BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO. Order/GR/PU/2022-23/20625-20642]**

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

In respect of

Noticee No.	Name of Noticee	PAN
1	ACIL Cotton Industries Ltd	AABCA7788F
2	Universal Credit & Securities Ltd	AAACU2627G
3	Mindvision Capital Ltd	AAACK8154A
4	RFL International Ltd	AAACR9384B
5	Narendra Shah	AAPPS6559P
6	Anish Shah	AWWPS3129G
7	Ankur Shah	BFKPS3124P
8	Chetan Pandit	AGJPP0477F
9	Devendra Shah	AMKPS2912D
10	Kalpana H. Shah	FHKPS8651F
11	Mitesh Jani	ACNPJ6429M
12	Prahalad Panchal	AADPP4559Q
13	Taraben Bhatt	BXOPB7190J
14	Alkaben Jadhav	AVWPJ1040N
15	Devang Vora	AFIPV4897H

16	Mahendrabhai Panchal	CTNPP8328L
17	Sushma Vimalkumar Raval	BBPPR7839K
18	Vimalkumar Raval	ANIPR5608Q

In the matter of audit report of “ACL Cotton Industries Ltd ,Universal Credit & Securities Ltd, Mindvision Capital Ltd and RFL International Ltd”.,

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

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) had conducted an investigation based on the complaint of Mr. Dinesh S. Bang, Chartered Accountant alleging fraudulent use of his firm's name, M/s. Dinesh S. Bang & Co in the matter of audit report of ACIL Cotton Industries Ltd., (hereinafter referred to as “ACIL”/ “Noticee No.1”), Universal Credit & Securities Ltd., (hereinafter referred to as “UCSL”/ Noticee No.2), Mindvision Capital Ltd., (hereinafter referred to as “MCL”/Noticee No.3) and RFL International Ltd. (hereinafter referred to as “RFL”/ Noticee No.4), companies listed on Bombay Stock Exchange (“**BSE**”) in order to ascertain whether there was any violation of the provisions of SEBI Act, 1992 (hereinafter referred as “**SEBI Act**”) ,SEBI (Prohibition of Fraudulent & Unfair Trade practices) Regulation, 2003 (hereinafter referred as “**PFUTP Regulations**”) and of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 (hereinafter referred as “**LODR Regulations**”), Equity Listing Agreement

(hereinafter referred as "**Listing Agreement** ") and of Securities Contract Regulation Act, 1956 (hereinafter referred as "**SCRA**") by certain entities for the period from April 01, 2011 to March 31 , 2018 (hereinafter referred to as "**Investigation Period/IP**"). However, wherever deemed necessary, reference has been made outside this period.

2. Investigation observed that, ACIL (Noticee No.1), UCSL (Noticee 2), MCL(Noticee 3) and RFL(Noticee 4) in their annual reports and other filings submitted to Registrar of Companies ("**ROC**"), Reserve Bank of India ("**RBI**") and stock exchange for FY 2012-13 and Noticee No. 5 -13 being non-Independent Directors/Chairman & Managing Director/Independent Directors of the aforementioned Noticees had misused the names of Chartered Accountant ("**CA**") as statutory auditors in the Financial statements and filed fraudulent audit reports and failed to publish true and fair audited financial statements and thereby alleged to have been violated the provisions of Section 12A(c) of the SEBI Act read with Regulation 3(d),4(2)(f),(k), of PFUTP Regulations, Regulation 4(1)(b),(c),(g),(j),33(1)(d),33(3)(d),(e) ,34(2)(a) of LODR Regulations and Section 21 of SCRA read with Clause 41(I)(d)(IV),)(V) of the Equity Listing Agreement.

3. Further, it was also observed that the Noticee No. 5-18 failed to provide the information sought and appear in person, as required under summons and thereby alleged to have violated the provisions of Section 11C(2), (3), (5), (6) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. In this regard, SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as Adjudicating Officer, communicated vide communique dated ,November 17, 2022 under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 *(*hereinafter referred to as ***Adjudication Rules)*** and Section 23-I of SCRA read with Rule 3 of the Securities contracts Regulation (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ("**SCR Adjudication Rules**") to inquire into and adjudge under Section 15A(a), 15HA and 15HB of the SEBI Act and Section 23E and 23H of SCRA, respectively, for the aforesaid violation alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common Show Cause Notice dated March 01, 2021 (hereinafter referred to as ***SCN***) was issued to the Noticees in terms of Section 15-I of the SEBI Act read with Rule 4 of the Adjudication Rules and Section 23-I of SCRA read with Rule 4 of SCR Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty be not imposed, under Section 15A(a),15 HA and 15HB of the SEBI Act and Section 23E and 23H of SCRA, as applicable for the alleged violation as specified in the SCN. The said SCN and annexures issued to the Noticees were duly delivered through Speed Post (SPAD) and Newspaper publication. The details of mode of delivery of the SCN and the replies received in the matter are as under;

Noticee No.	Name of the Noticee	SCN Delivered (Y/N)	Reply Received Y/N (Date)	Hearing Notice Date	HN Delivered (Mode of Service)	Hearing Date	Hearing Attended(Y/N)
1	ACIL Cotton Industries Ltd	D	N	24/06/2022	NEWSPAPER	14/07/2022	N
2	Universal Credit & Securities Ltd	D	N	19/08/2022	NEWSPAPER	24/08/2022	N
3	Mindvision Capital Ltd	D	N	24/06/2022	NEWSPAPER	14/07/2022	N
4	RFL International Ltd	D	N	24/06/2022	NEWSPAPER	14/07/2022	N
5	Narendra Shah	D	N	15/07/2022	SPAD	26/07/2022	N
6	Anish Shah	D	Y	15/07/2022	SPAD	26/07/2022	N
7	Ankur Shah	D	N	15/07/2022	SPAD	26/07/2022	N
8	Chetan Pandit	D	N	15/07/2022	SPAD	26/07/2022	N
9	Devendra Shah	D	N	24/06/2022	NEWSPAPER	14/07/2022	N
10	Kalpana H. Shah	D	N	24/06/2022	NEWSPAPER	14/07/2022	N
11	Mitesh Jani	D	N	15/07/2022	SPAD	26/07/2022	N
12	Prahalad Panchal	D	N	15/07/2022	SPAD	26/07/2022	N
13	Taraben Bhatt	D	N	24/06/2022	NEWSPAPER	14/07/2022	N

14	Alkaben Jadhav	D	N	15/07/2022	SPAD	26/07/2022	N
15	Devang Vora	D	N	15/07/2022	SPAD	26/07/2022	N
16	Mahendrabhai Panchal	D	N	15/07/2022	SPAD	26/07/2022	N
17	Sushma Vimalkumar Raval	D	N	24/06/2022	NEWSPAPER	14/07/2022	N
18	Vimalkumar Raval	D	N	15/07/2022	SPAD	26/07/2022	N

6. From the above, I note that except Noticee No.6, none of the Noticees have either filed any reply or have availed the opportunity of personal hearing despite service of notices upon them. In view of the said facts and circumstances of this case, I am of the view that Noticee Nos. 1-5 & 7-18, have nothing to submit and in terms of Rule 4(7) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, the matter can be proceeded ex-parte on the basis of material available on record. In the absence of any response from the aforesaid Noticees to the SCN, I presume that the Noticees have admitted the charges levelled against them.

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

that the charges alleged against them in the show cause notice were admitted by them".

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

9. Additionally, the same position reiterated by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Dave Harihar Kirtibhai vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:

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

10. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against Noticee No. 1-5 & 7-18, ex parte, based on the material available on record .While deciding the case, I also cannot lose sight of settled position of law that the charge should be established with valid reasons and in accordance with law. I, therefore, deem it necessary to examine the charge based upon the non-compliance on the part of the Noticees and supporting material as provided in the SCN.

11. In view of the above, I note that principles of natural justice have been duly complied with, as SCNs/Hearing Notices were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

12. The reply dated May 25, 2021 submitted Noticee No.6, is summarized as under:

- *At the outset , I would like to state that I was never a director of ACIL and RFL. I have been falsely and erroneously be shown as director.*
- *I would like to mention that way back in the year 2017, I had received a call from SEBI w.r.t. complaint of Mr. CA Dinesh Bang and clarification was sought from me. Pursuant thereto, I had researched on the subject matter and found out that my name was falsely and erroneously used as a director of ACIL and RFL.*
- *In reply to the said telephonic conversation, I had by my email dated 19.05.2017, gave detailed explanations on the facts of the case and how my name was fraudulently used by Narendra Shah, his son Abhishek Shah & his group. Additionally, I had also*

mentioned that my signature on the financial statements of ACIL and RFL has been forged. Further, by the said email dated 19.05.2017.

- *I had also informed SEBI about complaint filed by Mr. Shirish Dalal, for fraudulently using his name as statutory auditors in some other company. Further. I understand that many other complaints have been filed against Mr. Narendra Shah. However, there is no mention of my email dated 19.05.2017 in the SCN nor are the contents of the said email reproduced in the SCN.*
- *From my aforesaid email and the complaint filed by Mr. Shirish Dalal and many others, it can be seen that Mr. Narendra Shah is a habitual offender of fraudulently using names of other people as directors or statutory auditors of his companies.*
- *I hope that my aforesaid email dated 19.05.2017 has been considered by SEBI during the Investigation in the caption subject matter. In view thereof, I request your kind selves to provide me a copy of the investigation report so that I can ascertain that my email dated 19.05.2017 has been considered before issuing the present SCN.*
- *From my aforesaid email and the complaint filed by Mr. Shirish Dalal and many others, it can be seen that Mr. Narendra Shah is a habitual offender of fraudulently using names of other people as directors or statutory auditors of his companies.*
- *I deny that I have violated the section 12 A (c) of SEBI Act, 1992 r.w. Regulations 3(d), 4(2)(f), (k) of SEBI PFUTP Regulations, 2003.Regulations 4(1)(b),(c),(g),(j),33(1)(d),(e), 34(2)(a) of SEBI (LODR) Regulations, 2015 and Section 21 of the SCRA, 1956 R.W. Clause 41(I)(d),(IV),(V) of the Equity Listing Agreement and Section 11C(2),(3),(5),(6) of SEBI Act, 1992.*

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the charges levelled against the Noticees, reply filed by Noticee No.6 and documents/material available on record. The issues that arise for consideration in the present case are:

Whether

(a) *Noticees No.1 -13 have violated the provisions of Section 12A(c) of the SEBI Act read with Regulation 3(d),4(2)(f),(k) of PFUTP Regulations, Regulation 4(1)(b),(c),(g),(j),33(1)(d),33(3)(d),(e) ,34(2)(a) of LODR Regulations and Section 21 of SCRA read with Clause 41(I)(d)(IV),)(V) of the Listing Agreement;*

(b) *Noticees No. 5 to 18 have violated the provisions of provisions of Section 11C(2), (3), (5), (6) of the SEBI Act;*

(c) *Do the violations, if any, on the part of the Noticees attract penalty under Section 15A(a), 15HA, 15HB of the SEBI Act and Section 23E and 23H of SCRA, as applicable ?*

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

14. Before I proceed further in the matter, it is pertinent to mention the relevant provisions of the SEBI Act, PFUTP Regulations, LODR Regulations, SCRA and

Equity Listing Agreement alleged to have been violated by the Noticees. The same are reproduced below:

SEBI Act, 1992

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

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

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

Investigation.

11C. (2) *Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.*

11C. (3) *The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation*

11C. (5) *Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any* *intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.*

11C. (6) *If any person fails without reasonable cause or refuses—*

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7), he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

SEBI PFUTP Regulations, 2003:

3. No person shall directly or indirectly—

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—

(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions,

regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities

SEBI LODR Regulations, 2015:

Principles governing disclosures and obligations.

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

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

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

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

(j) Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity

Financial results.

33.(1) *While preparing financial results, the listed entity shall comply with the following:*

(d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India

33.(3) *The listed entity shall submit the financial results in the following manner:*

(d) the listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and [Statement on Impact of Audit Qualifications (applicable only]72for audit report with modified opinion)

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

(e)The listed entity shall also submit the audited 75[or limited reviewed] financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.

Annual Report

34(2) *The annual report shall contain the following:*

(a) audited financial statements i.e. balance sheets, profit and loss accounts etc and Statement on Impact of Audit Qualifications as stipulated in regulation 33(3)(d), if applicable

Relevant provisions of Securities Contract (Regulation) Act, 1956

Conditions of Listing

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

Relevant provisions of Equity Listing Agreement

<u>Clause 41(I):</u> Preparation and Submission of Financial Results

(d) The company shall submit audited financial results for the entire financial year, within sixty days of the end of the financial year. The company shall also submit the audited financial results in respect of the last quarter along with the results for the entire financial year, with a note that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year to date figures upto the third quarter of the current financial year.

<u>Clause 41(IV):</u> *Other requirements as to financial results*

(a) Where there is a variation between the unaudited quarterly or year to date financial results and the results amended pursuant to limited review for the same period, and –

(i) the variation in net profit or net loss after tax is in excess of 10% or Rs.10 lakhs, whichever is higher; or

(ii) the variation in exceptional or extraordinary items is in excess of 10% or Rs.10 lakhs, whichever is higher –

the company shall submit to the stock exchange an explanation of the reasons for variations, while submitting the limited review report. The explanation of variations so submitted shall be approved by the Board of Directors:

Provided that in case of results for the last quarter, the above sub-clause shall apply in respect of variation, if any, between the year to date figures contained in the unaudited results and the figures contained in the annual audited results.

b) If the auditor has expressed any qualification or other reservation in respect of audited financial results submitted or published under this clause, the company shall disclose such qualification or other reservation and impact of the same on the profit or loss, while publishing or submitting such results.

c) If the auditor has expressed any qualification or other reservation in his audit report or limited review report in respect of the financial results of any previous financial year or quarter which has an impact on the profit or loss of the reportable period, the company shall include as a note to the financial results –

(i) how the qualification or other reservation has been resolved; or

(ii) if it has not been resolved, the reason therefor and the steps which the company intends to take in the matter.

d) If the company has changed its name suggesting any new line of business, it shall disclose the net sales or income, expenditure and net profit or loss after tax figures pertaining to the said new line of business separately in the financial results and shall continue to make such disclosures for the three years succeeding the date of change in name.

Provided that tax expense shall be allocated between the said new line of business and other business of the company in the ratio of the respective figures of net profit before tax, subject to any exemption, deduction or concession available under the tax laws.

e) If the company had not commenced commercial production or commercial operations during the reportable period, the company shall, instead of submitting financial results, disclose the details of amount raised, the portions thereof which is utilized and that remaining unutilized, the details of investment made pending utilisation, brief description of the project which is pending completion, status of the project and expected date of commencement of commercial production or commercial operations.

Explanation: For the purposes of this item –

(i) the details mentioned above, shall be approved by the Board or a Committee thereof, based on certification by the Chief Executive Officer and Chief Financial Officer, in compliance with sub-clause (II);

(ii) the expression "amounts raised" shall mean the proceeds of any issue of shares or debentures made by the company.

f) The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 (AS 25 – Interim Financial Reporting) issued by the Institute of Chartered Accountants of India (ICAI) / Company (Accounting Standards) Rules, 2006, whichever is applicable.

g) All items of income and expenditure arising out of transactions of exceptional nature shall be disclosed.

h) Extraordinary items, if any, shall be disclosed in accordance with Accounting Standard 5 (AS 5 – Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies) issued by ICAI / Company (Accounting Standards) Rules, 2006, whichever is applicable.

i) Changes in accounting policies, if any, shall be disclosed in accordance with Accounting Standard 5 (AS 5 – Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies) issued by ICAI / Company (Accounting Standards) Rules, 2006, whichever is applicable.

j) Companies, whose revenues are subject to material seasonal variations, shall disclose the seasonal nature of their activities. In addition, they may supplement their financial results with information for the 12 months period ending on the last day of the quarter for the current and preceding years on a rolling basis.

k) The company shall disclose any event or transaction which occurred during or before the quarter that is material to an understanding of the results for the quarter including but not limited to completion of expansion and diversification programmes, strikes and lock-outs, change in management and change in capital structure. The company shall also disclose similar material events or transactions that take place subsequent to the end of the quarter.

l) The company shall disclose the following in respect of dividends paid or recommended for the year, including interim dividends:

(i) amount of dividend distributed or proposed for distribution per share; the amounts in respect of different classes of shares shall be distinguished and the nominal values of shares shall also be indicated;

(ii) where dividend is paid or proposed to be paid pro-rata for shares allotted during the year, the date of allotment and number of shares allotted, pro-rata amount of dividend per share and the aggregate amount of dividend paid or proposed to be paid on pro-rata basis.

m) The company shall disclose the effect on the financial results of material changes in the composition of the company, if any, including but not limited to business combinations, acquisitions or disposal of subsidiaries and long term investments, any other form of restructuring and discontinuance of operations.

n) The company shall also disclose the number of investor complaints pending at the beginning of the quarter, those received and disposed of during the quarter and those remaining unresolved at the end of the quarter.

Clause 41(V): Formats

a) The quarterly financial results shall be in the format given in Annexure I for companies other than banks and that given in Annexure II for banks.

b) Manufacturing, trading and service companies, which have followed functional (secondary) classification of expenditure in the annual profit and loss account published in the most recent annual report or which proposed to follow such classification for the current financial year, may furnish quarterly financial results in the alternative format given in Annexure III. The alternative format can be used only if such format is used consistently from the first quarter of the financial year.

c) Consolidated financial results shall be in the same format as is applicable to stand-alone financial results. Additionally, details relating to minority interest, share of associates and other related items shall be separately given as additional row items.

d) Annual audited financial results shall be in the format as is applicable to quarterly financial results. However, columns and figures relating to the last quarter, year to date results and corresponding three months in previous year need not be given.

e) If the company has more than one reportable primary segment in terms of Accounting Standard 17 (AS 17 – Segment Reporting) issued by ICAI / Company (Accounting Standards) Rules, 2006, it shall also submit quarterly or annual segment information as part of financial results in the format given in Annexure IV.

f) Limited review reports shall be given by auditors in the format given in Annexure V for companies other than banks (including those using the alternative format of financial results) and in the format given in Annexure VI for banks.

g) In case of audited financial reports, the audit report shall be given in the format given in Annexure VII for companies other than banks including those using the alternative format of financial results) and in the format given in Annexure VIII for banks.

h) Disclosure of Balance Sheet items as per items (ea) shall be in the format specified in Annexure IX drawn from Schedule VI of the Companies Act, or its equivalent formats in other statutes, as applicable.

Issues a & b: Whether

a) Noticees No.1 -13 have violated the provisions of Section 12A(c) of the SEBI Act read with Regulation 3(d),4(2)(f),(k) of PFUTP Regulations, Regulation 4(1)(b),(c),(g),(j), 33(1)(d),3 3(3)(d),(e), 34(2)(a) of LODR Regulations and Section 21 of SCRA read with Clause 41(I)(d)(IV),)(V) of the Listing Agreement;

b) Noticees No. 5 to 18 have violated the provisions of provisions of Section 11C(2), (3), (5), (6) of the SEBI Act;

<u>**Fraudulent use of firm names of CAs by the Noticees**</u>

15. In respect of the aforesaid alleged violation against the Noticee No. 1- 13, I note from Investigation Report (**IR**) that there was a complaint against the Noticee No.1-4 for misusing the name of a firm i.e. M/s. Dinesh S. Bang & Co. in their annual reports and other filings submitted to ROC, RBI and stock exchange for FY 2012. In

this regard, I note that vide letter dated October 05, 2015, comments were sought by SEBI from Noticee No.1- 4, the details of which are as under;

Company	Date of response	Summary of reply
ACIL	October 12, 2015	The company has resolved the complaint with the concerned auditor and he will communicate the same to your office.
UCSL	October 8, 2015	Inclusion of name is a technical error at the end of printing agency and the same has been explained to the concerned auditor and requested him to withdraw his complaint.
MCL	October 9, 2015	The company has resolved the complaint with the concerned auditor and inclusion of his name is a technical error and company had no point of time had appointed the concerned auditor.
RFL	October 15, 2015	The company has resolved the complaint with the concerned auditor and he will communicate the same to your office.

16. From the above, I note that in response, the aforesaid Noticees submitted diametrically opposite responses stating that the issues have been resolved with the complainant whereas the complainant confirmed that he had not received any communication as claimed by the said Noticees.

17. Further, I note that in order to ascertain whether names of statutory auditors were mis-used in other years as disclosed by Noticee No. 1 - 4 in their Annual Reports for FY 2011-12 and FY 2013-14, information was sought from the said auditors whether necessary 'No-objection' declarations was obtained from the previous auditors before taking up the audit assignment of the companies under consideration, as was required under clause 8 of Part I of the First Schedule of the

Chartered Accountants Act, 1949.The response of the said auditors is mentioned as under:

Name of the Auditor	**Period for which he was disclosed as auditor**	**Response of the auditor**
Chinmay Mehta	Disclosed as statutory auditor of UCSL, RFL and MCL for FY 2013-14.	He had not acted as statutory auditor in such companies and his name was misused.
Mukesh M. Choksi	Disclosed as statutory auditor of ACIL from FY 2012-14 to FY 2017-18 and of UCSL, MCL and RFL from FY 2015-16 till FY 2017-18	The company did not provide the name and address of the previous auditor. Therefore, he could not obtain no-objection letter from the said auditor. He admitted to having audited the books of these 4 companies (only till FY 2016-17). However, he stated that the companies had not approached him for auditing accounts for FY 2017-18 onwards.
Bhadresh Sanghvi	Disclosed as statutory auditor of UCSL & MCL for FY 2011-12.	He was the auditor for UCSL and MCL till FY 2008-09. Thereafter, he had not audited the books of accounts of the companies.
L. N. Patel	Disclosed as statutory auditor of ACIL & RFL for FY 2011-12.	He had never heard of RFL, nor had he done any professional work for the Company. He was the auditor of ACIL for 2-3 years somewhere around 2010.
Harshit Shah	Disclosed as statutory auditor of RFL for FY 2014-15.	He had neither done audit of the company nor provided any other services.

18. Further, I find it pertinent to mention here from the IR that the period for which the Noticee No. 1- 4 had fraudulently used the names of auditors and the period for which Annual Reports were not filed with the stock exchanges in the table below:

Company	**Fraudulent usage of names of auditors**	**Non-filing of Annual Report**
ACIL Cotton Industries Ltd	FY 2011-12, FY 2012-13, FY 2017-18	FY 2015-16
Universal Credit & Securities Ltd	FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, FY 2017-18	-
Mindvision Capital Ltd	FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, FY 2017-18	FY 2016-17
RFL International Ltd	FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, FY 2017-18	FY 2015-16, FY 2016-17

19. Further, I note that, during the IP on analysis of the directors of Noticee No 1- 4, these companies had common directors amongst them. The details of the common directors are listed as under:

Sr. No	**Name of the director**	**Company**	**Period**
1	Narendra Shah	UCSL	2009-14
		MCL	2017-18
2	Anish Shah	ACIL	2011-12
		RFL	2011-12
3	Ankur Shah	ACIL	2011-15
		MCL	2009-13
4	Devendra Shah	ACIL	2013-15
		RFL	2012-15

20. In this regard, I note that, as stated in the preceding paragraphs, though no response was received from Noticee No. 1- 4, despite several attempts by BSE and SEBI to seek information, the said Noticees were regularly filing annual reports with BSE. Accordingly, summonses u/s 11(c) (2), (3) and/or (5), (6) of SEBI Act were issued during August 2019 to February 2020 to the Non-Independent Directors/Chairman & Managing Director/Independent Directors of these companies. I also note that reminders on the summons were issued during this period seeking information / advising appearance in person. The details of dates of these summons and the status of delivery is tabulated below:

Name of Director	Date of Summons to furnish Info	Delivered?	Date of Summons to furnish Info	Delivered?	Date of Summons to appear in person	Delivered?	Date of Summons to appear in person	Delivered Y/N
Abhishek Shah	16-Aug-19	No					12-Feb-20	No
Alkaben Jadhav	19-Aug-19	Yes	17-Oct-19	Yes	7-Jan-20	Yes	12-Feb-20	Yes
Anish Shah	16-Aug-19	No					12-Feb-20	Yes
Ankur Shah	16-Aug-19	Yes			7-Jan-20	Yes	12-Feb-20	Yes
Chetan Pandit	16-Aug-19	No					12-Feb-20	Yes
Devang Vora	19-Aug-19	Yes			7-Jan-20	Yes	12-Feb-20	Yes
Devendra Shah	16-Aug-19	Yes			7-Jan-20	Yes	12-Feb-20	Refused to accept
Dolly Shah							12-Feb-20	No
Jitendra B. Patel	19-Aug-19	No					12-Feb-20	No
Kalpana H. Shah							12-Feb-20	Yes
Mahendrabhai Panchal	19-Aug-19	Yes	17-Oct-19	Yes	7-Jan-20	Yes	12-Feb-20	Yes
Mitesh Jani	16-Aug-19	Yes			7-Jan-20	Yes	12-Feb-20	Yes
Narendra Shah	16-Aug-19	Yes			7-Jan-20	Yes	12-Feb-20	Yes
Naresh N. Shah	19-Aug-19	No					12-Feb-20	No
Praful N. Trivedi							12-Feb-20	No

Prahalad Panchal	16-Aug-19	Yes			7-Jan-20	Yes	12-Feb-20	Yes
Sushma Vimalkumar Raval	19-Aug-19	Yes			7-Jan-20	No	12-Feb-20	No
Taraben Bhatt	16-Aug-19	No					12-Feb-20	Yes
Vimala Sanjay Patel	19-Aug-19	No					12-Feb-20	No
Vimalkumar Raval	19-Aug-19	Yes	17-Oct-19	Yes	7-Jan-20	Yes	12-Feb-20	Yes

21. I note from IR that only 7 directors had responded to the SEBI summons and the reply received is mentioned as under:

Name of the Director	**Date of Response**	**Response to Summons dated**	**Response in brief**
Narendra Shah*	August 26, 2019	August 16, 2019	I was director of RFL during the period from Nov 30, 2009 to January 17, 2013. I was director of UCSL w.e.f. Dec 20, 2006 till date and on the Board of the company. In the last week of July 2019, there was heavy rain in the district of Vadodara and the registered office of UCSL is situated at ground floor. Hence all records and computers were affected and records got wet. It may take a lot of time to make records usable. As and when I get the infuriation / records I will produce before you.
Ankur Shah*	August 31, 2019	August 16, 2019	I was director of MCL and ACIL during the period from April 20, 2008 till July 12, 2016. Since resignation, I have no connection to the said companies.

Devang Vora*	August 31, 2019	August 16, 2019	I was non-executive director of RFL since May 15, 2017 and resigned w.e.f. April 11, 2019 by filing form DIR-11 with ROC, Ahmedabad, but company has not given effect of my resignation. I was non-executive director and was not engaged in any affairs of the company. After receipt of your summons, I sent the said summons at the address of the regd. Office of the company and the company replied that since the matter is relevant to FY 2011-12 onwards, it may take time to provide the required information. As and when I get the infuriation / records I will produce before you.
Devendra Shah	August 26,	August 16, 2019	I was director of ACIL during the period from October 18, 2012 to May 24, 2017 and I was the director of RFL during the period from October 18, 2012 to May 15, 2017. After receipt of your summons, I sent the said summons at the address of the regd. Office of both the companies. The company replied that since the matter is relevant to FY 2011-12 onwards, it may take time to provide the required information. As and when I get the infuriation / records I will produce before you.
Prahlad Panchal	August 26, 2019	August 16, 2019	I was director of MCL during the period from May 10, 2004 to July 12, 2016. After my resignation, I had no connection with the company. After receipt of summons, I contacted the said company and handed over your summons.
Sushma Vimalkumar Raval	August 29, 2019	August 19, 2019	I was appointed as a director of USCL w.e.f. July 12, 2016. I am a non-executive independent director of the company. After getting summons, I sent it to the company for further suitable reply.

22. In respect of the allegation against Noticee No. 1 -13 as specified in the SCN, I note that only Noticee No. 6, has replied to the SCN in the matter. In this regard, I note that the Noticee No. 1- 4 are companies, which by mis-using names of CAs as statutory auditors and knowingly publishing financial results have mislead investors in believing that their financial statements depicted as true and fair view of their financial results and position. The said act is prohibited as per Section 12 A(c) of the SEBI Act, 1992 and regulations 3(d), 4(2)(f), (k) of SEBI (PFUTP) Regulations, 2003, as it operates as a device / scheme / artifice to deceive and defraud the investors. Therefore, they have committed fraud as defined under Regulation 2(1)(c) of PFUTP Regulations, 2003. Here I rely upon the relevant portion of the Judgement of Hon'ble SAT in **Shivam Investments Vs. SEBI**, wherein it is stated that "6. *...The scope of the term 'fraud' as defined above is wide enough to take in its sweep any act which disturbs the equilibrium of the market. It is not necessary that the fraudulent act should result in price Manipulation. There are other several wrong doings envisaged in the definition of fraud as mentioned above*….". Further, the Hon'ble Supreme Court in **Kanaiyalal Baldevbhai Patel v. SEBI (2017) 15 SCC** observed that "*It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation*."

23. Further, I note that Noticee No. 5, 7-13 being Non-Independent Directors/Chairman & Managing Director/Independent Directors of Noticee No. 1- 4, I note that a company acts through its board of directors. The directors are responsible for all the acts of omission and commission by the company. As per section 2(13) of the Companies Act 1956, Directors includes any person occupying the position of Directors by whatever name called. The definition of Director is inclusive definition. It includes any person who occupies the position of a Director is known as Director

whether or not designated as Director. Therefore, it is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls and that the directors of the listed companies have greater responsibility as they have access to inside information such as the financial position of the company, annual accounts, etc., and they take major decisions on behalf of the company, which affects the investors. Therefore, they are expected to exercise the powers in bona fide manner and in the interest of all stakeholders of the company. Further, I also note that Section 27(2) of the SEBI Act, 1992 Stipulates that, "*Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly*".

24. In view of the above, in any company, the directors are responsible for the day-to-day functioning of the company and are responsible for the companies' failure to submit true and fair audited financial statements. Accordingly it is established that the Noticee No. 1-13 violated the provisions of 12A(c) of the SEBI Act, 1992 read with regulations 3(d), 4(2)(f), (k) of SEBI (PFUTP) Regulations, 2003. Further, I note that by filing fraudulent audit reports & publishing misstated and untrue financial statements and / or failing to submit financial statements for certain years, the said Noticees also violated regulations 4(1)(b), (c), (g), (j), 33(1)(d), 33(3)(d), (e), 34(2)(a)

of SEBI (LODR) Regulations, 2015 and Section 21 of the SCRA, 1956 read with Clause 41(I)(d), (IV), (V) of the erstwhile Equity Listing Agreement.

25. I note that Noticee No.6 submitted that he has not violated the relevant provisions of SEBI Act, PFUTP Regulations LODR Regulations, SCRA and relevant provisions of Listing Agreement. Further he stated that he was not aware either of being appointed either as Director in both company ie RFL (Noticee No.4) and ACIL(Noticee No.1) or as a Non-executive Chairman of RFL and as a Managing Director of ACIL, respectively. Besides, in his submission (enclosing e-mail dated 19.05.2017), he is stated to have communicated to SEBI in response to the clarification sought on the complaints of Mr. Dinesh S. Bang, Chartered Accountant, against the Noticee No.1 & 4 that the name of his firm i.e. M/s Dinesh S. Bang &Co was misused in the annual reports and other fillings submitted to ROC, RBI and stock exchange for FY 2012. Wherein he specifically submitted the followings.

a) He was aware of the fact that there was a complaint by Mr. Krishna Somani, Director of Soham Securities Ltd., against the complainant Mr. Dinesh S. Bang in Boriwali west, Mumabi, for fraudulent use of his name as auditor.

b) He was not aware of being appointed either as a Director or as a Non-Executive Chairman of RFL. The financial results for the period 2009-2012 submitted to BSE as per Clause 41 of the Listing agreement the ELA, bearing his name and signature was forged without his knowledge. Further, as his name was wrongly shown as a compliance officer of RFL in the website of BSE, he stated that he would be writing to the exchange to remove the same.

c) Similarly, he was also not aware of being appointed either as a Director or as a Managing Director of ACIL and also his name and signature used in the financial statements of ACIL for the FY 2011-2012.

d) Appointed as Director in GFL Financials India Ltd., also not aware by him. Further, he came to know from the MCA website that his DIN no.00372544 used for 12 companies without his knowledge and in this connection he had written a letter on the same stating as fraud.

e) Finally, he stated that his name and signature was misused by Narendra Shah, his son Abhishek Shah and his group fraudulently.

26. From the above submission, (stated to have been submitted information), I note that the Noticee No.6's name and signature had been misused from the year 2009 onwards. Further, I note that almost 8 years had already passed since 2009 till the said fact was brought to the notice of SEBI on 19/5/2017, however, no documentary proof of letter written to exchange or MCA and/or even efforts taken for lodging complaint/FIR, against any of the person/entity has been produced till date to substantiate his claims of not being a Director/Non-Executive Chairman of Noticee No.1 & 4 (ACIL & RFL) during the relevant time period. Therefore, the claim of the Noticee No.6 in this regard is devoid of any merits. In view of the above, I find that Noticee No.6 has violated the provisions of 12A(c) of the SEBI Act, 1992 read with regulations 3(d), 4(2)(f), (k) of SEBI (PFUTP) Regulations, 2003, regulations 4(1)(b), (c), (g), (j), 33(1)(d), 33(3)(d), (e), 34(2)(a) of SEBI LODR Regulations and Section 21 of the SCRA read with Clause 41(I)(d), (IV), (V) of the erstwhile Equity Listing Agreement.

27. Further with regards to allegation of non-compliance of the summons against Noticee No. 5-18, I note from the IR that only 7 directors i.e. Noticee No. 5, 7, 9, 11, 12, 15 & 17, had replied to the summons and the said replies submitted by them were incomplete/ not relevant and they failed to appear in person as directed in the summons. In this regard, I note that, it is the responsibility of every person from whom information is sought vide summons (i.e. Noticee No. 5-18) to fully co-operate with Investigating Authority and promptly produce all documents, records, information, etc., to the said Investigating Authority. Non submission of the requisite information adversely affects the investigation process. Here, I would like to rely on the order of the Hon'ble Securities Appellate Tribunal Order dated 22.10.2013, in the matter of **Rich Capital & Financial Services Limited and Mr. Shashwat Agarwal vs. SEBI** observed that- "*We note that requisite information and relevant records are pre-requites for a meaningful investigation. In the absence of cooperation by the concerned company, the SEBI cannot move an inch. Therefore, every company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If companies are allowed to take the statutory summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins*." Further, in this context, it is also important to refer to the judgment of the Hon'ble SAT in the matter of Mr. Jalaj Batra vs. SEBI (Appeal no. 184 of 2010, date of decision dated December 06, 2010) wherein it observed: *"......We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the*

investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non co-operation with the market regulator has to be viewed seriously. We do not know what else would have come to light if the appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him." In view of the above, it is established that Noticees No. 5-18, by not submitting any information (in certain cases)/complete information (in certain cases) and not appearing in person in response to summonses received have violated the provisions of Section 11C(2), (3), (5), (6) of the SEBI Act.

Issue (b) - Does the violation, if any, attract penalty under Section 15A(a),15HA and 15HB of the SEBI Act and Section 23E and 23H of SCRA ?

28. I note that the Hon'ble Supreme Court of India in the matter of **SEBI v/s Shri Ram Mutual Fund** [2006] 68 SCL 216(SC)held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

29. In view of the foregoing, I am convinced that the Noticees are liable for monetary penalty under Section 15A(a),15HA and 15HB of the SEBI Act and Section 23E and 23H of SCRA . However, SEBI has appealed the order of Hon'ble SAT in the matter of **Suzlon Energy Ltd. Vs. SEBI**, in order to ascertain whether penalty can be imposed under Section 23E of SCRA for violations of provisions of Listing Agreement and the same is pending before the Hon'ble Supreme Court. The relevant penal provisions are mentioned as under:

SEBI Act, 1992

15A. Penalty for failure to furnish information, return, etc.

If any person, who is required under this Act or any rules or regulations made thereunder,-

(a) to furnish any document, return or report to the Board, fails to furnish the same [63][or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to [64][a penalty [65][which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];

[62] Chapters VI A and VI B containing sections 15A to 15J and 15K to 15Z respectively, inserted by Securities Laws (Amendment) Act, 1995 w.e.f. 25-1-1995

[64] Substituted for "a penalty not exceeding one lakh and fifty thousand rupees for each such failure" by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002.

[65]Substituted for the words "of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty 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.*

Penalty for contravention where no separate penalty has been provided.
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.*

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

23E. *If a company or any person managing collective investment scheme or mutual fund [123][or real estate investment trust or infrastructure investment trust or alternative investment fund], fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be [124][liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.]*

[122] Inserted by the Securities Laws (Amendment) Act, 2004, w.r.e.f. 12-10-2004

[123] Inserted by the Finance Act, 2018 w.e.f. 08-03-2019.

[124] Substituted for the words "liable to a penalty not exceeding twenty-five crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014.

[131][Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be [132][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees*.]

[131] Inserted by the Securities Laws (Amendment) Act, 2004, w.r.e.f. 12-10-2004

[132] Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014.

30. With regard to section 23E of SCRA, the Hon'ble SAT in the matter of **Suzlon Energy Ltd. and Anr. vs. SEBI**(Appeal No. 201 of 2018) dated May 03, 2021 has held the following:

"*Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E....." (emphasis supplied)*

31. I note that a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 17 and 18 of the aforesaid order and an appeal has been filed before the Hon'ble Supreme Court

against the aforesaid order vide civil appeal no. 4741 of 2021. I note that the aforesaid stay application and the appeal is pending. I note that vide orders in the matter of M/s NDTV vs. SEBI (Appeal no. 358 of 2015) dated August 07, 2019, and Oasis Securities Ltd. & Ors. Vs. SEBI (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under Section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement. For adjudging under Section 23E of SCRA, the limited purpose of these proceedings qua Noticee No. 1- 4 is to determine if the said Noticees have violated Section 21 of the SCRA read with Clause 41of the listing Agreement read and if so, determine whether penalty should be imposed and assess the quantum of such penalty. However, the enforcement of this order qua Noticee No. 1 to 4 for the penalty imposed under Section 23E of SCRA, shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court of India.

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

32. While determining the quantum of penalty under Sections 15A(b), 15 HA, 15 HB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995 and while determining the quantum of penalty under Sections 23 E and 23 H of SCRA it is important to consider the factors stipulated in Section 23 J of SCRA read with Rule 5 of the SCR Adjudication Rules, which read as under:

SEBI Act, 1992

Factors to be taken into account by the adjudicating officer

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

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

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

SCRA 1956

Factors to be taken into account by the adjudicating officer.

23J - While adjudging quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely: -

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

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

(c) the repetitive nature of the default.

33. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of the fraud done by them. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Filing of Financial statement and annual reports in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any

vital information in respect of their investments in the securities market. If any person/company who is to make such filing does it fraudulently as in the instant case and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticees Hence, I note that the Noticees misused names of CAs as statutory auditors in the Financial statements and filed fraudulent audit reports ,failed to publish true and fair audited financial statements and also failed to provide information and failed to appear in person , as required under summons and thereby have violated the relevant provisions of SEBI Act, PFUTP Regulations, LODR Regulations, Equity Listing Agreement and SCRA as mentioned above.

ORDER

34. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, 1995 and Section 23J of SCRA and in exercise of the powers conferred upon me under Section 23-I of SCRA read with Rule 5 of SCR Adjudication Rules, I hereby impose the following penalties on the Noticees in terms of Section 15A(a),15HA,15HB of the SEBI Act and Section 23E and 23H of the SCRA on the Noticees for the violations as specified in this order

Noticee No.	Name of the Noticees.	Penal Provisions	Penalty(Rs)/Violation
1	ACIL Cotton Industries Ltd	Adjudication proceedings under Section 15HA,15HB of the SEBI Act and Section 23E of the SCRA	Following penalties each on Noticees 1 to 4 : Under Section 15HA of SEBI Act – Rs. 5,00,000/- (Rupees Five Lakhs Only) Under Section 15HB of SEBI Act – Rs. 1,00,000/- (Rupees One Lakh Only) ******Under Section 23E of SCRA – Rs. 5,00,000/- (Rupees Five Lakhs Only)
2	Universal Credit & Securities Ltd		
3	Mindvision Capital Ltd		
4	RFL International Ltd		
5	Narendra Shah	Adjudication proceedings under Section 15HA,15HB and 15A(a) of the SEBI Act and Section 23H of the SCRA	Following penalties each on Noticees 5 to 13 : Under Section 15HA of SEBI Act – Rs. 5,00,000/- (Rupees Five Lakhs Only) Under Section 15HB of SEBI Act – Rs.
6	Anish Shah		
7	Ankur Shah		
8	Chetan Pandit		
9	Devendra Shah		
10	Kalpana H. Shah		
11	Mitesh Jani		
12	Prahalad Panchal		
13	Taraben Bhatt		

			1,00,000/- (Rupees One Lakh Only) Under Section 15A(a) of SEBI Act – Rs. 1,00,000/- (Rupees One Lakh Only) ******Under Section 23H of SCRA – Rs. 1,00,000/- (Rupees Five Lakhs Only)
14	Alkaben Jadhav	Adjudication proceedings under Section 15A(a) of the SEBI Act	<u>Following penalties each on Noticees 14 to 18 :</u> Under Section 15A(a) of SEBI Act – Rs. 1,00,000/- (Rupees One Lakh Only)
15	Devang Vora		
16	Mahendrabhai Panchal		
17	Sushma Vimalkumar Raval		
18	Vimalkumar Raval		

35. I am of the view that the said penalty is commensurate with the violation committed by the Noticees in this case.

36. ******As noted above, in light of the fact that an appeal has been before the Hon'ble Supreme Court in the Suzlon Energy (supra) matter, the monetary penalty imposed

on the Company under section 23E of the SCRA shall be payable depending upon the outcome of the aforesaid appeal before the Hon'ble Supreme Court.

37. The Noticee shall remit / pay the said amount of penalty either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

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

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

39. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to

recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

40. In terms of the provisions of Rule 6 of the Adjudication Rules and Rule 6 of the SC(R) Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: October 21, 2022 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**