BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/VS/2021-22/14533]

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

In respect of -

Karvy Computershare P. Ltd. (PAN AACCK2193D) (presently known as KFin Technologies Private Limited) having addresses at "Karvy Selenium Tower - B", Plot No. 31 and 32, Gachibowli, Financial District, Nanakramguda, Serilingampally, Hyderabad - 500032 and Karvy House, 46 Avenue 4, Street, No.1, Banjara Hills, Hyderabad, Andhra Pradesh - 500034

In the matter of Taurus Mutual Fund

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings against Karvy Computershare P. Ltd. ("**Noticee**") under Sections 15 HA and 15HB of the Securities and Exchange Board of India Act, 1992 ("**the SEBI Act**") for alleged violation of Regulations 3 (a) and 4 (1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 ("**FUTP Regulations**") and the SEBI (Registrars to Issue and Share Transfer Agents) Regulations, 1993 ("**the RTI and STA Regulations 1993**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer ("AO") under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**"), vide order dated October 18, 2019, to inquire into, and adjudge under Sections 15 HA and 15HB of the SEBI Act, the aforesaid alleged violations of the Noticee. The appointment of the undersigned as AO was communicated vide order dated October 31, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/VS/2020/10552/1&2 dated May 6, 2020 was issued to the Noticee for alleged violation of the PFUTP Regulations and the RTI and STA Regulations 1993.

4. The allegations levelled against the Noticee in the SCN are summarized as follows:-

5. SEBI had conducted inspection of Taurus Mutual Fund (hereinafter referred to as "**TMF**" or "**Taurus MF**") between March 29, 2017 and January 18, 2018 (hereinafter referred to as the "**investigation period**" or "**IP)** to examine the nature of valuation, due diligence conducted by TMF in respect of its investment in debt securities issued by Ballarpur Industries Ltd (hereinafter referred to as '**BILT**') and related entities, as well as fair treatment to investors in four of its schemes namely, Taurus Liquid Fund, Taurus Ultra Short Term Bond Fund, Taurus Short Term Income Fund and Taurus Dynamic Income Fund ("**the Affected Schemes**") which held debt securities issued by BILT before their markdown in valuation on February 22, 2017.

6. Brief chronology of the major events with respect to investment by TMF in commercial papers of BILT and BILT Graphics Paper Products Limited (hereinafter referred to as '**BGPPL'**) are as follows:-

Period /Date	**Event**
Oct 2012	TMF does initial investment of INR70 cr in CPs of BILT(INR 20 cr) and BGPPL (INR 50 cr)
Mar 2013	Maximum exposure in BILT & BGPPL CPs was INR 120 cr during the month
Aug 2013	Maximum exposure in BILT & BGPPL CPs was INR 25 cr during the month
Mar 2014	Maximum exposure in BILT & BGPPL CPs was INR 275 cr during the month
Aug 2015	Maximum exposure in BILT & BGPPL CPs was INR 360 cr during the month
Jul 15, 2016	BILT & BGPPL long term NCDs' credit ratings downgraded to "A-" from "A+" while short term CPs rating downgraded to "A1" from "A1+" by India Ratings and Research Private Ltd. (India Ratings)
Oct 2016	Maximum exposure in BILT & BGPPL CPs was INR 110 cr during the month
Dec 30 2016	BILT & BGPPL long term NCDs'credit ratings downgraded to "BBB-" from "A-" while short term CPs rating downgraded to "A3" from "A1"by India Ratings
Jan 24 2017	Exposure in BGPPL reduced to zero across all schemes. However in BILT the exposure was INR 107.50 crore
Feb 20, 2017	BILT defaulted on payment obligation of INR 45 cr to TMF
Feb 21, 2017	BILT & BGPPL long term NCDs' credit ratings downgraded to "C" from "BBB-" while short term CPs rating downgraded to "A4" from "A3" by India Ratings
Feb 22, 2017	BILT defaulted on payment obligation of INR 39.75 cr to TMF
Feb 22, 2017	TMF Marked down BILT as zero
Feb 27, 2017	BILT defaulted on payment obligation of INR 22.25 cr to TMF

7. TMF informed its Board of AMC and Trustees on February 22, 2017 about the inability of BILT to honour the commitment of payment of Commercial Papers (CPs) on account of their financial crisis.

8. The Board of Taurus AMC and Trustees in its meetings held on February 22, 2017 *inter alia* decided to undertake the following measures with respect to default of BILT –
    I. CPs of BILT to be reclassified as a NPA.
    II. 100% provision be made by TMF of the amount in default by the BILT securities.
    III. Till further notice, fresh sales to be suspended in schemes of TMF holding BILT papers.
    IV. Management fees not to be charged on these securities till the matter is resolved.
    V. The receivables from BILT CPs be segregated and marked payable to the investors who were invested in the Schemes as on the date of mark down and who had incurred losses on account of the same.
    VI. No restrictions to be imposed on redemptions and to ensure timely payment at the prevailing NAV in case of any redemption requests.

9. The details of the exposures of TMF schemes in BILT CPs from February 19, 2017 (prior to default by BILT) to February 27, 2017 (last default) as provided by TMF are as follows:-

Scheme Name	**Taurus Liquid Fund**	**Taurus Short Term Income Fund**	**Taurus Dynamic Income Fund**	**Taurus Ultra Short Term Bond Fund**	**TOTAL**
February 19, 2017					
AUM (INR In crore)	1,633.87	119.00	63.67	126.68	**1,943.22**
Remaining exposure	71.23	13.22	7.49	14.97	**106.91**

Scheme Name	Taurus Liquid Fund	Taurus Short Term Income Fund	Taurus Dynamic Income Fund	Taurus Ultra Short Term Bond Fund	TOTAL
(INR in crore)					
Defaulted amount	-	-	-	-	**-**
Total Defaulted Amount	-	-	-	-	**-**
February 20, 2017					
AUM (INR In crore)	1,353.23	119.00	63.60	126.70	**1,662.53**
Remaining Exposure (INR in crore)	31.24	13.22	7.49	9.98	**61.93**
Defaulted Amount	40	-	-	5	**45**
Total Defaulted Amount	40	-	-	5	**45**
February 21, 2017					
AUM (INR In crore)	1,353.45	118.71	63.61	126.76	**1,662.53**
Remaining Exposure (INR in crore)	31.25	13.23	7.50	9.98	**61.96**
Default	-	-	-	-	**-**
Total Defaulted Amount	40	-	-	5	**45**
February 22, 2017					
AUM (INR In crore)	913.55	105.47	56.08	111.81	**1,186.91**
Remaining Exposure (INR in crore)	-	10.73	1.50	9.98	**22.21**
Defaulted Amount	31.25	2.50	6.0	-	**39.75**
Total Defaulted Amount	71.25	2.50	6.0	5.0	**84.75**
February 23, 2017					
AUM (INR In crore)	841.55	105.51	56.13	111.86	**1,115.05**
Remaining Exposure	-	10.74	1.50	9.99	**22.23**

Scheme Name	Taurus Liquid Fund	Taurus Short Term Income Fund	Taurus Dynamic Income Fund	Taurus Ultra Short Term Bond Fund	TOTAL
(INR in crore)					
Defaulted Amount	-	-	-	-	**-**
Total Defaulted Amount	71.25	2.5	6	5	**84.75**
February 24, 2017					
AUM (INR In crore)	841.68	94.92	56.12	109.68	**1,102.40**
Remaining Exposure (INR in crore)	-	10.74	1.50	9.99	**22.23**
Defaulted Amount	-	-	-	-	**-**
Total Defaulted Amount	71.25	2.5	6	5	**84.75**
February 25, 2017					
AUM (INR In crore)	841.82	94.94	56.13	109.70	**1102.58**
Remaining Exposure (INR in crore)	-	10.75	1.50	10	**22.24**
Defaulted Amount	-	-	-	-	**-**
Total Defaulted Amount	71.25	2.5	6	5	**84.75**
February 26, 2017					
AUM (INR In crore)	841.95	94.96	56.14	109.71	**1102.77**
Remaining Exposure (INR in crore)	-	10.74	1.50	9.99	**22.22**
Defaulted Amount	-	-	-	-	**-**
Total Defaulted Amount	71.25	2.5	6	5	**84.75**
February 27, 2017					
AUM (INR In crore)	739.19	94.97	56.15	109.73	**1,000.05**
Remaining Exposure	-	-	-	-	**-**

Scheme Name	Taurus Liquid Fund	Taurus Short Term Income Fund	Taurus Dynamic Income Fund	Taurus Ultra Short Term Bond Fund	TOTAL
(INR in crore)					
Defaulted Amount	-	10.75	1.50	10	**22.25**
Total Defaulted Amount	**71.25**	**13.25**	**7.50**	**15**	**107.0**

10. From the table above, it was observed that BILT had defaulted in its payments on February 20, 2017 (INR 45 crore) on February 22, 2017 (INR 39.75 crores) and on February 27, 2017 (INR 22.25 crore). TMF had considered these default amounts as receivables from the date of respective defaults.

<u>Redemption by Karvy Computershare Pvt. Ltd.</u>

11. Karvy is the Registrar and Transfer Agent ("RTA") of TMF and it had been investing regularly in two funds of TMF namely Taurus Liquid Fund and Taurus Ultra Short Term Bond Fund. From the documents forwarded by Karvy vide letter dated May 29, 2017 (Annexure – 2 to SCN) it was observed that on February 20, 2017 at 2:33 PM, Karvy submitted redemption request forms for both accounts at Taurus AMC office in Hyderabad. The redemption request forms of Karvy revealed that Karvy redeemed all units from both the above mentioned schemes.

12. Perusal of hand written redemption forms revealed that there was overwriting in both the forms. Initially, both the forms were meant for redemption in Liquid Scheme for INR 7 crore and INR 2 crore. However, the following changes were made in the redemption request forms:

   - In one of the forms, the name of the scheme was edited from Taurus Liquid Fund to Taurus Ultra Short and the redemption request was edited from INR 2 crore to "All units".

- In another form the amount of redemption was edited from INR 7 crore to “All Units”.

13. The timing of redemption requests of Taurus AMC and Karvy (as per time stamping) is stated as follows:-

Date of redemption request	**Name of the Unit holder**	**Name of the Schemes of TMF**	**Time of redemption request**	**Amount Redeemed**	**Amount Outstanding in the scheme**
February 20, 2017	Taurus Asset Management Co Ltd	Taurus Ultra Short Term Bond Fund	12:41 PM	39,000,000.00	Redemption request cancelled
February 20, 2017	TMF Investor Education Pool Fund	Taurus Liquid Fund	14:10	22,545,441.00	0
February 20, 2017	TMF Investor Education And Awareness Fund	Taurus Liquid Fund	14:10	11,524,427.28	0
February 20, 2017	TMF Unclaimed Fund	Taurus Liquid Fund	14:10	3,006,058.80	0
February 20, 2017	Karvy Computershare P Ltd	Taurus Ultra Short Term Bond Fund	14:33	2,00,00,000	0
February 20, 2017	Karvy Computershare P Ltd	Taurus Liquid Fund	14:33	7,00,00,000	0

14. From the above table, it was observed that Karvy has placed its redemption request on February 20, 2017 at 14:33 after the redemption request placed by TMF. The past redemption request pattern of Karvy during the period from January 01, 2016 to March 28, 2017 does not show any other instance of Karvy withdrawing its entire holdings across schemes of TMF on a single day.

15. SEBI’s inspection team visited the Karvy Office in Hyderabad on October 12, 2017. Further vide emails dated October 17, 2017 and November 10, 2017, information regarding the transactions was sought from Karvy. Karvy vide emails dated October 25, 2017 (Annexure 3 to SCN) and November 13, 2017 (Annexure 4 to SCN) provided the information.

16. Vide email dated October 17, 2017, information was sought from Karvy. The details of information sought from Karvy and the reply of Karvy provided vide email dated October 25, 2017 were contained in Annexure 3 to the SCN.

17. Rationale for the full redemption of Karvy from schemes of TMF on February 20, 2017 - During the course of visit and vide email dated October 25, 2017, it was submitted by Karvy/KCPL that along with its distributor (Karvy Stock Brokers Ltd. (KSBL), Karvy keeps a track on yields for all the MFs investments. During the first week of February 2017, the Investment Committee (IC) of Karvy noted that there were defaults in debt investment, ratings and there were speeded up proceedings under the new Insolvency and Bankruptcy Regulation. Also, Karvy reviewed the media news items on downgrades of Ballarpur Industries Ltd. The IC in its meeting held on February 3, 2017 advised to monitor the development closely and keep a watch on the market developments. On the basis of the advice of IC, KCPL was progressively tracking the Investment Fact Sheet of Taurus Liquid Fund, apart from BSE announcement and media news. Also, KCPL realized the downgrade of the credit rating of some of the underlying investments and the reduction in yields. Hence the IC decided to redeem all the funds from Taurus Liquid Fund and Taurus Ultra Short Term Fund. Since overall size of Taurus Mutual Fund was small as compared to other Mutual Funds, IC decided to switch from a small fund to larger funds, even by sacrificing a small yield. This was purely a decision to protect the investment potential risks. It was also submitted that decision to redeem the entire investment in Taurus Mutual Fund was taken by IC on February 17, 2017 Friday at around 4pm. By the time, the decision papers got executed, it was late for submission to KSBL, the distributor with whom the Karvy submits all the investment and redemption applications. Hence, the application was submitted on February 20, 2017, Monday. The submission was done at 12:14pm by email. Historically all redemptions submitted during that quarter have been consistently submitted to KSBL between 12pm to 1:30pm. It was also mentioned that other investors have submitted their application at locations other than Hyderabad and at times which is after KCPL lodgement at 12:14pm.

18. Rationale for alterations in the redemption application forms (Taurus Liquid Fund and Taurus Ultra Short Term Bond Fund) of Karvy.- During the course of visit and vide email dated October 25, 2017, Karvy informed that the IC decision was to redeem full units of both the funds of Taurus Mutual Fund i.e. Liquid Fund and Ultra Short Term Fund. After submission of application to KSBL, the treasury team realized the redemption was done only for INR 9 crores. It was a clerical error and the correction was done in the same form as they had no other design or intention. Further, it was mentioned that if such design was there, the paper trail would have been made clean. Since they acted genuinely, the correction was made in the same forms. It was also mentioned that corrections in redemption applications is normal industry practice.

19. Karvy vide email dated October 25, 2017, provided the In-house (IH) number for redemption application of Karvy which is as follows:-

Investor Name	Amount	IH Number	IH Generation Log
KARVY COMPUTERSHARE PVT LTD	9,61,41,006.88	901199316	20/2/2017 6:13:59 PM
KARVY COMPUTERSHARE PVT LTD	3,52,476.21	901199318	20/2/2017 6:15:32 PM

20. Process followed by Karvy in normal course of business, if an investor requests for cancellation of redemption application after NAV declaration, prior to payment of proceeds - Vide email dated October 25, 2017, Karvy informed that in a normal course, cancellation of redemption application is accepted before cut-off time. In case where an investor requests for cancellation of redemption application after NAV declaration i.e. T+1 day, the cancellation requests is examined for materiality and referred to the concerned AMC for specific approval.

21. Due diligence process followed by Karvy with respect to cancellation of redemption application of TMF AMC in Taurus Ultra Short Term Bond Fund (

under Clause 12 of Schedule III (Code of Conduct) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 - A registrar to an Issue and share transfer agent shall always endeavor to render the best possible advice to the clients having regard to their needs) - Karvy vide email dated October 25, 2017 informed that with respect to cancellation of redemption application of TMF AMC in Taurus Ultra Short Term Bond Fund, KCPL checked for the materiality with the AMC. Since the cancellation requests came from AMC itself, KCPL discussed the implication with the client i.e. TMF AMC who informed KCPL that they have not liquidated any investment for this particular redemption requests, hence, no implication on the NAV. TMF AMC also informed that they do not sell/liquidate their corpus based on redemption application immediately as they wait for the inflow collection during the funding day and only if there is a shortfall, they either proceed for the sale/liquidation of the investments or use overdraft facility from the bank for the funding/payout. Accordingly, the cancellation request was executed. For this specific transaction, based on these parameters, KCPL stated that it has done the due diligence and consulted its client on best possible advice, in line with Clause 12 of Schedule III (Code of Conduct) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993.

22. Additionally, documentary evidence of media reports on downgrade of BILT, framework of investment of surplus fund adopted by Karvy, day wise investment details of Karvy etc was also forwarded by Karvy vide email dated November 13, 2017 (Annexure 4 to SCN).

23. It was observed from the minutes of Investment Committee (IC) of Karvy dated February 17, 2017, that IC decided to redeem all investment from TMF (Liquid Scheme and Ultra Short Term Scheme), however the rationale as submitted vide email dated October 25, 2017 was not recorded in the minutes.

24. Further, in the meeting of Karvy's IC held on February 17, 2017, the Committee also decided to invest in certain mutual funds. The details of all decisions are as follows:-

SL. No	Name of Mutual Fund	Scheme	Amount (INR)	Decision execution Date & Time
1.	UTI MF	UTI Liquid Fund (Institutional Plan) Daily Dividend Reinvestment	2.0 crore purchase	February 22, 2017, 13:59 hrs
2.	Reliance MF	Reliance Liquid Fund Daily Dividend Reinvestment	4.0 crore purchase	February 22, 2017, 13:19 hrs
3.	Reliance MF	Reliance Liquid Fund Daily Dividend Reinvestment	1.5 crore purchase	February 17, 2017, 14:00 hrs
4.	Religare MF	Religare Liquid Fund (Institutional Plan) Daily Dividend Reinvestment	2.0 crore purchase	February 22, 2017, 13:53 hrs
5.	Taurus MF	Taurus Liquid Fund Daily Dividend Reinvestment	Redemption of all units	February 20, 2017, 14:33 hrs
6.	Taurus MF	Taurus Ultra Short term Bond Fund Dividend Reinvestment	Redemption of all units	February 20, 2017, 14:33 hrs

25. From the above table it is seen that IC of Karvy on February 17, 2017, decided on 6 decisions - 4 decisions for purchase and 2 decisions for redemption out of which 3 decisions for purchase were executed on February 22, 2017 and 1 decision for purchase was executed on February 17, 2017. 2 redemption decisions were executed on February 20, 2017.

26. As per submission of Karvy, the IC of Karvy took the above decisions on February 17, 2017 around 4 pm. However, the application for investment in Reliance Liquid Fund Daily Dividend Reinvestment for amount INR 1.5 crore was executed on February 17, 2017 at 2 pm, prior to investment decision time, indicating contradiction in the submissions of Karvy.

27. With respect to redemption application of Taurus Liquid Fund and Taurus Short Term Bond Fund, Karvy submitted that as per practice they have forwarded the scanned copies of these redemption applications to their distributor i.e. KSBL

through email dated February 17, 2017 at 12:41 pm. (**Annexure 4**). On realising that there was error in the application form, they collected the application forms from the AMC office, the revision was carried out and countersigned by CFO and the application was resubmitted at AMC office.

28. This action of AMC appears unusual as in normal course the revision could have been carried out in three ways:-
    a. First - if initial application is sent through email then any revision could have been carried out in the original and resubmitted to KSBL through email. There would be no requirement for Karvy to get the application collected from AMC office and resubmit the same.
    b. Second - As the original application was with Karvy itself the revision could have been carried out in the original application itself and countersigned by CFO and submitted directly to AMC office. There would be no requirement to get the application collected from AMC office and resubmit.
    c. Third - A fresh application could have been made and the same could be scanned and mailed to distributor i.e. KSBL for onward submission or Karvy could have submitted this application at AMC office directly. There would be no requirement to get the application collected and resubmit.

29. The above allegedly shows that the steps taken by Karvy and rationale provided for carrying out revision in application forms do not stand to logic and appear untenable.

30. Further, Taurus AMC Hyderabad office as a practice prepared control sheet on daily basis for forwarding the applications received by them to Karvy for processing. These control sheets contain the information of the application along with the amount involved for purchase or redemption as the case may be (Annexure 5 to SCN) Taurus AMC submitted that the control sheets of the dates January 25, 2017 to February 28, 2017, were missing. During these dates,

Taurus AMC Hyderabad Office received 5 applications all of which 5 applications belonged to Karvy. These 5 applications also include 2 applications submitted on February 20, 2017, which were altered.

31. The incidence of default by BILT, not valuing securities of BILT fairly on the day of default, full redemption of own investment by Taurus AMC and related accounts, full redemption by Karvy, alteration in applications of Karvy, missing control sheets for Karvy applications, all occurring at the same time do not appear to co-incidental but intentional. Therefore, the events and circumstances allegedly indicate that Karvy decided to disinvest just before the declared default by BILT, thereby defrauding other investors, who were not privy to the information regarding default by BILT.

32. Pursuant to the default by BILT, TMF did not value its securities fairly, which resulted in declaration of incorrect NAV, enabling a few investors to redeem their entire holdings. The act of redemption of own investments enabled Karvy to avoid losses and caused additional losses to the investors who remained invested. Karvy, who was the RTA of TMF, was informed about the default by BILT in TMF and decided to liquidate its holdings in TMF.

33. The evidence created by Karvy by editing the redemption applications further served to corroborate that it was treated as a special investor of TMF and it acted in its own interest when in possession of information regarding default.

34. In view of the above, it was alleged that based on preponderance of probability, the act of Karvy is an unfair trade practice and has violated Regulations 3(a) and 4 (1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

35. Karvy as the RTA has also allegedly failed to maintain high standards of integrity in its conduct of business and fulfil its obligation in a prompt, ethical and professional manner as has been mandated in Clauses 1, 2 and 3 of Schedule III read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) 1993.

36. The SCN was served upon the Noticee at its e-mail addresses on record due to restrictions on postal services during the lockdown on account of the Covid19 pandemic. However, no response was received from the Noticee in respect of the SCN.

37. In the meantime, settlement application nos. Nos. 4172/2020, 4173/2020, 4174/2020, 4175/2020, 4176/2020 and 4177/2020 dated 25.02.2021 were filed by Taurus Investment Trust Company Limited, Mr. Waqar Naqvi (CEO of Taurus AMC), Ms. Anu Suri (Compliance Officer of Taurus MF), Mr. Amarjeet Singh, Mr. Dheeraj Singh and Mr. Archit Shah in respect of an SCN No. EAD5/MC/VS/2020/10554/1-6 dated May 6, 2020 issued for alleged violations of the Mutual Fund Regulations and certain SEBI Circular on account of irregularities observed in the conduct of the said persons in relation to Taurus MF's investment in BILT-default affected Schemes. Vide Settlement Order No. dated 30.07.2021, the said persons settled the alleged violations for a sum of Rs. 40,67,250 (Rupees Forty Lakhs Sixty Seven Thousand Two Hundred and Fifty) each.

38. Vide e-mail dated August 23, 2021, the Noticee was provided an opportunity of hearing by videoconferencing through WebEx on September 7, 2021 and was also granted time till September 3, 2021 to file its reply, if any, to the SCN.

39. Vide e-mail dated August 23, 2021, the Noticee submitted that it had not received the SCN dated May 6, 2020 as the domain name of the Noticee had changed to Kfintech. Further, the Noticee sought three weeks' time to respond to the SCN.

40. Vide e-mail dated August 31, 2021 the Noticee stated the following:-

    (a) The Noticee in the present case, Karvy Computershare Private Limited ("KCPL"), in 2018 amalgamated into Karvy Fintech Private Limited, which name was subsequently changed to 'KFin Technologies Private Limited'. Given that the subject matter of the SCN pertains to the year 2017 and there has been a change in the management of the company since then, Noticee would require additional time to collate the necessary information and documents to effectively respond to the SCN.

(b) The Noticee sought opportunity to inspect and receive copies of all documents/material/records/information/statements relied upon by Securities and Exchange Board of India for the purpose of the SCN.

41. Vide e-mail dated August 31, 2021, the Noticee was informed that its request for extension of time for filing its reply was acceded to, and that it could make its submissions by September 21, 2021. The hearing was accordingly rescheduled to September 22, 2021. Regarding the request for documents, the Noticee was informed that all relevant information and documents relied upon for crystallising the allegations levelled against the Noticee in the SCN had already been provided through the SCN and its Annexures, and that the Annexures comprise copies of correspondence and e-mails to which the Noticee is a party. The Noticee was also informed that in case it required inspection of a specific document, the same could be mentioned and inspection sought thereof.

42. Vide letter dated September 14, 2021 the Noticee sought inspection of a list of documents including the investigation report. In response to the said request, vide letter dated September 17, 2021, a copy of the inspection report and all its annexures were provided to the Noticee, and it was communicated to the Noticee that no material extraneous to that provided to the Noticee was being relied upon for the purpose of the allegations levelled against the Noticee in the SCN. Vide e-mail dated September 18, 2021 the Noticee was requested to get the documents collected physically as they were bulky, and the same were collected by the Authorised Representative of the Noticee.

43. Vide reply dated October 8, 2021 the Noticee made the following submissions:-

(a) The transactions in question had been carried out in 2017. The current management as well as directors and key managerial personnel running the business undertaking in question, are totally different from those who occupied these positions and conducted these operations, in 2017. Therefore, no person in KFin today was personally aware of or conversant with the facts and circumstances of the case to be able to depose on the facts and the principles on which decisions had been taken in 2017. It was merely because the business undertaking of KCPL i.e. the Noticee vested in KFin by reason of the scheme of arrangement that these proceedings were directed towards KFin and are being dealt with.

(b) The underlying objective and spirit of enforcement action under the SEBI Act articulated in Section 27 of the SEBI Act, including in relation to proceedings under Chapter-VIA would also point to these proceedings being stale and inappropriate insofar as they are directed against KFin, which is nothing but a successor-in-title to the business undertaking of the erstwhile KCPL.

(c) The allegation that the Noticee "*was informed about the default by BILT in TMF*" by TMF is untenable for the following reasons.

(d) The Investment Committee ("IC") of KCPL took the decision on February 17, 2017 itself to redeem all units of the two Taurus Schemes in question. This was three days prior to BILT's first default (in a series of defaults) in meeting obligations to TMF on February 20, 2017. SEBI's hypothesis of KCPL being purportedly tipped off about the default by BILT before it became public, is belied by the simple fact that three days prior to BILT's default, a decision had already been taken by KCPL to redeem all its units in the two Taurus Schemes.

(e) There is no mention in the SCN of how KCPL could have at all known that BILT was going to default. It is an admitted position by Taurus AMC that it became aware of the default by BILT only on February 20, 2017 at around 7:25 p.m. – by which time KCPL had already decided to exit from the two Taurus Schemes. No particulars are set out in the Notice on how KCPL could at all have been aware on February 17, 2017 or even prior, of the impending default by BILT. It is noteworthy that BILT did not disclose to the stock exchanges that it had defaulted in payment obligations

(f) TMF clearly indicating a desire to keep this information under wraps. A copy of the letter dated January 11, 2017 addressed by BILT to the stock exchanges intimating about the revised credit ratings was annexed as <u>Annexure – A to the reply.</u>

(g) KCPL's decision to fully redeem its investments, was an independent decision which was well thought out and considered by the IC. This decision was taken, giving due consideration to announcements of BILT to the exchanges, media reports about the current financial position of BILT, the downgrades by rating agencies and the worsening financial position of BILT.

(h) BILT's financial position was increasingly precarious was publicly available and became evident in the months and weeks preceding the default on February 20, 2020. These material events in the public domain included:-

I. Downgrade by India Ratings on December 30, 2016 of the long term rating and the rating of NCDs of BILT from 'IND A-' to 'IND BBB';
II. An announcement by BILT to the exchanges on January 12, 2017 (in response to a query from the exchange), that the ratings downgrade by India Ratings was on account *inter-alia* of a deterioration in cash flow and liquidity;
III. Downgrade by Fitch of BILT's ratings from 'BBB-' to 'CCC' on January 30, 2017. Fitch in its report stated that there was a low possibility of BILT avoiding a default;
IV. BILT's declaration of its financial results for the quarter ended December 30, 2016, on February 13, 2017 which showed a loss of INR 495 million;
V. A press article dated February 13, 2017 published in the Economic Times that Banks were planning to takeover a material subsidiary of BILT – BILT Graphic Paper Products that contributed to as much as 85% of the operating profit of BILT; and
VI. BILT, in response to a query from the exchange on the veracity of the Economic Times report, since they deemed it material and

significant, provided a vague and evasive response and did not comment on the correctness or otherwise of the report;

VII. Copies of the aforesaid documents were annexed to the reply as <u>Annexures – B1</u> to <u>Annexure – B6</u> respectively.

(i) The allegation that the IC's decision to redeem all units in the Taurus Schemes, on February 17, 2017, was because it was purportedly privy to news of BILT's impending default, was untenable and in realm of conjecture and surmise. It is belied by the abundance of information in the public domain on the precarious financial position of BILT, that would have caused any reasonable and prudent investor to cut its exposure to schemes that have invested in debt securities of BILT. This was evident from a number of investors who redeemed their investments even prior to KCPL.

(j) The allegation that redemption of all units by KCPL in the Taurus Schemes, was "*unusual*" compared to its past conduct, was incorrect and belied by both past conduct of KCPL and conduct post the investigation period – where units in various schemes were redeemed in full.

(k) Decisions to exit or invest in a particular scheme are driven by range of considerations and are driven primarily by contemporaneous events pertaining for example to the fund in question, the nature of the scheme (for example whether they are debt or equity) and the quality of its underlying investments. They are not motivated by past precedents of whether the fund had redeemed in full. Comparisons with past conduct are prone to be misleading especially if they are done without context and without regard to the specific facts which drove those investment decisions;

(l) The insinuation that the decision of KCPL to send the application forms on February 20, 2017 and not on February 17, 2017 ignores the fact that the decision of the IC was taken at 4:00 p.m. on February 17, 2017 - a Friday i.e. beyond the cut-off time applicable, at the time, for redemption requests to be made. Since February 18, 2017 and

February 19, 2017, were non-business days, the forms were sent on February 20, 2017;

(m) The forms initially submitted sought redemption for an aggregate amount of INR 9 Crores, owing to a clerical error; which was subsequently corrected, to 'all units'. The SCN allegation in this regard ignores the simple fact that the correction was only to align it with a decision of the IC taken three days earlier – that decision has not been assailed in the Notice as being motivated by any preferential access to news of BILT’s impending default. It only stands to reason that the correction was *bona-fide* and not because of purportedly preferential treatment.

(n) SEBI has overlooked is that the difference between the amounts mentioned in the forms as originally submitted and the corrected forms was just INR 61,63,513.95 – which is too miniscule to warrant an inference of a fraud.

(o) With regard to the absence of control sheets of the TMF, the allegation insofar as it pertains to the Noticee, is baseless. A failure by TMF to preserve records cannot be visited upon the Noticee. This too is in the realm of suspicion, conjecture and surmise.

(p) A Whole Time Member of SEBI *vide* an order dated August 18, 2020 against an employee of TMF AMC, has found that there was manipulation of redemption requests received by TMF on February 17, 2017 and February 20, 2017 by certain employees of TMF AMC, to give the benefit of to certain investors named in the order – there is no finding against the Noticee and indeed no allegation that the Noticee or its officials had any contact with the individuals specified in the order;

(q) The Notice is lacking in material particulars despite serious allegations of fraud. It is settled law that fraud must be alleged with sufficient particulars. A charge of clandestine communication of material non-public information, at the very least, entails setting out the details of who in BILT or TMF purportedly communicated with the Noticee prior to

February 17, 2017 and the persons involved. Absent these particulars, one cannot lightly infer a fraud.

(r) The Notice issued by SEBI is baseless and fails to discharge the burden of proving the serious allegations made against KCPL. The allegations made in the Notice are not supported by documents and the Adjudicating Officer has incorrectly applied the test of pre-ponderance of probability.

(s) As part of its treasury investments, KCPL had invested in the Taurus Schemes since 2016. TMF had invested in the commercial papers of BILT and related entities.

(t) KCPL used to keep a track on yields of all its mutual fund investments. The IC is an independent body within KCPL responsible for investment planning and oversight. In discharge of its role, the IC, in its meeting held on February 3, 2017, observed and advised that: (a) there are defaults in the debt repayment and the IC should monitor the performance of portfolios of investment; (b) the newly implemented Insolvency and Bankruptcy Code would have an impact on the underlying investments by the mutual funds; (c) there should be tighter process and monitor around performance of investments; and (d) the Treasury Team should closely monitor the aforementioned developments and keep a watch on the market developments as well. A copy of the minutes of IC's meeting held on February 3, 2017, was annexed to the Noticee's reply as Annexure – C.

(u) Basis the observation and advice of the IC on February 3, 2017, KCPL was progressively tracking the Investment Fact Sheet of Taurus Liquid Fund along with being cognizant of the announcements of the Bombay Stock Exchange ("BSE") and news in the media on downgrades of BILT.

(v) KCPL learned about the downgrade of the credit rating of some of its underlying investments and the reduction in yields. Since the overall size of its investment in TMF was small as compared to other mutual funds, the IC of KCPL decided on February 17, 2017 at around 4:00

p.m. to switch from a small fund to larger funds, even if by sacrificing a small yield, and to redeem all the funds from Taurus Schemes. A copy of the minutes of IC's meeting held on February 17, 2017 with respect to its decision to redeem the funds from the Taurus Schemes was annexed to the Noticee's reply as Annexure – D1 and Annexure – D2 respectively. This decision was made with a view to protect the potential risks in the investment. Pertinently, the minutes clearly record that '*all units*' of the aforesaid funds were to be redeemed.

(w) KCPL used to submit all its investment and redemption applications with KSBL. However, by the time the requisite documentation for redemption of the aforesaid funds was completed on Friday, February 17, 2017, the time for submission of these documents with KCPL's Distributor, Karvy Stock Broking Limited ("KSBL"), for the that day had expired.

(x) In view of this, the applications for redemption of the Taurus Schemes, were submitted on Monday, February 20, 2017 at 12:14 pm by email. A copy of the email dated February 20, 2017 sent at 12:14 p.m. submitting the redemption application forms with KSBL was annexed as Annexure – E. Historically, KCPL used to submit its redemption applications with KSBL between 12:00 p.m. to 1:30 p.m. (including the relevant quarter). Annexure – F to the Noticee's reply contained certain examples of redemption application forms submitted by KCPL to KSBL between 12:00 p.m. to 1:30 p.m.

(y) As stated above and as recorded in the minutes of IC's meeting held on February 17, 2017, the IC had decided to redeem all units of the aforesaid two funds. Accordingly, two redemption application forms were submitted with KSBL by email dated February 20, 2017 sent at 12:14 p.m. One form incorrectly recorded redemption of units worth INR 7 Crores (Seven Crores) and the other recorded redemption of units worth INR 2 Crores – thereby, totalling to INR 9 Crores (Rupees Nine Crores) as the redemption amount.

(z) However, the IC Minutes of February 17, 2017 had authorised the redemption of "*all units*". Upon realizing the clerical error, the redemption application forms were collected from the office of Taurus Asset Management Company ("Taurus AMC") in Hyderabad and due corrections were carried out to redeem all units. The difference in the amount of redemption of the Taurus Schemes between INR 9 crore and '*all units*' was only INR 61,63,513.95. The revised application redemption forms were countersigned by the then authorized signatory, the Chief Financial Officer, Mr Rakesh Santhalia, and the same were physically submitted at Taurus AMC's office at Hyderabad for processing. Copies of the revised forms for the Taurus Schemes were annexed to the Noticee's reply as <u>Annexure – G1</u> and <u>Annexure – G2</u> respectively.

(aa) From the Notice, it appears that between March 29, 2017 and January 18, 2018, SEBI had conducted inspection of TMF to examine the nature of valuation, due diligence conducted by TMF in respect of its investments in debt securities issued by BILT and related entities, as well as fair treatment to investors of its four schemes, which had held debt securities issued by BILT before their markdown in valuation on February 22, 2017.

(bb) In this regard, SEBI's inspection team had visited KCPL's office in Hyderabad on October 12, 2017. By emails dated October 17, 2017 and November 10, 2017, SEBI sought information inter alia regarding the transactions in Taurus Schemes from KCPL. In response thereto, KCPL, by its emails dated October 25, 2017 and November 13, 2017 provided the information sought by SEBI. Copies of KPCL's emails dated October 25, 2017 and November 13, 2017 along with the enclosures were annexed hereto as Annexure - H1 and Annexure - H2 to the Noticee's reply respectively.

(cc) The Notice comes to an incorrect and baseless conclusion that the actions of KCPL amount to a fraudulent and unfair trade practice, basis an assumption that KCPL was in possession of or privy to information in respect of BILT's default, and therefore acted in its own interest to redeem all its units, thereby defrauding other investors who were not privy to the information regarding the default by BILT.

(dd) The Notice assumes that (i) the incidence of default by BILT, (ii) TMF not valuing securities of BILT fairly on the day of default, (iii) full redemption by Taurus AMC and related accounts of its own investment in BILT, (iv) full redemption by KCPL, and (v) missing control sheets; occurring on the same day are intentional (and not coincidental), which indicates that KCPL was privy to information regarding default by BILT and thereby, allegedly defrauded other investors. These generalizations and assumptions are against the facts and circumstances of the matter.

(ee) The burden of proof in establishing fraudulent or unfair practices on the part of KCPL has not been discharged. This entails applying the test of preponderance of probabilities i.e. what a reasonable person must conclude on the basis of attendant facts and circumstances. Thus, the allegations in the Notice deserve to be rejected.

(ff) Regarding redemption of all units of the Taurus schemes by KCPL, it was submitted that based on information in the public domain which was made available to the IC of KCPL, the IC met on February 3, 2017 and advised progressive tracking of investment owing to risks of default.

(gg) Basis the decision of the IC on February 17, 2017, KCPL redeemed all units in the Taurus Schemes. This decision was an independent *bona fide* decision made with a view to protect the potential risks in the investment in Taurus Schemes. Pertinently, the minutes of February 17, 2017 clearly record that '*all units*' of the aforesaid funds were to be redeemed.

(hh) Further, redemption of all units was not an unusual practice in KCPL. KCPL has on previous occasions fully redeemed certain investments in mutual funds. <u>Annexure – I</u> to the Noticee's reply hereto is a list of full redemption requests made by KCPL from April 1, 2015 to September 13, 2021.

(ii) Besides the Taurus Schemes, KCPL had not invested in any other schemes of TMF. Therefore, the allegation that the past redemption request pattern of KCPL (during the period from January 1, 2016 to March 28, 2017) does not show any other instance of KCPL withdrawing its entire holdings across TMF schemes on a single day, is incorrect and baseless.

(jj) Additionally, without prejudice to the fact that KCPL had decided to redeem all units on February 17, 2017, it was submitted that SEBI has failed to consider the fact that on February 20, 2017 apart from KCPL, various other entities also redeemed the entire amount invested in TMF schemes. Details of the other entities which fully redeemed their investments in TMF schemes on February 20, 2017, are set out in the Inspection Report (*at Annexure 18*) provided by SEBI. Further, the Inspection Report (paragraphs 4.3.1 and 4.3.3 at page 26) further states that on February 20, 2017, 25 investors had redeemed the entire amount invested in schemes of Taurus, amounting to INR 397 Crore approx. However, the same have been not considered by SEBI while issuing the SCN.

(kk) Submission of revised redemption application forms by KCPL for the Taurus schemes – Admittedly, the redemption forms of KCPL in respect of the Taurus Schemes were submitted at the Hyderabad office of Taurus AMC. However, the redemption forms of TMF were submitted in Mumbai on February 20, 2017 at 2:10 p.m. The SCN also fails to consider that the redemption application forms for the Taurus Schemes were first submitted by KCPL to KSBL on February 20, 2017 sent at 12:14 p.m. (a copy of which was provided to SEBI during the inspection held on October 12, 2017). It was only the revised redemption application forms that were submitted on February 20, 2017 at 2:33 p.m.

(ll) The SCN also alleged that KCPL decided to disinvest in the Taurus Schemes just before the declared default by BILT, thereby allegedly defrauding other investors, who were not privy to the information regarding BILT's default.

(mm) KCPL used to keep a track on yields of all its mutual fund investments, including in the case of its investments in the Taurus Schemes. As stated above, the IC of KCPL was progressively tracking the Investment Fact Sheet of Taurus Liquid Fund since February 3, 2021 along with being cognizant of BSE announcement and news in the media on downgrades of BILT, which resulted in the decision of IC on February 17,2017 to redeem the Taurus Schemes.

(nn) The events and circumstances do not in any manner indicate that KCPL had in any manner decided to disinvest just before the declared default by BILT and had thereby allegedly defrauded other investors. KCPL, like other investors, was not privy to any information regarding default by BILT. In fact, the IC took the decision to redeem the Taurus Schemes within 4 days from the last news items of February 13, 2017, which had indicated challenges around repayment of debt by BILT.

(oo) Further, as admitted by TMF, BILT's inability to repay its maturity obligation towards TMF became known to TMF in the late evening/night of February 20, 2017. TMF has further admitted that the Boards of Taurus AMC and Taurus Investment Trust Company held their respective board meetings on February 22, 2017 at 2:30 p.m., and after deliberation of the Board, it was decided to mark down the exposure to BILT's commercial paper by 100% and value it to zero. A copy of the email dated October 26, 2017 addressed by TMF to KCPL stating the aforesaid was annexed to the Noticee’s reply as Annexure – J.

(pp) KCPL was not privy to any valuation done by TMF in respect of BILT. TMF has never, in any manner, given any preferential treatment to KCPL, which would have enabled KCPL to avoid losses to itself and/or cause losses to investors who remained invested. It was therefore untenable to state that merely by virtue of KCPL acting as the Registrar and Transfer Agent ("RTA") of TMF, KCPL was informed about the default by BILT in TMF which helped KCPL in taking a decision to liquidate its holding in TMF.

(qq) KCPL maintained different departments in its capacity as RTA and there were strict Chinese walls between them. Even the operations were carried out in totally different work locations in Hyderabad as also across different branch in India. It was submitted that KCPL had no access to any vital information leading it to take the decision to redeem the Taurus Schemes.

(rr) Therefore, the allegation that KCPL was privy to any information regarding BILT's default as the RTA of TMF or otherwise was baseless and incorrect.

(ss) The minutes of the IC meeting held on February 17, 2017 clearly recorded that 'all units' of the Taurus Schemes were to be redeemed. However, the redemption application forms submitted with KSBL by email dated February 20, 2017 sent at 12:14 p.m. wrongly reflected only INR 9 Crores (Rupees Nine Crores). Upon realizing the clerical error, the application forms were collected from the Taurus AMC's office in Hyderabad and due corrections were carried out. The revised/amended application forms were countersigned by the then authorized signatory, the Chief Financial Officer, Mr Rakesh Santhalia, and the same were physically submitted at Taurus AMC's office at Hyderabad for processing. The process followed by KCPL was done in good faith and deemed appropriate under the circumstances, there was no ulterior motive attributable to the process followed by KCPL.

(tt) It was not an unusual practice for redemption forms to be manually corrected/amended. Annexure – K to the Noticee's reply contained samples of redemption forms which have been amended/corrected.

(uu) In any event, the difference in the amount of redemption of the Taurus Schemes between INR 9 crore and '*all units*' was only INR 61,63,513.95. The statement showing the difference between redemption of partial and all units was annexed to the Noticee's reply as Annexure – L.

(vv) The SCN alleged that missing of control sheets maintained by Taurus AMC inter alia for KCPL redemption applications appeared to be intentional and not coincidental. The control sheets of Taurus AMC were maintained and updated solely by Taurus AMC as per their process, to which KCPL was not privy. Therefore, KCPL was not concerned with the control sheets for the period between January 25, 2017 to February

28, 2017, or otherwise, which allegedly went missing. All inferences drawn by SEBI between the missing control sheets of Taurus AMC and submission of the redemption forms by KCPL, are untenable.

(ww) Decisions made at the meeting of the IC on February 17, 2017 – The SCN alleged *inter alia* that the application for investment in Reliance Liquid Fund Daily Dividend Reinvestment for an amount of INR 1.5 Crore (Rupees One Crore Fifty Lakh only) was executed on February 17, 2017 at 2:00 p.m., prior to the investment decision time at around 4:00 p.m., indicating contradictions in the submissions by KCPL. In this regard, the Noticee submitted that the decision with respect to the purchase of INR 1.5 Crore (Rupees One Crore Fifty Lakh only) of Reliance Liquid Fund Daily Dividend Reinvestment, was taken earlier on February 17, 2017, and not at 4:00 p.m. Pursuant thereto, the purchase was made. Subsequently during the course of the day, other decision of purchase and redemption were made.

(xx) There was no anomaly in the decisions taken by KCPL with respect to the aforesaid transaction in Reliance Liquid Fund Daily Dividend Reinvestment on February 17, 2017 at 2:00 p.m. It is therefore incorrect to state that there were any contradictions in the submissions by KCPL.

(yy) It was submitted that since the overall size of its investment in TMF was small as compared to other mutual funds, the IC of KCPL had decided on February 17, 2017 to switch from a small fund to larger funds, and to redeem all the funds from Taurus Schemes. A copy of KCPL's bank statement showing investments made in Reliance Liquid Fund, Religare Liquid Fund and UTI Liquid Fund on February 22, 2017 was annexed as Annexure – M to the Noticee’s reply.

(zz) It is a pre-requisite and imperative for sebi to first establish ‘inducement’ before an act can be regarded as a fraud under FUTP regulations- SCN alleged violation of Regulations 3(a) and 4(1) of the FUTP Regulations, and essential requirement for provisions of Regulations 3(a) and 4(1) of the FUTP Regulations to be attracted is the ingredient of “*fraud*”. Regulation 2(1)(c) of the FUTP Regulations defines the term “*fraud*” as follows:

> “*Fraud includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities* *<u>in order to induce another person or his agent to deal in securities,</u>* *whether or not there is any wrongful gain or avoidance of any loss, and shall also include-“*

(aaa) It is a settled position of law that a term under a statute should be interpreted in accordance with the purpose for which that statute has been enacted. For any transactions in securities to be fraudulent, such transactions would have to strictly fall within the four corners of the above definition of “*fraud*” in the FUTP Regulations. From a plain reading of the above definition of “*fraud*” in the FUTP Regulations, the prerequisite for a fraud was that there had to be an inducement of another person to deal in securities. If and only if it were established that the act was committed to induce another person or his agent to deal in securities, then the act would become fraudulent.

(bbb) The “*fraud*” to be established is not fraud as it is ordinarily understood. “*Fraud*” as defined in regulation 2(1)(c) of FUTP Regulations has to be established. For this purpose, the Notice should have established incontrovertibly that the act has induced other market participants to trade in the Taurus Schemes. However, the SCN made no such allegation, and did not establish that the acts of KCPL induced any market participants to trade in the Taurus Schemes.

(ccc) No evidence whatsoever was adduced to establish that KCPL was in possession of or privy to information from TMF in respect of the BILT default.

(ddd) The term “*induce*” or “*inducement*” has not been defined under the Act or under the FUTP Regulations. According to Black’s Law dictionary, “*Inducement is the act or process of enticing or persuading another person to take a course of action*”. As noted above, “*inducement of a* *person to deal in securities*" is a pre-requisite for charging "*fraud*" under the FUTP Regulations and, as submitted, KCPL did not "*induce*" any person to "*enter into a contract or trade in securities*". However, the SCN did not demonstrate or even attempt to demonstrate how KCPL induced any person to deal in securities and fails to establish this critical pre-requisite of "*inducement*".

(eee) The above was re-affirmed by the Hon'ble Securities Appellate Tribunal in *DLF Limited* v. *SEBI*, as follows:-

"*106. We have minutely looked into Sections 12(a), (b) and (c) of Sebi Act, 1992, along with Regulations 3(a), (b), (c), (d); 4(1), 4(2)(f) and (k) of PFUTP Regulations as well as the definition of fraud. <u>First of all we note that a person could be held guilty of fraud only if he has done an act or omission with a view to induce another person to deal in securities</u>. The Respondent has not been able to attribute any such conduct to the Appellant anywhere in the Impugned Order. …* " (<u>Emphasis supplied</u>)

(fff)In its judgment in Price Waterhouse & Co. v. SEBI2, the Hon'ble Securities Appellate Tribunal has held as under:

"*44. From the aforesaid, it becomes apparently clear that Regulation 3 and 4 of PFUTP Regulations applies only on persons dealing in securities. The applicability can be extended to persons who are associated with the securities directly or indirectly. Admittedly, the appellants are not dealing in the securities either directly or indirectly. They are auditors of listed companies. In order to bring them culpable within the four corners of Section 12A and Regulation 3 and 4 of PFUTP Regulations, fraud has to be proved on the basis of evidence.*

The Supreme Court in Kanaiyalal's case (supra) extended the applicability of the provisions of Regulation 3 and 4 of PFUTP Regulation on a "tippee" only when a charge against him was proved. In the instant case, there is no shred of evidence to show that the auditor / audit firm had fabricated or falsified or fudged the books of account of SCSL in collusion with the top management of the SCSL. Further, fraud *cannot be proved only on alleged gross negligence, carelessness or recklessness as amounting to collusion and connivance on a preponderance of probabilities. The Supreme Court in Kanaiyalal's case (supra) has categorically held that the element of "inducement" must exist and should be proved before holding that a person is guilty of fraud. In the instance case, there is no finding that the appellants had induced someone and thereby played a fraud in the securities market. Assuming without admitting that the concept of preponderance of probabilities would also apply in the case of the appellants, still, it must be proved by cogent evidence that the appellants are guilty of "inducement". In the absence, of any evidence, the charge of fraud is not proved, nor the provisions of Regulation 3 and 4 of PFUTP Regulations applicable.*

(ggg) In the present case, the ingredient of "fraud" has not been proved. SCN fails to prove that that the redemptions done by KCPL amount to a fraud. Therefore, the Noticee could not have indulged in "fraudulent" activities in violation of Regulations 3 (a) or 4 (1) of the PFUTP Regulations.

(hhh) Preponderance of probability – The SCN has alleged that based on preponderance of probabilities the act of KCPL is an unfair trade practice and has violated Regulations 3 (a) and 4 (1) of the FUTP Regulations. It is a settled position in law that in quasi-judicial proceeding before SEBI for 'fraud', the standard of proof is '*preponderance of probability*'. The same was upheld in *SEBI v. Rakhi Trading Private Limited*, 2018 SCC OnLine SC 101, paragraph 30.

(iii) In the words of the Supreme Court, in *N.G. Dastane (Dr) v. S. Dastane*[1], the test for determination of preponderance of probabilities is as follows:-

"*A prudent man faced with conflicting probabilities concerning a factsituation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court*

1 (1975) 2 SCC 326, at paragraph 24 (Sr. No. 4 to the Compilation of Judgments).

applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies."

(jjj) It is also settled that imposing punishment under the FUTP Regulations on the ground of commission of fraud requires clear and unambiguous evidence and a high degree of probability. In *DLF Limited v. SEBI*, the Hon'ble SAT has held that:

""… *Without bringing out any piece of reliable or convincing evidence on record, the Appellant has been sought to be held guilty of the gravest possible allegation, leading to a harsh and stigmatic penalty. <u>This Tribunal</u> <u>has consistently held that even if fraud is to be proved on the basis of</u> <u>probability and not the strict principles of evidence, it is incumbent upon</u> <u>the Respondent to bring out cogent, convincing evidence and prove the</u> <u>charge of fraud against a company only as per the procedure established in</u> <u>the PFUTP Regulations and above all, on the basis of a high degree of</u> <u>probability to prove the same."</u>* (Emphasis supplied)"

(kkk) In *Keynote Corporate Services Limited, In re*, the Learned Whole Time Member, placing reliance on the judgment of the Hon'ble Supreme Court in *Mousam Singha Roy* v. *State of West Bengal* had observed that –

"*34. However, it is settled position that in order to allege fraud the SCNs should bring home the charge of "fraud" <u>on the basis of higher degree of probabilities if not on the basis of evidence beyond doubt</u>. Merely, probablising or endeavoring to prove the fact on the basis of preponderance of probability and incomplete circumstantial evidence is not sufficient to establish a serious charge of fraudulent transaction. <u>Having regard to the</u> <u>gravity of the wrong doing higher must be the</u>*

preponderance of probabilities in establishing such charges."(Emphasis supplied)"

(lll) In *Paksh Developers Pvt. Ltd., In re*, the Learned Whole Time Member observed that:

"In this regard, it is settled position that there must be convincing preponderance of probability to support the allegation of fraud and fraudulent practices. Having regard to the gravity of the wrong doing higher must be the preponderance of probabilities in establishing such charges."(Emphasis supplied)

(mmm) It was submitted that the test of preponderance of probabilities cannot be so dilutive that it allows levelling of charges on mere guess-work and conjectures. Such an evidentiary standard, if adopted, would shake the very foundation of the business of the entity in question and may adversely affect the same. Even though the test for fraud under the FUTP Regulations is that of preponderance of probabilities, the Hon'ble SAT has held that in the absence of "*reasonably strong evidence*", even in a civil proceeding, a person cannot be held guilty and awarded punishment. *(Sterlite Industries (India) Ltd. v. Securities and Exchange Board of India. (*2001) SCC OnLine SAT 28, page 38)

(nnn) While there is no mathematical test to determine the preponderance the probabilities, the test certainly excludes "*a trivial or a merely possible doubt*". The preponderance must be borne out of a "*fair doubt based upon reason and common sense" and "evidence in the case".(State of U.P. v. Krishna Gopal, (1988) 4 SCC 302, paragraph 25)*

(ooo) Neither the Notice nor the Inspection Report found any material indicating fraud by KCPL. Further, the evidence on the record did not show that the redemption of the Taurus Schemes by KCPL was done with a view to defrauding the market or to induce the participants to trade. In order to sustain the allegations under the FUTP Regulations, it was incumbent upon SEBI to adduce evidence to suggest connivance (including evidence of aiding or abetting fraudulent or unfair trade practice). However, no such evidence was placed on the record against KCPL.

(ppp) In *SEBI v. Kishore R. Ajmera ((2016) 6 SCC 368, paragraph 26)* the Supreme Court insisted that where there is no direct evidence of fraud forthcoming, the conclusion has to be gathered from a host of circumstances. The Supreme Court has laid down an illustrative list of circumstances in relation to synchronized trading, from which an inference of guilt can be drawn. Pertinently, in the instant case, the SCN failed to show the circumstances that were considered to allege that there was connivance between the TMF and KCPL to give an advantage to the latter.

(qqq) Since the allegations in the SCN relating to the violation are of the FUTP Regulations premised purely on conjecture and surmise, and not on any actual evidence or material on record, it was submitted that no *prima facie* case was made out against KCPL and the burden of proof under the FUTP Regulations was not discharged by SEBI.

(rrr) There is sufficient material on the record to fix the preponderance in favour of KCPL. It was clearly established by the material on record that KCPL was not privy to information regarding BILT's default on account of being TMF's RTA or otherwise, and / or violated the provisions of the FUTP Regulations.

(sss) ROLE OF A REGISTRAR AND TRANSFER AGENT - Clauses 1, and 3 of the Code of Conduct under the RTI-STA Regulations provide that an RTA shall maintain high standards of integrity in the conduct of its business, fulfil its obligations in a prompt, ethical and professional manner, and shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment. While SEBI alleged that KCPL violated these provisions, it failed to provide any evidence to show such violation by KCPL. The allegations of violation are based on conjectures and surmises.

(ttt)The IC of KCPL used to keep a track on yields of all its mutual fund investments. In the case of the Taurus Schemes, the IC had independently kept track of BSE announcements and news in the media on downgrades of BILT. In view of such downgrade, the IC, at its meeting on February 17, 2021, had decided to redeem all units in the Taurus Schemes. Thus, KCPL had conducted its due diligence, ensured proper care and exercised professional judgment with respect to its investments in the Taurus Schemes, thereby acting in an ethical and professional manner.

(uuu) The decision to redeem its investment in the Taurus Schemes was an independent *bona fide* decision made with a view to protect the potential risks in the investment in Taurus Schemes. This fact also bears out from the documents on the record of SEBI, which SEBI has failed to consider before issuing the Notice. KCPL had maintained high standards and integrity in the conduct of its business as an RTA, which fact is uncontroverted by any document on SEBI's record.

(vvv) Therefore, the allegations of violation of Clauses 1, 2 and 3 of Schedule III of the RTISTA Regulations by SEBI are incorrect and baseless.

(www) KCPL had excised utmost caution, due diligence and acted upon professional judgement. There is no incriminating evidence to show/establish that KCPL had in any manner misused its position as RTA and was thereby in a position to unjustly enrich itself by redeeming the units held by it in TMF, warranting initiation of any adjudication proceedings or imposition of monetary penalty.

44. During the hearing conducted by videoconferencing through WebEx on October 11, 2021, the Authorised Representatives (ARs) of the Noticee, namely - Mr. Somasekhar Sundaresan, Mr. Abhishek Venkatramani, Ms. Sonali Mathur, Ms. Cheryl Fernandes and Mr. Nishant Updhayay, Advocates, alongwith Mr. Anshul Kumar Jain, Chief Compliance Officer & Head of Legal for KFin Technologies Private Limited, appeared and made the following submissions –

(a) The deterioration of creditworthiness of BILT and BGPPL had begun on 15.07.2016, evidenced by the downgrading of commercial papers of BILT and associated companies, which was public knowledge

(b) Redemption by Karvy observed on 20.02.2017 when BILT defaulted was not motivated by access to privileged information received from Taurus MF regarding the default by BILT, but resulted from a decision taken by the Investment Committee of Karvy on 17.02.2017 to redeem all units of Taurus Liquid Fund and Taurus Ultra Short-term Fund.

(c) Corrections on 20.02.2017 by Karvy to the amount to be redeemed were in line with the decision taken by the IC on 17.02.2017, and translated to only approx. Rs. 60 lakhs more than the original instruction to redeem units worth Rs. 9 crore.

(d) Submissions made vide letter dated 08.10.2021 were reiterated.

(e) It was further undertaken to file additional submissions within 10 days from the date of the hearing.

45. Vide supplemental post-hearing submissions dated October 18, 2021 the Noticee:-

(a) The minutes of the IC meeting held on February 17, 2017 reflect that the decision had been for redemption of '*all units*' of the Taurus Schemes i.e. Taurus Liquid Fund and Taurus Ultra Short-Term Fund. (*See Annexures D1 and D2 to the Reply*)

(b) However, it was found that both redemption application forms submitted by KCPL with KSBL vide email dated February 20, 2017 sent at 12:14 p.m. wrongly reflected the name of only one Taurus Scheme i.e. Taurus Liquid Fund.

(c) Further, the form reflected the wrong redemption amounts as INR 7 Crore and INR 2 Crore respectively.

(d) Upon realising the clerical errors, the redemption application forms were collected from Taurus AMC's office in Hyderabad to carry out the necessary corrections. Accordingly:-

I. In one redemption application form, the name of the fund was changed from '*Taurus Liquid Fund*' to '*Taurus Ultra Short-Term Fund*' and the number of units was changed from '*Rs. 2,00,00,000/-*' to '*all units*'; and

II. In the second redemption application form, only the number of units was changed from '*Rs. 7,00,00,000/-*' to '*all units*'.

(e) Thus, requisite corrections were made in these redemption application forms to correspond with the decision of the IC taken on February 17, 2017.

(f) The redemptions of all units in the two Taurus Schemes was as follows:-

   I. Taurus Liquid Funds - 96090.610 units - redemption value: INR 9,61,63,513.95/-; and

   II. Taurus Ultra Short-Term Fund - 351.908 units - eventual redemption value: INR 3,52,616.5

(g) The Noticee made factual corrections in paragraphs 20 and 51 to the Noticee's Reply dated October 8, 2021, wherein the word 'Taurus Schemes' was used, which was replaced by 'Taurus Liquid Fund'.

(h) The difference between the amount of redemption of the Taurus Liquid Fund was only INR 61,63,513.95. Further, units worth INR 3,52,616.5 were redeemed from the Taurus Ultra Short-Term Fund. The difference in the amount of redemption of partial units and all units of the Taurus Schemes was clearly set out in Annexure L to the Reply and the table below:

Sr. No.	**Name of the Scheme**	**Amounts mentioned in the original redemption request form (Amt. in INR)**	**Units mentioned in the revised redemption request form**	**Amount equivalent to 'all units' (Amt. in INR) (*See Annexure L*)**	**Difference scheme wise (Amt. in INR)**
1.	Taurus Liquid Fund	9,00,00,000	All	9,61,63,513.95	61,63,513.95
2.	Taurus Ultra Short-Term Bond (*This name was inserted by correction)*	Not mentioned	All	3,52,616.5	3,52,616.5

(i) Submission IV to the Reply deals with the issue of alterations made in the redemption application forms of the Taurus Schemes submitted by KCPL.

(j) In respect of the investments in Reliance Liquid Fund Daily Dividend Reinvestment, it was submitted that:-

I. The decision with respect to the purchase of Reliance Liquid Fund Daily Dividend Reinvestment ("Reliance Fund") amounting INR 1.5 Crore taken on February 17, 2017, is not assailed but is being referred to, to question the credibility of the Reply in relation to whether the correction evidences receipt of inside information from TMF

II. The Notice, based on a misunderstanding of KCPL's responses on October 25, 2017 at the time of an inspection, alleges that the IC met only at around 4:00 p.m. on February 17, 2017 and consequently, the investment in the Reliance Fund was executed at 2:00 p.m. that day, "prior to investment decision time". The Notice wrongly claims that this purportedly indicates a "contradiction" in KCPL's submissions (See Page 14 at Para 121 of the Notice)

III. The Notice has sought to read contradiction in the timing of the IC's "meeting" by mixing up the time of decision in relation to the Taurus Schemes and the time of the IC decision in relation to investment in Reliance Fund on February 17, 2017. On February 17, 2017, the IC approved multiple investment proposals and one of them was in relation to Taurus Schemes and another was in relation to the Reliance Fund (*See list of investment decisions taken by the IC set out at Para 119 at Page 13 of the Notice*)

IV. On review of our records, we have found copies of the relevant minutes of decision, and a copy of the form submitted for purchase of the Reliance Fund on February 17, 2017. The form for the purchase will show that the decision to purchase was executed on February 17, 2017 prior to 2:00 p.m.

V. The IC's decision to redeem the Taurus Schemes was taken later, at around 4:00 p.m. on the same day i.e. February 17, 2017. The minutes of the IC decisions taken on February 17, 2017, recording the decision to purchase the Reliance Fund was annexed to the supplemental submissions as Annexure-1. The purchase application form for the Reliance Fund for an amount of INR 1.50 Crore was annexed to the supplemental submissions as Annexure 2.

VI. The Notice, purporting to rely on KCPL's submissions made to SEBI on October 25, 2017, wrongly came to the conclusion that the IC meeting commenced only at 4:00 p.m. on February 17, 2017. KCPL made no such submission to SEBI.

VII. In fact, SEBI vide an email dated October 17, 2017 sought details of the "*the date and <u>time when the decision to redeem the entire investment in Taurus</u> <u>Mutual Fund was taken</u>*". KCPL *vide* email dated October 25, 2017 in response the specific query about the Taurus Schemes, submitted that "*<u>the decision was</u> <u>taken by IC</u> on 17th February 2017, Friday at around 4pm*". (*Page 51 at para 2 of the Reply dated 08.10.2021*). KCPL was responding specifically to the timing of the decision in relation to the Taurus Schemes and not about a "meeting" of the IC on February 17, 2017.

VIII. SEBI did not ascertain from KCPL whether the IC had convened in a meeting or when the decision to undertake the investment in the Reliance Fund was taken. Instead of ascertaining these facts, the Notice erroneously jumped to the conclusion that the IC "met" only at 4:00 p.m. on February 17, 2017 as the decision in relation to the Taurus Schemes were taken at around 4:00 p.m.;

IX. There were also other decisions taken by the IC on February 17, 2017, to invest in schemes of UTI Mutual Fund and Religare Mutual Fund, which were executed on February 22, 2017 i.e. after the execution of the redemption of all units in the Taurus Schemes on February 20, 2017. Therefore, there is nothing unusual about: (i) multiple decisions being taken at different points of time on the same day by the IC, a decision- making collective; and (ii) investment decisions taken before the cut-off time on February 17, 2017 (a Friday), being executed subsequently on February 22, 2017 (Wednesday). (*Page 158 and 152 of Annexure M - consolidated account statements showing investments in schemes of UTI and Religare on February 22, 2017*).

X. The IC of KCPL appeared to have been a collective decision-making committee and it did not have to convene in a physical meeting just once to take one decision(s). Decisions taken from time to time would be taken by this collective, and when the decision was taken, it would have been implemented. Hence the difference in timing of the purchase of Reliance Fund units and the redemption of the Taurus Schemes, does not pose any anomaly in the Noticee's response.

XI. There was no anomaly in the decisions taken in respect of the transactions on February 17, 2017.

46. In the light of the allegations contained in the SCN, the Noticee's submissions in respect of the allegations made in the SCN and relevant material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

47. The issues arising for consideration in the instant proceedings are:-

I. Whether the following legal provisions have been violated by the Noticee-
    a) Regulations 3(a) and 4 (1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003
    b) Clauses 1, 2 and 3 of Schedule III read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) 1993

II. If yes, whether the Noticee is liable for imposition of monetary penalty under Sections 15HA and 15 HB of the SEBI Act

III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

I. Whether the following legal provisions have been violated by the Noticee- Regulations 3(a) and 4 (1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and Clauses 1, 2 and 3 of Schedule III read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) 1993

48. The brief facts of the case are that the Noticee was the Registrar to Issue and Share Transfer Agent (“RTI and STA”/ “RTA”) of Taurus Mutual Fund (“TMF”) during the investigation period. Further, the Noticee also invested in two funds of TMF which had exposure to BILT and BGPPL commercial papers– Taurus Liquid Fund and Taurus Ultra Short Term Bond Fund - and redeemed all units of the said investments on 20.02.2017 at 2:33 p.m. which was the same day as BILT defaulted on payment obligation of Rs. 45 crores to TMF, the first in a series of three defaults between 20.02.2017 and 27.02.2017. Further, the Noticee’s redemption applications for the two Schemes followed Taurus AMC’s own redemption application at 12.41 pm (and subsequent cancellation of redemption applications) on 20.02.2017 in the units of the abovesaid two Schemes, as well redemption application of 3 other funds of TMF at 2.10 pm, namely TMF Investor

Education Pool Fund, TMF Investor Education and Awareness Fund, TMF Unclaimed Fund. Given the timing of the Noticee's redemption request, the fact that the Noticee had never before redeemed all its units across Schemes of TMF on a single day before, and the haste reflected in the correction of the redemption request forms through overwriting, the Noticee is alleged to have dealt in securities in a fraudulent manner and indulged in a fraudulent and unfair trade practice and failed to maintain high standards of integrity in the conduct of its business as an RTI and STA.

49. Further, as RTA to Taurus Asset Management Company ("Taurus AMC"), the Noticee accepted Taurus MF's cancellation of redemption application even after the declaration of NAV and before payment of proceeds. Taurus AMC had placed redemption application for its units in Taurus Ultra Short Term Bond Fund at 12:41 p.m. on 20.02.2017, and it submitted request for cancellation of redemption application at 5:38 p.m. on 21.02.2017 after declaration of NAV applicable for the redemption request. Thus, the Noticee failed to maintain high standards of integrity in the conduct of its business as an RTI and STA as it failed to fulfil its obligations in a prompt, ethical and professional manner and to exercise due diligence, ensure proper care and exercise independent professional judgement.

50. The legal provisions allegedly violated by the Noticee are reproduced below for reference:-

<u>FUTP Regulations</u>

"3. Prohibition of certain dealings in securities

(a) buy, sell or otherwise deal in securities in a fraudulent manner"

"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."

<u>Securities and Exchange Board of India (Registrars To An Issue And Share Transfer Agents) Regulations, 1993</u>

"13. To abide by Code of Conduct.—

Every registrar to an issue and share transfer agent holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule III."

"Schedule III

1. A Registrar to an Issue and Share Transfer Agent shall maintain high standards of integrity in the conduct of its business.

2. A Registrar to an Issue and Share Transfer Agent shall fulfill its obligations in a prompt, ethical and professional manner.

3. A Registrar to an Issue and Share Transfer Agent shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment."

51. Based on the SCN, inspection report and reply of the Noticee, the facts which are relevant to consideration of the aforesaid allegations, are as follows:-

    (a) Noticee submitted copies of approval accorded by its Investment Committee in respect of decisions taken on 17.02.2017 to redeem all units of Taurus Liquid Fund and Taurus Ultra Short Term Bond Fund. On perusal of the said documents, I find that there is no record of the time when the decision was taken. On the same day, 4 other decisions were taken for purchase of units of other funds which were also recorded as individual approvals. There is no record of time on any of the approvals.

    (b) Of the decisions taken by the IC of the Noticee on 17.02.2017, only one was executed on 17.02.2017 and other 5 were carried out on 20.02.2017 and 22.02.2017.

    (c) Noticee submitted in its email dated 25.10.2017 that the IC decision regarding TMF units was taken at around 4.00 pm, however, decision on purchase of Reliance Liquid Fund units on 17.02.2017 was taken earlier, as the transaction was executed at 2.00 pm.

(d) Taurus AMC made a redemption request for Rs.3.9 crores from Taurus Liquid Fund which was time stamped at 12.41 pm on 20.02.2017. 3 other funds of TMF, namely TMF Investor Education Pool Fund, TMF Investor Education and Awareness Fund, and TMF Unclaimed Fund made a redemption request for all units at 2.10 pm on 20.02.2017. As RTA of TMF, Noticee processed the said applications and was thus aware of the redemption requests.

(e) Noticee made redemption request by email at 12.14 pm on 20.02.2017 which was modified and time stamped for redemption of all units at 2:33 pm on 17.02.2017.

(f) In all, there were 25 redemption applications made on 20.02.2017 between 12.41 pm and 2.54 pm.

(g) As per Taurus AMC's submissions recorded in the inspection report, it came to know of default by BILT late in the evening around 7.25 pm, on account of non-funding of the CP redemptions account by BILT.

(h) Taurus AMC requested cancellation of its redemption request vide e-mail dated 21.02.2017 at 5:38 p.m. after cut-off time after getting to know of the BILT default on 20.02.2017 and to avoid allegations of insider trading. Taurus AMC explained its decision to cancel redemption applications to the Noticee by stating that it had not yet liquidated the Mutual Fund's corpus for the said redemption requests, and therefore NAV was unaffected. Taurus AMC submitted during inspection that it requested cancellation of redemption applications after getting to know of the first BILT default on 20.02.2017 and to avoid allegations of insider trading.

(i) Noticee as RTA of Taurus AMC cancelled the said redemption request as a special case by considering materiality of the request and implications on NAV, as per the Noticee's submissions.

(j) The serial numbering of time-stamped transaction applications with Taurus AMC suggested tampering of the Date and Time Stamping Machine **(DTSM)** to benefit some applicants who made redemption requests on 17.02.2017 and 20.02.2017, as held in the order of WTM passed on 18.08.2020.

(k) Copies of control sheets maintained by Taurus AMC, Hyderabad office, containing information of redemption applications received from January 25, 2017 to February 28, 2017 were missing including 5 applications made by Noticee.

52. I have examined the facts as brought out in the SCN, the TMF inspection report, as well as the submissions made by the Noticee in their reply to the SCN, with particular reference to the facts as narrated above. The issue before me is to decide whether the redemption of units by the Noticee on 20.02.2017 amounted to an unfair trade practice and fraud, and whether the Noticee violated the high standards of integrity imposed by the Code of Conduct to the RTI and STA Regulations.

53. It is not in dispute that the ratings of BILT were being progressively downgraded from December 2016 onwards. On 30.12.2016, the long term issuer ratings and NCD ratings were downgraded by India Ratings from IND A- to IND BBB- while short term CPs rating was downgraded from “A1” to “A3”. On 30.01.2017. Fitch downgraded long term issuer default ratings from B- to CCC. However, the Fitch report is silent on the short term ratings. The investments by Taurus AMC were in short term paper i.e. CPs issued by BILT. I note from correspondence submitted by Taurus AMC between 13.02.2017 to 16.02.2017 that BILT had assured till as late as 16.02.2017 that it would repay the CPs without fail. While this information was not available with the Noticee, it serves to emphasize that as of 17.02.2017, despite general decline in rating and repayment capacity of BILT, Taurus AMC had reason to expect the CPs to be repaid and there was no publicly known information to indicate certainty of default of the CPs maturing on 20.02.2017.

54. However, something changed in the perception of repayment ability of BILT on 20.02.2017. I note that after 12.41 pm on 20.02.2017, there was a spate of

applications seeking full redemption of units from Taurus Liquid Fund and Taurus Ultra Short Term Bond Fund. There were 25 such applications time stamped between 12.41 pm to 2.54 pm, the first one being by Taurus AMC itself, which was later cancelled. The Noticee's redemption application is time stamped at 2.33 pm.

55. 3.00 pm was the cut-off time for acceptance of redemption applications on 20.02.2017. It is pertinent that while the default took place on 20.02.2017, Taurus AMC did not consider the default while computing NAV on 20.02.2017, and all those who made redemption applications on 20.02.2017 got a higher NAV despite the default. It is established in the order passed by the Whole Time Member, SEBI on 18.08.2020 that the DTSM was tampered with to accommodate redemption applications by certain persons. It thus becomes evident that all those who were able to succeed in submitting redemption applications on 20.02.2017 before cut-off time avoided substantial losses on account of the higher NAV availed due to non-recognition of the BILT default by Taurus AMC.

56. I find that in view of the 25 redemption requests on 20.02.2017 including redemption requests by Taurus AMC itself at 12.41 pm and 3 TMF schemes at 2.10 pm, it is reasonable to conclude that there was awareness of strong possibility of default amongst those who sent in redemption requests. Noticee, as the RTA, was aware of the various redemption applications including that of Taurus AMC and TMF funds. This was information that other investors were not privy to.

57. While Taurus AMC claimed that it was made aware of default by BILT on its obligations around 7:25 p.m. on 20.02.2017, it did not take this into account while publishing the NAV of the affected Schemes at 8:44 p.m. on 20.02.2017. Taurus AMC also placed applications for redemption of its own investments in Taurus Ultra Short Term Bond Fund on 20.02.2017 before the cut-off time, but requested cancellation of its redemption request vide e-mail dated 21.02.2017 at 5:38 p.m. after cut-off time, and the Noticee as RTA of Taurus AMC cancelled the said

redemption request as a special case by considering materiality of the request and implications on NAV, as per Noticee's submissions. Taurus AMC submitted during inspection that it requested cancellation of redemption applications after getting to know of the first BILT default on 20.02.2017 and to avoid allegations of insider trading.

58. Taurus AMC explained to the Noticee its decision to cancel redemption applications as an investor, by stating that it had not yet liquidated the Mutual Fund's corpus for the said redemption requests, and that therefore NAV was unaffected. The application was cancelled by Noticee on the next day, 21.02.2017, when the news of BILT default was known. Hence, Noticee was well aware that all redemption applications including its own made on 20.02.2017 would be getting a higher NAV at pre-default valuation, at the cost of investors who redeemed later at post default NAV, even as the corpus could only be liquidated at post default valuation. The fact of cancelling Taurus AMC redemption application and reasons given for considering the same by Noticee make it clear that Noticee was well aware of the implications of the redemptions on other investors in the schemes.

59. Regarding the timing of the redemptions by the Noticee on 20.02.2017, the Noticee has sought to link the said redemptions with previous news reports, BSE announcements and a news item on 13.02.2017 which indicated challenges around repayment of debt by BILT. This begs the question why the Noticee did not redeem its investments closer to the said publicly available information, instead acting at the last minute, on the day of default just prior to confirmation of default.

60. Noticee submitted that the decision to redeem all units in Taurus MF was made on 17.02.2017. On perusal of the records submitted by Noticee of their IC decisions, I find that there is a separate sheet documenting the decisions with respect to Taurus Liquid Fund and Taurus Ultra Short Bond Fund each, with date and signatures of 3 IC members. Similarly there is a separate sheet for each of the decisions taken on 17.02.2017 relating to purchase of Reliance Liquid Fund

(2 sheets for 1.5 crore and 4.00 crore each), Religare Liquid Fund and UTI Liquid Fund. This is unlike the minutes for the decisions taken on 03.02.2017 where it is stated that the IC met and discussed the points which were recorded. The decision taken in respect of purchase of Reliance Liquid Fund (Rs.1.5 crore) was executed on 17.02.2017. The decisions for redemption of Taurus MF schemes were executed on 20.02.2017, and purchase decisions of Reliance Liquid Fund (4.00 cr), Religare Liquid Fund and UTI Liquid Fund were executed on 22.02.2017. Based on the material on record regarding decisions taken by the IC, the way the minutes are recorded for 17.02.2017 when seen against the date of execution of said decisions, raises sufficient doubt as to whether the decision to disinvest from Taurus MF on 20.02.2017, and the purchase decisions for 22.02.2017 were actually taken on 17.02.2017 or were recorded as taken on 17.02.2017 as an afterthought. The Noticee has not submitted any material to substantiate that IC decisions for purchase or sale were normally implemented over the next 2 or 3 days.

61. The cut-off time for redemption at NAV of 20.02.2017 was 3.00 pm and Noticee's application was timed at 2.33 pm. Noticee has cited an email at 12.14 pm forwarding its original redemption application. However, the relevant time to be considered for their redemption request is that of the final application submitted which was altered by hand seeking redemption of all units. Also, comparable time of submission of redemption application by other investors is not available on record. Therefore, the Noticee's email time cannot be compared with the time-stamped applications of other investors including Taurus AMC's.

62. The Noticee carried out physical submission of its altered redemption application form instead of re-submission of corrected application over e-mail or otherwise. By way of explanation, the Noticee stated that it was not unusual to carry out manual corrections in application forms. In support of this statement the Noticee submitted a copy of what appears to be a redemption application form of one T. S. Srinivasan and another by DCM Shriram Ltd. in certain other funds and they were overwritten. I note here that overwriting in the Noticee's redemption

application forms in the given factual context points towards the haste in submission of the application forms within cut-off time.

63. The alteration by overwriting in redemption application forms of the Noticee also needs to be looked at in the context of the fact that Taurus AMC's Hyderabad office prepared control sheets containing purchase or redemption application details, on a daily basis before forwarding applications received by them to the Noticee for processing. However, strangely, Taurus AMC stated that control sheets only for the period between 25.01.2017 and 28.02.2017 when only the 5 applications of the Noticee, including its two redemption applications of 20.02.2017 were received, were missing. It is a significant circumstantial anomaly that Taurus AMC (Hyderabad office) did not have control sheets for the 2 redemption applications submitted on 20.02.2017, raising doubt as to when exactly the redemption applications were received by them.

64. In this context, I also take note of issue of tampering with the time stamping machine. Taurus AMC Hyderabad used a Date and Time Stamping Machine ("DTSM") with TAMC, Branch name, Date, Time and Serial No. stamped on each application as received. Inspection found irregularities in the Serial Nos. and time-stamp of some applications, where later serial nos. were stamped at an earlier time, to favour certain persons. This has been upheld in the order of WTM dated 18.08.2020. The alleged irregularities in the DTSM could then have led to errors in data prepared in excel sheets (known as control sheets) by the Hyderabad Office of Taurus AMC. The irregularities further establish the haste in making redemption applications by cut-off time on 20.02.2017 by several other investors.

65. While allegations in respect of Taurus MF/AMC are not at issue in this SCN, the facts related to DTSM irregularities and control sheets missing only in respect of details pertaining to the Noticee's applications including redemption application, cannot but indicate reasonable doubt regarding handling of the redemption applications on 20.02.2017 to gain advantage of higher NAV.

66. Regarding alteration in the Noticee's redemption application forms by overwriting, the Noticee has submitted that there was a difference of merely Rs. 61,63,513.95 between redemption of units worth Rs. 9 crore and all units, further submitting that the Investment Committee of the Noticee had already approved redemption of "all units" for the two schemes in question. I find that the alteration and the hurried manner of making correction establish the Noticee's haste in making redemption application of all units from both schemes of Taurus MF affected by the BILT default to ensure that it was made before cut-off time on 20.12.2017.

67. Even taking into consideration the submission of the Noticee that the difference of amount in the altered application was only Rs. 61,63,513.9, the alteration also indicates a change made by the Noticee which made their redemption application identical to all other 24 redemption applications submitted on 20.02.2017 which were all made for 'all units'. Further, when compared to the time stamped applications, Noticee's application followed the redemption applications made by Taurus AMC and several other investors, indicating misuse of privileged information available with the Noticee.

68. It is relevant to note here that Noticee as the RTI and STA had a fiduciary obligation towards investors and hence its position was not that of merely an investor in Taurus MF units, but one where its actions required it to consider its fiduciary obligations towards other investors. This becomes all the more evident when seen in the context of Noticee itself cancelling the redemption request of Taurus AMC, which as stated by Taurus AMC, was made by them after becoming privy to the information of default by BILT and to avoid allegations of insider trading. By putting in its own redemption applications on the same day as its client Taurus AMC and several other investors on 20.02.2017, before the BILT default was known publicly, the Noticee benefitted from the pre-default NAV for redemption, and misused its privileged position as RTA of Taurus AMC.

69. The Noticee has submitted that it maintained different departments in its capacity as RTA and there were strict Chinese walls between them. However, the findings

as given above raise sufficient doubt as to the Chinese wall separating the two functions.

70. In processing the cancellation request of Taurus AMC, the Noticee has not submitted any documentation regarding exception to the rule of non-cancellation of redemption request. Neither the Noticee nor Taurus MF/AMC have submitted copies of any communication between Taurus AMC/MF and the Noticee in this regard. Absence of any documentation also indicates flow of information between Noticee and Taurus AMC regarding default and creates sufficient doubt about the Chinese walls for its functions as RTA of Taurus MF and investor in Taurus MF schemes.

71. As RTI and STA of Taurus MF, the Noticee was required to exercise due diligence with ethics and in compliance with high standards of integrity when making its own investments to ensure that in case it was in any position to benefit from privilege of information access regarding the investments of its client, as well as information regarding actions of other investors, it would not take advantage of such privileged position. This is a high ethical requirement imposed by the Code of Conduct read with Regulation 13 of the RTI and STA Regulations, as well as by Regulations 3 and 4 of the PFUTP Regulations which prohibit an unfair trade practice.

72. The instant case is one where the test of preponderance of probability needs to be applied. As narrated above, there are several incidents – recording and execution of decisions said to be taken on 17.02.2017, the last minute decision to redeem all units despite news quoted by Noticee being available earlier on 13.02.2017, timing of redemption application when seen along with other redemption applications, missing control sheets in respect of only the Noticee's redemption applications, overwriting in Noticee's redemption applications, Noticee's acceptance of cancellation request for redemption applications of its client Taurus AMC – which reflect directly on the credibility, due diligence and fair market practice followed by the Noticee. When looked at in totality, and seen

against the fiduciary responsibility of RTA, on the principle of preponderance of probability, the facts establish that the Noticee did not act in compliance with high standards of integrity and ethics and misused its position to benefit from privilege of information available to it as RTA and thereby indulged in a fraudulent and unfair trade practice in terms of Regulations 3 and 4 of the PFUTP Regulations, and also did not act as required under Regulation 13 read with Schedule III of the RTI and STA Regulations.

73. In its reply the Noticee has contended that allegations of “fraud” or “fraudulent activity” in terms of Regulations 3 and 4 of the PFUTP Regulations must fail unless *inducement of another person or his agent to deal in securities* has been established in terms of the definition of “fraud” in Regulation 2 (1) (c) of the PFUTP Regulations. In this regard, I note that the actions of the Noticee, in putting in its redemption application for all units on the day of default by BILT on CP repayments were carried out based on privileged information garnered in its capacity as RTA, information which was not yet available to other investors. The redemption of all units by the Noticee clearly caused it to make gains at the cost of other investors who could only redeem units at the post default NAV. This was more so as the redemption in respect of the Noticee was based on sale which would be made by Taurus MF at reduced post default values, loading the losses on to other investors. Thus the aforesaid dealing in units of Taurus MF by Noticee clearly helped it avoid losses and which induced other investors to suffer losses larger than they would have had the Noticee redeemed units at post default values. After the cascading effects of the consecutive BILT defaults between 20.02.2017 to 27.02.2017 hammered down the NAVs of the affected Schemes on 22.02.2017, several investors had to redeem at post-default NAVs which were much lower than the NAV availed by the Noticee on 20.02.2017. Thus, the Noticee made unlawful gains to the extent to higher NAV availed by it by redeeming on 20.02.2017. The difference in NAV on this date and the subsequent date was Rs.126.12 for Taurus Liquid Fund, as the NAV fell from Rs.1751.63 to Rs.1625.51 on 22.02.2017 which was the next working day.

74. The aforementioned act of the Noticee also amounted to an unfair trade practice which enabled the Noticee to benefit from information available with it to make unlawful gains at the cost of investors who were not as closely connected with Taurus AMC. In this regard, I refer to the observations of the Hon'ble Supreme Court in the case of *Securities and Exchange Board of India and Ors. v. Shri Kanaiyalal Baldevbhai Patel and Ors.* (also referred to in *Securities and Exchange Board of India vs. Rakhi Trading Private Ltd.)* which sought to explain an unfair trade practice as a practice where "*conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this Regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'*."

75. In view of the above, it is established that the Noticee violated the provisions of Regulations 3 (a) and 4 (1) of the PFUTP Regulations and Clauses 1, 2 and 3 of the Code of Conduct in Schedule III read with Regulation 13 of the RTI and STA Regulations.

I. If yes, whether the Noticee is liable for imposition of monetary penalty under Sections 15HA and 15 HB of the SEBI act

II. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

76. As it has been established that the Noticee violated Regulations 3 (a) and 4 (1) of the PFUTP Regulations and Clauses 1, 2 and 3 of the Code of Conduct in Schedule III read with Regulation 13 of the RTI and STA Regulations, the Noticee

is liable for imposition of monetary penalty under Sections 15 HA and 15 HB of the SEBI Act which read as follows:-

<u>“Penalty for fraudulent and unfair trade practices.</u>
15HA. 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.”

<u>“Penalty for contravention where no separate penalty has been provided.</u>
15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees . ”

77. While determining the quantum of penalty under Sections 15 HA and 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

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.

78. Material on record has brought out that the Noticee sold all units in Taurus Liquid Fund (96090.61 units) at an NAV of Rs. 1751.63 and all units in Taurus Ultra Short Term Bond Fund (351.90 units) at an NAV of Rs. 1003.06 on 20.02.2017. After announcement of BILT default later in the evening on 20.02.2017, the NAV of Taurus Liquid Fund on 22.02.2017 (the next working day) was Rs. 1625.51 and that of Taurus Ultra Short Term Bond Fund was Rs. 884.88. Therefore, the Noticee unlawfully avoided loss of Rs. 126.12 per unit in case of Taurus Liquid Fund and Rs. 118.15 per unit in case of Taurus Ultra Short Term Bond Fund.

Thus Noticee made unlawful gain of approximately Rs.1.2 crore by redeeming all units in Taurus Liquid Fund and Taurus Ultra Short Term Bond Fund on 20.02.2017.

79. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of Rs. 1,50,00,000/- (Rs. One crore and fifty lakhs only) on the Noticee will be commensurate with the violations committed by the Noticee.

ORDER

80. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty of Rs. 1,50,00,000 (Rupees One Crore and Fifty Lakhs only) on the Noticee in terms of Sections 15 HA and 15HB of the SEBI Act for violation of Regulations 3 (a) and 4 (1) of the PFUTP Regulations and Clauses 1, 2 and 3 of the Code of Conduct in Schedule III read with Regulation 13 of the RTI and STA Regulations.

81. The Noticee 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link –

ENFORCEMENT → Orders → Orders of AO → PAY NOW

82. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 4 of SEBI.

83. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

84. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

MANINDER CHEEMA Digitally signed by MANINDER CHEEMA Date: 2021.12.22 15:49:02 +05'30'

DATE: DECEMBER 22, 2021 **MANINDER CHEEMA**

PLACE: MUMBAI **ADJUDICATING OFFICER**