**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**(ADJUDICATION ORDER NO: Order/GR/RK/2021-22/12716-12718)**

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

In respect of:

| SL. No. | Name of the Entity | PAN |
|---|---|---|
| 1. | Pankaj Kumar | AAHPS2438K |
| 2. | Prashant Mulekar | AACPM1058Q |
| 3. | Kiran Kulkarni | AAKPK6962F |

**In the matter of M/s Geodesic Limited**

(The aforesaid entities are hereinafter referred to by their respective names/ Noticee 1 to 3 or collectively as "the Noticees")

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## FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in the matter of M/s Geodesic Limited (hereinafter referred to as **"Geodesic/GDL/ the Company"**) for the period of April 01, 2012 to March 31, 2013 (hereinafter referred to as **"investigation period"**) and had observed *prima facie* violations of (a) Section 12A (a),(b),(c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and Regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (e), (f), (k) and (r) of the

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "the **PFUTP Regulations**" ). by Shri Pankaj Kumar (hereinafter referred to as **"Noticee 1"**), Shri Prashant Mulekar (hereinafter referred to as **"Noticee 2"**), and Shri Kiran Kulkarni (hereinafter referred to as **"Noticee 3"**) (b) Clause 2.1 & 7(ii) of Schedule II read with Regulation 12(2) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**") read with Regulation 12(2) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations, 2015**") by the Noticees. (c) Clause 3.2 of Schedule II read with Regulation 12(2) of PIT Regulations, 1992 read with read with Regulation 12(2) of PIT Regulations, 2015 by Noticee no. 2. (d) Clause I .2 and 4.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies given in Schedule I Part A (hereinafter referred to as "**Model Code of Conduct**") read with Regulations 12(1) and 12(3) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 by the Noticees. (e) Clauses 36 and 49 of Listing Agreement read with section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCR Act, 1956**") by the Noticees.

**APPOINTMENT OF ADJUDICATING OFFICER**

2. Based on the findings of the investigation, SEBI initiated Adjudication proceedings in the matter and vide Order dated October 27, 2015 appointed Shri S. V. Krishnamohan, as the Adjudicating Officer (hereinafter referred as **AO**) to inquire into and adjudge under Section 23E of SCR Act, 1956 and Sections 15HA and 15HB of the SEBI Act for the alleged violations specified at para 1 above committed by the Noticees.

   Subsequently, vide Order dated September 15, 2017, Shri. Biju S was appointed as the Adjudicating Officer in the said matter in the place of Shri S. V.

Krishnamohan. Thereafter, vide Order dated July 6, 2018, Shri. Satya Ranjan Prasad was appointed as the Adjudicating Officer in the said matter in the place of Shri Shri. Biju S. Later, vide order dated May 17, 2019 the undersigned has been appointed as the Adjudicating Officer in the instant matter. The proceeding is therefore being carried forward where they had been left off by the previous AO and an opportunity of personal hearing was granted as detailed hereinafter.

## SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated May 5, 2016 (hereinafter referred to as **'SCN'**) was issued by the erstwhile AO to the Noticees in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**"), and Section 23-I of the SCRA, 1956 read with Rule 4 of the Securities Contracts (Regulation)(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as "**SCR Adjudication Rules**") to show cause as to why an inquiry should not be held against the Noticees and why penalty should not be imposed on the Noticees under the provisions of Section 23E of SCR Act, 1956 and Sections 15HA and 15HB of the SEBI Act, for the aforesaid alleged violations. The SCN was duly served upon the Noticees.

4. The SCN was issued to the Noticees alleging, inter alia, that:

(a) The Company was constantly misleading the stock-exchanges, FCCBs holders, regarding the utilization of the proceeds of FCCBs, restructuring process and also regarding the expected proceeds to be realized from the redemption of restructured investments, which did not happen.

(b) The Company being fully cognizant of the impeding obligation towards redemption of FCCBs (for an amount of approximately INR 800 Crore) and was also aware about its dismal financial health, still made announcements for buy-back of shares as well as proposed for payment of dividends. After making such announcements, the Company did not take any step either towards the buy-back or payment of dividends.

(c) Both the announcements pertaining to buy-back and payment of dividend had positively impacted the price of the scrip of the *Company.* The market price of the scrip of the *Company* on November 21, 2012 (date of notice of Board Meeting) was INR 38.45 and on November 27, 2012 (date of Board Meeting wherein decision to buy-back was taken) the price was INR 52.20. Similarly, the market price of the scrip on November 23, 2012 (one day prior to date of notice of Board Meeting on November 24, 2012, which was Saturday) was INR 38.60 and on December 03, 2012 (date of Board Meeting wherein decision to consider paying dividend was taken) was INR 51.60.

(d) The sequence of events indicates that the intention behind making announcements of buy-back and payment of dividend despite knowing the financial incapacity to honour the same, was to positively influence the price of the scrip of the *Company*.

(e) ICICI Bank Limited had filed an application before Debt Recovery Tribunal ('**DRT'**) for recovery of 70.52 crore from the Company. DRT passed an interim order on 19/03/2013, freezing its bank accounts. DRT, vide its order dated 05/04/2013, directed continuation of freeze on the company's account, which would have been sufficient to cover the liability of the company towards the applicant. However, Company did not make any disclosure to stock exchange regarding the order passed by DRT in the suit filed against the company. The email dated March 24, 2015 from BSE confirming that no specific disclosure regarding the suit filed in DRT against the company in the year 2013 is enclosed as Annexure V. It is therefore, alleged that the Noticees have violated Clause 36 of Listing Agreement read with Section 21 of SCR Act, 1956 and Clause 2.1 & 7(ii) of Schedule II read with Regulation 12(2) of PIT Regulations, 1992 read with Regulation 12(2) of PIT

Regulations, 2015.

(f) Clause 49 of Listing Agreement requires that where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors. However, there was only one independent director in the company after February 22, 2013 along with three executive directors in the Board, which is not in compliance with the Listing Agreement.

(g) Clause 4.2 of Schedule I Part A, inter alia, provides that all directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. However, it was observed that the Noticee no. 2, Director, entered into opposite transactions during the investigation period.

5. The SCN dated May 05, 2016 was served upon the Noticees by way of registered post. In response to this, Noticee No. 3 requested for some additional time to file its reply to the SCN. Subsequently, an opportunity of personal hearing was granted to the Noticees on September 12, 2016 vide Hearing Notice dated September 01, 2016. In response to this, Noticee No. 3 requested for short adjournment in the matter due to his recent release from the judicial custody. Accordingly, the Noticees were given another opportunity of personal hearing on September 22, 2016. The said hearing was attended by Authorized Representative (**AR**) of Noticee No. 1 and 3, in which he requested for some additional time to file its detailed reply to the SCN. Subsequently, another opportunity of personal hearing was granted to the Noticees on October 20, 2016. The said hearing was attended by the AR of Noticee No. 1 & 3 in which it filed its reply to the SCN on behalf of Noticee No. 1 & 3 vide its letters dated October 19, 2016. The AR made further submissions in the matter vide its letter

dated November 15, 2016. The submissions made by AR of Noticee 1 & 3 are summarized as below:

*i. At the outset we deny all the allegations made against them in the SCN.*

*ii. At present, the Official Liquidator has taken the charge of assets and properties of the Company and therefore the said Noticees do not have access to the records pertaining to the Company and accordingly, the reply is filed based on the limited records/information available with the said Noticees.*

*iii. The Company also has 5 foreign subsidiary companies viz., Emiloto Associates Inc. & Zomo Technologies Limited (in British Virgin Islands); GTSL in Hong Kon; GHL in Mauritius; and Geodesic Information Systems Inc. in USA.*

*iv. The Company got listed on 2002 and from 2004 to 2011, the Company had paid dividends every year, total amounting to INR 96 Crore.*

*v. The Company had numerous innovative products and had clientele in both public as well as private sector. The Company had also won numerous international awards during relevant time.*

*vi. The decision of buy-back was taken as the Board of Directors felt that the prevailing market price was low and the scrip was undervalued. A similar buy-back of upto 5% equity capital was already undertaken by the Company during the year 2010.*

*vii. In terms of the FCCB Offering Circular, the proceeds of the FCCBs were invested along with internal accruals in overseas subsidiary companies set up by the Company or for acquisition of foreign companies directly or indirectly through the foreign subsidiaries.*

*viii. There were total 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).*

ix. *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. 1)**

| 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<br>22.02.2013 |
| 2. | Zomo Technologies Limited | Absolute Diversified Growth Fund | 87 Million | Credit Suisse Bank, Zurich | 94.18<br>31.01.2013 |
| 3. | Emiloto Associated Inc | Various liquid assets including Government securities and bonds# | 29 Million | HSBC, Zurich | 29.05<br>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.

x. *They 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 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.*

*xi. On the date of approval for proposal of buy-back (October 27, 2012) and even today, the Company has sufficient liquid assets to meet the financial requirements for buy-back amounting to INR 170 Crore. Similarly, in terms of letter dated January 21, 2013, addressed by HSBC to Emiloto Associated Inc (subsidiary of the Company), the assets in the account of HSBC are USD 29.05 Million, which shows that the Company had the financial strength for the requirement of buy-back.*

*xii. Certain events like stay obtained by ICICI Bank and the apprehension created in the mind of the Directors of the Company that similar such stay would be obtained for buy-back also; and the difficulty faced in the redemption of FCCBs due to erroneous information furnished by Citibank NA, together made it impossible for the Company to carry out the buy-back.*

*xiii. 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.*

*xiv. The Company never misled the stock exchanges or the FCCBs holders. The proceeds of FCCBs were invested in subsidiaries and well recognized funds in Singapore/Zurich. The investment of USD 176 Million in BIS Singapore and Credit Suisse was open ended and thus liquid. Only 20% of such proceeds were invested to explore and invest in new innovations.*

*xv. Due to the actions taken by various banks like ICICI Bank, Axis Bank etc., for recovery of loans, and action of demand initiated by Citibank NA, it resulted in a situation where the subsidiaries of the Company could not act to liquidate the assets and repay bondholders. Further, due to appointment of Official Liquidator, the Directors lost control of the Company due to which the business of Company completely stopped.*

*xvi. The above shows that there was actual intention of buy-back on part of the Company, however, it could not be completed due to reason stated above.*

*xvii. For the purpose of payment of dividend, a sum of only INR 18 Crore was required and the Company along with its subsidiaries had USD 200 Million in* *investments. Till November 24, 2012, there were no legal restrictions on payment of dividends, however, only on December 28, 2012, a stay order against the Company from declaring and paying dividend was obtained by ICICI Bank. Therefore, the allegation that the Company had no intention to pay dividend is erroneous.*

*xviii. It cannot be said the buy-back or proposal for dividend were the only reasons due to which the price of the scrip increased. The price of the scrip decreased due to various reasons like recovery actions from banks, failure of the key product and loss suffered by the Company in derivatives.*

*xix. As per the estimates of the Company, INR 838 Crore were required for redemption of FCCBs on January 18, 2013 and around INR 170 Crore (USD 31.80 Million) were required for the buy-back of shares and INR 18 Crore (USD 3 Million) were required for the payout of dividends. The total money for all the said aspects was INR 1,026 Crore (192.50 Million USD by conversion rate of INR 53/- prevalent at relevant time).*

*xx. It is clear that at the time of announcing buy-back of shares and declaration of dividends in November, 2012, the Company had sufficient financial requirements to meet the aforesaid disclosures. By the end of February, 2013, the Company had sufficient financial resources to meet the aforesaid announcements as well as those of the redemption of FCCBs.*

*xxi. Around December, 2012, a key product which was marketed by the Company through GTSL faced certain technical issues. As the technical issues could not be fixed the clients demanded for retraction of invoices for the period of 2011-2013 and also sought return of cheques issued by such clients to GTSL.*

*xxii. In order to retain the clients (who were using other products of the Company also), it was decided to forego the amounts due to the Company and cheques were not encashed. The same led to damage to the clients of the Company as well as its subsidiary GTSL. As the Company had raised invoices on GTSL for the said product, the Company also suffered a loss of INR 159 Crore. There is no document available* *in support of all this, except copy of Annual Report for 2012-13, which also mentions these facts.*

*xxiii. The Company had taken a loan of INR 55 Crore (Out of the sanctioned limit of INR 130 Crore) in June, 2012 from ICICI Bank for working capital and for the purposes of hedging its exposure to foreign currency by entering into Foreign Currency Derivative Contracts. Certain payments towards interest etc., as demanded by the bank during October/December, 2012 were made by the Company. The said loan was due for repayment on December 31, 2012, however due to compromised cash flow, the Company vide its letter dated February 22, 2013, requested the bank for rescheduling the repayment of loan.*

*xxiv. On December 28, 2012, ICICI Bank had obtained a stay order on payout of the proposed dividend by the Company. Copy of loan agreement, demand notices, stay order have been filed in support thereof.*

*xxv. As the Company intended to repay the loan amounts due to ICICI Bank and obtain approval of the shareholders thereafter, such stay order was not challenged by the Company in any court of law. In the AGM dated February 11, 2013, the shareholders resolved to approve declaration of dividend subject to permission being obtained from ICICI Bank or payment of the loan due to the bank.*

*xxvi. As the Company apprehended that a similar stay against buy-back may also be taken by the bank, it decided to defer the payout of dividends till such loan is repaid and FCCBs were redeemed. The Company had also decided to reschedule the AGM of shareholders from December 30, 2012 to February 11, 2013 and permission for rescheduling the same was obtained by RoC. In pursuance of said decision, the agenda of buy-back of shares was not included in the list of agendas for said AGM. However, during the AGM, it was clarified to its shareholders that proposed buy-back has only been deferred till completion of redemption of FCCBs.*

*xxvii. Till January, 2013, the Trustees of FCCBs holders, viz., Citibank NA, had advised the Company that FCCBs could be redeemed by overseas subsidiaries/step down subsidiaries. However, around January 2013, Citibank NA informed the Company that the Company and not its subsidiaries had to redeem the FCCBs. In* *order to bring the funds invested in the subsidiaries, the Company would have to restructure its holdings which involved valuation of overseas subsidiaries. The said process could not have been completed by January 18, 2013, due to which the Company sought 45 days' time for redemption.*

*xxviii. Due to circumstances beyond the control of the Company, the restructuring could not be achieved within the expected time frame and in May, 2013, the Trustees issued a demand notice for redemption of the FCCBs."*

*xxix. Since March 19, 2013, operation of almost all the bank accounts of the Company were stopped by ICICI Bank by obtaining an ex parte stay order dated March 19, 2013 from the DRT. As. a result, the Company's business operations virtually came to a standstill and by oversight, the Company omitted to inform the stock exchanges regarding the said stay order.*

6. Additionally, an opportunity of personal hearing was granted to Noticee No. 2 on October 19, 2016 vide Hearing Notice dated October 07, 2016. In response to this, the Noticee vide its letter dated October 13, 2016 informed SEBI that he is unable to attend the hearing as he is currently in judicial custody.

7. Subsequently, pursuant to the appointment of the undersigned as the AO in the matter, an opportunity of personal hearing was provided to the Noticees on April 23, 2021 vide email dated March 24, 2021 which was later rescheduled on June 17, 2021 and again on July 05, 2021 on the request of AR of Noticee No. 1 & 3. The said hearing was attended by the AR of Noticee No. 1 & 3 in which it reiterated its submissions made vide its earlier replies. However, no response was received from Noticee No. 2 in this regard.

8. It is noted from the records that the Noticee No. 2 has not participated in the present proceedings and has addressed certain communications with requests to adjourn the proceedings as he is in judicial custody. In this connection, I note that the present matter is very old as the alleged violations pertain to the period

of 2012-2013. The SCN was issued in the year 2016, however, based on the repeated requests received from the Noticees, including the Noticee No. 2 regarding his inability to present his case, the personal hearing in the matter was adjourned time and again. It is well recognized that any situation of a delinquent being restrained from presenting his case due to certain physical restrictions like being in judicial custody deserves lenient view. However, when the matter is examined holistically, it is observed that adequate opportunities have already been granted to the Noticees to present their case and in absence of any fixed time frame being indicated to me for removal of physical restrictions on the Noticee No. 2, it would not be in the fitness of things to keep the matter pending infinitely. Accordingly, vide email dated March 24, 2021, the Noticee No. 2 was provided with a last opportunity to file his response to the SCN. The said email was duly delivered to the Noticee No. 2. I, therefore find that adequate opportunities have been given to the Noticee No. 2 and in absence of any response on his behalf or about his present status it is not known as to when the Noticee No. 2 will be available to attend the personal hearing before me. Further, Noticee No. 2 was at liberty to engage an Authorised Representative/Counsel to present his case in his defence but he has not taken any step in this regard either. Under the circumstances, I have no other option but to proceed to deal with the matter based on the materials available on records.

9. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been followed in the matter by granting the Noticees opportunities of being heard and submit its reply in the matter. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record.

**<u>CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS</u>**

10. I have taken into consideration the facts and material available on record wherein it is alleged that the Noticees have violated various provisions of SCR Act, 1956, PIT Regulations 1992/2015, Sebi Act and PFUTP Regulations.

I have the following issues for consideration, viz.,

I. *Whether the Noticees have violated the provisions of the SEBI Act, SCR Act, 1956, PIT Regulations 1992/2015 and PFUTP Regulations, 2003?*

II. *Does the violation, if any, attract monetary penalty under Sections 23E of SCR Act, 1956 and Sections 15 HA and 15HB of SEBI Act.?*

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?*

11. Before moving forward, it is pertinent to refer to the relevant provisions of aforementioned Regulations, which reads as under:

**SEBI Act, 1992**

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

***Section 12A.No person shall directly or indirectly—***

*(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a 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.*

**PFUTP Regulations, 2003**

***Regulation 3. Prohibition of certain dealings in securities***

*"No person shall directly or indirectly –*

*(a) buy, sell or otherwise deal in the securities in a fraudulent manner;*

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

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

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

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

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

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

*(e) any act or omission amounting to manipulation of the price of a security;*

*(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.*

***<u>Power to adjudicate</u>.***

***15-I.***

*(1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G,15H, 15HA and 15HB, the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.*

*(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.*

***<u>Relevant provisions of PIT Regulations, 1992</u>***

***CHAPTER IV***

***POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING***

***Code of internal procedures and conduct for listed companies and other entities.***

***Regulation 12***

*(1) All listed companies and organisations associated with securities markets including:*

*(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;*

*(b) the self-regulatory organisations recognised or authorised by the Board;*

*(c) the recognised stock exchanges and clearing house or corporations;*

*(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; And*

*(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,*

*shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same].*

*(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.*

**SCHEDULE I**

**PART A**

**MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES**

***1.0 Compliance Officer***

***1.2*** *The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.*

*Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :—*

*(i) officers comprising the top three tiers of the company management 60;*

*(ii) the employees designated by the company to whom these trading restrictions shall be*
*applicable, keeping in mind the objectives of this code of conduct.*

***4.0 Other restrictions***

***4.2*** *All directors/ officers/ designated employees who buy or sell any number of shares of the*
*company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.*

*In the case of subscription in the primary market (initial public offers), the above mentioned*
*entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.*

**SCHEDULE II**

**CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING**

***2.0*** *Prompt disclosure of price sensitive information*
***2.1*** *Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*

***3.0 Overseeing and co-ordinating disclosure***
***3.1*** *Listed companies shall designate a senior official (such as compliance officer) to oversee corporate disclosure.*
***3.2*** *This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.*

***7.0 Medium of disclosure/dissemination***
*(i) Disclosure/dissemination of information may be done through various media so as*
*to achieve maximum reach and quick dissemination.*
*(ii) Corporates shall ensure that disclosure to stock exchanges is made promptly.*

**Relevant provisions of PIT Regulations, 2015**

***Regulation 12: Repeal and Savings***

*(2) Notwithstanding such repeal, —*

*(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in*

*respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*

*(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

***Issue I: Whether the Noticees have violated the provisions of the SEBI Act, 1992, SCR Act, 1956, PIT Regulations 1992/2015 and PFUTP Regulations, 2003:***

***a) Violation of Section 12A (a), (b), (c) of the SEBI Act, 1992 and Regulations 3(a), (b), (c), (d) and 4(1), 4(2) (e), (f),(k) and (r) of the PFUTP Regulations, 2003?***

12. I have perused the facts of the case, gist of allegations made against the Noticees as per the SCN, summary of the submissions made by the Noticees, documents available on record and my findings thereof are specified below:

13. Moving on to the merits of the case, I observe that the allegations in brief against the Noticees are that despite being well aware of the poor financial health of the Company, the Noticees, comprising the Board of Directors, had announced a buy-back of shares and had also further proceeded with a proposal for payment of dividends to the shareholders of the Company. It was alleged in the SCN that both the said announcements positively impacted the price of the scrip of the Company, however, none of the said announcements were fulfilled.

14. In this regard, Noticees no. 1 and 3 have contended that, when the proposal for buy back of shares and dividend were announced, the Company had sufficient funds to meet the requirements of the same.

15. Noticee No. 1 and 3 submitted that, the redemption of FCCBs required INR 838 Crore/USD 157 Million; process of buy-back required INR 170 Crore/USD 31.80 Million and the payment of dividends required only INR 18 Crore/USD 3 Million to honour the same and the value of the investments made by the company out of FCCBs proceeds and their internal accruals in its subsidiaries/step down subsidiaries during the period of January/February, 2013 was around USD 205.25 Million. Hence, by projecting the said calculation, it has been contended that the Company had at relevant times, sufficient liquid assets to meet the aforesaid requirements. They further submitted that, despite having financial backing, the Company could not complete the buy-back and payment of dividends, due to various reasons like stay obtained by ICICI Bank, fault that occurred in one of the key product etc.

16. In this regard, I have perused the stay order dated December 28, 2012, obtained by ICICI Bank against the Company preventing it from paying dividend, and the same is being reproduced hereunder for ready reference:

*"Mr. Pankaj Kumar, Chairman of defendant Company made a statement that unless the outstanding loan amount of plaintiff-Bank is paid, Company will not pay the dividend to its Shareholders or without obtaining written permission from the Plaintiff-Bank. In view of this submission, advocate submitted that suit may be disposed of. Accordingly, suit disposed of with following order.*

*ORDER*

1. *Defendant-Company shall not declare dividend to its shareholders without written permission of the plaintiff- Bank or on payment of outstanding loan amount.*
2. *Accordingly, suit disposed of with no order as to cost.*

17. The Noticees no. 1 and 3, have submitted that in June, 2012, a loan of INR 55 Crore was taken by the Company from ICICI Bank towards working capital as

well as for the purpose of entering into Foreign Currency Derivative Contract. The Noticees have also filed copies of a few documents pertaining to the loan, Non-Disposal Undertaking, demand letters issued by ICICI Bank etc.

18. The perusal of the aforesaid documents indicates the following factors that deserve to be highlighted:

i. The *Company* was sanctioned a limit of one-time short-term loan ("OTSTL") of INR 850 Million or INR 85 Crore, out of which, INR 55 Crore was disbursed by the ICICI Bank to the *Company*. Apart from the said short term loan, the ICICI Bank had extended a limit of INR 450 Million (INR 45 Crore) limit for derivative transactions.

ii. The OTSTL extended by the ICICI Bank was secured by: (a) creating an interest over the Non Disposal Undertaking (NDU) and PoA on shares of the *Company* held by the promoters (*Noticees herein*); (b) personal guarantee of the *Noticees* herein; and (c) First pari- passu charge on current assets of the *Company*. It is noticed that all products, all cash flows receivable by the *Company*, etc., were hypothecated to secure the said short term loan by the *Company*.

iii. The OTSTL was to be completely repaid by the *Company* in the following phases: November 30, 2012 (30%); December 15, 2012 (30%) and December 31, 2012 (40%).

*iv.* Further, there is a "Mandatory Prepayment" Clause in the said agreement, which reads as: *"The Borrower shall prepay without any prepayment penalty the whole or part of the loan from proceeds of cash/deposit/structured deposit of Geodesic Technology Solutions Limited maintained with BSI Bank Ltd., Singapore and/or HSBC Private Bank, Zuriuch and/or Clariden Leu, Zurich as an when they mature…."* .

v. A NDU dated June 15, 2012 was executed through which it was undertaken by the *Noticees* that the shares of the *Company* held by the *Noticees* shall not be disposed of by them and in the event of default of the guarantee, the shares under reference shall be sold, which comprised 34 Lakh shares of *Noticee no. 1*; 14 Lakh shares of *Noticee no. 2* and 35 Lakh shares of *Noticee no. 3*, aggregating to 83 Lakh shares under the said NDU.

vi. As the *Company* defaulted in repayment of the short term loan as well as on the derivative facilities, ICICI Bank vide letter dated December 14, 2012, made a demand of INR 22.94 Crore (approx.) from the *Company*.

vii. Further, vide letter dated March 04, 2013 addressed to the *Company* as well as the *Noticees* herein, ICICI Bank invoked the guarantee extended by the *Noticees* in their personal capacity, and sought a payment of INR 58.59 Crore (approx.). The said letter also informed the *Company* and the *Noticees* about the invocation of pledge on 48 Lakh shares which were given as a security, thereby leaving remaining 35 Lakh shares still under pledge. Similarly, vide a separate letter dated March 05, 2013, the personal guarantee of the *Noticees* was again invoked for the outstanding amount of INR 12.29 Crore, arising out of the Derivatives Facility provided by the bank.

19. On perusal of the aforementioned documents, I observe that, for the short term loan of INR 55 Crore obtained from ICICI Bank, the Company had hypothecated all its currents assets, cash receivables, and had also agreed to mandatorily pre-pay the said loan out of the receivables of the investments made by the Company in foreign subsidiaries. Moreover, the said amount was also secured by the undertaking that shares of the Company shall not be disposed of or encumbered in any manner in pursuance of the NDU executed by the Noticees herein, who were the Promoter-Directors of the Company.

20. Further, from the above, I also note that Company was not able to service its debt liability which was initially limited to only INR 58.59 Crore (short term loan) and INR 12.29 Crore (Derivative Trading Limit). Hence, it clearly demonstrates that the financial health of the Company was admittedly adversely impacted during that period.

21. Further, regarding *Company's* intention to repay the said loan, I find that, the Noticees have not furnished any details of such repayment or even part payment, if any, made to the ICICI Bank. Further, the details of any steps taken towards

meeting the debt liability to ICICI Bank have also been brought to the record. Hence, it clearly suggests that the Company was not having sufficient liquidity with it so as to honor its two important announcements viz. payment of dividend and buy back.

22. Further, it is apparent that, if the *Company* had cleared the outstanding dues of the Bank, there would not have been any objection from the bank (ICICI Bank) to payment/distribution of dividend. However, I note that, during the relevant period, the company had not taken any step to either repay the bank loan or to obtain a written consent for payment of dividends from the said bank in terms of the aforesaid stay order. I further note that, in terms of the submissions made by the *Company,* it was not only ICICI Bank, but also the other banks like Axis Bank, HDFC Bank had taken action against the Company. Though the details of such actions have not been furnished by the Noticees in the reply, it is noted that the said actions taken by those Banks were also pertaining to non-payment of dues of those Banks. These facts further corroborate the fact that the financial health of the Company was not upright during the relevant period.

23. Under the circumstances, the claim made by the Noticees No. 1 and 3 that the dividend was not paid by the Company only due to the reason that ICICI Bank had obtained a stay order against such payment does not reveal the truth, is completely devoid of merit, for the reasons recorded above.

24. I note that during the relevant time, the *Company* was aware about the impending financial liability of INR 838 Crore arising out of the redemption of FCCB, which was due on January 18, 2013, still the *Company* went ahead and made an announcement about the proposed dividend to be paid to its shareholders. It is further noted that the redemption of the FCCBs was due in the January, 2013, however, the Company had defaulted on the said redemption. Eventually, neither the shareholders were paid the dividend nor the FCCBs holders were paid the

redemption amount due to them and finally the *Company* went into liquidation. Hence, it is evident that, the *Company* was actually starved of funds and did not have any funds to meet any of its outstanding liabilities hence, the possibility of distributing dividend to shareholders did not arise. Thus, the aforesaid claims made by the *Noticees that* the *Company* had sufficient financial resources to meet the obligation of the dividends payment in November, 2012 devoid of any merit.

25. Further, the Company had declared a dividend of INR 2 per share on the face value of INR 2, i.e., 100% of the face value. I note that the decision of a listed company to pay the dividend of 100% of the face value of shares acts in itself as an inducement, strong enough to attract more investing public in the shares of the Company. In the present case, it is noted from the contents of the SCN that the market price of the scrip of the Company was INR 38.60 on November 23, 2012, i.e., one day prior to the date of notice of Board Meeting on November 24, 2012, which was Saturday. On the date of the Board Meeting when the decision to consider paying the dividend was taken up for decision, the price of the scrip went up to INR 51.60. It is noted that the announcement made by the Company on December 04, 2012 positively impacted the trading volume of the scrip, as the same witnessed an increase of 160% on BSE and 190% on NSE, as compared to respective trading volumes of previous days.

26. Thus, the announcement of payment of dividend, made at a time when the financial situation of the Company was in an extremely poor condition and absence of any step taken towards complying with such an announcement is indicative of the fact that the intention of the Noticees (Promoter-Directors of the Company) was to create an artificial positive market sentiment about the Company and to inflate the price of the scrip by making such false announcements to the public.

27. Additionally, it is noted from the SCN that on November 27, 2012, another announcement was made by the company, that the Board of Directors at their meeting held on even date, have approved buy-back of 25% of shares of the Company at a maximum buy-back price of INR 75/- per share subject to approval of the shareholders. However, after making the aforesaid announcement, the Company did not take any step towards obtaining the approval of the shareholders and eventually, it was informed by the Company that the process for Postal Ballot would be initiated only after completing the redemption of the FCCBs, which was due on January 18, 2013.

28. The Noticees no. 1 and 3 in their reply to the SCN, have submitted that it was apprehended by the Company that ICICI Bank will obtain a stay order on the proposed buy-back also, similar to the one obtained by the bank on payment of dividends. In this regard, I note here that there was even no actual stay by ICICI bank and based on a mere apprehension, the Company, did not take any further step in the direction of meeting the announcement made for buy-back of its equity shares. Further, in the preceding paras, I have already noted how the Company did not have any financial strength or liquidity to meet its outstanding dues to the Bank. Further, it is evident that, had the Company possessed adequate liquidity to repay its loans to ICICI Bank, contrary to the claims made by the Noticees, the necessity for ICICI Bank to obtain a stay order would not have arisen.

29. As noted above, the process of buy-back was halted by the Company and the delay was attributed to the impending redemption of FCCBs. However, admittedly, neither the FCCBs were redeemed nor any step towards buy-back was taken by the Company. As noted earlier, the Company defaulted in the redemption of the FCCBs and went into liquidation on the orders of the Hon'ble High Court of Bombay. Therefore, looking at the events that took place in the affairs of the Company due to its poor financial health, it clearly indicates that

the claim of the Noticees no. 1 and 3 that the Company was having adequate funds so as to discharge its obligations towards the bond holders and also towards the proposed buy-back, is misleading, false, hence devoid of merit and is therefore rejected.

30. In view of the foregoing discussion, I note that the Company had not only misled the investors about the issues governing the FCCBs but had also made the announcement of buy-back of equity shares despite being clearly aware of its precarious financial status and lack of liquidity to fructify such public announcements, which shows that the said announcement was made with no intention to fulfil the same and predictably, no step whatsoever towards such buy- back was taken by the Company after making such an announcement.

31. It is also noted from the SCN that the aforesaid announcement about the buy-back positively impacted the market price of the scrip of the Company which shows that an artificial inducement was created in the minds of the investors by making such an announcement. On November 21, 2012 (date of notice of Board Meeting) the market price of the scrip of the Company was INR 38.45, which on November 27, 2012 (date of Board Meeting wherein decision to buy- back was taken) rose to INR 52.20. Thus, the announcement of buy-back, made at a time when the financial situation of the Company was in an extremely poor condition and absence of any step taken towards complying with such an announcement is indicative of the fact that the intention of the Noticees (Promoter-Directors of the Company) was to create an artificial positive market sentiment about the Company and to inflate the price of the scrip by making such false announcements to the public.

32. In view of the foregoing observations, I note that, the announcements of buy-back as well as of declaring dividend by the Company were indeed misleading in nature which were never meant to be honoured. Thus, based on the detailed

reasoning recorded above, I observe that the Noticees who were at the helm of day to day affairs of the Company and were also the promoters of the Company who were responsible for such fraudulent announcements have violated Section 12A(a),(b),(c) of the SEBI Act and Regulations 3(a),(b),(c),(d); 4(1) & 4(2)(e),(f),(k),(r) of the PFUTP Regulations.

***b) Violation of Clause 36 of Listing Agreement read with Section 21 of SCR Act, 1956, and violation of Clause 2.1 & 7( ii ) of Schedule II read with Regulation 12( 2! of PIT Regulations, 1992 by Noticee no. 1, 2 and 3***

**c)** ***Violation of Clause 3.2 of Schedule II read with Regulation 12(2) of PIT Regulations, 1992 b' Noticee no. 2***

33. Clause 36 of Listing Agreement requires the Issuer company to, inter alia, intimate to the Stock Exchange immediately of all events which will have a bearing on the performance/operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the security holders and the public to appraise the position of the Issuer and to avoid the establishment of a false market in its securities.

34. Regulation 12(2) of PIT Regulations, 1992 requires all listed companies to abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations. Clause 2.1 of Schedule II of PIT Regulations, 1992 requires that price sensitive information to be given by listed companies to stock exchanges and disseminated on continuous and immediate basis. Clause 7(ii) of Schedule II of PIT Regulations, 1992 requires corporates to ensure that disclosure to the stock exchange is made promptly.

35. I note that, ICICI Bank Limited had filed an application before Debt Recovery Tribunal (DRT) for recovery of 70.52 crore from the Company. Subsequently, DRT passed an interim order on 19/03/2013, freezing its bank accounts. Further, DRT, vide its order dated 05/04/2013, directed continuation of freeze on the company's account, which would have been sufficient to cover the liability of the company towards the applicant.

36. In this regard, it is observed that, Company did not make any disclosure to stock exchange regarding the order passed by DRT in the suit filed against the company. Further, The BSE vide its email dated March 24, 2015 confirmed that no specific disclosure regarding the suit filed in DRT against the company in the year 2013 has been made.

37. In this regard, the Noticees had submitted that since March 19, 2013, operation of almost all the bank accounts of the Company were stopped by ICICI Bank by obtaining an ex parte stay order dated March 19, 2013 from the DRT, hence the Company's business operations virtually came to a standstill and by oversight, the Company omitted to inform the stock exchanges regarding the said stay order.

38. However, I note that a listed entity is required to comply with the relevant Regulations/directions issued by SEBI from time to time. Further, in the instant matter, the provision of said Regulation does not give any relaxation from complying with the same for any procedural challenges like this. Therefore, I do not accept this contention of the Noticee.

*39.* Further, in this regard I place reliance on Hon'ble SAT's judgement dated October 14, 2014 in the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014), in which Hon'ble SAT observed that "………. *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly,* *argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures." (Emphasis supplied).*

40. Further, timely disclosure of relevant information by listed companies is essential for maintaining transparency about the affairs of the Company which helps in eliminating information asymmetry. Moreover, correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision. In this context, I would like to rely on observation of Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI* (*Appeal No. 209 of 2014 order dated August 11, 2014*) wherein it was held that: "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same*."

41. Hence, in view of the aforesaid, I conclude that the Noticees who were directors/promoters of the company during relevant period, have violated Clause 36 of Listing Agreement read with Section 21 of SCR Act, 1956 and Clause 2.1 & 7(ii) of Schedule II read with Regulation 12(2) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.

42. I further note that, during the relevant period, Noticee no. 2 was also the compliance officer of the company and Clause 3.2 of Schedule II of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 1992 provides that such designated official shall be responsible for ensuring that

the company complies with continuous disclosure requirements and overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.

43. Hence, as the Company did not make any disclosure to stock exchange regarding the order passed by DRT in the suit filed against the company, I note that the Noticee no. 2 has violated Clause 3.2 of Schedule II of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.

***Violation of Clause 49 of Listing Agreement read with Section 21 of SCR Act, 1956 by Noticee no. 1. 2 and 3***

44. Clause 49 of Listing Agreement requires that where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.

45. On perusal of the Annual Report of the company for the year 2011-12, I observe that, the company had 3 Independent Directors out of six directors in the Board of Directors. Further, the Company vide corporate announcements dated January 17, 2013 and February informed about the resignation of Mr. Nitin Potdar and Mrs. Radhika Pereira as Independent and Non-Executive Director of the Company respectively. Hence, pursuant to these resignations, I note that, there was only one independent director in the company after February 22, 2013 along with three executive directors and further there are no independent directors in the company since June 2013.

46. In this regard, the Noticees vide their Statement dated January 02, 2014 also stated that currently there are three executive directors in the Board, and that the company is speaking to several prominent people to join the board and it is expected as soon as the FCCB matter is resolved. Hence, it is evident that during the relevant period the company was not having minimum number of independent directors on their Board, as mandated under Listing Agreement.

47. In this respect, it is essential to understand the essence of the concept of Independent Director. As the name itself suggests, an Independent Director is a non-executive director of a company who helps the company in improving corporate credibility and governance standards and he is also supposed to protect the interest of minority shareholders of the company.

48. Hence, the objective of induction of the institution of Independent Director in the board of Directors of a company is to improve the corporate governance framework of the company, more so in a listed company since it employs the funds of the public shareholders for its business. Therefore, it was felt necessary to have a system of an independent and an impartial oversight over the acts of the Board of Directors by such person(s) who could exercise independent judgment in the best interest of stakeholders of the company at large.

49. In these circumstances, non-comprising of minimum number of Independent directors in the Board of the company, as mandated under Clause 49 of Listing Agreement, would defeat the whole purpose of institution of Independent Director in a company and would lead to continuation of the mischief which was attempted to be curbed by way of induction of Independent Directors in Board of directors of the companies.

50. Hence, I conclude that by failing to adhere to the requirements mandated under Clause 49 of Listing Agreement, the Noticees have violated Clause 49 of Listing Agreement read with Section 21 of SCR Act, 1956.

***Violation of Clause 1.2 and 4.2 of Model Code of Conduct of Schedule I Part A read with Regulations 12(1) and 12(3) of PIT Regulations, 1992 by Noticee no. 1. 2 and 3***

51. Regulation 12(1) of PIT Regulations, 1992 requires all listed companies to frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same. Regulation 12(3) of PIT Regulations, 1992 requires listed companies to adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

52. Clause 1.2 of Schedule I Part A provides that the compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

*53.* Clause 4.2 of Schedule I Part A, *inter-alia*, provides that all directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction.

54. On perusal of the trading details of Directors/Promoters of the company for the period, April 01, 2012 to March 31, 2012 it was observed that the Noticee no. 1, (Director of the company), entered into opposite transactions during the investigation period. The details of such transaction of the Noticee no. 1 is as follows:

| Date | Director Name | Gr Buy Vol | Gr Sell Vol |
|---|---|---|---|
| 14/06/2012 | Pankaj Kumar | 350000 | 0 |
| 14/06/2012 | Pankaj Kumar | 265000 | 0 |
| 30/07/2012 | Pankaj Kumar | 0 | 5000 |
| 30/07/2012 | Pankaj Kumar | 0 | 8200 |
| 30/08/2012 | Pankaj Kumar | 0 | 10000 |
| 30/08/2012 | Pankaj Kumar | 0 | 20000 |
| 25/09/2012 | Pankaj Kumar | 0 | 7500 |
| 25/09/2012 | Pankaj Kumar | 0 | 3500 |
| 04/10/2012 | Pankaj Kumar | 0 | 8000 |
| 04/10/2012 | Pankaj Kumar | 0 | 3500 |

55. Further, the Noticees in their reply have conceded that the aforementioned transactions did take place for Noticee No. 1.

56. As the directors are prohibited from entering into opposite transactions during the next six months following the prior transaction in the shares of the company under the Model Code of Conduct and monitoring of trades and the implementation of code of conduct is the responsibility of the compliance officer under the overall supervision of the Board of Directors, I note that, the Noticees have violated Clause 1.2 and 4.2 of Model Code of Conduct of Schedule l Part A read with Regulations 12(1) and 12(3) of PIT Regulations,1992 read with Regulation 12(2) of PIT Regulations, 2015.

***Issue II: Does the violation, if any, attract monetary penalty under Section 23E of SCR Act, 1956 and Sections 15 HA and 15HB of SEBI Act.?***

The provisions of Section 23E of SCR Act, 1956 and Sections 15HA and 15HB of the SEBI Act, 1992 read as under:

***<u>SEBI Act 15HA - "Penalty for fraudulent and unfair trade practices–</u>***

*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 practices, whichever is higher."*

***SEBI Act 15HB - Penalty for contravention where no separate penalty has been provided***

*Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

***SCR Act, 1956***

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

57. In view of the foregoing, I am convinced that the Noticees are liable for monetary penalty under Section 23E of SCR Act, 1956 and Sections 15 HA and 15HB of SEBI Act.

***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?***

58. While determining the quantum of penalty under Section 23E of SCR Act, 1956 and Sections 15 HA and 15HB of SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-.

**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.*

59. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticees. I note that being Promoter-Directors of the Company, the Noticees were supposed to adhere to the highest standards of governance so as to protect the interest of shareholders who had invested in the scrip of the Company. However, as discussed above, the Noticees played a clear fraud on the shareholders by making two important specious announcements and fulfilling none of them. I further note that, the basic premise on which the foundation of securities market is laid upon, is that the persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities. However, the false and misleading announcements as found in this case are not only detrimental to the interests of investors but also endanger integrity of the securities markets. Hence, this is also a fit case where SEBI needs to send a stern message to professionals who associate themselves with securities market so as to prevent them from indulging in such acts of omissions and commissions as found in this case. Therefore, I am of the view that people,

who indulge in fraudulent/unfair trade practice, should be suitably penalized for such acts of omissions and commissions. Further, in the present matter, I note that the Noticees have violated the various provisions of Sebi Act, SCR Act, 1956, PIT Regulations 1992/2015 and PFUTP Regulations.

**ORDER**

60. 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 and Rule 5 of SCR Adjudication Rules, I hereby impose the following penalties on the Noticees:

| Noticee | Violation | Penal Provisions | Penalty (Rs.) |
|---|---|---|---|
| Shri Pankaj Kumar (PAN: AAHPS2438K) | Section 12A(a),(b),(c) of the SEBI Act and Regulations 3(a),(b),(c),(d), 4(1) & 4(2)(e), (f),(k),(r) of the PFUTP Regulations | Section 15HA of the SEBI Act, 1992 | Rs. 5,00,000/- (Rupees Five Lakh Only) |
| | Clause 2.1 & 7(ii) of Schedule II read with Regulation 12(2)of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 | Section 15HB of the SEBI Act, 1992 | Rs. 2,00,000/- (Rupees Two Lakh Only) |

| | | | |
|---|---|---|---|
| | Clause I .2 and 4.2 of Model Code of Conduct read with Regulations 12(1) and 12(3) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 | Section 15HB of the SEBI Act, 1992 | Rs. 1,00,000/-<br><br>(Rupees One Lakh Only) |
| | Clauses 36 and 49 of Listing Agreement read with section 21 of SCR Act, 1956 | Section 23E of SCR Act, 1956 | Rs. 3,00,000/-<br><br>(Rupees Three Lakh Only) |
| | | **Total** | **Rs. 11,00,000/-**<br><br>**(Rupees Eleven Lakh Only)** |
| Shri Prashant Mulekar (PAN: AACPM1058Q) | Section 12A(a),(b),(c) of the SEBI Act and Regulations 3(a),(b),(c),(d), 4(1) & 4(2)(e), (f),(k),(r) of the PFUTP Regulations | Section 15HA of the SEBI Act, 1992 | Rs. 5,00,000/-<br><br>(Rupees Five Lakh Only) |
| | Clause 2.1 & 7(ii) of Schedule II and Clause 3.2 of Schedule II read | Section 15HB of the SEBI Act, 1992 | Rs. 2,00,000/-<br><br>(Rupees Two Lakh Only) |

| | | | |
|---|---|---|---|
| | with Regulation 12(2)of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 | | |
| | Clause I .2 and 4.2 of Model Code of Conduct read with Regulations 12(1) and 12(3) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 | Section 15HB of the SEBI Act, 1992 | Rs. 1,00,000/-<br><br>(Rupees One Lakh Only) |
| | Clauses 36 and 49 of Listing Agreement read with section 21 of SCR Act, 1956 | Section 23E of SCR Act, 1956 | Rs. 3,00,000/-<br><br>(Rupees Three Lakh Only) |
| | | **Total** | **Rs. 11,00,000/-**<br><br>**(Rupees Eleven Lakh Only)** |
| Shri Kiran Kulkarni (PAN: AAKPK6962F) | Section 12A(a),(b),(c) of the SEBI Act and Regulations 3(a),(b),(c),(d), 4(1) & 4(2)(e), (f),(k),(r) of the PFUTP Regulations | Section 15HA of the SEBI Act, 1992 | Rs. 5,00,000/-<br><br>(Rupees Five Lakh Only) |
| | Clause 2.1 & 7(ii) of Schedule II read with Regulation 12(2)of PIT Regulations, 1992 read with | Section 15HB of the SEBI Act, 1992 | Rs. 2,00,000/-<br><br>(Rupees Two Lakh Only) |

| | | | |
|---|---|---|---|
| | Regulation 12(2) of PIT Regulations, 2015 | | |
| | Clause I .2 and 4.2 of Model Code of Conduct read with Regulations 12(1) and 12(3) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 | Section 15HB of the SEBI Act, 1992 | Rs. 1,00,000/- (Rupees One Lakh Only) |
| | Clauses 36 and 49 of Listing Agreement read with section 21 of SCR Act, 1956 | Section 23E of SCR Act, 1956 | Rs. 3,00,000/- (Rupees Three Lakh Only) |
| | | **Total** | **Rs. 11,00,000/- (Rupees Eleven Lakh Only)** |

61. 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**

62. 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 :<br><br>(like penalties/ disgorgement/ recovery/<br><br>settlement amount and legal charges along | |

63. 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.

64. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the 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: July 27, 2021** **G RAMAR**

**Place: Mumbai** **ADJUDICATING OFFICER**