however, based on the detailed observations made about the investment by GL in the preceding paragraphs, I am of the firm view that the grounds of defence taken by Noticee nos. 1 and 3 in respect of allegations made against them have been found to be evasive, contradictory and unreliable. It has also been noted that the Company as well as its subsidiaries like GTSL Hong Kong are underlying winding up proceedings.

39. In view of the above, I note that Noticee no. 1, 2 and 3, being the Executive Directors of the Company have failed to vindicate themselves from the charges levelled in the SCN, and accordingly, are responsible of inducing the common investors to invest in the company by publishing Annual Report that contained grossly manipulated figures and misleading financial statements and have thus violated Section 12A(a), (b), (c) of SEBI Act, 1992, read with Regulation 3(b), (c), (d) and 4(1),4(2)(f), (k) & (r) of PFUTP Regulations, 2003.

40. The next issue for consideration is whether Noticee nos. 4 & 5 (Independent Directors), have failed to oversee the correctness of the financial statements for the FY 201112 which are now proven to contain false and misleading figures and amounts and thereby have failed to discharge their duties as Independent Directors. In this regard, I note that in view of my findings already recorded in the preceding sections of the present order, it is clear that the financial statements of GL for the FY 2011-12 were containing false and misleading statements.

41. In this connection, I note that the Noticee no. 4 vide his letters dated July 12, 2018 and mail dated November 11, 2022 and Noticee no. 5 vide his letters dated June 16, 2021, July 02, 2021 and December 7, 2022 have vehemently contested the charges made against them

in the SCN by taking various common pleas and arguments which are summarised in para 18 above.

42. I note from the replies of Noticee no. 4 and 5, that they have made several overlapping submissions which includes that there is no dispute to the fact that they being Non-Executive Directors of GL, were not involved in the day to day management of GL and have discharged their responsibilities in good faith and with due-diligence. It is also found that there is no evidence on record, which even remotely indicate that the alleged actions committed by the Executive Directors were committed with the knowledge, consent or approval of the Board of Directors and no specific adverse facts attributing their conduct or knowledge in the violations committed by GL have been alleged in the SCN. It has been further submitted that as diligent Directors, queries have been raised and further upon not being satisfied, they have resigned immediately from the post of the directorship even before the scam was published.

43. I note that the aforesaid two Noticees have also relied upon judicial orders of the Hon'ble Supreme Court, Hon'ble High Court of Bombay and Hon'ble SAT to substantiate their contentions that as Independent Directors, they had limited role to play as they were not involved in the day to day functioning or managing the affairs of GL, hence, were not aware of the alleged wrongdoings by GL. Further, Noticee no. 4 has exercised his diligence immediately after becoming aware of the wrongdoings in GL and ultimately has tendered his resignation from GL's Board hence, he can't be held liable, for the wrongdoings of GL, which has been committed against the wish and consent of the Noticee. Reliance have also been placed on an MCA Circular dated July 29, 2011 and an MCA letter dated November 09, 2016 to support the contention that Independent Directors shall not be made liable for a violation which occurred without their knowledge and without their consent or connivance or in cases where they have acted diligently through the Board process. I have perused the judgement of the Hon'ble Supreme Court in the case of Chintalapati Srinivasa Raju and ors. v. SEBI, (2018) 7 SCC 443 relied upon by the Noticese, wherein Court has observed that *"Non-executive directors are, therefore, persons who are not involved in the day to day affairs of the running of GL and are not in charge of and not responsible for the conduct of the business of the company……."*

44. I note that the charges in the present matter are limited to the non-reporting of the actual picture of the financial health of GL especially pertaining to its investments, profits, reserves and expenses etc. As far as Noticee no. 4 and 5 are concerned, I note that they have been charged with the allegation of various provisions of securities laws by alleging that being Member of the Audit Committee, they have failed to oversee the correctness of the financial statements. After carefully perusing various factual and legal arguments advanced by the said Noticees, I find that their submissions have merits due to the following broad reasons:

a) There are enough evidences in form of the Forensic Audit Report, etc., which indicate that complex layered transactions were executed on behalf of the Company and the persons behind such acts were the Noticee nos. 1, 2 and 3 who were the Promoter/Directors of the Company. Further, in terms of the Forensic Audit Report, the funds were first invested in the foreign subsidiaries of the Company viz., GTSL, Hong Kong and Geodesic Holding Limited Mauritius, from where such funds were further diverted to other entities. There is no insinuation made in the present proceedings with respect to the first level investment or reporting of such investments made by GL out of the FCCB proceeds, into the said subsidiaries, and rather the charges stem from further transfers/siphoning off/misreporting of such investments made in the subsidiaries of the Company and there is nothing on record to show that the Audit Committee Members were having knowledge about such onward investments /transfer of funds for the overseas subsidiaries to other companies/entities. On the other hand, the defence taken by the Executive Directors of the Company has already been rejected and based on strong factual and evidentiary support, they have been found guilty of misrepresenting the financials of the Company.

b) Further, in the present case, it appears that the actual facts, figures and the real state of affairs of the Company were concealed by the Executive Directors from the Audit Committee. In this regard, I note that vide an email dated May 16, 2013, Noticee no. 4 had resigned from the Directorship by citing many reasons, few of which are being quoted verbatim herein below:

"-forex losses: we have incurred forex losses of Rs 150 cr. There was no mention about this aggressive foreign exchange trades in the audit and board meeting over the years. Nor was any approval sought.

Keeping the board uninformed is unacceptable. I am greatly pained by this. The magnitude of the loss is staggering.

-Fccb payout- I was repeatedly told that the fccb will be paid out in full on due date in January. It is now mid may and there still isn't clarity. I have repeatedly asked for a bi-

weekly update and a clear PERT chart of balance steps. I keep getting vague answers despite visiting geodesic every week over the last 5 months."

c) The aforesaid email was responded to by Noticee no. 3 herein on the even date, and Noticee no. 1 was also marked copy. From the contents of the said response, it is noted that none of the averments made by Noticee no. 4 in the aforesaid email were disputed/denied by the aforesaid two Noticees. As can be seen from the aforesaid, it rather contains a clear cut admission of all the statements/averments made by Noticee no. 4 in his email. The reply of Noticee No. 3 reads as follows: *"Most of these things you have mentioned are falling in place and may I request you to bear with us for another fortnight to set all these right. Please go ahead with your resignation if things dont fall in place by 31st of May 2013. "* (underline supplied)

d) From the aforesaid response, made by Noticee no. 3, it can be seen that grave issues pertaining to Forex Trades which led to loss of INR 150 Crore to the Company were not informed by the management to the Audit Committee Members. I also note that such a glaring fact of keeping the things under wraps from the eyes of Audit Committee speaks volume about the deceitful conduct of the Executive Directors who were running the show of GL. Therefore, the aforesaid observation even on a stand-alone basis, carries sufficient weightage to exonerate the Independent Directors of GL.

e) There is no dispute to the fact that Noticee no. 4, whose confrontation with the management of GL has been cited above, had resigned from the Directorship on May 16, 2013, whereas Noticee no. 5 had resigned on December 04, 2012. Further, it is admitted fact that the financial statements of GL for the period of 2011-12 were recast on February 14, 2014. I observe that Noticee no. 4 has placed reliance on the decision of Ministry of Corporate Affairs, wherein he has been exonerated from the charges of violations of the Companies Act, 1956 pertaining to non-compliance in Director's Report by virtue of the fact that the accounts for the FY 2011-12 were revised in the year 2014 and by that time, he had resigned from the Directorship of GL.

f) I also note the reliance placed by the Noticee on Regulation 25 (5) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to contend that an Independent Director should only be made liable in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. I note that the allegation in the present proceedings is not that the Independent Directors had actively participated in the day to day affairs of the Company. There is also no evidence to indicate their direct or indirect participation in the execution of the scheme devised by the Executive Directors against whom strong observation have also be passed by the Hon'ble High Court for their wrong doings, which also does not indicate any involvement or knowledge of the Independent Directors.

g) Under the circumstances, where evidences are not showing direct culpability of Noticee no. 4 and 5, it becomes important to see as to whether they have actually had any knowledge of the fraudulent conduct of the Company and whether they were party to the said fraudulent conduct or whether they have displayed due diligence that is expected of an Independent Director of a listed company which has raised funds from public. I note that the two Noticees i.e. Noticees no. 4 & 5 were certainly holding the post of Directors during the relevant period. I also find that the two Directors were members of the Audit Committee, however, after perusing the submissions of the Noticees along with the materials available on record, I am of the view that the submissions made by Noticee no. 4 and 5 with supporting documents including the MCA letter holding Noticee no. 4 not as an officer in default, can't be ignored. In my considerate view, the two Noticees have been successful in showing that due diligence has been carried out by them while acting in the capacity of Independent Directors, and have not acted as mute or silent spectator to the nefarious activities of the Company.

h) It is also can't be ignored that after coming to know that the Company was not observing transparency in its affairs, the Noticee no. 4 and 5 had taken a decision to step down from the position of directorship. Under the circumstances, considering the submissions made by these two Noticees and the manner in which the entire scheme of fraud was hatched and executed, which have been commented upon even by the Hon'ble High Court of Bombay in its order dated April 07, 2014 and further considering the fact that relevant information were not furnished to the Audit Committee, I find that the charges made against Noticees no. 4 and 5 are falling short of bringing home the allegations made in the SCN against them. Hence, in my considered opinion, such charges would not sustain in the facts of the matter. Accordingly, the proceedings against them deserve to be dropped.

45. In view of the aforesaid observations, I note that the Independent Directors who were also member of the Audit Committee i.e. Noticee No. 4 and 5, were not furnished with complete and adequate information about the financial affairs of the Company including important information regarding huge losses incurred from Forex trading. Such conduct on the part of the management highlights the ill-intent of Executive Directors to keep the actual financials undisclosed from the investing public and regulatory authorities. Under the aforesaid facts and circumstances, I note that the facts available on record are not

adequate in establishing the charges against the Noticee nos. 4 and 5. Therefore, Noticee No. 4 and 5 are exonerated from the present proceedings.

46. However, the same cannon be held for Noticee No. 2. Unlike Noticee No. 4 and 5, Noticee No. 2 was not the Independent Director but an Executive Director as well as the Compliance Officer in addition of being the member of the Audit Committee of GL having clear involvement in the day to day affairs of the company. By virtue of his position of Director as well as compliance officer, he was sufficiently expected to have the knowledge of complete information related to financial affairs of the Company and he should have acted on the aforementioned established manipulation and fraudulent acts. Therefore, I held that Noticee No. 2 failed to discharge his duties diligently as a member of the Audit Committee and accordingly has violated the provisions of Clause 49 of the Listing Agreement read with section 21 of SCRA, 1956.

47. In view of the aforesaid observations and findings, I hold that Noticee nos. 1, 2, and 3 have violated the provisions of Section 12A (a), (b), (c) of the SEBI Act, 1992 read with Regulation 3(b), (c), (d), 4(1), 4(2) (f), (k) and (r) of the PFUTP Regulations, 2003. Additionally, I also hold Noticee No. 2 guilty of violating provisions of Clause 49 of the Listing Agreement read with section 21 of SCRA, 1956. Further, the proceedings against Noticee nos. 4 and 5 in the present matter are hereby dropped.

Issue II: Does the violation, if any, attract monetary penalty under Section 15 HA of SEBI Act and section 23H of SCRA for the Noticees, as applicable?

48. I note that Hon'ble Supreme Court of India, in the matter of Chairman, **SEBI vs. Shriram Mutual Fund** {*[2006] 5 SCC 361*} held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".*

49. In view of the foregoing, I am convinced that Noticee No. 1, 2 and 3 are liable for monetary penalty under Section 15 HA of the SEBI Act, 1992 for the violation of

provisions of Section 12 A (a), (b), (c) of SEBI Act and Regulations 3(b), (c), (d), 4(1) and 4(2)(f), (k) & (r) of PFUTP Regulations, 2003 and Noticee No. 2 is liable for monetary penalty under Section 23H of SCRA for the violation of provisions of Clause 49 of the Listing Agreement read with Section 21 of SCRA.

50. The provisions of Sections 15 HA of the SEBI Act, 1992 and Section 23H of SCRA read as under:

<u>SEBI Act, 1992</u>

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

It was amended to read as *"[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]*

As per the dates of violations, Section 15HA of SEBI Act is applicable, as it stood prior to the amendment. Nevertheless, guided by the principle of rule of beneficial construction of even ex post facto law to mitigate the rigour of law, as was laid by the Hon'ble Supreme Court in *T. Barai vs. Henry Ah Hoe and Ors.* (*07.12.1982 -SC): MANU/SC/0123/1982 [(1983)1SCC177]*, the amended version of section 15HA of SEBI Act is being applied.

<u>SCRA, 1956</u>

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised 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 may extend to one crore rupees.*

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act and Section 23J of SCRA?

51. While determining the quantum of penalty under Sections 15HA of the SEBI Act and 23H of SCRA, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act and 23J of SCRA, which read as under: -.

<u>SEBI Act, 1992</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.

<u>SCRA</u>
Factors to be taken into account while adjudging quantum of penalty.

Section 23J - While adjudging quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely: -

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

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

(c) *the repetitive nature of the default.*

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 been exercised under the provisions of this section.*

52. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the aforesaid violations by the Noticees is not available. Further, material available on record does not show that the said failure is repetitive. However, I note that, as the regulator of the capital markets, SEBI has the vowed duty to safeguard the interests of investors and protect the integrity of the securities market. In the present matter, it is established that the Audited Balance Sheet of the Company for the FY 2011-12 was replete with misleading

financial data and was not containing the true and correct numbers pertaining to the financial health of the Company thereby misleading the investors at large and preventing them from taking an informed decision, while dealing in the shares of the Company and accordingly Noticee No. 1, 2 and 3 violated the provisions of Section 12 A (a), (b), (c) of SEBI Act and Regulations 3(b), (c), (d), 4(1) and 4(2)(f), (k) & (r) of PFUTP Regulations, 2003 and Noticee No. 2 has also violated the provisions of Clause 49 of the Listing Agreement read with Section 21 of SCRA.

ORDER

53. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, 1995 (with respect to Noticee No. 1, 2 and 3); and in Section 23J of SCRA and in exercise of the powers conferred upon me under Section 23I of SCRA read with Rule 5 of the SCR Adjudication Rules (with respect to Noticee No. 2), I hereby impose the following penalties, for the violations as specified in this order:

S. No.	Name of the Noticees	Penal provision	Penalty amount (Rs.)
1.	Pankaj Kumar	Section 15HA of SEBI Act	Rs.5,00,000/- (Rupees Five Lacs Only)
2.	Prashant Mulekar	Section 15HA of SEBI Act and Section 23H of SCRA	Rs.6,00,000/- (Rupees Six Lacs Only)
3.	Kiran Kulkarni	Section 15HA of SEBI Act	Rs.5,00,000/- (Rupees Five Lacs Only)

54. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor 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

55. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

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 etc.)	

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

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

Date: February 22, 2023 **G. Ramar**

Place: Mumbai **Adjudicating Officer**