BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/17072-17074]

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

In respect of:

1. **Kamal Nayan Sharma [PAN: BFFPS8269J]**
2. **Harish Joshi [PAN: ADYPJ1327J]**
3. **Mukund Bhardwaj [PAN: AHHPB0587H]**

In the matter of Indian Infotech & Software Ltd.

FACTS OF THE CASE IN BRIEF

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

September 21, 2017, (hereinafter referred to as **'Interim Order'**) advised Stock Exchanges to appoint Forensic Auditor, for forensic audit of Indian Infotech & Software Ltd (hereinafter referred to as "**Company/IISL/By Name"**) Thereafter, SEBI passed a confirmatory order in the matter on February 08, 2018, confirming the directions contained in the Interim Order.

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

3. On the basis of the examination of the inspection report of BSE, Annual Reports of IISL for the Financial Years 2014-15 & 2015-16 and replies/submissions filed by the IISL post Interim Order, it was observed by SEBI that IISL and its directors namely Varsha Murarka, Kamal Nayan Sharma (**Noticee 1)**, Harish Joshi (**Noticee 2)** and Mukund Bhardwaj **(Noticee 3) [Noticees 1, 2 and 3 are hereinafter collectively referred to as "Noticees"]** had violated following provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), Securities Contracts (Regulation) Act 1956 (hereinafter referred to as "**SCRA"**), SEBI(Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") and SEBI (Prohibition on Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"):

<table>
<tr><th>Sl. No.</th><th>Name of the Entity</th><th>Violations observed</th></tr>
<tr><td>1</td><td>Indian Infotech & Software Ltd.</td><td rowspan="4">Section 12A (a) (b) and (c) of the SEBI Act and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations.

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

Section 11(2)(i) and 11(2)(ia) of the SEBI Act.</td></tr>
<tr><td>2</td><td>Kamal Nayan Sharma</td></tr>
<tr><td>3</td><td>Varsha Murarka</td></tr>
<tr><td>4</td><td>Harish Joshi</td></tr>
<tr><td>5</td><td>Mukund Bhardwaj</td><td>Section 12A (a) (b) and (c) of the SEBI Act and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations.

Regulations 4(1) (c), (e) and (g) and 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6) & (12) of the SEBI (LODR) Regulations, Clause 49(ix) of the erstwhile Listing Agreement and Section 21 of SCRA.</td></tr>
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4. Therefore, SEBI initiated adjudication proceedings against IISL and its directors under provisions of SEBI Act and SCRA, as applicable, for the aforementioned alleged violations by them.

APPOINTMENT OF ADJUDICATING OFFICER

5. Vide order dated December 29, 2020, SEBI appointed undersigned as the Adjudicating Officer(AO) under Section 19 of SEBI Act read with Section 15I and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as `**SEBI Adjudication Rules'**) and under Sub-section (1) of Section 23-I of SCRA and

Rule 3 of (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SCRA Adjudication Rules'**) to inquire into and adjudge the aforementioned alleged violations against IISL and its directors. [Both SEBI Adjudication Rules and SCRA Adjudication Rules are hereinafter collectively referred to as " **Adjudication Rules"**]

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A common show cause notice dated March 09, 2021 (hereinafter referred to as '**SCN**') was issued to IISL and its directors, including Noticees, under Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be initiated against them and penalty, if any, not be imposed upon them for the aforesaid violations alleged to have been committed by them. I note that in the SCN, Kamal Nayan Sharma, Harish Joshi and Mukund Bhardwaj have been defined as Noticee 2, Noticee 4 and Noticee 5 respectively whereas in this Order the aforesaid entities have been defined as Noticee 1, Noticee 2 and Noticee 3 respectively.

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

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

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

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

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

E. *The company's HDFC bank statement of account no. 00600350115229 and Yes Bank statement of account no 020185700000189 revealed that there were numerous entries of funds received by IISL from multiple entities and transferred to other entities on the same day, leaving a negligible closing balance in the bank accounts. IISL stated that as the company was maintaining negligible balance, the transactions made by it cannot be treated as accommodation entries just because it does not maintain the balance in its account. IISL further replied that it has current account with the bank which does not provide any interest on the amount kept with them, whereas company earns interest if such funds are deployed as loans & advances. IISL stated that if it maintains heavy balance in the bank account and company cannot generate revenue which may affect shareholders' interests. It was observed that IISL had not submitted any documentary evidence pertaining to Loans & Advances and therefore, the authenticity of the loans &*

advances schedule submitted by the company could not be verified and also the claim of the company vide its reply that "….the company earns interest if such funds are deployed as loans & advances…." remained to be substantiated. The company had not provided evidence to substantiate whether the transfer of funds or receipt of funds relate to the loans and advances and that the funds received were "immediately deployed for lending purpose". Hence, it is alleged that the company is being used as a conduit to facilitate accommodation transactions.

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

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

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

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

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

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

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

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

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

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

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

8. The SCNs were sent to Noticees through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') as well as through digitally signed email. The SCN was duly served on Mr. Harish Joshi through SPAD/ digitally signed email. The delivery of SCN to Mukund Bhardwaj and Kamal Nayan Sharma failed through SPAD, digitally signed email and affixture and therefore, the SCN was served on them through newspaper publication in the Hindustan Times and Public Warta newspapers, in Delhi and Sonipat editions, respectively. The SCN was duly served on Varsha Mararka and Indian Infotech & Software

Ltd through affixture as delivery of the SCN to them through SPAD and digitally signed email failed.

9. Noticees were given fifteen (15) days' time from the date of receipt of the SCN to make their submissions in respect of the allegations made in the SCN. During the pendency of the adjudication proceeding, settlement applications under SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "**Settlement Regulations**") were filed by the IISL and Varsha Murarka. I note from the records that the aforementioned adjudication proceedings is pending before SEBI. I also note from records that the remaining directors of IISL, Mukund Bhardwaj, Kamal Nayan Sharma and Harish Joshi i.e., Noticees, have not filed any settlement applications. Accordingly, the present proceedings are now being adjudicated with respect to Mukund Bhardwaj, Kamal Nayan Sharma and Harish Joshi alone. In this regard, I note that Regulation 8 of Settlement Regulations states that "*Where any proceeding is pending or to be initiated against several persons but the settlement application is filed only by one or more persons, but not all, the filing of such an application shall not affect the initiation, continuation and disposal of the proceedings against the person who has not filed the application for settlement and any adverse observations made in such proceedings against the applicant shall qua the applicant be subject to the outcome of the settlement application filed by such applicant."* In light of the aforesaid provision of Settlement Regulations, I find that the present adjudication proceeding initiated against Noticees to determine their liability with regard to allegations levelled in the SCN against them, can be proceeded with on merits

10. In the interest of natural justice, an opportunity of personal hearing before the undersigned was granted to Mukund Bhardwaj, Kamal Nayan Sharma and Harish Joshi on January 07, 2022 vide hearing notices(HNs) dated November 30, 2021. The same was served on Kamal Nayan Sharma and Mukund Bhardwaj vide affixture at their last known addresses. The HN was duly served on Harish Josh by digitally signed email on November 30, 2021. However, due to certain exigencies, the hearing in the matter scheduled on January 07, 2022 was adjourned. Another opportunity of personal hearing in the matter was provided to Mr. Harish Joshi on February 04, 2022 vide digitally signed email dated January 25, 2022. However, I note that Mr. Harish Joshi failed to attend the hearing on the scheduled date. Similarly, another opportunity of personal hearing was granted to Mukund Bhardwaj and Kamal Nayan Sharma on April 22, 2022. The aforesaid notice of hearing was served on them through newspaper publication in the Hindustan Times and Public Warta

newspapers, in Delhi and Sonipat editions, respectively. However, I note that Mukund Bhardwaj and Kamal Nayan Sharma failed to attend the hearing on the schedule date.

11. I note that despite the service of SCN and HN in the matter, Noticees neither filed any replies to the SCN nor attended the scheduled hearings. I also note that sufficient opportunities have been granted to Noticees to represent themselves in the matter. However, Noticees have failed to make any submissions in the instant proceedings. In view of the above, I am compelled to proceed ex parte in the matter against Noticees. Therefore, the present proceedings against the Mukund Bhardwaj, Kamal Nayan Sharma and Harish Joshi undertaken ex-parte on the basis of available documents and information. In this regard, I also note that Noticees had also not filed reply to the SCN nor attended personal hearing in respect of parallel proceedings initiated under Section 11B of SEBI Act before Learned WTM, SEBI in the same matter.

12. In this regard, it is worth mentioning here that it is well settled position of law that if the facts/details of charges are not disputed by the person to whom show cause notice is issued, then, it is presumed that the same are admitted by him. The Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of Classic Credit Ltd. v/s SEBI [2007] 76 SCL 51 (SAT - MUM), *inter-alia,* held 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".

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

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

    I. Whether

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

B. Noticee 1 and Noticee 2 have violated Section 11(2)(i) and 11(2)(ia) of the SEBI Act?

C. Noticee 3 has violated Clause 49(ix) of the erstwhile Listing Agreement read with Section 21 of SCRA?

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

A. Sections 15A(a), 15HA and 15HB of SEBI Act and Section 23H of the SCRA, for the alleged violations by Noticee 1 and Noticee 2?

B. Sections 15HA and 15HB of the SEBI Act and Section 23H of SCRA for the alleged violations by Noticee 3?

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

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

Relevant extract of provisions of SEBI Act:

*“**Functions of Board.***

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

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

(a).....

(b)....

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

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

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

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

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

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

(d) ...."

Relevant extract of provisions of SCRA:

*"**Conditions for listing.***

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

Relevant extract of provisions of LODR Regulations:

*"**Principles governing disclosures and obligations**.*

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

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

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

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

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

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

(f) ....

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

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

(a)........................

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

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

(i) Disclosure of information:

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

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

(ii)Key functions of the board of directors-

(1) ....

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

(3)........

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

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

(iii) Other responsibilities:

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

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

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

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

....

....

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

...

....

....

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

....

...

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

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

(a) ....

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

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

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

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

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities. (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a).......

(b).......

...

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

(g)...

(h)...

......

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

Issue No. I. Whether:

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

C. Noticee 3 has violated Clause 49(ix) of the erstwhile Listing Agreement read with Section 21 of SCRA.?

15. I note from the Annual Report of the IISL for Financial Year (FY) 2015-16 that Noticees were directors of IISL for the said year and Mr. Mukund Bharwaj was the Chief Financial Officer of the Company (CFO). I also note that Mr. Mukund Bharwaj was CFO of the IISL till September 2017. The details of directors and their designation are as given hereunder:

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

16. In the present matter, I note that role of Noticees with regard to allegations in the SCN is inextricably linked with role of the IISL. Therefore, even though IISL is under Settlement Mechanism, in order to examine the liability of directors with respect to allegations in the SCN, I note that there is a need to first examine the role of IISL with regard to the allegations in the SCN.

17. It has been alleged that IISL had misstated its financials. In this regard, I observe from the Annual Report of IISL for FY 2015-16 that IISL had sold its quoted investment of Rs 8.47 Cr during the year. I note that IISL, vide its letter to SEBI dated September 12, 2017, *inter alia*, had submitted the details regarding the aforementioned sale of investment in the FY 2015-16. On perusal of the same, I note that IISL had sold shares by way of off -market transfer to a single entity, Dhanaasha Infracon Pvt. Ltd (DIPL) for sale price of Rs. 84, 775, 684/-. The specifics of the aforementioned transactions as noted from IISL's letter dated September 12, 2017 are given hereunder:

Sr. No.	Scrip name	No. of shares	Cost price (Rs)	Mode	Sale Price (Rs)
1	Golden Goenka Fincorp Limited	3,50,000	25,82,441	Off-market	25,82,441
2	Kappac Pharma Limited	29,400	74,71,061	Off-market	74,71,061

3	Rajlaxmi Industries Limited	56,370	1,71,153,162	Off-market	1,71,153,162
4	Sulabh Engg & Services Limited	2,57,300	5,75,60,740	Off-market	5,75,60,740
5	Novarlis India Limited	30	8,280	Off-market	8,280
				Total	**8,47,75,684/-**

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

Sr. No.	**Date**	**Particular**	**Credit Amount (Rs)**
1	22-12-2015	By HDFC Bank Ltd	1,00,00,000
2		By HDFC Bank Ltd	47,00,000
3		By HDFC Bank Ltd	50,00,000
4	23-12-2015	By HDFC Bank Ltd	85,00,000
5	24-12-2015	By HDFC Bank Ltd	20,00,000
6		By HDFC Bank Ltd	30,00,000
7		By HDFC Bank Ltd	30,00,000
8		By HDFC Bank Ltd	20,00,000
9	28-12-2015	By HDFC Bank Ltd	15,00,000

10		By HDFC Bank Ltd	30,00,000
11	29-12-2015	By HDFC Bank Ltd	25,00,000
12		By HDFC Bank Ltd	90,000
13		By HDFC Bank Ltd	20,00,000
14		By HDFC Bank Ltd	50,00,000
15		By HDFC Bank Ltd	65,00,000
16		By HDFC Bank Ltd	50,00,000
17		By HDFC Bank Ltd	16,00,000
18	11-01-2016	By HDFC Bank Ltd	9,50,000
19		By HDFC Bank Ltd	2,00,000
20	12-01-2016	By HDFC Bank Ltd	27,50,000
21	22-01-2016	By HDFC Bank Ltd	9,00,000

19. However, apart from the above details, there is nothing on record to indicate that above sums of money amounting to Rs 8.47 crores, transferred by the DIPL to IISL, were consideration for sale of shares by IISL to DIPL. I also note from records that IISL had not produced any documentary evidence like agreement for sale of shares in the proceedings initiated in the same matter before the Learned WTM, SEBI to prove that it had sold the shares to DIPL and had received the aforesaid amount as a consideration for the same. In this regard, I note that the Learned WTM, SEBI in his Order dated November 12, 2020 has observed with respect to the aforementioned purported sale of shares of IISL to DIPL as under:

" *In this regard, I note that there is neither an agreement/documentary evidence for the said sale of shares between IISL and DIPL nor is there any agreement/documentary evidence whereby IISL has agreed to receive the payment for the shares in such tranches over a period of 3 months, before me. I also note that IISL vide its detailed reply dated September 22, 2020 has not submitted as to whether the shares have now been transferred to DIPL or submitted any documents to show transfer of shares/delivery of the sharesto the account of DIPL. Hence, it is not clear as to whether the amount of*

Rs. 8.47 crores transferred by DIPL to the account of IISL was for the purpose of sale of shares to DIPL as claimed by IISL, as it appears that the shares have not yet been transferred till date to DIPL, whereas the payments have been made by DIPL to IISL in 2015 itself."

20. Therefore, lack of documentary evidence for such high value transactions and the fact that IISL continued to hold the aforesaid shares in its demat account even after the alleged sale clearly questions the authenticity of statement in its annual report for FY 2015-16 that there was a sale of investment to DIPL in the FY 15-16 and lends credence to the allegation that there was misrepresentation of financials in the Company.

21. I note from the Annual Report of the IISL for FY 2015-16 that IISL has shown an amount of approximately Rs. 51 Cr under the head "Goodwill" in its balance sheet as on March 31, 2016. I also note from the aforementioned Annual Report that the said goodwill amount has been carried over from the previous years starting from March 31, 2012. I further note that IISL, vide its letter dated September 12, 2017, had stated that the said goodwill was booked as per the Amalgamation Order dated May 04, 2012 passed by Hon'ble High Court of Bombay. A document indicating the calculation of goodwill formulated as per the said amalgamation scheme was placed on record by IISL in its reply dated October 17, 2017. In this regard, I note that Hon'ble High Court of Bombay in its Order dated May 04, 2012, *inter alia* held that "*The networth of the Transferor No. 1 (Lambodar Nirmit Limited) as per the valuation report of Independent Chartered Accountant is Rs, 73,36,96,520/-………The networth of the Transferor No. 2 (Niki Metal Company Limited) as per the valuation report of Independent Chartered Accountant is Rs, 88,16,70,376/-."* It has been alleged that IISL failed to furnish a copy of independent chartered accountant valuation report for the aforesaid goodwill amount for the FY 2015-16 as required by WTM, SEBI during hearing in the parallel proceedings under Section 11B of the SEBI Act initiated against IISL and its directors in the same matter. However, I note from the reply of the IIFSL dated September 12, 2017, that IISL failed to furnish the same during the aforesaid 11B proceedings and had stated that as the calculation of goodwill was done as per the aforementioned High Court Order, no valuation certificate in this regard was required to be obtained by the Company. Thus, I find that IISL failed to furnish an independent chartered accountant valuation report for the aforesaid goodwill amount for the FY 2015-16. Therefore, in the absence of the aforementioned valuation report of independent chartered accountant, I am unable to acertain the veracity of the amount shown as "goodwill" in the balance sheet

of IISL for the FY 2015-16 and thus, I am unable to decide in the respect of allegation that IISL had misrepresented the financial of the company as regards the aforesaid goodwill amount.

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

23. At this juncture, I find it pertinent to refer to the “Frequently Asked Questions” (FAQ) section in the website of the RBI. I note from the aforementioned FAQ section that RBI has categorized NBFCs into four categories namely, a loan company, an investment company, an asset finance company and mutual benefit finance company. In this context, in the FAQ, “Loan Company” and “Investment Company” have been defined as under:
    - Investment Company (IC): IC means any company which is a financial institution carrying on as its principal business the acquisition of securities,
    - Loan Company (LC): LC means any company which is a financial institution carrying on as its principal business the providing of finance whether by making loans or advances or otherwise for any activity other than its own but does not include an Asset Finance Company.

24. I note from the website of the RBI and copy of registration certificate of IISL from RBI, submitted by IISL vide its letter dated September 12, 2017 that IISL falls within the list of Non Deposit Accepting Non-Banking Financial Company (NBFCs) registered with RBI. Further, I note from the website of RBI that Noticee has been categorized as an “Investment Company” by RBI. However, I note that in the Statutory Auditory Certificate (SAC) prepared by Shah Parmar & Mehta, the Company’s Chartered Accountants for FY 2015-2016, IISL had been considered as a “Loan Company”. I note that IISL, vide its replies dated September 12, 2017 and October 17, 2017, had stated that it was a Loan Company which also did investment activities in accordance with its Memorandum of

Association (MoA). Therefore, I observe that there are contradictions in respect of the category of the Company as an NBFC.

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

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

27. I note that IISL, vide its letter dated September 12, 2017 to SEBI had stated that that there was a typo error in the Annual Report of the Company for FY 2015-16, wherein the "Purchase of Shares" was mentioned as "Purchase of Goods", "Sale of Shares" was mentioned as "Sale of Goods". However, I note from the Annual Reports of IISL for FY

2014-15 and 2013-14 that even in the aforementioned years, ‘‘revenue from operations” schedule in the Annual Reports showed income from sales of goods/ services and purchase of traded goods. I also note from available records that though company had submitted that Purchase of Shares” was mentioned as “Purchase of Goods”, “Sale of Shares” was mentioned as “Sale of Goods” due to typo error, Cash flow statement for the year ended March 31, 2016 indicated that the cash flow with respect to purchase of Investments is Rs. 37.50 lakhs only. I also note since the Company has been generating revenue from the sale of IT and Software Products as seen from the Annual Report for the FY 2015-16, the said sale of goods and services could have also referred to the sale of IT and Software products/services. Further, I note that it is no clear from records whether the sale/purchase of shares was a business activity of IISL or an investment activity of IISL. Therefore, I note that above reasoning provided by IISL that there was a typo error is not credible.

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

29. Hence, I note that IISL had deviated from the principle business of financial activity for which it was registered with RBI as NBFC and had also deviated from the main objects of its formation as given in its MoA by engaging in business other than those stated in its MoA. In light of the foregoing observations, I find that that there are significant contradictions in respect of the claimed business of IISL and the Company had made incorrect representation about the business in its annual report and Annual Return for the year 2015-16.

30. I note from available records that the company’s HDFC bank statement of account no. 00600350115229 and Yes Bank statement of account no 020185700000189 that there were numerous entries of funds received by IISL from multiple entities and transferred to

other entities on the same day, leaving a negligible closing balance in the aforesaid bank accounts. In this regard, vide its letter dated October 17, 2017, IISL had submitted that as the company was maintaining negligible balance, the transactions made by it cannot be treated as accommodation entries just because it does not maintain balance in its account. IISL further replied that it has current account with the bank which does not provide any interest on the amount kept with them, whereas company earns interest if such funds are deployed as loans and advances. IISL stated that if it maintains heavy balance in the bank account and company cannot generate revenue which may affect shareholders' interests. The IISL in its aforementioned letter had also stated that the funds received were deployed for loans and advances. In this regard, I note that no documentary evidence had been submitted by IISL to indicate that the transfer of funds from its HDFC bank account no. 00600350115229 and Yes Bank Account No. 020185700000189 were in nature of loans and advances as claimed by the IISL. The company had also not submitted specific details of these fund transfers purported to be loans and advances like particulars of the loan, details of loan agreement, particulars of borrowers, details of interest, tenure of loans etc. to indicate that the funds received were deployed for loans and advances. I find that IISL's inability to provide any documentary evidence/specific details regarding the impugned fund transfers combined with its refusal to cooperate with the forensic auditor clearly indicates that the company was facilitating accommodation transactions. In light of the above observations and in absence of evidence to the contrary, I note that the company was being used as a conduit to facilitate accommodation transactions.

31. I note that SEBI, vide Interim Order dated September 21, 2017, had directed BSE to appoint an independent auditor to conduct forensic audit for verification of credentials/ financials of IISL. The aforementioned direction was confirmed by SEBI vide its confirmatory order dated February 08, 2018. I note from available records that pursuant to the Interim Order, BSE had appointed M/s. Chokshi & Chokshi LLP for conducting forsenic audit of the IISL on December 26, 2017. I note that BSE, vide its letter dated October 12, 2018, had informed SEBI that M/s. Chokshi & Chokshi LLP had requested IISL to provide contact details of company officials for purpose of conducting forensic audit but the same had not been provided by IISL. Further, I also note from the aforementioned letter that BSE had, vide letters dated May 23, 2018 and July 17, 2018, had advised IISL to cooperate and provide requested documents sought by the forensic auditor and on non -compliance with the said request of BSE, it had issued Show Cause Notice dated August 30, 2018 to the company for its refusal to cooperate with the forensic auditor. I also note from available

records that IISL had not responded to the Show Cause Notice issued by BSE and that the forensic auditor was unable to initiate forensic audit in terms of directions of Interim Order of SEBI due to non-cooperation of IISL. Thus, I am of the view that IISL had failed to provide information and documents sought by the forensic auditor appointed under the direction of SEBI and therefore, had failed to provide information to SEBI.

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

1) *there was no name board of the company at the entrance of the premises. However, name of the company was affixed on the plain paper on the side wall of the entrance.*
2) *the office was situated in a residential complex and there were no furniture or any computers/printers available at the said office*
3) *per the company's latest correspondence dated September 27, 2018 with the Exchange, the company letter head carried landline and fax no. 022 – 4295 6833 for its registered office address, however, no such landline telephone/fax instrument was available at the said premises*
4) *during the inspection, none of directors or company secretary of IISL were present.*
5) *one Mr. Sachin Merchande, the only company official who was present there, could not clarify regarding operations carried out from the said premises and according to him, none of the directors visited the office*
6) *As per electricity bills provided to the team for the month of July 2018, August 2018 and September 2018, these bills were in the name of R. K. Developers. electricity bills for the months of July 2018, August 2018 and September 2018 were provided to the inspection team and it was observed that there was minimal electricity consumption of 25 units during these 3 months. As per the society maintenance bill provided by Mr. Sachin Merchande, bill is in the name of Mr. Sandeep Rasiklal Sheth & Others. Upon enquiring, Mr. Sachin could not clarify relationship of Mr. Sandeep Rasiklal Sheth with IISL. Thus, it appeared that the premises was on a rent. However, no rent agreement was provided to the team.*
7) *As per attendance sheet of the Annual General Meeting ("AGM"), it appeared to have been held at the office for last 3 years, it was observed that, more than 30 shareholders of IISL have attended these meetings. As per records, company's total area is about*

225 sq. ft. which includes a room, kitchen and facilities. In view of the same, there was suspicion as to how such a small room could accommodate more than 30 shareholders in addition to other company directors and officials attending such AGMs.

33. With respect to observation regarding conduct of the AGM, I note that Learned WTM in his Order dated November 12, 2020 has held that "*With regard to the AGM, although it is questionable as to how more than 30 shareholders including company officials could have been accommodated in the small office of about 225 square feet area, I find that the attendance sheet duly signed by the shareholders who attended the AGM have been submitted and there are no complaints by the shareholders with regard to the AGM before me"*. In light of same and in absence of any other evidence on record to establish that no AGM had been conducted by IISL, I am inclined to give benefit of doubt to Noticees regarding conduct of AGMs by IISL. However, In light of the other observations in the inspection report of BSE, it appears that no operations were being carried out by IISL at its registered address.

34. In view of the aforesaid observations, I find that IISL failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financial statements and misuse of books of account/ funds of the company and such acts were found to be fraudulent in nature. I also find that being a listed entity, IISL is required to refrain from misrepresentation and ensure that information provided to recognized stock exchange (BSE) and investors is not misleading which it failed to do so. I also note that IISL failed to comply with the conditions of the listing agreement with BSE.

35. However, at this juncture, it is clarified that findings in this Order and ensuing legal liability is in reference to Noticees only and not against IISL. This is so, because IISL has filed for settlement application and Noticees have not filed settlement application.

36. I now proceed to examine the role of the Noticees in respect of the aforementioned findings observed against IISL. I note that a company cannot act on its own and that a company act through its directors. The directors are responsible for all the acts of omission and commission by the company. It is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. While the extent of responsibility of an independent director

may differ from that of an executive director, an independent director has the duty of being vigilant. The directors have the duty of being vigilant, which calls for exercise of independent judgment which may reasonably be expected of a director in his position and any additional knowledge, skill and experience which he may possess. The directors of the listed companies have greater responsibility as they have access to inside information such as the financial position of the company, annual accounts, etc., and they take major decisions on behalf of the company, which affects the investors. Therefore, they are required to exercise the powers for the purposes for which they are conferred and any misuse of their powers for making false misrepresentations to the public has to be dealt with strongly. In this regard, with respect to the liability of directors, I note that the Hon'ble Supreme Court, in the matter of N Narayanan v. Adjudicating Officer, SEBI (Civil Appeals No. 4112-4113 of 2013)has observed as under:

"*33. Company though a legal entity cannot act by itself, it can act only through its Directors.They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially*."

37. In this regard, I note the acts/omissions of directors of IISL also fall under the definition of fraud as defined in Regulation 2(1)(c) of PFUTP Regulations. I note that Section 12A(a)(b)(c) of the SEBI Act read with Regulation 3(b)(c)(d) of PFUTP Regulations, inter alia prohibits employment of any manipulative/ deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Regulation 4 (1) of PFUTP Regulations provides for prohibition on indulging in fraudulent or unfair trade practices. Regulation 4(2) (f) and (r) of PFUTP Regulations states that dealing in securities by a person shall be deemed as fraudulent if it involves fraud including publishing or causing to publish or reporting or

causing to report any information which is not true or planting false or misleading news which may influence sale or purchase of securities.

38. Therefore, in view of the above observations and placing reliance on aforesaid judgement of the Hon'ble Supreme Court, I find that Noticees, as directors of IISL, and Noticee 3, also as the CFO of IISL, are responsible for the failure of the company to present true and fair financial statements and executing transactions which were non-genuine in nature resulting in misrepresentation of the accounts/financial statements and misuse of account/funds of the company which would tantamount to fraud and are detrimental to the interests of genuine investors, as observed in foregoing paragraphs.

39. In view thereof, I find that Noticees have violated provisions of Section 12A(a), (b) & (c) of the SEBI Act, Regulations 3(b), (c) & (d) and Regulation 4(1), 4(2)(f) & (r) of the PFUTP Regulations,

40. It has been observed in the preceding paragraphs that IISL had failed to ensure that information provided to BSE and investors was not misleading and also failed to comply with the conditions of listing agreement. Regulation 4(1) of LODR Regulations require a listed entity to refrain from misrepresentation and ensure that information provided to recognized stock exchange(s) and investors is not misleading. Regulation 4(2) of LODR Regulations requires the listed entity to comply with corporate governance provisions. Further, Section 21 of SCRA, states that where securities are listed on the application of any person on any recognized stock exchange, such person shall comply with the conditions of the listing agreement with the stock exchange. I note that Noticees, being directors of the Company, would be liable for the above acts/omissions of IISL. Therefore, I find that Noticees, as directors of the Company, have failed to exercise duty of care by misrepresenting the financials and have failed to discharge their fiduciary responsibility. In this regard, I find that the Noticees, being directors of IISL, are also liable for violation of the aforementioned violations.

41. In view of the foregoing, I find that allegation that Noticees have violated Regulations 4(1)(c),(e) & (g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6) & (12) of LODR Regulations and Section 21 of SCRA stands established.

42. It has been observed earlier in the Order that the documents as requested by the forensic auditor were not provided by IISL. Hence, I find that Noticee 1 and Noticee 2, being directors of the IISL during the relevant period, have failed to provide information and documents sought and have violated the provisions of Section 11(2)(i) and 11(2)(ia) of the SEBI Act as alleged in the SCN.

43. I note that as per Clause 49(ix) of the erstwhile Listing Agreement, the CFO must certify that they have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading and that these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations. The CFO must also certify that the company to the best of their knowledge hasn't entered into any transaction during the year which are fraudulent, illegal or violative of the company's code of conduct. Further, the CFO must certify that they accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the company pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies. Further, it is the duty of the CFO of the listed entity to certify that the financial results do not contain any false or misleading statement or figures and do not omit any material-fact which may make the statements or figures contained therein misleading while placing the financial results. However, as observed earlier in the Order, IISL failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financial statements and misuse of books of account/ funds of the company. In this regard, I note that aforementioned misrepresentations in the financial statement of IISL has not been disclosed by Noticee in his certificate under Clause 49(ix) of the erstwhile Listing Agreement.

44. Therefore, in view of the foregoing, I find that Noticee 3, being CFO of the company, has also violated Clause 49(ix) of the erstwhile Listing Agreement read with Section 21 of SCRA.

45. I also note that parallel 11B proceeding in the same matter has been concluded vide order dated November 12, 2020 by Learned WTM SEBI, wherein it has also been held that Noticees have violated provision of aforementioned Regulations, SEBI Act and SCRA.

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

A. **Sections 15A(a), 15HA and 15HB of SEBI Act and Section 23H of the SCRA, for the alleged violations by Noticee 1 and Noticee 2?**

B. **Sections 15HA and 15HB of the SEBI Act and Section 23H of SCRA for the alleged violations by Noticee 3?**

46. The above allegations levelled against Noticees in the SCN have been established in the preceding paragraphs. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established...….*"

47. Therefore, in view of the findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violations committed by Noticee 1 and Noticee 2 would attract monetary penalty under Sections 15A(a), 15HA and 15HB of SEBI Act and Section 23H of SCRA and violations committed by Noticee 3 would attract monetary penalty under Sections 15HA and 15HB of SEBI Act and Section 23H of the SCRA . The aforesaid provisions are reproduced as under:

Section 23H of SCRA: *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognized stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees*.

Section 15A SEBI Act: *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a)to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books

orother documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

…………………………………………………………………..

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

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

Issue No.3 - What should be the quantum of monetary penalty?

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

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

Explanation- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section

15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

SCRA

Factors to be taken into account by adjudicating officer.

Section 23J. -While adjudging the quantum of penalty under section 23-I, the adjudicatingofficer shall have due regard to the following factors, namely:—

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

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

c) the repetitive nature of the default.

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

49. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the aforesaid default of Noticees or the consequent loss caused to investors as a result of the default. Further, material on record also do not show that violations of Noticees are repetitive in nature. However, on account of the observations in the Order that Noticees were responsible for misstatements in the financials of the company and that they failed to ensure that the Company presented true and fair financial statements, I find that such serious laches on the part of Noticees amount to an act of misleading the investors and would have an adverse impact on investor interests. Therefore, I am of the view that such serious lapses on part of Noticees deserve penalty commensurate with the gravity of charges.

ORDER

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

Name of the Noticees	Penalty under	Penalty Amount
Kamal Nayan Sharma	Sections 15A(a), 15HA and 15HB of the SEBI Act and Section 23H of SCRA.	8,00,000/- (Rupees Eight Lakhs Only)
Harish Joshi		8,00,000/-(Rupees Eight Lakhs Only)
Mukund Bhardwaj	Sections 15HA and 15HB of the SEBI Act and Section 23H of SCRA	7,00,000/-(Rupees Seven Lakhs Only)

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

52. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

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

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

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

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

Place: Mumbai **SOMA MAJUMDER**
Date: June 15, 2022 **ADJUDICATING OFFICER**