BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VV/AK/2022-23/16782-16799

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

In the matter of Sudar Industries Limited

In respect of:

S.N.	Noticee Name	PAN
1	Sudar Industries Limited	AAGCS4668D
2	Murugan M Thevar	AADPT6163E
3	Deepak Shenoy	AWJPS4461L
4	Gopi Chellappan Nair	AAZPN6829R
5	Shridhar Shetty	AACPS2665R
6	Venkatraman Gopal Nadar	ABPPN9892B
7	M S Anand	N.A.
8	Sapna Karmokar	ATBPK1115G
9	Suresh Hegde	AAAPH4848P
10	Suresh Hegde and Co	N.A.
11	Ramesh Andy Thevar	ACPPT5650G
12	Edwin Joseph	AASPE7328P
13	Reena Nadar	AIJPN8995N
14	Santosh Vishnu Ingle	AAHPI9852P
15	Valliammal Murugan M Thevar	AAGPT5653G

S.N.	Noticee Name	PAN
16	Kamlesh Muthappa Nadar	AEEPN4399F
17	Stalin Muthappa	APSPM5576N
18	B Ravishankar Pai	BKSPP5971Q

Each Noticee referred as as per their serial No. *i.e.* Sudar Industries Limited (Noticee 1), Murugan M Thevar (Noticee 2), Deepak Shenoy (Noticee 3), Gopi Chellappan Nair (Noticee No. 4), Shridhar Shetty (Noticee 5), Venkatraman Gopal Nadar (Noticee 6), M S Anand (Noticee 7), Sapna Karmokar (Noticee 8), Suresh Hegde (Noticee 9), Suresh Hegde and Co (Noticee 10), Ramesh Andy Thevar (Noticee 11), Edwin Joseph (Noticee 12), Reena Nadar (Noticee 13), Santosh Vishnu Ingle (Noticee 14), Valliammal Murugan M Thevar (Noticee 15), Kamlesh Muthappa Nadar (Noticee 16), Stalin Muthappa (Noticee 17), B Ravishankar Pai (Noticee 18), and they are collectively referred as Noticees

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A. BACKGROUND

1. The matter emanates from an investigation carried out by Securities Exchange Board of India (Hereinafter referred to as "**SEBI**") with respect to the Initial Public Offer (IPO) of Sudar Industries Limited ("SIL"/ "Sudar" / "Company"/Noticee 1) for issue of 90,88,000 equity shares of face value Rs. 10 each, through 100% book-building process. Investigation in the matter of Initial Public Offer of Sudar Industries Ltd. was initiated suo moto by Concerned Department along with certain other IPOs listed in 2011.

2. The focus of the investigation was to examine whether there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**"), SEBI (Issue of Capital Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**ICDR Regulations**") and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP, Regulations**") with regard to deviation in disclosures made in the offer document for the IPO of Sudar Industries Ltd for the period March 11-18, 2011

(hereinafter referred to as the "**investigation period**" / "**IP**"). However, wherever necessary, reference and/or inferences may have been drawn outside the period.

3. Pursuant to the investigation, it was inter alia found that SIL had deviated from the Objects of the Issue mentioned in the Prospectus of the Company dated March 03, 2011 and siphoned off Rs. 64.43 Cr (approx.) from the IPO proceeds. Further, it was also found that Noticee 9, proprietor of Noticee 10, was the Statutory Auditor of SIL and being personally related to SIL, had connived and colluded with SIL and/or its related entities concocting sales figures of SIL for the FY 2008-19 and 2009-10, which was also mis-stated in the Prospectus of SIL and had also certified the mis-stated financial statements of SIL for the FY 2010-11. Additionally, it was also alleged that the Noticee 11 to 18 were party to the scheme of siphoning off of Rs. 64.43 Cr (approx.) from the IPO proceeds of SIL. Accordingly, adjudication proceeding has been initiated with reference to the Noticees.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI had appointed Adjudicating Officer Mr. S.V. Krishnamohan *vide* communication order April 19, 2017, under section 15I(1) and 15I(2) of SEBI Act and under Section 23-I of SCRA to inquire into and adjudge the aforementioned alleged violation by the Noticees mentioned therein in the IPO of SIL. The matter has been transferred to Shri Sahil Malik *vide* order dated May 18, 2017 to inquire into adjudge in the matter. Pursuant to transfer of Shri Sahil Malik, undersigned was appointed as Adjudicating Officer *vide* Communiqué dated August 19, 2019 to inquire into adjudge in the matter. It has been advised that except for the change of the Adjudicating Officer the other terms and conditions of the original orders '*shall remain unchanged and shall be in full force and effect*' and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders.*"

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. Consequent and subsequent to the conclusion of the abovementioned investigation, a common Show-Cause Notice dated December 15, 2017 (hereinafter referred to as "**SCN**") was issued, calling upon to show cause as to why an inquiry should not be held against the Noticees in terms of Rule 4 of the SEBI (Procedure for holding enquires and imposing penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") read with Section 15 I of the SEBI Act and Rule 4 of Securities Contracts (Regulation) (Procedure For Holding inquiry And Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SCRA Adjudication Rules**") and Section 23 I of SCRA and adjudge under sections 15A(b), 15HA and 15HB of the SEBI Act and under section 23E of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**") for the alleged violations as specified in the SCN.

6. I note from available records that the SCN has been duly served on the Noticees through SPAD except Noticee no. 7 (M S Anand). I note that SCN is got undelivered to the Noticee No. 7. Accordingly, affixture has been done in terms of rule 7(2) of SEBI Adjudication Rules/ SCRA adjudication rules on January 10, 2018. Subsequently, a newspaper publication dated January 30, 2018 has also done in terms of rule 7(3) of SEBI adjudication rules/ SCRA adjudication rules. Therefore, SCN has been duly delivered with respect to Noticees as per the rule 7 of SEBI adjudication rules and SCRA adjudication rules. in the present adjudication proceedings. However, no response has been received from the Noticee No. 7. Noticees except Noticee 4 and Noticee 4 have made written submission in the present matter through various letter which are summarised in below parahraphs. Further, I note that inspection opportunity has been provided to the Noticee as mentioned below

a) On March 13, 2018, Noticee 1-3 and Noticee 5-6 have availed the inspection opportunity.
b) On March 19, 2018, Noticee 11-18 have availed the inspection opportunity.
c) On March 27, 2018 Noticee No. 9 to 10 have availed the inspection opportunity.

7. The written submissions made by the Noticees have been mentioned in the subsequent paragraphs. I also note that Noticees have availed the hearing opportunity before the undersigned which is as follows:

a) Noticee 2, Noticee 3, Noticee 5, Noticee 6, Noticee 8, Noticee 9 and Noticee 10 have availed the hearing opportunity before the undersigned on October 27, 2021.
b) Noticee 1, Noticee 4 and Noticee 7 have not availed the hearing opportunity even after giving multiple opportunity.
c) Noticee 11 -18 have availed the hearing opportunity before the undersigned on October 29, 2021.

8. I note that in view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on WebEx platform. On the scheduled date of hearing, the authorized representative of the Noticees appeared before me through video conference and made oral submission.

9. The allegations levelled against Noticee in the SCN are summarized as below:

Table No. 1

Noticee No.	Allegations in the SCN in brief	Violations	Why penalty is not imposed under the provision
Noticee 1-8	**Noticee 1** Made wrong disclosures to NSE & BSE with respect to Clause 43 of Listing Agreement.	Clause 43 of Listing Agreement read with Section 21 of the SC(R) Act, 1956.	**Noticee 1** Section 23E of SCRA

Noticee No.	Allegations in the SCN in brief	Violations	Why penalty is not imposed under the provision
	<u>Noticee 1-8</u> Failed to make related party disclosures as per Clause 32 of the Listing Agreement with respect to the transactions with related suppliers/customers of SIL to exchange as well as in the Prospectus of SIL dated March 03, 2011	Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956 Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009	**<u>Noticee 1</u>** Section 23E of SC(R)Act, 1956 **<u>Noticee 1-8</u>** section 15A(b) of SEBI Act.
	<u>Noticee 1-8</u> Concocted the sales figures of the Company for the FY 2008-09 & 2009-10, which was also mis-stated in the Prospectus along with mis-statements related to KMP & Customers.	Section 12 A(a),(b) & (c) of SEBI Act. Regulation 3 (b), (c) & (d), 4(1), 4(2)(k) & (r) of PFUTP Regulation	**<u>Noticee 1-8</u>** Section 15HA of SEBI Act, 1992
	<u>Noticee 1-6</u> False & misleading statements in the Annual Report for Financial 2010-11	Section 12 A(a),(b) & (c) of SEBI Act. Regulation 3 (b), (c) & (d), 4(1), 4(2)(k) & (r) of PFUTP Regulation	**Noticee 1-6** Section 15HA of SEBI Act.
Noticee 9-10	Suresh Hegde & Co. in connivance and in collusion with SIL and/or its related entities concocted the sales figures of the Company for the FY 2008-09 & 2009-10, which was also mis-stated in the Prospectus Certifying the mis-stated Financial Statements of SIL for the FY 2010-11	Section 12A(a), (b) & (c) of SEBI Act read with regulation 3(b), (c), (d) and 4(1), 4(2) (k) and (r) of PFUTP Regulation.	Section 15HA of SEBI Act, 1992
Noticee 11-18	Party to the scheme of routing of IPO proceeds of SIL	Sections 12A (a), (b) & (c) of SEBI Act Read with regulations 3(b),(c),(d) and 4(1) of PFUTP Regulations	section 15HA of SEBI Act, 1992

10. The details regarding directors, key management personnel, shareholding of “Promoter and promoter Group”, during the investigation period were as follows:

Table No. 2 Board of Directors

S.N.	Name	Designation	Status
1	Mr. Murugan Muthiah Thevar	Chairman & Managing Director	Executive & Non Independent
2	Mr. Deepak Shenoy	Independent Director	Non Executive & Independent
3	Mr. Gopi Chellappan Nair	Whole time Director	Executive & Non Independent
4	Mr. Shridhar Shetty	Independent Director	Non Executive & Independent
5	Mr. Venketraman Gopal Nadar	Independent Director	Non Executive & Independent

Table No. 3 Key Management Personnel

S.N.	Name	Designation	Date of joining
1	**Mr. M. S. Anand**	**Vice President- Finance**	**July 2010**
2	Mr. Rajendra Pillai	GM-Human Resource and Administration	June 2010
3	Mr. Alberts S Pilai	Manager- Finishing and dispatch department	October 2009
4	Mr Prafulla Chandra Hegde	Head- Washing Department	July 1995
5	*Mrs E Reena Nadar*	*Manager- Accounts*	*February 2003*
6	*Mr.Y Edwin Joseph*	*Manager- Corporate Planning*	*July 2009*
7	Mr. Tirumalai Perumal	General Manager- Merchandising	May 2008
8	**Ms. Sapna Karmokar**	**Company Secretary & Compliance Officer**	**July 2010**

Source: IPO Prospectus dated March 03, 2011

Table No. 4 Shareholding of "Promoter and Promoter Group"

Name of the Shareholder	No. of shares	Shareholding as a % of total share capital
Murugan Muthiah Thevar	78,72,625	42.45
Valliammal Murugan Thevar	4,61,250	2.49
Ramesh Andy Thevar	1,87,500	1.01
Total	85,21,375	45.95

11. **The Scheme**

a) The Company came out with an Initial Public Offer (IPO) for the issue of 90,88,000 equity shares of face value Rs. 10 each through 100% book building process. SIL was listed on the BSE and the NSE, on March 11,

2011. The scrip opened at Rs. 80.05 on NSE and touched a high of Rs. 117.35, registering a rise of 47**%.**

b) The Company by way of the said IPO raised an amount of Rs. 69.97 crore. The said amount was transferred to three bank accounts, the details of which are provided hereunder:

Table No. 5

Date	**Bank**	**Branch**	**Account Number**	**Amount (in Rs.)**
05/03/2011	HDFC Bank	Fort, Mumbai	00600350092062	20,11,80,903.00
05/03/2011	Dhanlaxmi Bank	Fort, Mumbai	014406800000140	25,24,20,938.00
10/03/2011	Axis Bank	New Panvel	911020013567782	24,61,74,159.00
Total				**69,97,76,000.00**

c) The said amount had been raised by the Company from the public on the basis of the objects of the issue, as provided in the Red Herring Prospectus/ Prospectus.

d) In this regard, the SCN alleged that the Company has deviated from the objects of the issue a per the prospectus of SIL and has siphoned off the funds. A comparative table showing the funds earmarked for deployment, as stated in the prospectus, and actual deployment of the said funds is provided hereunder:

Table no. 6

Objects of the issue	As per the Prospectus dated March 03, 2011	Utilization to disclosed exchanges	Utilization details provided to SEBI	Actual Utilization
Expansion of the existing apparel manufacturing unit	26.28	24.38	28. 75	0
Meeting Working Capital Requirements	27.30	27.30	27.30	1.67
Setting up Retail Outlets and Brand Building	5.90	0.00	0.00	0
Meeting General Corporate Expenses	9.11	6.00	6.00	2.06
Meeting the Issue Expenses	6.16	6.16	6.16	1.81
Total	**74.76**	**63.84**	**68.21**	**5.54**
Means Of Finance				
Proceeds from initial Public Offer	69.97			
Internal Accruals	4.78			
Amount Siphoned off	**64.43**			

12. **The Fund Flow**

a) The Company informed that the IPO proceeds were transferred to the following persons and entities:

Table No. 7

Sl. No.	Name of the entity /Purpose	Particulars	Amount (in ₹)
1	Elim Traders	Working Capital	11,34,06,148
2	R J Traders	Working Capital	7,79,32,122
3	A.R Fabrics	Working Capital	8,06,17,117

Sl. No.	Name of the entity /Purpose	Particulars	Amount (in ₹)
4	Shree Vinayaga Distributors	New Project and Expansion	12,53,09,339
5	Mahalaxmi Distributors	New Project and Expansion	5,61,79,520
		General Corporate Purpose	1,37,77,955
6	Sudharshan Enterprises	New Project and	4,63,98,813
		Expansion	
7	Sarvesh Enterprise	New Project and Expansion	2,47,39,473
8	S. M Construction	New Project and Expansion	3,10,80,280
		General Corporate Purpose	1,30,00,000
9	Bhawana Interiors	General Corporate Purpose	2,08,01,824
10	Mruga Engineering	General Corporate Purpose	70,00,000
11	Aryan Construction	New Project and Expansion	39,00,000
12	Balaji Enterprises	Working Capital	4,22,207
13	Rahul Packaging	Working Capital	1,86,227
14	Panchshil Packaging Industries	Working Capital	1,57,093
15	Angoora Silk Mill Pvt Ltd	Working Capital	3,00,000
16	Land Purchased	General Corporate Expenses	54,50,000

Sl. No.	Name of the entity /Purpose	Particulars	Amount (in ₹)
17	Issue Expenses	-	6,16,11,733
Total			**68,22,69,851**

b) In this regard it has been alleged in the SCN that the persons/entities were related to the company/promoters and the money had been given under false claims. The details of the said allegations are as under:

a) Rs. 23.5 crore of the IPO proceeds were transferred to **Regent Capital Private Limited ("Regent Capital")** in five tranches under the false claim of inter corporate deposits (ICDs). These amounts were not deployed by the Company for the IPO objects and the funds were siphoned off.

b) Rs. 19.50 crore under the false claim of repayment of ICDs taken prior to IPO to **Premier Fiscal Services Pvt. Ltd. ("Premier Fiscal").** However, as per prospectus dated March 03, 2011 in respect of IPO of SIL, repayment of ICDs was not indicated as one of the objects of the issue.

c) Rs. 6 crore from IPO proceeds was transferred by SIL to **B Ravishankar Pai** under the false claim of land deal. The said amount was further transferred from B Ravishankar Pai's account to other entities, viz., **Ailish Traders Pvt. Ltd.** (Rs. 1.5 crore), **Galaxy Corporation** (Rs. 50 lakh), **Mehta Trading Co.** (Rs. 75 lakh), **Montaex Trading Co.** (Rs. 75 lakh), and **Classic Trading Co.** (Rs. 1 crore). SIL claimed that the land deal did not go through, so B Ravishankar Pai returned the money to SIL. However, subsequently the money that was transferred to SIL was received from entities other than to whom the funds were earlier transferred from the account of B Ravishankar Pai.

d) Rs. 2.04 crore to **Manan Trading Co.** and Rs. 2 crore to **Girish Kumar Ramanlal Choksi**, under the false claim of repayment of ICDs and payment to suppliers. SIL had previously contended that the amount transferred to MTC & GKRC was repayment of earlier ICDs.Upon seeking documentary evidence regarding the receipt of the claimed ICD amount, SIL vide letter dated February 11, 2016 claimed that the same was an error and the transfer was towards supply of raw materials. Neither Manan Trading Co. nor Girish Kumar Ramanl Choksi ("GKRC") figured in the list of suppliers provided by SIL. No prior loan had been received by SIL.

e) Amounts of Rs. 1,01,24,274 /-, Rs. 1,01,00,603 /-, Rs. 1,01,12,439 /- and Rs. 1,01,24,274 /- were transferred on March 10, 2011 to **Fulford Sales P Ltd.**, **SM Mercantiles P Ltd.**, **Deeksha Marketing P Ltd.** and **Navsari Commodities P Ltd.**respectively. SIL claimed that these payments were made towards repayment of ICDs availed by SIL prior to the IPO for arranging funds required for meeting the expenses related to the IPO. However, the list of entities from whom SIL had taken ICDs during the relevant period did not include Fulford, SM Mercantiles, Deeksha and Navsari.

f) An amount of Rs. 1 crore was transferred to SM Construction from the IPO proceeds of SIL. SM Construction is a proprietary concern of Santosh Vishnu Ingle, who was connected to SIL. SIL had submitted bills, claiming to have been provided by S M Constructions in favour of SIL for work done. Santosh Vishnu Ingle in his statement stated that he was not aware of the same and that it was not raised by him nor pertained to him. The amount of Rs. 1 crore transferred by SIL to SM Construction was not for any construction activity.

g) An amount of Rs. 0.84 crore was transferred by SIL to Elim Traders from the IPO proceeds. Reena Nadar, employee of SIL was the proprietor of Elim Traders (Elim). SIL stated that the payments to Elim have been made against supply of raw materials by Elim to SIL. Reena Nadar, in her statement dated November 03, 2015 has stated that Elim Traders had no operations/activities, whatsoever since its formation and that the firm existed only on paper and that too only in bank records. A sum of Rs. 0.84 crore was further transferred by Elim to two connected entities viz., Shree Bhagwati International & Shalom Fashion (claimed by SIL to be its customers), who in turn transferred the said funds to SIL on the same day, viz. March 28, 2011. All these entities did not have any business and/or commercial activities and existed only on paper. The indicated purpose for transfer of funds to these entities was a farce.

h) An amount of Rs. Rs. 0.61 crore was transferred by SIL to RJ Traders ("RJ") from the IPO proceeds. Edwin Joseph, employee of SIL-Manager Corporate Planning and husband of Reena Nadar, was the proprietor of RJ Traders. SIL stated that the payments to RJ had been made against supply of raw materials by RJ Traders to SIL. However, Edwin Joseph, in his recorded statement has stated that he was not aware of the activities of RJ Traders and that it was opened as per the instruction of Shri Murugan M Thevar and Deepak Shenoy. It was observed that the referred amount of Rs. 0.61 crore transferred by SIL to RJ was further transferred by RJ to two connected entities viz., Addon Exports ("Addon") & Shalom Fashion (claimed by SIL to be its customers) who in turn transferred the said funds to SIL on the same day, viz. March 28, 2011.

i) AR Fabrics was the proprietary firm of Ramesh Andy Thevar. He was part of Promoter group of SIL and the Brother-in-law of Murugan M Thevar, MD of SIL. Ramesh Andy Thevarin his statement has said that AR Fabrics existed only on paper with no operational activities since 2006. AR Fabrics was started as per the instructions of Murugan M Thevar, and the bank account of AR Fabrics was operated by Murugan M Thevar to whom he used to handover signed blank cheques. AR Fabrics, which was controlled by SIL did not have any genuine commercial activity and was used by it for the purpose of routing funds.

j) George Street London was a proprietorship firm of Stalin Muthappa who is an Employee of SIL. Late Kashi Muthappa, father of Stalin Muthappa, was a friend of Shri Paul Murugan, son of Murugan M Thevar, MD of SIL. Stalin Muthappa used to sign blank cheque books which were handed over to SIL. George Street London, which was controlled by SIL did not have any genuine commercial activity and was used by it for the purpose of routing funds.

k) Shree Bhagwati International was a proprietorship firm of Kamlesh Muthappa Nadar, Brother of Stalin Muthappa, the proprietor of George Street London. Paul Murugan, son of Murugan M Thevar, had told him to start a firm in the name of Shree Bhagwati International. Kamlesh Muthappa Nadar signed blank cheques which were handed over to SIL, without knowing the commercial activities of Shree Bhagwati International or the transactions in its accounts. Shree Bhagwati International had major transactions only with SIL and its suppliers/customers. Shree Bhagwati International, which was controlled by SIL did not have any genuine commercial activity and was used by it for the purpose of routing funds.

l) Addon Exports was a proprietorship firm of Valliammal Murugan M Thevar, wife of Murugan M Thevar, MD of SIL and part of promoter group of SIL. In her recorded statement, she has stated that she was not aware of the activities of Addon Exports as the activities were handled by her husband, Murugan M Thevar, MD of SIL. Addon Exports had major transactions only with SIL and entities related to SIL, viz. Elim Traders, Shalom Fashion & RJ Traders, during the period January 01, 2011 to December 31, 2011. Addon Exports, which was controlled by SIL did not have any genuine commercial activity and was used by it for the purpose of routing funds.

m) Shalom Fashion was a proprietorship firm of Shri Santosh Vishnu Ingle (pre-IPO allottee of 1,87,500 shares of SIL as well as Proprietor of S M Construction - Supplier to SIL). In his statement, he stated that he had signed blank cheques in the name of Shalom Fashion which were handed over to Murugan M Thevar and that he was neither a supplier/buyer to/from SIL. Shalom Fashion had major transactions only with SIL and entities related to SIL, viz. Elim, Addon & RJ, during the period January 01, 2011 to December 31, 2011. Shalom Fashion, which was controlled by SIL did not have any genuine commercial activity and was used by it for the purpose of routing funds.

c) The details as stated herein above are tabulated hereunder:

Table No. 8

Proprietorship Concern	**Proprietor**
Addon Exports	Valliamal Murugan M Thevar
Shalom Fashion/SM Construction	Santosh Vishnu Ingle
AR Fabrics	Ramesh Andy Thevar

Proprietorship Concern	Proprietor
Elim Traders	E Reena Nadar
RJ Traders	Y Edwin Joseph
Shree Bhagwati International	Kamlesh Muthappa Nadar
George Street London	Stalin Muthappa

D. Relevant submissions of the Noticees summarized below: -

13. **Noticee No. 1, Sudar Industries Limited in his Reply dated December 10, 2018 has inter alia submitted the following:**
    a) *That the company, viz Sudar Industries Limited, be ordered and directed to be wound up under the direction of Hon'ble High Court of Bombay order dated July 20, 2018 (Ordinary Original Civil Jurisdiction, Company Petition No. 446 of 2016) as per the section 446 of Companies Act, 1956 (reiterated in the amended Companies Act, 2013 under section 279).*
    b) *Accordingly, Noticee submitted that SEBI SCN should be disposed off. For this purpose, Noticee placed reliance on varipus adjudication order passed by SEBI which are mentioned below:*
        a) *WTM Order in the matter of Avon Corporation Limited, dated September 05, 2017 bearing reference no. WTM/SR/EFD/61/09/2017.*
        b) *Adjudication Order in respect of M/s Omnitech Infosolutions Ltd, dated June 16, 2017, bearing reference no. RA/DPS/87/2017.*
        c) *Adjudication order in respect of Parasrampuria Industries Limited, dated Nov 10, 2017, bearing reference no. EAD-2/DSR/VS/855/2017.*
        d) *Adjudication Order in respect of M/s Shivalik Loha Mills Limited dated Feb 27, 2015, bearing reference no. JJ/AK/AO–32/2015.*

14. **Noticee No. 2 Murugan M Thevar**

    Noticee No. 2 in his Reply dated October 26, 2021 has inter alia submitted the following:

    a) *It is submitted that your goodself has not mentioned in the SCN that how the Noticee had failed to make essential disclosures while executing the transactions. Your goodself in the SCN has alleged that the Noticee had failed to make the required disclosures which was expected from it, however, it has not been mentioned in the SCN that what should have been done in addition to making those disclosures by the Notice. Also, there is no independent inquiry conducted by SEBI. Therefore, SCN is completely vague. For this purpose Noticee placed reliance on Swaranganga Trading vs Adjudicating Officer, SEBI (Appeal No 74 of 2009), Gorkha Security Services vs Government (NCT of Delhi), (2014) 9 SCC 105, M.G. Capital Services Limited vs SEBI (Appeal No. 62/2012) dated July 31, 2012, Food Corporation of India vs State of Punjab (2001) 1 SCC 291.*

b) *There is an inordinate delay in issuing the SCN as the Company came out with an IPO in 2011 while the SCN has been issued in 2017, more than 6 years after the IPO. Conveniently painting everyone in the same picture including the Noticee. For this purpose Noiticee relied on Libord Finance Limited vs SEBI, 2008 86 SCL 72 SAT, HB stockholding Limited vs SEBI.*

c) *That Noticee has been roped on the basis of mere surmises and conjectures and there is absolutely no involvement of Noticee in any siphoning of funds or misstatement in the prospectus. The SCN being issued under Section 15A (b) and 15 HA of the SEBI Act, 1992, there is no scope for any presumptions or assumptions, and allegations can be levied only on the basis of concrete material. For this purpose reliance is placed on Sameer C Arora vs SEBI (order dated October 15, 2004 in Appeal No. 83/2000), Union of India vs Chaturbhai M Patel (1976) 1 SCC 747.*

d) *That Noticee would request a cross examination of Mr. B. Ravishankar Pai, Mr. Deepak Shenoy, Mr. Edwin Joseph, Ms. Reena Nadar, Mr. Santosh Ingle, Mr. Ramesh Andy Thevar, Mr. Stalin Muthappa, Mr. Kamlesh Muthappa Nadar, Mrs. Valliammal Murugan Thevar which forms a significant part of the allegations against the Noticee. In case cross-examination is not provided, SEBI is estopped from relying on the statement on record by these entities. For this purpose, reliance is placed on Bharat Jayantilal patel vs SEBI (Appeal No. 126 of 2010) and SEBI vs PWC (Appeal No. 6003-6004/12)*

e) *With reference to Para 6.4.3 and Para 6.4.4 of the SCN, it is submitted that the transfer of Rs 23.5 Crore to Regent Capital Private Limited is a false allegation. The transfer for a period of 12 months was in accordance with the objects of the issue which provided for interim use of funds pending utilization for the purpose stated in the IPO in the Prospectus of SIL. For this purpose, reliance has been placed on the Hon'ble SAT order Mohandas Shenoy Adige vs SEBI in appeal No. 479/2020 and P.G. Electroplast Limited vs SEBI in Appeal No. 144 of 2014 order dated August 30, 2016.*

f) *That loan repayment started from within a period of 1 month from the date on which the loan was granted and within a period of 6 months, Rs. 11.13 Crore i.e., almost 50% of the loaned amount was repaid. It is done according to the ICD agreement. Further, the Company was in strong financial condition when it disbursed the loan amount, but subsequently the financial condition deteriorated due to which it became difficult to initiate recovery proceedings.*

g) *That SCN failed to establish any connection wrt Noticee with the RCPL. Also, ICDs were squarely covered within the object of issue and clearly mentioned in the prospectus.*

h) That meeting working capital requirement was one of the objects of the issue and for the said purpose Rs 27.30 Crore were permitted to be deployed. In line with Para 7.2 and 7.4 of the said SCN, from the IPO proceeds, Rs. 19.50 Crore were transferred to PFSPL in two tranches of Rs 10 Crore and Rs 9.50 Crore towards the repayment of ICDs taken prior to IPO. This was done in pursuance to meet the working capital requirement which was one of the objects of the issue.

i) That opening of fixed deposit with Shamrao Vithal Co-Operative Bank Limited was in accordance with the objects of the issue. It must be noted that fixed deposit was only for a short period of 91 days.

j) That Rs. 6 Crore was transferred to Mr. B. Ravishankar Pai ("Noticce No 18") on March 23, 2011 for undertaking a land deal as per the objects of the issue i.e. expansion of existing apparel unit. However, due to non-fulfillment of land deal the amount was received back by the company. Further, a board meeting was held which authorized the aforementioned transaction of Rs. 6.25 Crore.

k) That the IPO proceeds were utilized as per the objects of the issue as subsequent to non-fulfillment of land deal and consequent return of money, the same was used for purchasing another piece of land and for construction of worker quarters in accordance with the objects of the issue.

l) In parallel proceedings WTM Order dated April 20, 2021 statement of B. Ravishankar Pai, Edwin Joseph, Mrs. Reena Nadar, Santosh Ingle, Ramesh Andy Thevar, Stalin Muthappa, Kamlesh Muthappa, Valliammal Murugan Thevar *have already been was retracted.*

m) that Manan Trading Co. ("MTC") and Girish Kumar Ramanlal Choksi ("GKRC") were the suppliers of SIL even prior to SIL came out with IPO. Further, the payments made to these entities were according to the objects of the issue i.e. meeting working capital expenses. Accordingly, it is denied that SIL by transferring the amount of Rs. 4.04 Crore to MTC and GKRC has deviated from the objects of the issue.

n) that the transfers made by the Company to Fulford Sales P Limited, SM Mercantiles P Limited, Deeksha Marketing P Limited and Navsari Commodities P Limited were made towards the repayment of ICDs availed to meet the Issue related expenses.

o) That an amount of Rs. 6.16 Crore from the IPO proceeds were reserved for the purpose of "Meeting the Issue Expenses". Out of which the amount of ICDs repaid to the said 4 entities being Rs. 4.04 Crore is well within the amount reserved.

p) That RJ Traders was one of the suppliers of fabrics to SIL. The payment of Rs. 0.61 Crore to RJ Traders was towards the raw material i.e. fabrics supplied by it.

Since, meeting working capital requirements was one of the objects of the issue, the aforementioned payment to RJ Traders for supply of fabrics was in consonance with the objects of the issue.

q) *That Elim Traders was one of the suppliers of fabrics i.e. raw material to SIL. The payments of Rs. 0.84 Crore to Elim Traders was towards fabrics supplied by Elim to SIL. The aforementioned payment was in accordance with the objects of the issue being meeting working capital requirements; hence, it is denied that the same was in deviation from the objects of the issue.*

r) *That SM Construction was one of the constructors for the Company. SIL in accordance with one of its objects of the issue i.e. expansion of the existing apparel manufacturing unit engaged SM Construction for undertaking the construction work. Accordingly, the amount of Rs. 1 Crore was transferred to SM Construction for the construction services provided by it which was in accordance with the objects of the issue.*

s) *AR Fabrics was the supplier of fabric to SIL even prior to the IPO. The fabrics supplied by AR Fabrics were in the nature of raw materials for SIL. AR Fabrics used to raise invoices on the basis of fabrics supplied to SIL and accordingly there were genuine business transactions between AR Fabrics and SIL. Hence, it is denied that AR Fabrics was controlled by SIL or was used for any violative purposes.*

t) *The Noticee is accused of not disclosing transactions with Mr. Ramesh Andy Thevar as related party transaction in in the Company's Prospectus. It is alleged on the basis of factors : (i) Mr. Ramesh held shares in the Company (ii) Mr. Ramesh was brother in law of the Noticee (iii) the address of Mr. Ramesh was same as the Company (iv)the introducer of Mr. Ramesh bank account was the auditor of the Company.(v) Mr. Ramesh admitted that the business of AR fabric controlled by Noticee The same is incorrect factual position as the factors mentioned by SEBI does not constitute sufficient reason to categorize these transactions as related party transaction.*

u) *That Noticee is not aware about the statements made by Mr. Stalin Muthappa. Further, the Noticee strongly denies that Mr. Stalin used to sign blank cheque books which were handed over to SIL.*

v) *That he is not aware about the alleged fact that Mr. Santosh Ingle was the introducer to the account of George Street London as it is their personal transaction.*

w) *The Noticee is accused of not disclosing transactions with Stalin Muthappa as a related party transaction in the Company's Prospectus. (i) Mr. Stalin was an* *employee of SIL, (ii) Mr. Santosh was intoducer to his bank account (iii) major transaction of Mr Stalin were with the Company (iv) Mr. Stalin admitted that business of George Street London controlled by the Company. However, the same is incorrect factual position as the factors mentioned by SEBI does not constitute sufficient reason to categorize these transactions as related party transaction.*

x) *That Noticee is not aware about the statements made by Mr. Kamlesh Muthappa proprietor of Shree Bhagwati International ("SB"). Further, the Noticee strongly denies that Paul Murugan, son of Noticee, told Mr. Kamlesh to start a firm in the name of SB and that Mr. Kamlesh signed blank cheques which were handed over to SIL. Further, with regard to the statement made by Mr. Kamlesh that he was unaware of the commercial activities of SB or the transactions in its accounts, Noticee submitted that as far as the transactions of SB with SIL are concerned, it is submitted that Mr. Kamlesh was well aware of the commercial activities of SB and the transactions taking place in SB's accounts.*

y) *The Noticee is accused of not disclosing transactions with Stalin Muthappa as a related party transaction in the Company's Prospectus. The same is incorrect factual position as the factors mentioned by SEBI does not constitute sufficient reason to categorize these transactions as related party transaction*

z) *That Noticee is not aware and clearly denied the the statements made by Mrs. Valliammal Murugan Thevar, proprietor of Addon. Further, it is clearly mentioned in the prospectus as well in the risk chapter that Addon is a major customer and any loss of major customer will affect the business. Accordingly, complete disclosures were made in the Prospectus.*

aa) *Noticee denies SEBl's allegation that the entity Addon was controlled by SIL for the purpose of routing funds and that it did not have any genuine commercial activity.*

bb) *That Noticee is not aware and denies the statements made by Mr. Santosh that he signed blank cheques in the name of Shalom and handed them over to the Noticee and that he was neither the supplier nor was the buyer to/from SIL proprietor of Shalom Fashion. SIL used to supply garments to Shalom even prior to IPO. The same was also reflected in the prospectus dated March 03, 2011. Further, the allegation that transactions with Shalom and SM Construction were not disclosed as related party transaction is baseless as they are not related parties as per the provisions of Companies Act, 1956. Further, it is clearly mentioned in the prospectus as well in the risk chapter that Shalom is a major customer and any loss of major customer will affect the business. Accordingly, complete disclosures were made in the Prospectus.*

cc) *The Noticee is accused of not disclosing transactions with Santosh Ingle as a related party transaction in the Company's Prospectus. The same is incorrect factual position as the factors mentioned by SEBI does not constitute sufficient reason to categorize these transactions as related party transaction.*

dd) *In reference to Paragraph No. 28 and 29 of the SCN, with regard to grading by CRISIL, this clearly shows that the Company had made full and true disclosures in the Prospectus and that the investors were given a fair and complete disclosures so as to enable the applicants to take an informed investment decision.*

ee) *That apart from the statutory auditor of the Company, the Company is not concerned with any transaction held between Suresh Hegde & Co. and the other entities. Suresh Hegde & Co. was an Independent statutory auditor of the Company and we deny that Mr. Suresh Hegde enjoyed a personal relationship with SIL.*

ff) *It is submitted that when Suresh Hegde & Co. and another auditor i.e., J.S. Uberoi & Co. has not found any misstatement while auditing and e-auditing the financial statement of SIL, it cannot reasonable be alleged that the Noticee have concocted the sales figures in collusion with entities related to SIL.*

gg) *That it is the responsibility of the Merchant Banker to ensure adequate disclosure in the prospectus. Noticee states that Merchant Banker had examined and verified all the documents with a view to compliance with securities laws. That once the merchant banker is appointed, the Noticee has done his diligence and taken reasonable care and therefore cannot be expected to understand the technicalities of the various disclosure requirements which were the roles of the Merchant Banker.*

hh) *It is a matter of record that the Company always had an identified person as the Managing Director or Chairman. Nowhere does the SCN indicate any evidence of a personal gain/benefit accruing to him.*

15. **Noticee No. 3, Deepak Shenoy (Letter Dated December 21, 2021 and letter dated October 26, 2021)**

a) *Noticee appointed as Non-Executive Independent Director on January 20, 2010. Subsequently, Noticee appointed designated as WTD in SIL on Spetember 27, 2013 wherein Noticee served till March 31, 2015. Thereupon, Noticee appointed as the Chief Operating Officer of SIL on April 01, 2015. Therefore, for the purpose of investigation period Noticee was Non-executive Independent Director. The SCN made allegation only on the basis that Noticees had the positon of Non-Executive Independent Director of SIL. In this regard Noticee submitted that SCN failed to show any physical involvement or any knowledge of the alleged misdeed* *of the Noticee. Noticee submitted that if a director of company who was not in charge of and was not responsible for conduct of Company's business at the time of alleged violation occurred shall not be liable. Whereas a person who does not hold any position or designation in a Company, may be liable if he meets the main criteria of being charge of and accountable for conduct of Company's business at the relevant period. For this purpose, Noticee placed reliance on Inventure Growth and Securities Ltd. vs SEBI (Appeal No. 361 of 2018) and Prafull Anubhai Shah vs SEBI (Appeal No. 389 of 2021).*

b) *SImilarily, Noticee No. 5 and Noticee No. 6 are also a non-executive independent director which had been appointed on July 08, 2010 and July 16, 2010 respectively. And SCN failed to alleged that Noticee No. 5 and Noticee No. 6 were involved with any of the violation. They have no association with any of the transactions involved with SIL or any transaction where SIL was involved with any other entity. Therefore, allegation against Noticee No. 3, Noticee No. 5 and Noticee No. 6 are baseless since they did not have any knowledge of the alleged misdeed or no physical involvement.*

c) *There is an inordinate delay in issuing the SCN as the Company came out with an IPO in 2011 while the SCN has been issued in 2017, more than 6 years after the IPO. Conveniently painting everyone in the same picture including the Noticee. In this regard Noticee placed reliance on Libord Finance Limited vs SEBI, 2008 86 SCL 72 SAT, HB stockholding Limited vs SEBI.*

d) *Noticee submitted that SEBI cannot question the business decision taken more than 6 years back. For this purpose Noticee placed reliance on WTM(SEBI) order dated January 11, 2016 in the matter of Taneja Aerospace and Aviation Ltd.*

e) *It is submitted that your goodself has not mentioned in the SCN that how the Noticee had failed to make essential disclosures while executing the transactions. Your goodself in the SCN has alleged that the Noticee had failed to make the required disclosures which was expected from it, however, it has not been mentioned in the SCN that what should have been done in addition to making those disclosures by the Noticee. Therefore, the Noticee cannot be charged for not making appropriate disclosures in respect to transactions executed when your goodself has not even provided as to how precisely the Noticee has failed to make relevant disclosures*

f) *That Noticee would request a cross examination of Mr. Edwin Joseph/RJ Traders, Ms. Reena Nadar/Elim Traders, Mr. Santosh Ingle/SM Constructions which forms a significant part of the allegations against the Noticee. In case cross-examination is not provided, SEBI is estopped from relying on the statement on record by these entities.*

g) *In respect to the financial transactions which required the involvement of the Noticee, it is submitted that the transfer of Rs 23.5 crore to RCPL is of false allegation. It is submitted that the ICDs of Rs. 23.5 crore for a period of 12 months with RCPL was in accordance with the objects of an issue which provided for interim use of funds pending utilization for the purpose stated in the IPO in the Prospectus of SIL.*

h) *It is submitted that in respect to transaction of Rs 19.50 crore to PFSPL, it is stated that the transaction was in consonance with the repayment of the ICD availed from the PFSPL prior to the IPO. the Noticee further submits that the internal accruals were in consonance with the ordinary course of business which was duly certified by the Independent Statutory Auditor.*

i) *It is submitted that during the Investigation Period, the Noticee was the Non-Executive Independent Director of the Company and the SCN does not point out any specific acts/omission of the Noticee in relation to the alleged violations against him.*

j) *Noticee submitted that Hon'ble Andhra High Court, in the case of G. Vijayalakshmi v. SEBI has held that the definition of the "officer who is in default" implies that the liability of ordinary directors would arise only in respect of a company which has no managing director or a whole time director or a manager and where particular directors are not specified to be liable by the company. Applying this principle in the case at hand would clearly show that since the Company had its Managing Director who was responsible for the management of the Company, the Noticee cannot be held liable.*

k) *In reply to Para 11 of the SCN, it is submitted that with respect to opening of the RJ Traders proprietorship as per the instructions of the Noticee, it is submitted that the Noticee is not aware of the statements made by Shri Edwin Josep. Without prejudice to the above fact, Noticee strongly denies that Mr. Edwin opened a proprietorship as per the instruction of the Noticee.*

l) *It is further submitted that the Noticee was neither the person in charge and nor responsible for the conduct of the affairs of the company. It is further submitted that in the context a person 'in-charge' must mean that the person should be in over-all control of the day-to-day business of the company or firm. Therefore, it is further submitted that the SCN has failed in stating the fact that the Noticee was in day to day in charge of the operations of the company or RJ Traders.*

m) *In reply to Para 12 of the SCN, it is submitted with respect to preparing and signing of the bills/invoices as per the instructions of the Noticee, it is further submitted that the Noticee is not aware of the statements made by Ms. Reena Nadar.*

Without prejudice to the above fact, Noticee strongly denies that Ms. Reena signed all the invoices as per the instruction of the Noticee.

n) *In reply to Para 13.6, 13.8, and 13.10 of the SCN with respect to the alleged violation in the SCN in involvement with SM Construction/Santosh Ingle who was the proprietor of the firm, Noticee submits that he is not aware of the statements made by Mr. Santosh Ingle. Without prejudice to the above fact, Noticee strongly denies that Mr. Santosh used to sign blank cheque books which were handed over to the Noticee.*

o) *It is submitted that from the bare perusal of the WTM Order dated April 20, 2021, the recorded statements of other entities have been retracted. Therefore, there is no basis of the allegations mentioned in the SCN when the statements have already been retracted.*

p) *The Noticee submits that liability depends on the role one plays in the affairs of a Company and not on the designation or status, therefore the Noticee being a Non-Executive Independent Director should not be held liable for the allegations stated in the SCN.*

q) *The close analysis of the facts forming the basis of the allegations against the Noticee in the present case would clearly reveal that SEBI has failed to establish any failure on the part of the Noticee to stand upright in his duty to exercise due care and diligence. In light of the facts in the present case would indicate that the Internal Auditor as well as the Merchant Banker has found no discrepancies in relation to the issuance of the offer document and hence has not raised any red flags for the same.*

r) *Noticee while placing reliance on Sat order Sayanti Sen vs. SEBI dated August, 09, 2019 and Supreme Court Order SEBI vs. Gaurav Varshney, (2016) 14 SCC 430 submitted that in order to fix any liability on any of the directors of the company, the knowledge of the wrongdoing with the said person is essential to be proved, which in the present case SEBI has failed to illustrate and hence the allegations of the alleged wrongdoing against the Noficee warrants to fall and in such circumstances, if there is no basis/ justificaüon for passing any directions or imposing any penalty against the Noticee as SEBI in the present case has also failed to establish any purpose, motive and intention on the part of the Noticee in alleged misstatements and mis-utilization of the IPO proceeds of SIL.*

s) *while such serious charges have been alleged against the Noticee, the SCN does not allege that he was in charge of SIL. Therefore, the charge against the Noticee is wholly unsustainable*

t) *It is submitted that the Noticee was appointed as the Non-Executive Independent Director on January 20, 2010. Further, while the Noticee was a Non-Executive Independent Director, the document and materials represented before him for the advisory or reviewing purposes, it is stated that those documents were sophisticated and technical documents yet very over simplified where the misdeeds by management would not sufficiently be reflected. The Noticee has an obligation of providing advisory and consultancy services over the matters and not dealing with the authenticity of the documents.*

u) *It is submitted that just because the Noticee was the signatory of the offer document, the Noticee cannot be held liable for the alleged violations in the SCN.*

v) *In addition to the above, it is submitted that there has been dual audit conducted for the purpose of the IPO wherein the restated financial statements were mentioned I the prospectus implying dual level of scrutiny.*

w) *In addition to the above submissions, it is further submitted that neither any bank statements nor any invoices in respect to the transactions taken place between the entities and SIL were presented to the Noticee for verification purposes.*

x) *In respect the alleged violations in the SCN regarding the related party transactions, it is submitted that the Noticee was neither aware of the entities which were involved with the SIL nor was informed of any related party transactions.*

y) *In respect to concocting the sale figures of the company for the financial year 2009-10, it is submitted that the Noticee was appointed in the month of Janaury of 2010 and the approval of the annual financial statement was already undergone by the members by the SIL prior to the joining of the Noticee. It is also submitted that no red flags were raised in respect to the approved annual financial statement; therefore, it would be extraneous for the Noticee to raise the issue on such point. Further, the Noticee submits that he should not be held liable for concocting the sale figures for the financial year 2009-10 even when Noticee was not involved in the process of evaluating the sale figures.*

16. Noticee 5, Shridhar Shetty, *vide* letter dated October 26, 2021 has inter alia submitted the following:

a) *Considering the allegations and the basis of the alleged violations as mentioned in the SCN, it is submitted that during the Investigation Period, the Noticee was the Non-Executive Independent Director of the Company and the SCN does not point out any specific acts/omission of the Noticee in relation to the alleged violations against him.*

b) It is also submitted that SEBI cannot question the business decisions taken more than 6 years back, for which the Noticee is not even required to maintain the relevant documents.

c) Since the charges are vague and it has not been shown by SEBI as to how the charges have been levelled, the said SCN is vague.

d) It is imperative that an authority must state in the SCN about the acts of the Noticee and how the acts of the Noticee has resulted in the violations of law stated in the SCN as per the principles of natural justice. The same is required so that Noticee can give his proper and effective defense. Hence, the SCN in the present case is invalid in the eyes of law and must be struck down / quashed

e) It is submitted that the Noticee was appointed as the Non-Executive Independent Director on July 08, 2010 till July 01, 2013. It is further submitted that the Noticee was appointed as the member of the Audit Committee which was approved by the Board of Directors on July 16, 2010. Further, while the Noticee was a Non-Executive Independent Director and the member of the Audit Committee, the document and materials represented for review were sophisticated and technical document yet in very over simplified manner where the misdeeds by management would not sufficiently reflected. The Noticee has an obligation of reviewing the documents and not dealing with the authenticity of the documents.

f) That Noticee was appointed in July 2010, by that time major part of due diligence requirement for the IPO was already undergoing. As Noticee was new to the company he was not a part of any significant entity.

g) It is submitted that just because the Noticee was the signatory of the offer document, the Noticee cannot be held liable for the alleged violations in the SCN. It is further submitted that apart from the Noticee, the entities involved in the process such as Auditors and Merchant Banker already undertook the responsibility performing the due diligence required in the process of issuing an offer document, therefore, the Noticee as a Non-Executive Independent Director had limited in the above-mentioned process should not be held liable for the actions of the rest of the Noticees especially when no role of the Noticee is illustrated by the SEBI in the SCN and conversely no allegation regarding lack of due diligence have been made.

h) In addition to the above submissions, it is further submitted that neither any bank statements nor any invoices in respect to the transactions taken place between the entities and SIL were presented to the Noticee for verification purposes.

i) In respect the alleged violations in the SCN regarding the related party transactions, it is submitted that the Noticee was neither aware of the entities which were involved with the SIL nor was informed of any related party transactions.

j) In respect to concocting the sale figures of the company for the financial year 2009-10, it is submitted that the Noticee was appointed in the month of July of 2010 and the approval of the annual financial statement was already undergone by the members by the SIL prior to the joining of the Noticee. It is also submitted that no red flags were raised in respect to the approved annual financial statement; therefore, it would be extraneous for the Noticee to raise the issue on such point.

k) It is further submitted that the Noticee was neither the person in charge and nor responsible for the conduct of the affairs of the company. It is further submitted that in the context a person 'in-charge' must mean that the person should be in over-all control of the day to day business of the company or firm. Therefore, it is submitted that Noticee denies his involvement with anyone else as the Noticee was not making day to day decisions.

l) It is further alleged in the SCN that the Noticee as a Non-Executive Independent Director was involved with the entities in routing of IPO proceeds, therefore, it is submitted that due to the distinction between the board of a company and its management, there is no formal or informal way for a Non-Executive Independent Directors like the Noticee to be in connection/contact with the operational managers/management of the company.

m) The close analysis of the facts forming the basis of the allegations against the Noticee in the present case would clearly reveal that SEBI has failed to establish any failure on the part of the Noticee to stand upright in his duty to exercise due care and diligence. In light of the facts in the present case would indicate that the Internal Auditor as well as the Merchant Banker has found no discrepancies in relation to the issuance of the offer document and hence has not raised any red flags for the same

n) It is further submitted that the Noticee was neither Promoter or Executive or Whole Time Director of SIL but was Non-Executive Independent Directors and was not involved in the day-to-day management of SIL.

o) Taking into consideration the above dictum of the Hon'ble Tribunal in Sayanti Sen (supra) and by Hon'ble Supreme Court in SEBI vs. Gaurav Varshney (supra), it is submitted that while MD of SIL was the one who was involved in the day to day activities of the Company and took the decisions for SIL, SEBI has out rightly and unduly alleged wrongdoing on the Noticee.

p) It is brought to your notice that since no knowledge of any alleged misdeeds or any physical involvement of the Noticee had been shown with respect to the subject matter, the only basis of the allegation against the Noticee is based on his position as Non-Executive Independent Directors of SIL and the alleged misdeeds of the management of SIL during the Investigation Period. It is brought to the notice that while the allegations have been levelled considering the Noticee to be an Independent Director of SIL, the same does not attracts the provisions of Section 27 of SEBI Act, 1992 and there is no charging section under which the said allegations against the Noticee might have been levelled and hence the captioned SCN should be discarded on this ground also.

17. Noticee No. 6, Venkatraman Gopal Nadar, vide letter dated October 26, 2021 has inter alia submitted the following:
    a) *Considering the allegations and the basis of the alleged violations as mentioned in the SCN, it is submitted that during the Investigation Period, the Noticee was the Non Executive Independent Director of the Company and the SCN does not point out any specific acts/omission of the Noticee in relation to the alleged violations against him.*
    b) *It is also submitted that SEBI cannot question the business decisions taken more than 6 years back, for which the Noticee is not even required to maintain the relevant documents.*
    c) *Since the charges are vague and it has not been shown by SEBI as to how the charges have been levelled, the said SCN is vague.*
    d) *It is imperative that an authority must state in the SCN about the acts of the Noticee and how the acts of the Noticee has resulted in the violations of law stated in the SCN as per the principles of natural justice. The same is required so that Noticee can give his proper and effective defense. Hence, the SCN in the present case is invalid in the eyes of law and must be struck down / quashed*
    e) *It is submitted that the Noticee was appointed as the Non-Executive Independent Director on July 16, 2010 till November 30, 2012. It is further submitted that the Noticee was appointed as the member of the Audit Committee which was approved by the Board of Directors on July 16, 2010. Further, while the Noticee was a Non-Executive Independent Director and the member of the Audit Committee, the document and materials represented for review were sophisticated and technical document yet in very over simplified manner where the misdeeds by management would not sufficiently reflected. The Noticee has an obligation of reviewing the documents and not dealing with the authenticity of the documents.*
    f) *That Noticee was appointed in July 2010, by that time mahor part of due diligence requirement for the IPO was already undergoing. As Noticee was new to the company he was not a part of any significant entity.*
    g) *It is submitted that just because the Noticee was the signatory of the offer document, the Noticee cannot be held liable for the alleged violations in the SCN. It is further submitted that apart from the Noticee, the entities involved in the process such as Auditors and Merchant Banker already undertook the responsibility performing the due diligence required in the process of issuing an offer document, therefore, the Noticee as a Non-Executive Independent Director had limited in the above-mentioned process should not be held liable for the actions of the rest of the Noticees especially when no role of the Noticee is illustrated by the SEBI in the SCN and conversely no allegation regarding lack of due diligence have been made.*
    h) *In addition to the above submissions, it is further submitted that neither any bank statements nor any invoices in respect to the transactions taken place between the entities and SIL were presented to the Noticee for verification purposes.*

i) In respect the alleged violations in the SCN regarding the related party transactions, it is submitted that the Noticee was neither aware of the entities which were involved with the SIL nor was informed of any related party transactions.

j) In respect to concocting the sale figures of the company for the financial year 2009-10, it is submitted that the Noticee was appointed in the month of July of 2010 and the approval of the annual financial statement was already undergone by the members by the SIL prior to the joining of the Noticee. It is also submitted that no red flags were raised in respect to the approved annual financial statement; therefore, it would be extraneous for the Noticee to raise the issue on such point.

k) It is further submitted that the Noticee was neither the person in charge and nor responsible for the conduct of the affairs of the company. It is further submitted that in the context a person 'in-charge' must mean that the person should be in over-all control of the day to day business of the company or firm. Therefore, it is submitted that Noticee denies his involvement with anyone else as the Noticee was not making day to day decisions.

l) It is further alleged in the SCN that the Noticee as a Non-Executive Independent Director was involved with the entities in routing of IPO proceeds, therefore, it is submitted that due to the distinction between the board of a company and its management, there is no formal or informal way for a Non-Executive Independent Directors like the Noticee to be in connection/contact with the operational managers/management of the company.

m) The close analysis of the facts forming the basis of the allegations against the Noticee in the present case would clearly reveal that SEBI has failed to establish any failure on the part of the Noticee to stand upright in his duty to exercise due care and diligence. In light of the facts in the present case would indicate that the Internal Auditor as well as the Merchant Banker has found no discrepancies in relation to the issuance of the offer document and hence has not raised any red flags for the same

n) It is further submitted that the Noticee was neither Promoter or Executive or Whole Time Director of SIL but was Non-Executive Independent Directors and was not involved in the day-to-day management of SIL.

o) Taking into consideration the above dictum of the Hon'ble Tribunal in Sayanti Sen (supra) and by Hon'ble Supreme Court in SEBI vs. Gaurav Varshney (supra), it is submitted that while MD of SIL was the one who was involved in the day to day activities of the Company and took the decisions for SIL, SEBI has out rightly and unduly alleged wrongdoing on the Noticee.

p) *It is brought to your notice that since no knowledge of any alleged misdeeds or any physical involvement of the Noticee had been shown with respect to the subject matter, the only basis of the allegation against the Noticee is based on his position as Non-Executive Independent Directors of SIL and the alleged misdeeds of the management of SIL during the Investigation Period. It is brought to the notice that while the allegations have been levelled considering the Noticee to be an Independent Director of SIL, the same does not attracts the provisions of Section 27 of SEBI Act, 1992 and there is no charging section under which the said allegations against the Noticee might have been levelled and hence the captioned SCN should be discarded on this ground also.*

18. **Noticee 8, Sapna Karmokar in his Reply dated December 10, 2018 has inter alia submitted the following:**

a) *Noticee No. 08 vide her submissions dated February 08, 2018, August 20, 2021 and submitted that She had cleared Company Secretary exams in the month of February 2010 and got enrolled as a Company Secretary on July 12, 2010 and joined as the Company Secretary and Compliance Officer of the Company on July 14, 2010 at the age of 25.*

b) *When she had joined, the process of IPO under investigation already been initiated and substantial part of the work was done the Merchant Bankers of the said IPO, Ashika Capital Limited and a reputed firm of Company Secretaries, namely, M/s Deep Shukla and Associates, who were involved in the preparation of documents, information and compliances required for the IPO process. Except the selected information shared with her by the promoter, Mr. Murugan Thever. She was neither aware about any other information nor was she aware of any information as she did not have any access to the same. the Noticee being a fresher had a negligible role in the IPO of SIL.*

c) *Noticee contended that since the concerned parties willfully withheld the information as a disclosure, it was impossible for her to investigate whether the directors withheld the information from her did not disclose any information to her that they were under obligation to disclose. Though, she was mentioned as the KMP of the Company she was not involved in the key decision or meetings. She was only a signatory to documents which the directors/promoters asked her to sign as the Company Secretary of the Company.*

d) *The Noticee had signed the prospectus in her capacity as Company Secretary as directed and not as a Director and not to verify the content of the Prospectus/offer document. Nothing was brought to the attention of the Noticee for her to inspect/apprehend/believe that there were alleged transactions with related suppliers/customers of SIL and/or alleged concocted sales figures and/or alleged mis-statements related to KMP and Customers and/or any fraudulent scheme/s.*

e) *Notice submitted that the request of the Noticee No. 8 for inspection of documents has been summarily rejected. For this purpose, reliance has been placed on various SAT order*
   a) *Securities and Exchange Board of India v/s Price Waterhouse & Co. and Others dated 10th January, 2017 passed in Civil Appeal Nos. 6003-6004 of 2012.*
   b) *Smitaben N. Shah v/s SEBI ((2010) SCC Online SAT 243.*
   c) *HB Stockholdings Limited v. SEBI, decision dated 27th August 2013, reported in Manu/SB/0039/2013*

f) *It is submitted that the present SCN dated 15th December 2017 has been issued in respect of an Initial Public Offer that took place between February 21, 2011 and 24 February 24, 2011. The aforesaid time period of almost 7 years between the IPO and issuance of the SCN clearly demonstrates the gross delay by SEBI in the present proceedings. The Noticee No. 8 having resigned many years ago and the IPO having taken place over a decade ago, is handicapped due to the lack of contemporaneous records that she would have had access to had there not been an inordinate delay in issuance of the SCN. In this regard Noticee placed reliance on various SAT orders they are as follow:*
   a) *Rakesh Kathothia & Ors. v/s SEBI (Appeal No. 7 of 2016) decided on 27th May, 2019.*
   b) *HB Stockholding Ltd. vs SEBI reported in Manu/SB/0039/2013.*
   c) *Libord Finance Ltd. vs. SEBI, decided by the Hon'ble Securities Tribunal on March 31, 2008.*
   d) *Khandwala Securities Limited vs. SEBI decided by the Hon'ble Securities Appellate Tribunal on September 7, 2012.*

g) *No specific allegation against the Noticee. The allegations appear to be predominantly against the company, namely, SIL as well as its promoters, certain directors, certain employees and others. There is no allegations in the SCN that the Noticee No. 8 was aware of the same and/or had the requisite knowledge and/or had the means to ascertain the same*

h) *While the SEBI Act, in Section 27 provides for vicarious liability of directors for acts of the company, the same would not be applicable in the facts and circumstances of the present proceedings in view of the fact that no offence has been committed.*

i) *Without prejudice to the aforesaid, it is also submitted that SEBI in the present case has not invoked Section 27 at all. As such it cannot contend the Noticee No. 8 is vicariously liable for the acts of the Company and on this ground alone the Show Cause Notice requires to be discharged.*

j) *The fundamental premise on the basis of which the alleged violations stated in paragraph 41 of SCN have been made effectively appears to be in respect of particular statements made in the prospectus. In this regard, it is apposite to note that the Noticee 8 is not a signatory to the declaration dated 3rd March 2011 annexed to the prospectus (Anx. P @ internal Pg. 249) as the declaration were made only by the Directors of the company. It is therefore submitted that the Noticee No. 8 having not made the declaration cannot be held liable for the veracity of any statements made therein.*

k) *In addition to the aforesaid, it would be pertinent to note that Section 60(1) of the then prevailing Companies Act, 1956 inter alia postulates the persons by whom the prospectus is to be signed. Crucially, the Section does not stipulate that a Company Secretary is required to sign the same.*

l) *Section 56(4) and Section 62 of the then prevailing Companies Act 1956 contain provisions for misstatements in prospectus, but do not fasten liability on a Company Page 18 of 32 Secretary. In fact, these provisions even contain stipulations for absolving of liability in the circumstances enumerated therein.*

m) *Furthermore, even Clause (2)(XVI((B)(1) of Part A of Schedule VIII of the ICDR Regulations postulates that the draft offer document (in case of issues other than fast track issues) and offer document shall be approved by the Board of Directors of the issuer and shall be signed by all directors, the Chief Executive Officer, i.e., the Managing Director or Manager within the meaning of the Companies Act, 1956 and the Chief Financial Officer, i.e., the whole-time finance director or any other person heading the finance function and discharging that function. No onus and/or obligation is cast upon the Company Secretary either to approve and/or sign the offer documents.*

n) *Without Prejudice to the aforesaid Noticee Submitted that insofar as the alleged failure to make related party disclosures, Noticee submitted that he had no knowledge or any means to ascertain that entities were related parties. Further, SCN failed to established that Noticee 8 was aware or had knowledge of the fact.*

o) *Noticee cannot be alleged as party to the misstatement the prospectus, when it is found that true and correct facts were suppressed from him.*

19. Suresh Hegde (Noticee 9), Suresh Hegde and Co (Noticee 10) has inter alia made the following written submissions in the matter vide letter dated 25 October 2021:

a) *That the SCN has entirely relied upon the assumption of personal relationships and the statement given by certain noticees regarding their business transaction with SIL. In the absence of any material on record and independent investigation/*

verification, the claims made in the SCN are unsustainable, without enquiring that we were the independent statutory auditors of SIL and all the work conducted was in a professional capacity. For this purpose Noticee placed reliance on Hon'ble Supreme Court Order in the case of Gorkha Security Services vs Govt (NCT of Delhi) (2014) 9 SCC 105 and Swaranganga Trading Private Ltd vs Adjudicating Officer SEBI(Appeal No. 74 of 2009). Further, Noticee relied on SAT orders viz in the matter of M.G. Capital Services Ltd vs SEBI Appeal No. 62/2012 and Food Corporation of India vs State of Punjab (2001) 1 SCC 291.

b) It is submitted that your good self has not mentioned in the SCN that how on the basis of professional relationships with certain entities established a personal relation in light of the fact that we were acting as an independent auditor. Further, violations based on the statements of certain entities are out rightly denied.

c) There is an inordinate delay in issuing the SCN as the Company came out with an IPO in 2011 while the SCN has been issued in 2017, more than 6 years after the IPO.

d) We submit that we have been roped in on the basis of mere surmises and conjectures and we have absolutely no involvement in the allegation stating connivance and collusion with entities related to SIU its promoters/ director having concocted false sales figures for the Financial years 2008-09 & 2009-10. In the instant case, where the SCN is issued under 15 HA of the SEBI Act, 1992, there is no scope for any presumptions or assumptions, and allegations can be levied only on the basis of concrete evidence. For this purpose, Noticee placed reliance on Hon'ble SAT order in Sameer C Arora vs SEBI (Order dated October 15 2004, in appeal No. 83/2000) and Hon'ble Supreme Court order in the case of Union of India vs Chaturbhai M Patel (1976) 1 SCC 747.

e) The only allegation against us is with respect to the alleged misstatement of sales figures for the financial year 2008-09 & 2009-10 in the prospected. In this regard, it is submitted that we have performed our role as statutory auditor based on the material and data made available to us, and certified the financials on the bonafide belief, and had no reason to question the data made available to us. Further, the said Financial Statement was examined by another auditor that is Uberoi & Co in their independent capacity without any relation to us, Further, the SCN has levelled no charges or any connection with related entities of SIL against J.S. Uberoi & Co. Also, they have re-audited the financial statement for the year ended on 31.10.10 and for the half-year ended 30.09.10.

f) That the allegation with respect to the issuance of certificate to Adson Exports, Shri Bhagwati Intentional, end RJ traders as well as filing of Income Tax return of Noticee No. 9, Noticee No. 10, and Noticee no. 2 were in due course of our professional services as a Charted Accountants.

g) *It is submitted that the SCN merely on the basis of a purported personal relationship of us with certain suppliers, has alleged that we have concocted false sales figures which have been misstated in the prospectus of the Company. This is absolutely false and vehemently denied.*

h) *It is further submitted that in order to make us, who are the Statutory Auditor, come under the four concerns of Section 12A and Regulation 3 and 4 of PFUTP Regulations, fraud has to be proved on the basis of evidence. In the present case, no shred of evidence to show that we had fabricated or falsified or fudged the books of account of SIL in collusion with the other entities related to SIL is provided.*

i) *It is the directors of the company who are primarily responsible for the preparation of the annual accounts and the information contained in them. The duty of safeguarding the assets of a company is primarily that of the management and the auditor is entitled to rely upon the safeguards and internal controls instituted by the management. We have performed our function as a statutory auditor in a bonafide and fairway. Further, it is a matter of record that we were not involved in the business of SIL nor we had any information with respect to its business transaction. As statutory auditors, we were only responsible to look into the financial data and documents provided by the management in order to provide our services. For this purpose, Noticee placed reliance on Adjudication Order in the matter of Fortis Healthcare Ltd, bearing reference number Order bearing no. Order/GR/KG/2021-22/13092.*

20. Noticee No.9 (Edwin Joseph), NoticeeNo.10 (Reena Nadar), NoticeeNo.11 (Valliammal M. Thevar), NoticeeNo.12 (B Ravishankar Pai), NoticeeNo.13 (Santosh Vishnu Ingle), NoticeeNo.14 (Ramesh Andy Thevar), NoticeeNo.15 (Stallin Muthappa), NoticeeNo.16 (Kamlesh M .Nadar), have filed there written submission *vide* letter dated October 26, 2021, the summary of written submission is summarized here:
    a) The said Noticees have by way of their replies made the following common submissions:
        a) The Show Cause Notice entirely relied on the statement of above mentioned Noticees that were made during the investigation, later on those statements were revoked through affidavit, as the same was coerced and SEBI has not conducted any Independent Investigation/verification. In the absence of any material on record and independent investigation/ verification, the claims made in the Notice are unsustainable.

b) There has been considerable delay in issuance of SCN to the Noticees. The IPO was in 2011 and the SCN has been issued only in 2017 i.e. after a period of almost 6 years.

c) Noticees through letter dated May 02, 2018 had requested an opportunity to cross examine Mr. Deepak Shenoy and Mr. Murugan Thevar but SEBI did not respond to the Noticees request

d) None of the Noticees from No. 9 to No.16 mentioned above are on the board of directors of Sudar neither they were the signatories to the prospectus nor they were

e) None of the Noticees from No. 9 to Noticee No.16 were signatories to financial results of Sudar.

f) Noticee No.9 to Noticee No.11 can never be considered to be in control or the directing mind behind driving the IPO or using the IPO funds for any purpose.

g) There has been complete failure in observing principles of natural justice and fair process including in conducting complete and fair investigation, painting every one with the same broad brush, lacunae in the SCN, right of cross-examination of every one including Co-Noticees, etc. This has been pleaded in various communications from the date of SCN and is a matter of record with SEBI which are not being repeated again herein.

21. **Noticee No.9 (Edwin Joseph)**

The said Noticee by way of the replies stated that:

a) Noticee No.9 was in control of the proprietorship concern named RJ Traders and was looking into its day-to-day affairs and was in business with SIL since 2010. All transactions that were done by the proprietorship were in due accordance of law and there was no irregularity of any kind whatsoever.

b) SEBI has only relied upon the coerced statements, later these statements were retracted through affidavit, but SEBI relied on these statements and no independent/investigation has been conducted by the SEBI and no evidence has been provided by the SEBI to substantiate the allegations. SEBI has at no point of time challenged the veracity of the retraction affidavit and hence it will be grossly illegal for SEBI to now rely on a statement that was retracted more than 3 years and 8 months ago.

c) Payment received by RJ Traders was towards the raw material supplied for which bill were issued. Copies of the invoices were submitted by the NoticeeNo.9.

d) Noticee No. 9 was neither a Key Managerial Personnel (“KMP”) of SIL nor he is related to the promoter or director of SIL, since the time he had joined SIL, his work profile in SIL was related to a variety of work like solving computer networking issues, handling printer-related issues

e) Noticee No.9 has neither received any personal benefit, nor is there any allegation of SEBI against NoticeeNo.9 of any personal gain.

f) *All the allegations against the NoticeeNo.9 are merely surmises and conjectures and the proceedings against the NoticeeNo.9 should be dropped immediately as there is no cause of action.*

22. **Noticee No. 10 (Reena Nadar)**

The said Noticee by way of the reply stated that:

g) *Noticee No.10 was in control of the proprietorship concern named Elim Traders and was looking into its day-to-day affairs and was in business with SIL since 2010. All transactions that were done by the proprietorship were in due accordance of law and there was no irregularity of any kind whatsoever.*

h) *SEBI has only relied upon the coerced statements, later these statements were retracted through affidavit, but SEBI relied on these statements and no independent/investigation has been conducted by the SEBI and no evidence has been provided by the SEBI to substantiate the allegations. SEBI has at no point of time challenged the veracity of the retraction affidavit and hence it will be grossly illegal for SEBI to now rely on a statement that was retracted more than 3 years and 8 months ago.*

i) *Payment received by Elim Traders was towards the raw material supplied for which bill were issued. Copies of the invoices were submitted by the NoticeeNo.10.*

j) *SEBI had alleged that Elim Trader does not have any business or commercial activities and transfer of funds are based on bogus transactions and false documents, prepared on the instruction or by Deepak Shenoy and Murugam M. Thevar. Noticee No. 10 states that Suresh Hedge & Co. was the Statutory Auditor of the SIL after IPO till 2014-2015. They must have had the access to all the previous financial statements, documents of transactions, and books of accounts of the company. The Statutory Auditor performs scrutiny and analysis of all the transactions and financial documents. Therefore, if the transfer of funds was farce and documents were false then the Statutory Auditor of SIL would had raised the flag of concern to the management of the Company or would have reported the same as a qualification in the financial statements but no such red flag was raised by him.*

k) *Noticee No.10 has neither received any personal benefit, nor is there any allegation of SEBI against Noticee No.10 of any personal gain.*

l) *All the allegations against the Noticee No.10 are merely surmises and conjectures and the proceedings against the Noticee No.10 should be dropped immediately as there is no cause of action.*

23. **Noticee No. 11 (Valliammal M. Thevar)**

The said Noticee by way of the reply stated that:

m) *It is denied that Addon was "controlled" by Sudar 'for the purposes of routing funds and did not have any genuine commercial activity'. The show cause notice contradicts itself by stating that 'she was not aware of the activities of Addon'.*

n) *SEBI has only relied upon the coerced statements, later on these statements were retracted through affidavit, but SEBI relied on these statements and no independent/investigation has been conducted by the SEBI and no evidence has been provided by the SEBI to substantiate the allegations. SEBI has at no point of time challenged the veracity of the retraction affidavit and hence it will be grossly illegal for SEBI to now rely on a statement that was retracted more than 3 years and 8 months ago.*

o) *Merely because NoticeeNo.11 is the spouse of Noticee No 2, Murugan M Thevar, SEBI has incorrectly presumed all her genuine commercial activity to be in violation while ignoring the fact that by SEBI's own admission her activities in Addon Exports were prior to IPO (datedMarch11,2011) and continued for a substantial amount of time even after the IPO.*

p) *The allegation against NoticeeNo.11 without any evidence other than being a spouse of NoticeeNo.2, is entirely flimsy and without any basis for alleging a serious offence.*

q) *All the allegations against the NoticeeNo.11are merely surmises and conjectures and the proceedings against the NoticeeNo.11 should be dropped immediately as there is no cause of action.*

24. **Noticee No. 12 (B Ravishankar Pai)**

The said Noticee by way of the reply stated that:

r) *The said sum of Rs. 6 crores was transferred into the account of the Noticee No. 12 on or around March 23, 2011.As the proposed land deal failed to culminate into a transaction, the said sum of Rs. 6 crore was returned by Noticee No. 12 to SIL by way of bank transfers of Rs. 2 Crore on March 31, 2011 and Rs. 4.25 Crore on April 5, 2011.*

s) *The entire amount of Rs. 6 crore was transferred back into the account of SIL within 13 days of receipt of funds. The entire funds were returned much before any investigation was initiated by SEBI and that itself demonstrates the legitimacy of the transaction. The bank accounts statements of the Noticee No. 12 are on record of SEBI and the same can be verified.*

t) *SEBI has only relied upon the coerced statements, later on these statements were retracted through affidavit, but SEBI relied on these statements and no independent/investigation has been conducted by the SEBI and no evidence has been provided by the SEBI to substantiate the allegations. SEBI has at no point of time challenged the veracity of the retraction affidavit and hence it will be grossly illegal for SEBI to now rely on a statement that was retracted more than 3 years and 8 months ago*

u) *It is blatantly incorrect to state that the funds were diverted out of the IPO proceeds as the funds were received back by SIL.*

v) *The said transactions were banking transactions and were done much before SEBI investigation. Hence the presumption of SEBI that the transaction of land deal was an afterthought is absolutely incorrect.*

w) *Noticee No.12 has not received any personal benefit and nor is there any allegation against Noticee No. 12 of any personal gain.*

x) *The allegations against the Noticee No.12 are merely surmises and conjectures and the proceeding against Noticee No. 12 needs to be dropped as there is no cause of action.*

25. **NoticeeNo.13 (Santosh Vishnu Ingle)**

The said Noticee by way of the reply stated that:

y) *Noticee No. 13 was in control of the proprietorship concerns and was looking into the day-to-day affairs. All transactions that were done by the proprietorship concerns were in due accordance of law and there was no irregularity of any kind whatsoever.*

z) *Infact, SEBI has only relied upon the coerced statements, later these statements were retracted through affidavit, but SEBI relied on these statements and no independent/investigation has been conducted by the SEBI and no evidence has been provided by the SEBI to substantiate the allegations. SEBI has at no point of time challenged the veracity of the retraction affidavit and hence it will be grossly illegal for SEBI to now rely on a statement that was retracted more than 3 years and 8 months ago.*

aa) *Allegation against Mr. Santosh Vishnu Ingle is that his proprietor concern namely SM Construction received a sum of Rs. 1,00,00,000/- from the IPO funds. SM Construction has received the sum of Rs. 1,00,00,000/-towards the material supplied for construction i.e. the expansion of the manufacturing unit located on Survey No. 30A Sr 30A4, Village Paud and Survery No. 27B, Village Madap, Mazgaon Road, Khalapur, Taluka Raigad District, Maharashtra.*

bb) *Invoices of the same have been provided by the Noticee No. 13. There has been no dispute on the receipt of material supplied nor has there been any evidence to the contrary provided by SEBI or Sudar. Infact photographs of extension of the building have been provided and form part of the record of SEBI proceedings.*

cc) *Noticee No.13 has not received any personal benefit and nor is there any allegation against Noticee No. 13 of any personal gain.*

dd) *Shalom Fashion was an agent of readymade garments and used to procure readymade garments from SIL even before the IPO. Infact Shalom*

Fashion was also shown as one of the major customers of Sudar in their IPO document.

ee) *No allegation of siphoning off of funds on Shalom Fashions.*

ff) *The allegation against SM Constructions and Shalom Fashion is that the transactions of SIL with these entities were not shown as related party transactions by SIL. It is not the responsibility under any law that required Noticee No. 13 to disclose himself or his proprietorship firms as related party in the IPO document.*

gg) *All the allegations against the Noticee No.13 are merely surmises and conjectures and the proceedings against the Noticee No. 13 should be dropped immediately as there is no cause of action.*

26. **Noticee No. 14 (Ramesh Andy Thevar)**

The said Noticee by way of the reply stated that:

a. *Noticee No. 14 was in control of the proprietorship concern and was looking into the day-to-day affairs. All transactions that were done by the proprietorship were in due accordance of law and there was no irregularity of any kind whatsoever.*

b. *Infact, SEBI has only relied upon the coerced statements, later these statements were retracted through affidavit, but SEBI relied on these statements and no independent/investigation has been conducted by the SEBI and no evidence has been provided by the SEBI to substantiate the allegations. SEBI has at no point of time challenged the veracity of the retraction affidavit and hence it will be grossly illegal for SEBI to now rely on a statement that was retracted more than 3 years and 8 months ago.*

c. *Payment received by A R Fabrics was towards the raw material supplied for which invoices were issued by the Noticee No. 14 Copies of the invoices were submitted to SEBI by the Noticee No. 14 and the same form part of the record of SEBI.*

d. *A R Fabrics started its operations around 2005 / 2006 which was much before the IPO. It is also submitted that A R Fabrics was disclosed as one of the suppliers of raw materials in the prospectus. Further it is also submitted that A R Fabrics had a continuous relation with Sudar even prior to the IPO. The same can also be seen from the banking transactions of A R Fabrics with Sudar.*

e. *A R Fabrics has stopped all its operations and as it was a proprietorship concern it did not maintain any separate books of accounts.*

f. *Noticee No.14 has not received any personal benefit, nor is there any allegation of SEBI against Noticee No. 14 of any personal gain.*

g. *The allegations against the Noticee No. 14 are merely surmises and conjectures and the proceedings against the Noticee No.14 should be dropped immediately as there is no cause of action.*

27. **Noticee No. 15 (Stallin Muthappa)**

The said Noticee by way of the reply stated that:

a) *Noticee No. 15 was in control of the proprietorship concern named George Street London and was looking into the day-to-day affairs. All transactions that were done by the proprietorship were in due accordance of law and there was no irregularity of any kind whatsoever.*
b) *SEBI has only relied upon the coerced statements, later these statements were retracted through affidavit, but SEBI relied on these statements and no independent/investigation has been conducted by the SEBI and no evidence has been provided by the SEBI to substantiate the allegations. SEBI has at no point of time challenged the veracity of the retraction affidavit and hence it will be grossly illegal for SEBI to now rely on a statement that was retracted more than 3 years and 8 months ago.*
c) *George Street London has stopped all operation and as it was a proprietorship concern it did not maintain any separate books of accounts. Income tax returns were filed by the Noticee No. 15 in his individual capacity (Copies of the same have been submitted to SEBI and are part of the record with SEBI).*
d) *There is no allegation of siphoning off of funds against Noticee No. 15.*
e) *The allegation against Noticee No. 15 is that they were not shown as related party transactions by SIL. It is not the responsibility under any law that required Noticee No.15 to disclose himself or his proprietorship firms as related party in the IPO document. Hence this allegation has been wrongly placed upon the Noticee No. 15.*
f) *Noticee No.15 has not received any personal benefit and nor is there any allegation against Noticee No. 15 of any personal gain.*
g) *The allegation against the Noticee No.15 are merely surmises and conjectures and the proceedings against the Noticee No.15 needs to be dropped with no cause of action.*

28. **Noticee No.16 (Kamlesh M. Nadar)**

The said Noticee by way of the reply stated that:

a) *Noticee No. 16 was in control of the proprietorship concern named Shree Bhagwati International and was looking into the said proprietorship concern's day to day affairs. All transactions that were done by the proprietorship were in due accordance of law and there was no irregularity of any kind whatsoever.*
b) *SEBI has only relied upon the coerced statements, later these statements were retracted through affidavit, but SEBI relied on these statements and no independent/investigation has been conducted by the SEBI and no evidence has been provided by the SEBI to substantiate the allegations. SEBI has at no point of time challenged the veracity of the retraction affidavit and hence it will be*

grossly illegal for SEBI to now rely on a statement that was retracted more than 3 years and 8 months ago.

c) *No allegation of siphoning of funds against Noticee No. 16.*
d) *Infact SEBI records in the SCN that Shree Bhagwati International had other business transactions also, however majority of the transactions were with SIL.*
e) *The allegation against Noticee No. 16 is that they were not shown as related party transactions by Sudar.It is not the responsibility under any law that required Noticee No.16 to disclose himself or his proprietorship firms as related party in the IPO document.*
f) *Hence this allegation has been wrongly placed upon the Noticee No. 16.*
g) *Noticee No.16 has not received any personal benefit and nor is there any allegation against Noticee No. 16 of any personal gain.*
h) *The allegation against the Noticee No.16 are merely surmises and conjectures and the proceedings against the Noticee No.16 needs to be dropped with no cause of action.*

E. Relevant Provisions

SCRA Act

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

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, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.".*

Listing Agreement

Clause 32

The company will make disclosures in compliance with the Accounting Standard on "Related Party Disclosures" in its Annual Report.

2) For the purpose of the above disclosures the terms 'Associate' and 'Related Party' shall have the same meaning as defined in the Accounting Standard on "Related Party Disclosures (AS-18)" issued by ICAI The above disclosures shall be applicable to all listed companies except for listed banks.

Clause 43

a) *The Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilisation of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory* *statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilisation of funds and/or actual profitability.*

b) *The statement referred to in clause (1) shall be given for each of the years for which projections are provided in the prospectus/letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities and shall be published in newspapers simultaneously with the unaudited/audited financial results as required under clause 41.*

c) *If there are material variations between the projections and the actual utilisation/profitability, the company shall furnish an explanation therefore in the advertisement and shall also provide the same in the Directors' Report.*

d) *The statement referred to in clause (a) shall also be given for warrants issued along with public or rights issue of specified securities.*

ICDR Regulation 2009

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

Regulation 57 : Manner of disclosures in the offer document.

(1)The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

(2)Without prejudice to the generality of sub-regulation (1):

(a) the red-herring prospectus, shelf prospectus and prospectus shall contain:

i) the disclosures specified in Schedule II of the Companies Act, 1956; and

ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.

(b)the letter of offer shall contain disclosures as specified in Part E of Schedule VIII.

PART A OF SCHEDULE VII

CLAUSE 2(IX)(B)(12)(a)

(12) Related Party Transactions: *Related Party Transactions: The issuer shall disclose the following details of related party transactions and make disclosures in accordance with the requirements of Accounting Standard (AS 18) "Related Party Disclosures" issued by the Institute of Chartered Accountants of India:*

a) Information with respect to transactions or loans between the issuer and

i. *enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the issuer;*
ii. *associates;*

iii. *individuals owning, directly or indirectly, an interest in the voting power of the company that gives them significant influence over the issuer, and close members of any such individual's family;*

iv. *key managerial personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of companies and close members of such individuals' families;*

v. *enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (iii) or (iv)] or over which such a person is able to exercise significant influence and includes enterprises owned by directors or major shareholders of the issuer.*

SEBI Act

Section 12 A (a), (b), (c)

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

"12A. No person shall directly or indirectly—

a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
b) *employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
c) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder"*

Penalty for failure to furnish information, return, etc.

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

***(b)** to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less*

Penalty for fraudulent and unfair trade practices

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

<u>Provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003</u>

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- *a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- *b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- *c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- *d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

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

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

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

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

F. ISSUES AND FINDINGS

I. Whether Noticee No. 1 violated Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956 and Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009. Further, Noticee No 1 is in violation of Regulations 3(b), 3(c), 3(d) and 4(1)

4(2)(k) 4(2)(r) of PFUTP Regulations read with Sections 12A(a), 12A(b) & 12A(c) of SEBI Act. Additionally, Noticee No 1 is in violation of Clause 43 of Listing Agreement read with Section 21 of the SC(R) Act, 1956.

II. Whether Noticee 2-6 violated Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956 and Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009. Further, Noticee No 2-6 are in violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations read with Sections 12A(a), 12A(b) & 12A(c) of SEBI Act.

III. Whether Noticee 7 and Noticee 8 are in violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations and Sections 12A(a), 12A(b) & 12A(c) of SEBI Act.

IV. Whether Noticee Nos. 11 to 18 are in violation of Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations and Sections 12A(a), 12A(b) & 12A(c) of SEBI Act?

V. Whether Noticee Nos. 9 and 10 are in violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations and Sections 12A(a), 12A(b) & 12A(c) of SEBI Act?

VI. If yes, whether Noticee 1-18 would attract monetary penalty under Section 15A(b), 15HA of SEBI Act and 23E of the SCRA Act. if so, what quantum of monetary penalty should be imposed on the Noticee?

Issue I. Whether Noticee No. 1 violated Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956 and Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009. Further, Noticee No 1 is in violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations read with Sections 12A(a), 12A(b) & 12A(c) of SEBI Act. Additionally, Noticee No 1 is in violation of Clause 43 of Listing Agreement read with Section 21 of the SC(R) Act, 1956.

29. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, reply/ submissions of the Noticees, documents produced by the Noticees and oral submissions made during the personal hearing before undersigned. Before dealing the case on merit basis, I would first deal with several preliminary technical/legal contentions raised by the Noticees.

30. The Noticees have raised an issue relating to non-furnishing of certain documents to them such as the complete copy of Investigation Report and certain other documents without specifying the documents sought. In this regard, I note that all the documents relied upon and relevant in the SCN has been provided to the Noticees in the instant matter. Therefore, the request of the Noticees in this regard is not tenable. In this regard, reference may be made to the order dated February 12, 2020 passed by Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in Appeal (L) No. 28 of 2020 – **Shruti Vora vs. SEBI**, wherein it was observed as under: "In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence." The aforesaid observations made in Shruti Vora's case has been reiterated with confirmation by Hon'ble SAT in its order dated July 17, 2020 passed in **Anant R Sathe Vs. SEBI** wherein it was observed as under: "………….8. The said principle elucidated in Shruti Vora's judgement is squarely applicable in the instant case. The authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence………..."

31. The Noticees have contended that the SCN is false, fabricated, baseless and not true. In this regard, I note that, the charge in the SCN in the instant proceedings w.r.t. these Noticees for violations of PFUTP Regulations for their

role of aiding and abetting THL and its directors in creating false and fictitious sales and purchase for the years 2010-11 and 2011-12 and provisions has been clearly spelt out in the SCN.

32. I note that Noticees have raised the preliminary issue with regard to inordinate delay in issue of SCN after a gap of almost 6 years from the date of alleged violations. I note that the investigation generally is a detailed process involving analysis of various data, gathering of evidences, etc. that shall stand the test of legal scrutiny at various judicial fora. This, generally, consumes considerable time and efforts depending on the number of entities involved, the complexity of the transactions, correspondences with the entities involved etc. As already stated, Investigation in the matter of IPO of SIL was initiated suo-moto by Investigation Department along with certain other IPOs listed in 2011. Investigation authoirity appointed by the order dated February 21, 2012. During the investigation, information was requisitioned from various entities including but not limited to the stock exchanges, the Company, the directors of the Company, banks, brokers, merchant bankers, registrar and transfer agent and allottees in the SIC IPO. Thereafter, the investigation *inter alia* entailed examination of bank statements, know your information (KYC) details, transaction details, ledger accounts, replies of the entities to summons, movement of funds and listing day trade details. The investigation also required coordination with various regional offices of SEBI in order to send summons.

33. Investigation has been completed and accordingly, the investigation report was approved by the competent authority on March 31, 2016 wherein *inter alia* proceedings under sections 11(1), 11(4) and 11(B) of the SEBI Act were approved along with adjudication proceedings under sections 15A(b), 15HA of the SEBI Act and section 23E of the SCRA Act. *Vide* order dated December 08, 2016, Shri S.V. Krishnamohan was appointed as Adjudicating Officer. It has been communicated by communique dated April 19, 2017. Pursuant to this, the matter has been transferred to Shri Sahil Malik by communique dated May 18, 2017 to inquire into adjudge in the present matter. Thereafter, a common SCN

dated December 15, 2017 was issued informing the Noticees the charges levelled against them. Subsequently, pursuant to transfer of Shri Sahil Malik undersigned was appointed as Adjudicating Officer *vide* Communiqué dated August 19, 2019. in the matter.

34. In the view of the above, facts and circumstances, I am of the view that that investigation is an exhaustive and time consuming process, which requires detailed analysis of facts and law especially considering that there are multiple stakeholders involved in the present matter apart from the Noticees. I also note that, initiating a proceeding under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the outcome of the fact finding exercise, which is the investigation done in this case, and just because the alleged violation was committed in a distant past cannot be a ground to vitiate initiation of these proceedings. Moreover, in this case the SCN makes a serious allegation of fraud under the PFUTP Regulations on ground of non-disclosure of material information and false and mis-leading reporting of sales and purchases in a public issue. I am also of a view that, Hon'ble SAT in past has held that the reasonable period would depend on the facts and circumstances of each case and that no hard and fast rule can be laid down in this regard. I am of the view that present proceedings do not suffer from any infirmity on the ground of delay. I, therefore, hold that there is no protracted delay as contended and hence, the contention of the Noticees in this regard is rejected.

35. In this regard, I also find it relevant to rely on certain orders passed by the Hon'ble SAT:

    (i) In ***Hemant Sheth and Ors. vs. SEBI***, Appeal No. 521 of 2021, decided on January 07, 2022, it was argued by the appellants that the adjudicating officer was appointed on July 04, 2013 but the show cause notice was issued in 2016 and therefore there was an inordinate delay of 30 months for which no plausible explanation was given. The Hon'ble SAT while dismissing the aforesaid contention of the appellants held that:

"9. Insofar as the delay is concerned we find that after the observation made by the WTM in its order of May 10, 2013 SEBI took action and appointed the AO dated July 4, 2013. No doubt the show cause notice was issued in January 2016 but the delay in the issuance of the show cause notice in the instant case will not vitiate the proceedings initiated against the appellants in the peculiar facts and circumstances of the case. Consequently, we are not inclined to quash the proceedings only on the ground of inordinate delay as asserted by the learned counsel for the appellant."

(ii) In ***M/s. Adamina Traders Private Limited vs. SEBI*** (Appeal No. 331 and 366 of 2020) dated December 15, 2021, the trades concerned in the appeal took place in 2013, and the show cause notice was issued by the adjudicating officer in 2018. The appellants raised an argument of inordinate delay in issuance of the show cause notice. Dismissing the aforesaid contention, the Hon'ble SAT held the following:

'We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected. <u>Further, nothing has been shown as to how this delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside</u>." (emphasis supplied)

(iii) In ***Rajendra Aggarwal vs. SEBI*** (Misc. Application No. 426 of 2020 and Appeal No. 552 of 2019), dated September 17, 2021, an appeal was filed against an order of the adjudicating officer imposing penalties against the appellants for violation of regulation 3 and 4 of the PFUTP Regulations. The appellants contended that due to the inordinate delay, the aforesaid order should be quashed since the trades took place in the year 2009, the notice was issued in 2013, the hearing took place in 2018, and 18 months after the hearing, an adjudication order was passed. In this regard, the Hon'ble SAT held:

"13. On issue of delay, we find that the show cause notice was issued in the year 2013 and the trades were executed in 2009. The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay in the delivery of the impugned order after the last date of hearing by the AO. We are of the opinion that after the conclusion of the arguments the data of 35 entities was required to be analysed and collated which took time and, therefore, we do not see any reason to vitiate the judgment only on the ground of delay in delivering the order. In any case, such delay in the delivery of the judgment does not cause any prejudice to the appellants."

(iv) In ***Girraj Kumar Gupta HUF vs. SEBI*** (Misc. Application No. 516 of 2019 and Appeal No. 424 of 2019), dated August 11, 2021, an appeal was filed against an order passed by an adjudicating officer imposing penalties against the appellants for violation of regulation 3 and 4 of the PFUTP Regulations. The appellants *inter alia* challenged the order on the ground that there was a delay in the issuance of the show cause notice. In this regard, the Hon'ble SAT held the following:

"13. The contention of the appellants that there was inordinate delay in the initiation of the proceedings is erroneous. We find that the investigation started in the year 2015 which involved examining

several entities in the order logs, trade logs, off market transactions and gathering evidence from the Stock Exchange. The show cause notice was issued in the October, 2017 and accordingly we find that there is no inordinate delay in the initiation of the proceedings. The contention raised is, thus, erroneous and cannot be accepted."

36. I note that Noticees 2, 3, 5, 6 contended that in parallel proceedings before the SEBI Whole Time Member (order dated April 20, 2021) statement of B. Ravishankar Pai, Edwin Joseph, Mrs. Reena Nadar, Santosh Ingle, Ramesh Andy Thevar, Stalin Muthappa, Kamlesh Muthappa, Valliammal Murugan Thevar have already been was retracted. Further, said Noticee also contended that opportunity of cross examination is not given to the Noticee. In this regard I note that Noticees 11-18 also submitted before me their retracted version of arguments, which goes against the statement as it has been given before the investigation authority. In this regard, attention is drawn to Section 11 C (5) of the SEBI Act, which provides that "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." Further, Section 11 C (7) of the SEBI Act provides that "Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him." It may be stated that the SEBI Act confers upon SEBI the same powers of a civil court to summon and enforce the attendance of persons and examine them on oath, during an investigation. As would be evident from above, the Investigating Authority under Section 11 C (5) is authorised to examine a person on oath and record the statement. Also, it may be noted that as per Section 11 C (7), a statement made on oath and recorded, and thereafter

signed by the person examined is admissible as evidence, including against the person examined.

37. Further, it is also stated that no cross examination is needed since statement of the Noticee used as corroborative evidence along with other documentary evidence. I also note that in the parallel proceeding arising out of same cause of action before the WTM the Noticees given chance to cross examine which they did not avail. I note that no cross examination is needed for the purpose of present adjudication proceedings.

38. Further, in the aforesaid WTM order it is categorically mentioned that: in the present matter, the affidavits submitted by the seven Noticees, retracting their respective statements were submitted after the lapse of two years from the date of recording of those statements under oath. Further, the said Noticess have alleged coercion, duress and disturbed mental state at the time of recording of the statement. Also, the retractions are not supported by any evidence of coercion or duress. The collective retractions at more or less the same time by the seven Noticees, shows that it was a pre-planned arrangement arrived at by them, after receipt of the SCN, merely with the idea of jointly opposing the enforcement action of SEBI.

39. In this regard, reference is drawn to the decision of the Hon'ble Chattisgarh High Court in the matter of **ACIT V. Hukumchnad Jain**, [2011]337ITR 238 (Chhattisgarh). In the matter it was inter alia held that when addition was based on confessional statement of the Assessee and the Assessee did not retract his statement immediately after the search and seizure operations under Section 132 (4) of the Income Tax Act, 1961 it could be said that the Assessee had failed to discharge the onus on proving that confession made by him under Section 132 (4) was as a result of intimidation, duress, coercion or the same was made a result of mistaken belief of law or fact. Therefore, the Assessing Officer was fully justified in assessing income of the Assessee on the basis of search on undisclosed income made under Section 132 (4). Further, in the case

of **Hotel Kiran V. Assistant Commissioner of Income Tax**, [2002]82ITD 453 (Pune) decided on February 20, 1998, the Pune bench of the Income Tax Tribunal inter alia observed that where statement under Section 132 (4) of the Income Tax Act was voluntarily made and there was no coercion or threat whatsoever and the contents of the statement were clear and unambiguous, the same would be binding on the Assessee, even if it was subsequently retracted.

40. Further, I note that Estoppel is that rule which prohibits a person from contradicting what was earlier said by him in a court of law. In the view of the above facts and circumstances I am of the view that Noticees estopped from retracting their statement as submitted before the investigation authority on the oath. I also note that Noticee submitted contrary statement before me by vide letter dated October 26, 2021. In this regard I note that due to the rule of estoppel I would rely on statements as recorded on November, 2015 in case there is any contradiction while submission made by the Noticee.

41. I also note that it is the settle position of law that in absence of any response from the said Noticees to the SCN, I presume that that they have admitted the charges levelled against them. In this regard, it is pertinent to note that the Hon’ble 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*”. 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, and 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...”. Further, the same position is reiterated by the Hon’ble 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, evenworse, 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*..."

42. In the absence of any response from the Noticee 4 and Noticee 7, to the SCN, the matter can be proceeded ex-parte on the basis of the material available on record, in terms of Rule 4(7) of the SEBI Adjudication Rules and Rule 4(7) of SCRA Adjudication Rules. Further, in view of the aforesaid observations made by the Hon'ble SAT, I find no reason to take a different view and therefore, I deem it appropriate to proceed against them ex-parte, based on the material available on record.

43. Coming to the merits of the case, I am the view that **Issue I** can be divide into two parts:
    a) Noticee No 1 is in violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations read with Sections 12A(a), 12A(b) & 12A(c) of SEBI Act.
    b) Whether Noticee 1 violated Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956 and Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009.
    c) Noticee No 1 is in violation of Clause 43 of Listing Agreement read with Section 21 of the SC(R) Act, 1956.

Issue I.a. Noticee No 1 is in violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations read with Sections 12A(a), 12A(b) & 12A(c) of SEBI Act.

44. I note that in the present proceedings before me Noticee 1 has not filled any reply to the specific allegation as specified in the SCN. The Noticee 1 submitted that since as per the aforementioned High Court order dated July 20, 2018, liquidation has been started with respect to Noticee 1, the said SCN should be disposed off. Therfore, I note that Company has not specifically denied the charges levelled in the SCN. However, while deciding the case, I 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 on the statement given by Noticee 1, submission given by Noticee 2 and the supporting material as provided in the SCN. It is also highlighted that liability of the Noticee 2-8 and Noticee 11-18 flow from the fact that there is some misdeed in the part of the Noticee 1. Therefore, I am of the view that it become essential to determine the liability of the Noticee 1.

45. I note from the SCN that it has been alleged that SIL had only deployed Rs. 5.54 crore (approx.), as per its stated objects, out of the Rs. 69.97 crore that it had collected by way of IPO proceeds (as given in the Table No. 6 of the Order). In other words, we can say that SIL had deviated from the Objects of the Issue as per the Prospectus of SIL and has siphoned off an amount of Rs. 64.43 crore (approx.) from the IPO proceeds.

46. In the present case, the Company, has claimed that Rs. 19.50 crore was used for the repayment of ICDs taken prior to IPO to Premier Fiscal. Similarly, it has been stated by the Company vide its letter dated December 09, 2015 that amounts of Rs. 1,01,24,274, Rs. 1,01,00,603, Rs. 1,01,12,439 and Rs.

1,01,24,274 were transferred on March 10, 2011 to Fulford Sales P Ltd., SM Mercantiles P Ltd., Deeksha Marketing P Ltd. and Navsari Commodities P Ltd. respectively towards repayment of ICDs availed by SIL prior to the IPO for arranging funds required for meeting the expenses related to the IPO. It is statutory obligation that the offer document should disclose the details of loans or any financial arrangement, which may be repaid from the proceeds of the issue. It is to be noted that the list of entities from whom SIL had taken ICDs during the relevant period did not include Fulford, SM Mercantiles, Deeksha and Navsari and the same should have been stated in the offer document.

47. Upon an examination of the prospectus dated March 03, 2011 filed by the Company, it is seen that repayment of ICDs taken prior to the IPO was not a part of the Objects of the Issue. Also, as already pointed out in the previous part of this order, clause Cl. 2 (VII) (G) mandates that any financial arrangement or loan taken prior to the IPO, which is to be repaid from the IPO proceeds has to be disclosed in the offer document/prospectus. No such disclosure is found in the prospectus filed by the Company. Further, it is seen from the documents that vide summons dated October 10, 2013, SIL was asked to provide detailed terms & conditions of ICDs taken/given by it during the year 2010-11. Pursuant to it, SIL by way of letter dated November 13, 2013, provided the details of ICDs received by it during the said period. It is to be noted that the list of entities from whom SIL had taken ICDs during the relevant period, as provided by way of the said letter, did not include Fulford, SM Mercantiles, Deeksha and Naysari. The submission of SIL that the payments made to Fulford, SM Mercantiles, Deeksha and Naysari were in respect of the ICDs received by it appears to be an afterthought and without merit. It therefore stands established that the said payments to the above entities were made to siphon off the IPO proceeds.

48. Noticee 2 contended that “in the year 2011, ADS Finance, the financial advisor to the Company then, approached the Company with an offer to invest the surplus funds, if any, in Regent Capital Private Limited as an inter- corporate

deposit in order for the Company to earn interests on the principal amounts being so invested by the Company. At such times, the Company had surplus funds available out of the funds raised from the initial public offering and in order to utilize such unutilized funds, in the interim period, the Company vide its board resolution dated March 05, 2011 resolved to grant the inter corporate deposit of Rs. 24 Cr to Regent Capital Private Limited." Further, it has been stated that it granted the inter corporate deposit pursuant to an agreement dated March 08, 2011. The said agreement was for a period of 10 months from the date of execution at a cost of 15% per annum. The said amount was to be repaid on or before December 11, 2011. Furthermore, the Noticee 2 informed in its reply that Rs. 11,13,12,500 could only be recovered from the Rs. 24 crore as Regent Capital started facing financial difficulties. Also, the Noticee 2 has informed (as on May 17, 2017) that it did not initiate any legal proceedings against Regent Capital for recovery of the outstanding amount as Regent Capital had assured the Company of repayment, and initiation of legal proceedings would have resulted in legal expenses without any positive outcome.

49. I find that at this stage that it is relevant to consider the following dates:

Table No. 8

Sl. No.	Date	Event
1.	January 22, 2011	Red Herring Prospectus filed with the ROC.
2.	February 21, 2011	Issue opens.
3.	February 24, 2011	Issue closes.
4.	March 03, 2011	Prospectus filed with the ROC.

50. Further, the Prospectus filed by the Company in the "Funds Requirement" part states that –

"**Funds Requirement**

The requirement of Funds, as estimated by the management is as under:

Table No. 9

Sr. No	Particulars	Amount (Rs. In lacs)
A.	Expansion of the existing apparel manufacturing unit	2,628.93

B.	Working Capital Requirement	2,730.00
C.	Setting up Retail Outlets and Brand Building	590.00
D.	Meeting General Corporate Expenses	911.77
E.	Meeting the Issue Expenses	616.03
	TOTAL	**7476.73**

Similarly, in the "Means of Finance" part it states that –

"**Means of Finance**

Table 10

Sr. No	**Particulars**	**Amount (Rs. In lacs)**
A.	Proceeds from Initial Public Offer	6,997.76
B.	Internal Accruals	478.97
	TOTAL	**7,476.73**

51. So, it is seen from the above that the Company in the Prospectus dated March 03, 2011 has stated that it required the funds for five purposes *viz*, expansion of the existing apparel manufacturing unit; Working Capital Requirement; Setting up Retail Outlets and Brand Building; Meeting General Corporate Expenses; Meeting the Issue Expenses. However, the Company on March 05, 2011, two days from the filing of the prospectus stating the above purposes as the reasons for fund requirements, passed a Board Resolution to lend Rs. 24 crore as ICDs to Regent Capital. Noticee 2 in its reply has stated that in the year 2011, ADS Finance, the financial advisor to the Company then, approached the Company with an offer to invest the surplus funds, if any, in Regent Capital as an inter- corporate deposit in order for the Company to earn interest. I find it quite strange that the Company had already, even before the IPO had opened, determined that it would have a long standing surplus from the IPO proceeds so as to deploy in ICDs. This makes it clear that the decision to grant ICDs to the tune of Rs. 24 crore to Regent Capital had already been made by the Company/director prior to the filing of the prospectus. The board resolution two days after the filing of the prospectus was a ploy to avoid

disclosure in the offer document about the proposed grant of ICDs to Regent Capital. Further, the realization of only Rs. 11,13,12,500 out of the Rs. 24 crore granted as ICDs, and the deliberate avoidance of any legal action by the Company for recovery of the balance amount from Regent Capital clearly establishes the mala fide intent of the Company and its directors.

52. It has also been alleged in the SCN that Rs. 19.50 crore was paid to Premier Fiscal under the false claim of repayment of ICDs taken prior to the IPO. In this regard, Noticee 2 stated that the Company had availed the ICDs for meeting the expenses related to public issue and meeting its working capital requirements. Also, it has been stated that as meeting working capital requirement and meeting the issue expenses were in the objects of the issue, the utilization of issue proceeds for repayment of ICDs availed for meeting issue expenses and working capital requirements conform to the objects of the IPO as mentioned in the prospectus. Further, it has been submitted by said Noticee that it had banking relations with the Shamrao Vithal Co-operative Bank Limited and, as such, on March 09, 2011 passed a resolution to keep an amount of Rs. 23,40,00,000 as Fixed Deposit. The Company availed a loan of Rs. 22,23,00,000 on the Fixed Deposit and the said loan was used to repay the ICDs.

53. The Company in the prospectus dated March 03, 2011 has stated that it required the funds for the four purposes named above. However, it is again seen from the above that within 6 days of filing the prospectus, the Company put an amount of Rs. 22,23,00,000 as a Fixed Deposit. Based on this Fixed Deposit, the Company availed a loan and paid Rs. 19.50 crore to Premier Fiscal. The Company has defended its action by stating that as meeting working capital requirement and meeting the issue expenses were in the objects of the issue, the utilization of issue proceeds for repayment of ICDs availed for meeting issue expenses and working capital requirements conform to the objects of the IPO. I do not find this reasoning convincing at all. In this regard,

reference is drawn to Clause 2(VII)(G) of Part A of Schedule VII of the ICDR Regulations. The said clause states that the issuer should provide specific details of existing loans or any financial arrangement, which may be repaid from the proceeds of the issue. So, if the Company had taken ICDs for working capital requirement and issue expenses then the same should have been specifically mentioned in the Offer Document, which the Company has not done. It must be noted that the objects of the issue, as provided in the offer document, denote the areas on which money raised by way of the issue shall be utilized. The Company cannot start utilsing the proceeds for paying off debt taken for expenses already incurred, unless specific disclosure of the same is provided as per the abovementioned clause. Therefore, the defence of the Noticee 2 that as meeting working capital requirement and meeting the issue expenses were in the objects of the issue, the utilization of issue proceeds for repayment of ICDs availed for meeting issue expenses and working capital requirements conform to the objects of the IPO is devoid of any merit.

54. I note from the records that Rs. 2.04 crore was transferred to Manan Trading Co. (MTC) and Rs. 2 crore to Girish Kumar Ramanlal Choksi for repayment of ICDs and payment to suppliers. Upon seeking documentary evidence regarding the receipt of the claimed ICD amount, SIL vide letter dated February 11, 2016 claimed that the same was an error and the transfer was towards supply of raw materials. Thus, It has been contended by Company that as meeting working capital requirement was one of the objects of the IPO, the Company has utilised the proceeds as per the objects.

55. It is revealed from the bank statements of the Company that on March 12, 2011, an amount of Rs. 2.04 crore (approx) was transferred to the account of one Manan Trading Co. and amount of Rs. 1 crore was transferred to Girishkumar Ramanlal Choksi from the bank account of SIL maintained with Axis Bank bearing number 910020010977754. Similarly, on March 14, 2011 an amount of Rs. 1 crore was further transferred to Girishkumar Ramanlal Choksi from

another bank account of SIL maintained with Axis Bank bearing number 911020013667782. So, there is no doubt that money was transferred to the above entities by SIL out of the IPO proceeds. The Company has held the defence that since the payment to the above Noticees was for the supply of fabric to the Company, the proceeds had been used as per the objects of the IPO. In this regard, it is seen from the investigation report that SIL had all along contended that the amount transferred to Manan Trading Co. and Girishkumar Ramanlal Choksi was for repayment of ICDs received prior to the IPO. However, upon seeking documentary evidence regarding the receipt of the claimed ICD amount, SIL vide letter dated February 11, 2016 claimed that the same was an error and the transfer of money was actually towards supply of raw materials. It is to be noted that SIL by way of its letter dated June 12, 2012 had provided SEBI a list of its suppliers. The said list did not feature either Manan Trading Co. or Girishkumar Ramanlal Choksi. Further, I also note that no invoices have been submitted by SIL to SEBI, based on which the above-mentioned payments were made to Manan Trading Co. and Girishkumar Ramanlal Choksi. The Company has taken the defence that as certain files were seized by the Sales Tax Authorities, they were not in a position to provide the copies of the invoices. I find the justification of the Noticee 2 quite nebulous and inconsistent. Accordingly, I find the same unacceptable and hence conclude that the money has been used for objects not provided in the IPO.

56. The SCN has alleged that an amount of Rs. 6 crore from the IPO proceeds was transferred to B Ravishankar Pai under the false claim of land deal. In this regard, I note that by way of a board resolution dated March 22, 2011, a sum of Rs. 6 crore was transferred to the bank account of B Ravishankar Pai, when the negotiation was at the final stages and he was about to transfer the money to the dealer. SIL in its statements also claimed that that land dealers were demanding for advance payment before proceeding further with the land deal, and therefore, it instructed B Ravishankar Pai to transfer the amount lying in his account to the said land dealers. SEBI vide summons dated April 27, 2012

asked SIL to provide copies of the agenda and minutes of all board meetings/audit committee meetings since April 01, 2010. SIL vide letter dated June 12, 2012 provided details of the same including index of dates of all meetings of its board of directors in chronological order. No mention of any meeting dated March 22, 2011 was observed in the index or copies of documents relating to any board meeting held on March 22, 2011. Further, there is no mention of any such board meeting in its Annual Report of 2010-11. Also, there is no mention of such board meeting on the website of the exchange.

57. Further, a perusal of the bank account statement (Axis Bank, Bank Account No. 833438270) of B Ravishankar Pai shows that a total amount of Rs. 6 crore was transferred to B Ravishankar Pai in three tranches of Rs 2 crore on March 23, 2011. Thereafter, it is seen that the money received by B Ravishankar Pai was transferred the very next day i.e., March 24, 2011 to entities namely Ailish Traders Pvt. Ltd (Rs. 1.5 crore), Galaxy Corporation (Rs. 50 lakh), Mehta Trading Co (Rs. 75 lakh), Montaex Trading Co (Rs. 75 lakh) and on March 25, 2011 to Classic Trading Co (Rs. 1 crore). The Company has claimed that these amounts constituted the advance for the land. Subsequent to the above transactions, it is seen that a total of Rs. 6.5 crore was received from SM Constructions in three tranches of Rs. 2 crore, Rs. 3 crore and Rs. 1.25 crore on March 31, 2011; April 06, 2011 and April 06, 2011 respectively. The above amounts received were transferred to SIL in two tranches of Rs. 2 crores and Rs. 4.25 crore on March 31, 2011 and April 06, 2011 respectively. It is thus seen from the above that while B Ravishankar Pai had paid out Rs. 4.25 crore to five entities, which has been claimed by the Company as advance for purchase of land, upon receipt of Rs. 6 crores from SIL. Subsequent to this, 6.25 crore was received from SM Construction, which was transferred to SIL. This transfer has been shown by the Company to claim that Rs. 6 crore originally transferred to B Ravishankar Pai for purchase of land has been returned to the Company. This is, however, not the case. It is so because the five entities to whom Rs. 4.25 core had been transferred, which has been

claimed by the Company as advance for land, did not return that money. The bank statement of B Ravishankar Pai starting from January 01, 2011 till February 18, 2012, when the account was closed, shows no entry denoting any transfer of money by the above-mentioned five entities to B Ravishakar Pai. The amount of Rs. 6.25 crore that was transferred to SIL came from SM Constructions. Therefore, the submission of the Company that Rs. 6 core was for purchase of land and the same was returned to the Company as the transaction did not fructify, is not borne out by the facts. Further, it does not seem credible that the Company by way of a board resolution dated March 14, 2011 resolved that the money be used for purchase of land, and by March 22, 2011 it had found suitable land and decided to transfer money for the purchase of the land. The speed of this so-called transaction raises doubts about its authenticity.

58. In addition to the above, the Company has not provided any details in respect of the land *viz*., name of the seller(s), details of the land, location, area, rate etc. It has merely stated that the deal could not go through due to some 'unforeseen circumstances', which is very generic in nature. Accordingly, I find that the claim that Rs. 6 crore was transferred to B Ravi Shankar Pai for the purpose of buying of land is devoid of merit. Further, the fact that the five entities to whom the money was transferred, were not suppliers of the Company show that the money has not been utilised as per the objects of the IPO.

59. The SCN has alleged that an amount of Rs. 1.00 crore was transferred to SM Construction by SIL from the proceeds of the IPO. SIL had submitted bills, claiming that they had been provided by S M Constructions for work undertaken. Santosh Vishnu Ingle, the proprietor of SM Construction, stated that he was not aware of the same and that same was not raised by him nor pertained to him. Accordingly, it was alleged that the amount of Rs. 1.0 crore transferred by SIL to SM Construction was not for any construction activity and that SIL had deviated from the Objects of the Issue and siphoned off the funds.

60. It is noted that *vide* letter dated January 05, 2016, it has been stated by SIL that the said funds were transferred to SM Construction as advance for undertaking the construction work awarded by SIL. Further, upon perusal of the statement of Santosh Vishnu Ingle dated November 05, 2015, it is seen that the bills submitted by SIL to SEBI, claiming to have been provided by S M Construction in favour of SIL were shown to Santosh Vishnu Ingle. On this, he stated that he was not aware of those bills and that he had not raised those bills. Also, it is gathered from his statement that he was not aware of the transactions running into crores in the bank accounts maintained in his name. Also, he has stated that he had handed over signed cheques to Murugan M Thevar / Deepak Shenoy of SIL. Further, it has been stated by Santosh Vishnu Ingle that no work was ever done by him through SM Construction.

61. I further note that SM Construction was purportedly involved in the construction business. Naturally, any entity involved in construction related activities, would be required to make payments towards supplies of construction namely, sand, cement, bricks, iron bars; and expenditure towards labour, architect, supervisors etc. However, the examination of the statement of the bank account of SM Construction maintained with Axis Bank (A/c No. 652010200002523) shows that the receipts/payments did not pertain to construction related activities and most of the entries appear to be related to SIL and/or entities related/connected to promoters/directors of SIL. Furthermore, the following facts emerge regarding the close relationship between SIL and its promoter directors and Santosh Vishnu Ingle:

a) Santosh Vishnu Ingle started working under Murugan M Thevar, the MD of SIL, from 1993-94 on cash payment basis;
b) Santosh Vishnu Ingle was a witness for Murugan M Thevar in the agreement for sale dated July 27, 2007 for purchase of land by then Sudar

c) Garments Pvt. Ltd. from one Nandlal T Gumani;

d) the address of Santosh Vishnu Ingle was the same as that of SIL as per its Memorandum and Articles of Association: Bldg. no. 44, Flat no. 1552, Tilak Nagar, Chembur (East), Mumbai, 400089;

e) Santosh Vishnu Ingle was also the proprietor of Shalom Fashion, which was stated to be one of the top customers of SIL in its Prospectus

f) The account of SM Construction was opened in the same branch where SIL also held a bank account (A/c No. 911020013567782, Axis Bank, New Panvel Branch).

g) Santosh Vishnu Ingle was the introducer with respect to the bank accounts of Reena Nadar and Edwin Y Joseph, the other suppliers/customers related to SIL; and

h) Santosh Vishnu Ingle was one of the allottees of 1,87,500 shares prior to IPO of SIL (appearing as one of the Top 7 shareholders holding 1.98% of total shares, as on date of filing of prospectus).

62. In view of the above, I find that Santosh Vishnu Ingle was closely related to SIL. I also find that SM Construction did not have any visible business activities, its name appeared only in the bank account and it was run and used by promoter/director of SIL and as per the arrangement, the proprietor Santosh Vishnu Ingle used to hand over signed blank cheques to the promoter/director of SIL. Thus, having regard to the statement of proprietor of SM, and the above mentioned facts, it is established that SM Construction was not into any construction activity and the claim of SIL that Rs. 1.0 crore was transferred to SM Construction as advance for undertaking the construction work awarded by the Company appears to be dubious. The statements of Santosh Vishnu Ingle and the Company are mutually contradictory and do not invoke any credence. Accordingly, I conclude that the amount of Rs. 1.0 crore transferred by SIL to SM Construction was not for any construction activity but purely on the basis of the long personal relationship that Santosh Vishnu Ingle shared with the

Company, and that SIL has deviated from the Objects of the Issue and siphoned off the funds.

63.. The SCN has alleged that an amount of Rs. 1.00 crore was transferred to SM Construction by SIL from the proceeds of the IPO. SIL had submitted bills, claiming that they had been provided by S M Constructions for work undertaken. Santosh Vishnu Ingle, the proprietor of SM Construction, stated that he was not aware of the same and that same was not raised by him nor pertained to him. Accordingly, it was alleged that the amount of Rs. 1.0 crore transferred by SIL to SM Construction was not for any construction activity and that SIL had deviated from the Objects of the Issue and siphoned off the funds.

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65. It is relevant to note that SM Construction was purportedly involved in the construction business. Naturally, any entity involved in construction related activities, would be required to make payments towards supplies of construction namely, sand, cement, bricks, iron bars; and expenditure towards labour, architect, supervisors etc. However, the examination of the statement of the bank account of SM Construction maintained with Axis Bank (A/c No.

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i) Santosh Vishnu Ingle started working under Murugan M Thevar, the MD of SIL, from 1993-94 on cash payment basis;
j) Santosh Vishnu Ingle was a witness for Murugan M Thevar in the agreement for sale dated July 27, 2007 for purchase of land by then SIL from one Nandlal T Gumani;
k) the address of Santosh Vishnu Ingle was the same as that of SIL as per its Memorandum and Articles of Association: Bldg. no. 44, Flat no. 1552, Tilak Nagar, Chembur (East), Mumbai, 400089;
l) Santosh Vishnu Ingle was also the proprietor of Shalom Fashion, which was stated to be one of the top customers of SIL in its Prospectus
m) The account of SM Construction was opened in the same branch where SIL also held a bank account (A/c No. 911020013567782, Axis Bank, New Panvel Branch).
n) Santosh Vishnu Ingle was the introducer with respect to the bank accounts of Reena Nadar and Edwin Y Joseph, the other suppliers/customers related to SIL; and Santosh Vishnu Ingle was one of the allottees of 1,87,500 shares prior to IPO of SIL (appearing as one of the Top 7 shareholders holding 1.98% of total shares, as on date of filing of prospectus).

66. In view of the above facts and circumstances, I find that Santosh Vishnu Ingle was closely related to SIL. I also find that SM Construction did not have any visible business activities, its name appeared only in the bank account and it was run and used by promoter/director of SIL and as per the arrangement, the proprietor Santosh Vishnu Ingle used to hand over signed blank cheques to the

promoter/director of SIL. Thus, having regard to the statement of proprietor of SM, and the above mentioned facts, it is established that SM Construction was not into any construction activity and the claim of SIL that Rs. 1.0 crore was transferred to SM Construction as advance for undertaking the construction work awarded by the Company appears to be dubious. The statements of Santosh Vishnu Ingle and the Company are mutually contradictory and do not invoke any credence. Accordingly, I conclude that the amount of Rs. 1.0 crore transferred by SIL to SM Construction was not for any construction activity but purely on the basis of the long personal relationship that Santosh Vishnu Ingle shared with the Company, and that SIL has deviated from the Objects of the Issue and siphoned off the funds.

67. At this juncture I refer to Hon'ble SAT order in the matter of **V. Natarajan Vs. SEBI**, Appeal No. 104 of 2011, has observed as follows: "... We are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, were violated… These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities…"

68. In view of the above I conclude that, by failing to make true, fair and adequate disclosures with respect to utilisation of loan and also by not making the disclosure regarding related party transaction in the Prospectus Noticee 1 has misled the investors which is detrimental to the interest of investors in securities

market and thereby violated Regulations 3 (b), (c), (d), 4(1), 4(2) (f) ,(k) and (r) of PFUTP Regulations and section 12A (a), (b) and (c) of SEBI Act.

Issue I.b. Whether Noticee 1 violated Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956 and Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009.

69. I note that SEBI has adopted a disclosure based regulatory regime. Under this framework, issuers and intermediaries disclose relevant details about themselves, the products, the market and the regulations so that the investor can take informed investment decisions based on such disclosures. In the case of an IPO by a company, the information about the company is made available to the public/investors in the form of offer document. The public/investors make its decision based on the information provided to them in the form of disclosures in the offer document.

70. Regulation 57 of ICDR Regulations 2009 makes it clear that the offer document is required to contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision. In respect of related party transactions, I note that Clause 32 of Listing Agreement r/w Section 21 of the SC(R) Act, 1956 and Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009 contemplates that the issuer shall disclose the details of related party transactions information with respect to transactions or loans between the issuer and employees/KMP/connected entities.

71. Full, fair and timely disclosures form the cornerstone of any disclosure requirement stipulated by SEBI. The guiding principle in a disclosure based regulatory regime is the need for the issuers of securities to disseminate true and complete information to the potential investors in respect of the issuer and the security being issued to enable the potential investors to make their own

informed investment decisions. The same is also with a view to bring transparency in the securities market. The access to the securities market for issuers is conditional upon such disclosures. The disclosure-based regime imposes a heavier responsibility on the issuers of securities in respect of the accuracy and completeness of the information disclosed by them.

72. True and fair disclosures are important in an IPO as the investors rely on the statements and disclosures made by the Issuer Company while making investment decisions. If the disclosures made by the company / promoter & director later found to be factually incorrect, it will impact the interest of investors, which in turn mislead the investors and Prospectus is the principal medium through which the investors get information of the strength and weakness of the company, its creditworthiness, credence and confidence of Promoters and the company's prospects. The purpose of filing the offer document with SEBI is not a mere ritual or formality. Therefore, the importance of contents of the Prospectus in a disclosure regime cannot be over-emphasised. In this connection, it is pertinent to note that Hon'ble SAT in the matter of HSBC Securities and **Capital Markets (India) Private Ltd. vs. SEBI** decided on February 20, 2008 observed that " an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator"

73. I note that it has been already established in above paras that while Shalom & Addon were indicated as customers of SIL in the prospectus of SIL dated March 03, 2011, the relationship that these were proprietary concerns of employees/KMP/connected entities of SIL and the same was not disclosed in the Prospectus.

74. In the view of the above facts and circumstances, I find that the transactions of SIL with these entities were not disclosed in related party transactions of SIL in the Prospectus of SIL dated March 03, 2011 which is in violation of Cl 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009 and Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956.

Issue I. c. whether Noticee No 1 is in violation of Clause 43 of Listing Agreement read with Section 21 of the SC(R) Act, 1956?

75. SIL made the following filings to NSE & BSE regarding deployment of IPO proceeds under Clause 43 of listing agreement:

Table No 11

Description	Quarter ended Mar. 31, 2011	Quarter ended Jun. 30, 2011		Quarter ended Sept. 30, 2011	
		Proposed in prospectus	Actual Deployment	Proposed in prospectus	Actual Deployment
New project/ expansion	**No disclosure filed**	32.18	18.64	32.18	20.40
Working capital		27.30	27.30	27.30	27.30
Exp. related with general corporate purpose		6.00	6.00	6.00	6.00
Issue expense		6.16	6.16	6.16	6.16
Total		71.64	58.10	71.64	59.86
Description		**Quarter ended Dec. 31, 2011**		**Quarter ended Mar. 31, 2012**	
		Proposed in prospectus	**Actual Deployment**		
New project/ expansion		32.18	24.38	**No disclosure filed**	
Working capital		27.30	27.30		
Exp. related with general corporate purpose		6.00	6.00		
Issue expense		6.16	6.16		
Total		71.64	63.84		

76. Though SIL had made certain disclosures to the exchanges regarding utilization of IPO proceeds under Clause 43 of Listing Agreement, these do not appear to match with the transactions appearing in the bank account statements of SIL as already discussed in the above paras. In the view of the above, I find that Noticee 1 has violated Clause 43 of the listing Agreement.

Issue II. Whether Noticee 2-6 violated Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956 and Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009. Further, Noticee No 2-6 are in violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations read with Sections 12A(a), 12A(b) & 12A(c) of SEBI Act.

77. I note that in the present proceedings before me, SCN alleged that SIL's director *viz* Murugan M Thevar(Noticee 2), Deepak Shenoy (Noticee 3), Gopi Chellappan Nair(Noticee 4), Shridhar Shetty (Noticee 5), Venkatraman Gopal Nadar (Noticee 5) have violated the provisions as stated in the SCN.

78. In this regard, I note that a company works through its directors. In this context I note that in the case of ***Narayanan vs. Adjudicating Officer, SEBI*** *(2013) 12 SCC 152*, wherein it was observed that: "*33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in* ***Official Liquidator v. P.A. Tendolkar*** *(1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."* Accordingly, in view of aforesaid finding in respect of the Company, the role of the above-mentioned directors warrants an examination.

79. I note that, during investigation period, an examination of SIL's Annual Report dated August 12, 2011 for the financial year 2010-2011 shows that at the relevant time, the SIL had abovementioned five directors in different capacity.

The details of the designation of the directors has already mentioned under Table No. 2. Also, it is seen from the said Annual Report that a total of twenty board meeting were held on the following dates during the financial year 2010-2011: April 16, 2010; May 06, 2010; May 15, 2010; May 20, 2010; June 01, 2010; July 08, 2010; July 10, 2010; July 14, 2010; July 15, 2010; July 16, 2010; July 19, 2010; September 02, 2010; September 27, 2010; September 29, 2010; November 18, 2010; January 22, 2011; February 28, 2011; March 03, 2011; March 05, 2011; and March 09, 2011. The details regarding the attendance of the directors in the board meetings is provided hereunder:

Table No. 12

Name of Director	**Category**	**Number of Board Meetings Attended**
Murugan M Thevar	Managing Director	20
Gopi Chellapan Nair	Executive Non Independent	18
Deepak Shenoy	Non-Executive Independent	20
Shridhar Shetty	Non-Executive Independent	15
Venkatraman Nadar	Non-Executive Independent	11

80. With respect to *Noticee 2 (*Murugan M Thevar), I note that the Noticee 2 attended all the twenty board meetings that the SIL had during the financial year 2010-2011, as reported in the SIL's Annual Report. The Noticee 2 in its reply has stated that the Company vide its board resolution dated March 05, 2011 resolved to grant an inter-corporate deposit of Rs. 24 cr to Regent Capital. Also, it has been stated by the Noticee 2 that the SIL vide board resolution dated March 14, 2011, resolved that such monies be used for purchase of land in the vicinity of the existing factory premises and if need be to build workers quarter in such premises. It has been stated by the Noticee 2 that further to the decision of purchasing land, the Company vide board resolution dated March 22, 2011, transferred a sum of Rs. 6 Cr. in the bank account of B Ravishankar Pai for effecting the purchase of land. Lastly, it has been submitted by the Noticee that on March 09, 2011 the Board passed a resolution to keep an amount of Rs. 23,40,00,000 as Fixed Deposit Company with the Shamrao

Vithal Co-operative Bank Limited and thereafter, availed a loan of Rs. 22,23,00,000 on the Fixed Deposit and the said loan was used to repay the ICDs received from Premier Fiscal. Noticee 2 made above statement while justifying that all the transactions are as per the object of the issue.

81. I find that in the view of the above facts as gathered from the Noticee's 2 own submissions, clearly demonstrate that the decisions to use the proceeds of the IPO for various purposes was done subsequent to board resolutions granting authorisation for such use of the IPO proceeds.

82. In the view of the above I find that claim of the Noticee 2, who was the Managing Director and Chairman of the Company, and was present in all the twenty board meetings that took place in the Financial Year 2010-2011, was responsible fo for all the acts of the SIL which has been done during the tenure of Noticee 2. Further, I note that Hon'ble High Court of Bombay in the matter of **Garda Chemical Pvt. Ltd. vs. R Parthasarthy, Asst. Collector Central Excise** decided on October 15, 1983 has held that: "It is not disputed that the accused No. 2 is the Managing Director and is in overall charge of the Company." In view of the observation of Hon'ble High Court, it is clear that the Managing Director is in overall charge of the business of the company and has been vested with substantial powers of management. He is in charge of the day to day affairs of the company and is bound to discharge his functions with utmost care, skill and diligence.

83. I note that The scheme is possible only with the knowledge and active role of the Managing Director, Noticee 2, Managing Director of the company is responsible for all the deeds / acts of the company related to diversion of IPO proceeds and thus, had played fraud and misled the investors by deviating from the objects of the issue and not utilizing the fund raised through IPO towards the objects as set out in the prospectus. It has already been discussed in preceding paragraphs how diversion of IPO proceeds tantamount to fraud. Therefore, I am of the view that Noticee 2 has violated Regulations 3 (b), (c),

(d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act and is liable for penalty under section 15HA of SEBI Act 1992

84. I note from the table No 2 that the rest of the directors, apart from Noticee No. 2, namely, Noticee 3-6 were nonexecutive Independent Directors. It is also noted that no reply has been received from Noticee 4. I further note that since the above-named Noticees were categorised as Non-Executive Independent Directors, it would be necessary to specifically examine their actions to ascribe liability for the actions of the Company. For this purpose reference drawn to the Order dated November 27, 2019 of the Hon'ble SAT in **G. Unnikrishnan Nair and Others vs SEBI** (Appeal No. 05 of 2018) wherein it was held that "an independent director shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, consent or connivance or where the independent director had not acted diligently." The said principle was reiterated by the Hon'ble SAT in its Order dated February 07, 2020 in **Dr. Venkadasamy Venkataramanujan vs SEBI** (Appeal No. 254 of 2019). It is also note that for this purpose said Noticee also placed on Sayanti Sen vs. SEBI dated August, 09, 2019 and Supreme Court Order SEBI vs. Gaurav Varshney.

85. With respect to Noticee 3, I note that during the financial year 2010-2011, the Company had twenty board meetings, and out of the said twenty meetings, Deepak Shenoy attended all those meetings. Also, with respect to the role of Deepak Shenoy, the CRISIL grading report of the IPO of SIL dated January 21, 2011, stated that— "One of the independent directors is closely involved in business activities and plays a major role in guiding the promoter in taking business and financial decisions. We believe this will limit his ability to act in the best interest of minority shareholders. Also, we believe the other independent directors have limited understanding of their roles and responsibilities. They are not adequately equipped to provide guidance and exercise oversight to ensure that the interests of minority shareholders are protected. In the past, the

company has made unrelated financial investments which could have otherwise been invested in the operations of the company."

86. Further, it has been brought out in the investigation report that Noticee 3 was concurrently holding two positions *viz*., one as an employee of FASIPL, which was acting as a financial consultant to SIL and other as an independent director of SIL (to which the consultancy was being given). Noticee 3 being the key person representing FASIPL on the one hand and concurrently being one of the Independent Directors of SIL, was playing a key role in the IPO of SIL. This indicates that the role of Deepak Shenoy as a consultant was in direct conflict with his role as an Independent Director. I note that Noticee 3 has submitted that he was appointed on the board of SIL in furtherance of his role as financial consultant of SIL through FASIPL. Though, the roles of Noticee 3 as consultant appointed by FASIPL and, as Independent Director are not separately or distinctly identifiable, Noticee 3 has not denied his role in financial affairs of the SIL. I also note that Noticee 3 submitted that he is neither expert nor skilled in clothing /garment business which was SIL's main business. Notwithstanding the fact that cross examination was not provided in the instant proceeding owing to futility of the same as explained in preceding Paragraphs, I note from the perusal of the records that statements of various persons has highlighted the prominent role played by Noticee 3 in the financial affairs of SIL. I note that, Noticee 3, through his various submissions, has contended that there is not enough material on record other than aforesaid statements by various persons that, he was closely involved in the business of affairs of SIL. However, in my opinion, considering the priniciple laid down by Hon'ble Supreme Court in this regard (reproduced as below), the role of Noticee 3 in business affairs of SIL cannot be ignored.

87. At this juncture, it is pertinent to note the Hon'ble Supreme Court order in ***Narayanan vs. Adjudicating Officer, SEBI*** *(2013) 12 SCC 152*, wherein it was observed that: "*33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on*

behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in ***Official Liquidator v. P.A. Tendolkar*** *(1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

88. With regard to other Non-executive Directors, Noticee 04, Noticee 05, Noticee 06. It is seen from the Annual Report that out of the 20 board meeting held during the 2010-2011 financial year, Noticee 04 (Gopi Chellapan Nair) attended 18 meetings, Noticee 05 (Shridhar Shetty) attended 15 meetings and Noticee 06 (Venkatraman Nadar) attended 11 meetings.

89. In this regard, reference is made to Cl. 2 (XVI) (B) (1) of Part A of Schedule – VIII to the ICDR Regulations, 2009 which deals with Declaration by the issuer with respect to the disclosures made in the offer document. The said clause reads, "The draft offer document (in case of issues other than fast track issues) and offer document shall be approved by the Board of Directors of the issuer and shall be signed by all directors, the Chief Executive Officer, i.e., the Managing Director or Manager within the meaning of the Companies Act, 1956 and the Chief Financial Officer, i.e., the whole time finance director or any other person heading the finance function and discharging that function." Further reference is made to Cl. 2 (XVI) (B) (2) of Part A of Schedule – VIII. The said clause reads, "The signatories shall further certify that all disclosures made in the offer document are true and correct." A conjoint reading of the above mentioned clauses brings out three essential things a) the offer document should have been approved by the Board of Directors; b) it should necessarily be signed by all the members of the Board; and c) the signatories should certify that all disclosures made in the offer document are true and correct.

90. It must be emphasized here that there is a deliberate legislative intent in requiring that not only should the offer document be approved by the board of directors but should be signed by all the directors on the board. And that all signatories satisfy that all disclosures made in the offer document are true and correct. This is to ensure that any offer document placed in the public domain has passed through the scrutiny of each director on the board of that Company. In the present case, it has been clearly established that the disclosures made in the offer document were in fact untrue, and the proceeds of the IPO was used for purposes distinct from those mentioned in the offer document. So, the above mentioned directors cannot claim that because they were independent directors they cannot be held liable. The duty cast by way of the above-mentioned provisions is on all the directors on the board of a company, irrespective of their individual status as independent or executive.

91. It is pertinent to refer the order of Hon'ble SAT in the matter of **Brooks Laboratories Ltd. vs. SEBI (**decided on March 21, 2018) in which Hon'ble SAT held that, "*Failure to disclose material information and making false/ misleading statements in the RHP/ Prospectus constitutes serious violation of the PFUTP/ ICDR Regulations. Appellants who are Chairman, Managing Director, Chief Executive Officer, Chief Financial Officer and Company Secretary of the Company cannot escape penal liability for the aforesaid violations by merely stating that they had relied on the merchant banker. Appellants were equally responsible to ensure that all material facts were disclosed and further ensure that false and misleading statements were not made in the RHP/ Prospectus*."

92. I, therefore, find that the violations of the Company happened with the knowledge, consent and connivance of the directors namely, Gopi Chellapan Nair (Noticee No. 4), Shridhar Shetty (Noticee No. 5) and Venkatraman Nadar (Noticee No. 6), and they had failed to act diligently making them liable for the acts of the Company.

93. In the view of the above facts and circumstances, I am of the view that, Noticee 2-6 are liable for violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations read with Sections 12A(a), 12A(b) & 12A(c) of SEBI Act. Additionally, Noticce 2-6 are liable for the act of the SIL, since as established in the above paras of the order that SIL failed to disclose the related party disclosures as per clause 32 of the listing agreement with respect to transaction with related supplier/customer of SIL to exchange as in the prospectus of SIL dated March 03, 2011. Thereby, I am of the view that Noticee 2-6 violated Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956 and Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009

Issue III. Whether Noticee 7 and Noticee 8 are in violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations and Sections 12A(a), 12A(b) & 12A(c) of SEBI Act.

94. Noticee 7 and Noticee 8 shown as part of the Key Management Personnel. M S Anand holding the position of VP (Finance) is shown as "in charge for Finance" and Sapna Karmokar holding the position of Company Secretary is shown as "In charge for Secretarial and Compliance".

95. I note that Regulation 2 (1) (s) of the ICDR 2009 defines Key Management Personnel as "*the officers vested with executive powers and the officers at the level immediately below the board of directors of the issuer and includes any other person whom the issuer may declare as key management personnel*". In this regard, reference is again made to Cl. 2 (XVI) (B) (2) of Part A of Schedule – VIII, which provides that signatories shall certify that all disclosures made in the offer document are true and correct. It is noted that M S Anand (Noticee 7) and Sapna Karmokar (Noticee 8) were both signatories to the offer document. Therefore, it is alleged that there is a duty cast on the signatories of the offer document to ensure that the disclosures made are true and correct.

96. In this regard I note in the separate and parallel proceeding was initiated against the Noticee 7 and Noticee 8 under the provisions of sections 11(1), 11(4), 11A and 11B of the SEBI Act. Vide order dated April 20, 2021, WTM held that both Noticee 7 and Noticee 8, “failed to ensure that the disclosures made in the offer document as they were true and correct have facilitated and connived with the Company in using the proceeds of the IPO for purposes distinct from those mentioned in the offer document and siphoning off the funds.”

97. I further note that Hon’ble SAT in the matter of **Nirmal Kotecha vs SEBI**, (Appeal No. 580 of 2019, order dated June 8, 2021) held that when the earlier proceedings are identical on facts and law with the present proceedings and the subject matter/issue involved is the same, the bar is absolute in relation to all points decided. In the view of the above I find that in the present matter, the principle of issue estoppel is fully applicable with reference to the Noticee 7. However, rule of estoppel with reference to the Noticee 8 is not applied because the aforesaid order has been passed ex-parte because Noticee 8 has not made any submission in his defence. However, in the present proceedings before me he submitted his written submission through various letter as mentioned above.

98. With regard to Noticee 7 I note that Noticee 7 has provided sufficient opportunity to defend his case, however, he failed to do the same. I also note that Noticee 7 is holding the designation of Vice President of finance in SIL. Aforesaid position is an upper-level executive who oversees all financial matters for an organization. He is responsible for processing the financial activities of an organization to maximize a company’s profits and plan for its growth. The role includes analyzing data and advising top executives on ways to use that information to make strategic decisions about the organization’s future. Therefore, it is difficult to assume that he has no knowledge about the misdeed as already established in the above paras that the disclosures made in the offer document were in fact untrue, and the proceeds of the IPO were used for purposes distinct from those mentioned in the offer document.

99. In the view of the above facts and circustances, I am of the view that Noticee 7 has failed to ensure that the disclosures made in the offer document as they were true and correct have facilitated and connived with the Company in using the proceeds of the IPO for purposes distinct from those mentioned in the offer document and siphoning off the funds.

100. In the view of the above facts and circumstances, I am of the view that, Noticee 7 is liable for violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations read with Sections 12A(a), 12A(b) & 12A(c) of SEBI Act. Additionally, Noticce 7, are liable for the act of the SIL, since as established in the above paras of the order that SIL failed to disclose the related party disclosures as per clause 32 of the listing agreement with respect to transaction with related supplier/customer of SIL to exchange as in the prospectus of SIL dated March 03, 2011. Thereby, I am of the view that Noticee 7 violated Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956 and Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of SEBI(ICDR) Regulations, 2009.

101. With regard to Noticee 8, I note that she had cleared Company Secretary exams in the month of February 2010 and got enrolled as a Company Secretary on July 12, 2010 and joined as the Company Secretary and Compliance Officer of the Company on July 14, 2010 at the age of 25. I also note that Noticee 8 submitted that the process of IPO under investigation already been initiated and substantial part of the work was done the Merchant Bankers of the said IPO, Ashika Capital Limited and a reputed firm of Company Secretaries, namely, M/s Deep Shukla and Associates, who were involved in the preparation of documents, information and compliances required for the IPO process.

102. Noticee 8 contended that since the concerned parties wilfully withheld the information as a disclosure, it was impossible for her to investigate whether the directors withheld the information from her did not disclose any information

to her that they were under obligation to disclose. Though, she was mentioned as the KMP of the Company she was not involved in the key decision or meetings. She was only a signatory to documents which the directors/promoters asked her to sign as the Company Secretary of the Company.

103. In this context, I note that Hon'ble SAT in **Sayanti Sen vs SEBI (**order dated: 09.08.2019, Appeal No. 163 of 2018) held that "T*hus, the WTM was required to arrive at a specific finding that a Director or Directors were responsible for the acts of the Company. The mere fact that a person is a Director would not make him automatically responsible for refund of monies under Section 73(2) of the Companies Act*." Further, Hon'ble SAT in case of **G. Electroplast Ltd vs SEBI** order dated august 02, 2019 Appeal No. 281 of 2017 held that: "*AO must give a specific finding that all the appellants as Directors were responsible for the alleged violation and were in charge of the affairs of the Company. In the instant case, there is no shred of evidence to show that the alleged act was committed by any of the Directors from which a reasonable inference could be drawn that the said Directors could also be vicariously liable. Vicarious liability can be inferred against a Company and its Directors only if the requisite assertions / allegations are averred in the Show Cause Notice so as to make the Company and its Directors 18 vicariously liable for the violation of the provisions of the Act and its Regulations. The assertions / allegations should also include that the Director / Directors were in charge of and responsible for the business of the Company and by virtue of their position they are liable for penalty. In the instant case, no such allegations has been made in the SCN*."

104. I also note that Noticee 8 joined the SIL in the capacity of company secretary. The role of the company secretary is to ensure the various legal compliances. I note that it is already established by order dated April 06, 2020 that merchant banker Ashika Capital failed to perform its due diligence. Further, it is also noted that role of statutory auditor is also put into suspicion and dealt

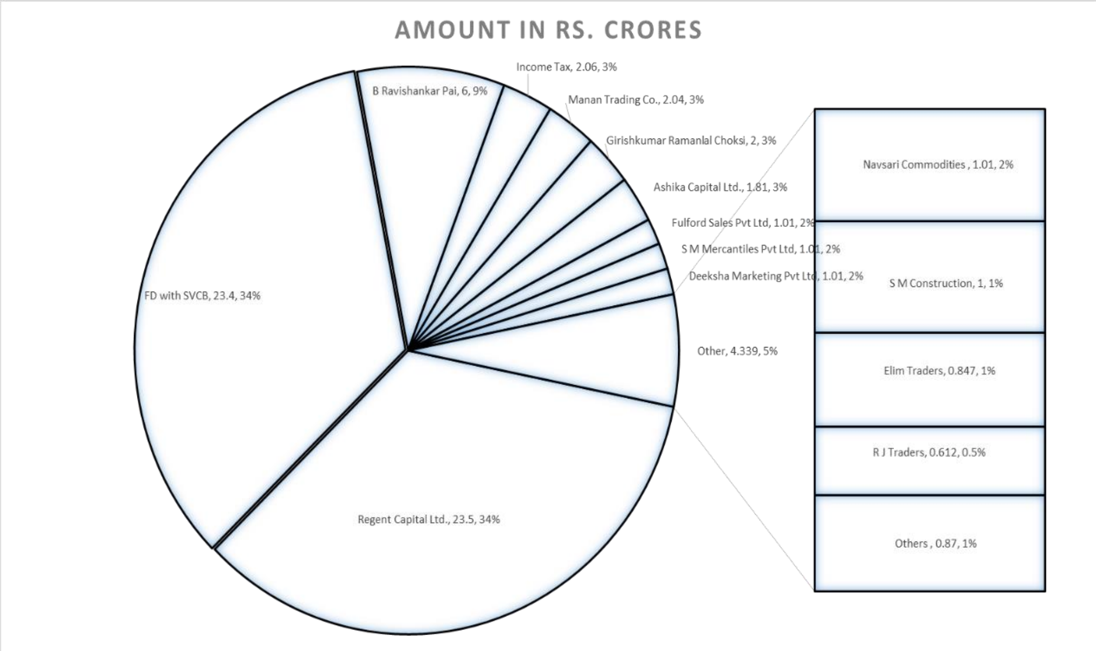
below. Further, as it has already been established in the above para the concerned director willfully withheld the information.

105. In the view of the above I note that it is not reasonably possible for Noticee 8 to ascertain whether the directors withheld the information from her or disclose any information to her which they were under obligation to disclose. Further, I note from the document available on record that except the signature of Noticee 8 on the prospectus SCN failed to show any instances which specifically allege that Noticee 8 was aware or had knowledge of the fact. Therefore, I find that it is difficult to ascertain whether Noticee 8 had any knowledge with reference to the misstatement in the Prospectus. Therefore, I am of the view that that in view of principles of equity and justice and principles laid down by SAT as cited by the Noticee 8, benefit of doubt is given to the Noticee 8.

106. Therefore, In the view of the above facts and circumstance i find that, Noticee 8 is not liable for the violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations and Sections 12A(a), 12A(b) & 12A(c) of SEBI Act. Additionally, Noticce 8 has not violated Clause 32 of the Listing Agreement r/w Section 21 of the SC(R) Act, 1956 and Clause 2(IX)(B)(12)(a) of Part A of Schedule VIII r/w Regulation 57(2)(a) of ICDR Regulations, 2009.

Issue No. IV Whether Noticee Nos. 11 to 18 are in violation of Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations and Sections 12A(a), 12A(b) & 12A(c) of SEBI Act?

107. It has been established in the previous part of this Order that the Company used the proprietorship firms of Noticee Nos. 11 to 18 to deviate from the objects of the issue by siphoning off the IPO proceeds. In this regard, The fund flow from the IPO proceeds to major entities is graphically represented as below:-



108. As can be seen from the table and chart above, approx 75% of the IPO funds received were transferred to 6 entities on the same day, viz. March 10, 2011. Further, the roles of Noticee Nos. 11 to 18 in providing assistance to the Company and its directors to deviate from the objects of the issue by siphoning off the IPO proceeds is hereby examined. Noticee contention that statement of Noticee 11-18 already retracted in the parallel proceedings before the WTM, I note that of retraction of statemnt by the Noticee 11-18 in respect of their statements given to SEBI, was an afterthought with the intent of subverting the enforcement actions contemplated in the SCN. Accordingly, I have found the said retraction affidavits to be unacceptable.

109. Further, the said Noticee (Noticee 11-18), by way of his reply filed with SEBI has taken a stand similar to the stand taken by the Noticee 2 and stated that the control of the proprietorship concerns and its day to day affairs were in his hands. Also, all transactions that were done by the proprietorship were in accordance with law and there was no irregularity of any kind whatsoever. Further, that the payments were made in respect of legitimate commercial transactions. In this regard, I note from the above paras that Noticee 11-18 estopped from taking contrary position what they have earlier submitted to

SEBI. In view of the same, reliance is being placed on the statements of the Noticees, wherever found appropriate, to establish the violations alleged in the SCN.

Noticee 11 (Ramesh Andy Thevar)

110. Noticee 11, is the proprietor of AR Fabrics and brother-in-law of Mr. Murugan M Thevar, CMD of SIL and also part of the promoter group of SIL. A R Fabrics was shown as one of the suppliers of fabric to the Company. It has already been established in the previous part of this Order that A R Fabrics had been used merely as a front for the diversion of the IPO proceeds and existed only on paper with no operational activities.

111. In his statement dated November 03, 2015, Ramesh Andy Thevar has stated that AR Fabrics was started as per the instructions of Murugan M Thevar. It has also been stated by him that the bank account of AR Fabrics was operated by Murugan M Thevar, the CMD of SIL. In his statement, with the respect to the operation of bank account of AR Fabrics, it has been stated by the above-named Noticee "*I used to sign all the cheque books and give it to my brother-in-law, Murugan M Thevar.*" Further, Noticee 11, with respect to the transactions of AR fabrics has stated that, "*I used to sign blank cheques and gave it to my brother in law. I don't know the details of dealing relating to AR Fabrics.*

112. Upon a holistic consideration of the facts that have emerged in the matter and the examination of transactions between the said Noticee and SIL, it is evident that the said transactions were at the initiation of SIL. I find that, it is clear that the Noticee 11 by (a) starting the proprietorship firm, AR Fabrics, (b) opening a bank account in its name (c) signing blank cheques for use by the Company has provided active assistance and support to SIL to deviate from the objects of the issue by siphoning off the IPO proceeds.

113. In the view of above, I find that Noticee 11 has become a party to the scheme of deviating from the objects of the issue by siphoning off the IPO proceeds, thereby violating Sections 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3(b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

Noticee 12 (Edwin Joseph)

114. As already stated Edwin Joseph was the proprietor of R J Traders and was an employee in SIL, holding the position of Manager, Corporate Planning. R J Traders was shown as one of the suppliers of the Company. It has already been established in the previous part of this Order that RJ Traders had been used merely as a front for the diversion of the IPO proceeds and existed only on paper with no operational activities.

115. In his statement dated November 30, 2015, Edwin Joseph has stated that RJ Traders was started as per the instructions of Murugan M Thevar and Deepak Shenoy. It has also been stated by him that the bank account of RJ Traders was operated by Murugan M Thevar and Deepak Shenoy. In his statement, with respect to the operation of RJ Traders, it has been stated by Noticee 12, "I *was not aware of the activities of R J Traders… I used to sign blank cheques in the name of RJ Traders and handover the same to Deepak Shenoy & Murugan M Thevar*." Further, the Noticee 12, with respect to the transactions made through RJ Traders' bank account, has stated, "*I am not aware of these fund movement. I used to sign the blank cheques (which were in the name of RJ Traders) and give to Shri Deepak Shenoy or Murugan M Thevar*."

116. In the view of the above facts and circumstances, I note the matter and the examination of transactions between the said Noticee and SIL, it is evident that the said transactions were at the initiation of the Company. Thus, it is clear that the Noticee 12 by (a) starting the proprietorship firm, AR Fabrics, (b) opening a bank account in its name, (c) signing blank cheques for use by SIL

has provided active assistance and support to the Company to deviate from the objects of the issue by siphoning off the IPO proceeds. Accordingly, I find that Noticee 12 has become a party to the scheme of deviating from the objects of the issue by siphoning off the IPO proceeds, thereby violating Sections 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3(b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

Noticee 13, Reena Nadar

117. As already stated, Reena Nadar was the proprietor of Elim Traders and was an employee in SIL,holding the position of General Manager. Elim Traders was shown as one of the suppliers of the Company. It has already been established in the previous part of this Order that Elim Traders had been used merely as a front for the diversion of the IPO proceeds and existed only on paper with no operational activities.

118. With respect to the starting of Elim Traders, Reena Nadar in her statement dated November 30, 2015, has stated that "Sometime during June-July 2010 I was told by Mr Murugan M Thevar and Mr Deepak B. Shenoy that they wanted me to open current account in federal bank, chembur branch in the name of Elim Traders." was started as per the instructions of Murugan M Thevar and Deepak Shenoy. It has also been stated by her that the bank account of RJ Traders was operated by Murugan M Thevar and Deepak Shenoy. In this regard, it has been stated by her that "the cheque book (containing about 25 leaves) was signed and handed over to Mr. Deepak Shenoy in presence of Mr Murugan M Thevar. This continued till 2013 as after that the said bank account is not being used." Further, the Noticee, with respect to the transactions made through Elim Traders' bank account, has stated that "This account was used for doing and routing transactions. In this account the money used to come from Sudar and then same used to be routed to bank account of either of the three entities viz., Shalom Fashions/Shree Bhagwati / George Street. All these three entities also had bank account in Federal Bank

Chembur Branch. Thereafter the amount used to go back to bank accounts of Sudar Industries Ltd. This way the money was routed and ELIM Traders and its bank account was used for this purpose only."

119. The said Noticee, by way of her reply filed with SEBI has taken a stand similar to the stand taken by the Company and Noticee 2 and stated that the control of the proprietorship concerns and its day to day affairs was in her hands. Also, all transactions that were done by the proprietorship were in accordance with law and there was no irregularity of any kind whatsoever. Further, that the payments were made in respect of legitimate commercial transactions.

120. Upon a holistic consideration of the facts that have emerged in the matter and the examination of transactions between the said Noticee and SIL, it is evident that the said transactions were at the initiation of the Company. Thus, it is clear that the Noticee by starting the proprietorship firm, Elim Traders ; opening a bank account in its name; and allowing the directors of the Company to operate the said bank account, knowing fully well that the account would be used to route funds, has provided active assistance and support to the Company to deviate from the objects of the issue by siphoning off the IPO proceeds. Accordingly, I find that Noticee 13 by providing assistance and support has become a party to the scheme of deviating from the objects of the issue by siphoning off the IPO proceeds, thereby violating Sections 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3(b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

Noticee 14 (Santosh Vishnu Ingle)

121. As already stated Santosh Vishnu Inglewas the proprietor of Shalom Fashions and SM Construction. Shalom Fashion was shown as one of the customers of the Company. SM Construction was shown as a supplier of the Company. It has already been established in the previous part of this Order

that Shalom Fashion and SM Construction had been used merely as a front for the diversion of the IPO proceeds.

122. In his statement dated November 05, 2015, Santosh Vishnu Ingle has stated that he started working with Murugan M Thevarin 1993-94 when he was about 15-16 years old. His mother knew one Andy Thevar, who was their neighbor and the father-in-law of Murugan M Thevar. Hehas stated that Shalom Fashion was started as per the instructions of Murugan M Thevar for which a bank account was opened in the Chembur branch of Federal Bank. He has further stated that Shalom fashion was " run by Murugan M Thevar. As regards the cheques etc., the cheque books containing about 25 to 50 cheque leaves were signed and handed over to Murugan M Thevar/ Deepak Shenoy." Further elaborating on the way Shalom Fashion was run, the said Noticee has stated that "all cheques received in the name of Shalom Fashion for job work done by me were handed over to office of Sudar Industries Ltd.to Murugan M Thevar/Deepak Shenoy or to one of Sushant (in account dept)…" Similarly, with respect to SM Construction, it has been stated by Santosh Vishnu Ingle that he thought of doing "labour work" and entering the construction business for which he started SM Construction. A bank account in this regard was also opened with the Panvel branch of Axis Bank. It has been stated by the Noticee that due to his inability to manage labour etc. on contract for supplying to the construction works, he decided to continue to work as he was doing earlier and expressed the same to Murugan M Thevar. Pursuant to this, the Noticee has stated that "Murugan M Thevar and Deepak Shenoy asked me to hand over the cheque book after signing the cheques citing they would be able to use the firm as their construction work was also on." Elaborating further on the functioning of SM Construction, it has been stated by the Noticee that "Mr Murugan/Mr Deepak said that as construction work was already on for Sudar Garments factory so the firm could be used by them. I handed all documents to them including blank signed cheques/cheque book as was being done in case of Shalom Fashion. I never did any job or work whatsoever ever nor did I do any

banking transaction in the said bank account, however I used to sign the entire cheque book and hand over to office of SIL (Mr Murugan M Thevar/Mr Deepak Shenoy)."

123. The said Noticee, by way of his reply filed with SEBI has taken a stand similar to the stand taken by the Company, Noticee 2 and stated that the control of the proprietorship concerns and its day to day affairs were in his hands. Also, all transactions that were done by the proprietorship were in accordance with law and there was no irregularity of any kind whatsoever. Further, that the payments were made in respect of legitimate commercial transactions.

124. Upon a holistic consideration of the facts that have emerged in the matter and the examination of transactions between the said Noticee and SIL, it is evident that the said transactions were at the initiation of the Company. Thus, it is clear that the Noticee by starting the proprietorship firms, Shalom Fashion and SM Construction; opening bank accounts in the name of the said proprietorship firms; signing blank cheques for use by the Company has provided active assistance and support to the Company todeviate from the objects of the issue by siphoning off the IPO proceeds. Accordingly, I find that said Noticee by providing assistance and support has become a party to the scheme of deviating from the objects of the issue by siphoning off the IPO proceeds, thereby violating Sections 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3(b), (c), (d) and 4(1) of PFUTP Regulation 2003.

125. Valliammal Murugan M Thevarwas the proprietor of Addon Exports and is also the wife of the CMD of SIL,Murugan M Thevar, Noticee No.1. Addon Exports was shown as one of the customers of the Company. It has already been established in the previous part of this Order that Addon Exports had been used merely as a front for the diversion of the IPO proceeds and existed only on paper with no operational activities.

Noticee 15 (Valliammal Murugan M Thevar)

126. In her statement dated November 09, 2015, Valliammal Murugan M Thevar has stated that she was informed by her husband that Addon Exports was in her name, though she was not aware of the activities, as they were being handled by her husband. It has also been stated by her that the bank account of Addon Exports was operated by Murugan M Thevar, the CMD of SIL. In her statement, with the respect to the operation of bank account of Addon Exports, it has been stated by the above-named Noticee "I am not aware of details of transactions in my account. I used to sign blank cheques and hand it over to my husband, Murugan M Thevar." Further, the Noticee, with respect to the transactions of Addon Exports has stated, "As stated earlier, I am not aware of details of transactions in my account. My husband Murugan M Thevar would be able to give details"

127. The said Noticee, by way of her reply filed with SEBI has taken a stand similar to the stand taken by the Company and Noticee 2 and stated that the control of the proprietorship concern and its day to day affairs were in her hands. Also, all transactions that were done by the proprietorship were in accordance with law and there was no irregularity of any kind whatsoever. Further, that the payments were made in respect of legitimate commercial transactions.

128. Upon a holistic consideration of the facts that have emerged in the matter and the examination of transactions between the said Noticee and SIL, it is evident that the said transactions were at the initiation of the Company.Thus,it is clear that the Noticee by acceding to the formation of a proprietorship firm, Addon Exports; allowing Noticee No. 1 to operate the bank account of the proprietorship firm ; signing blank cheques for use by the Company has provided active assistance and support to the Company todeviate from the objects of the issue by siphoning off the IPO proceeds. Accordingly, I find that said Noticee by providing assistance and support has become a party to the

scheme of deviating from the objects of the issue by siphoning off the IPO proceeds, thereby violating Sections 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3(b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

Noticee 16 (Kamlesh Muthappa Nadar)

129. As already stated Kamlesh Muthappa Nadar was the proprietor of Shree Bhagwati International. Shree Bhagwati International was shown as one of the customers of the Company. It has already been established in the previous part of this Order that RJ Traders had been used merely as a front for the diversion of the IPO proceeds and existed only on paper with no operational activities.

130. In his statement dated November 15, 2015, Kamlesh Muthappa Nadar has stated that Shree Bhagwati International was started on the instance of Paul Murugan, son of Murugan M Thevar. In this regard, he has stated that "Paul Murugan told me that they had plans to start a firm in the name of Shree Bhagwati International in my name around 2010. I remember that I signed some documents pertaining to Shree thagwati International though I don't remember the exact details." In his statement, with respect to the operation of Shree Bhagwati International, it has been stated by the abovenamed Noticee, "I am not aware of the business activities of Shree Bhagwati International. I am only aware that a firm in the name of Shree Bhagwati International was opened in my name & I signed blank cheque books in the name of Shree Bhagwati International on the instructions of Ms. Reena who used to call me from the office telephone number and I used to visit the office of Sudar and sign the blank cheque books from there." Further, the Noticee, with respect to the transactions made through the bank account of Shree Bhagwati International, has stated, "I am not aware of these transactions." The said Noticee, by way of his reply filed with SEBI has taken a stand similar to the stand taken by the Company and stated that the control of the proprietorship concerns and its day to day affairs were in his hands. Also, all transactions that were done by the

proprietorship were in accordance with law and there was no irregularity of any kind whatsoever. Further, that the payments were made in respect of legitimate commercial transactions.

131. Upon a holistic consideration of the facts that have emerged in the matter and the examination of transactions between the said Noticee and SIL, it is evident that the said transactions were at the initiation of the Company. Thus, it is clear that the Noticee by starting the proprietorship firm, Shree Bhagwati International; opening a bank account in its name; signing blank cheques for use by the Company has provided active assistance and support to the Company todeviate from the objects of the issue by siphoning off the IPO proceeds. Accordingly, I find that said Noticee by providing assistance and support has become a party to the scheme of deviating from the objects of the issue by siphoning off the IPO proceeds, thereby violating Sections 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3(b), (c), (d) and 4(1) of PFUTP regulation.

Noticee 17 (Stalin Muthappa)

132. As already stated Stalin Muthappa was the proprietor of George Street London. George Street London was shown as one of the customers of the Company. It has already been established in the previous part of this Order that George Street London had been used merely as a front for the diversion of the IPO proceeds and existed only on paper with no operational activities. In his statement dated November 27, 2015, Noticee 17 has stated that George Street London was started on the instance of Paul Murugan, son of Murugan M Thevar. In this regard, he has stated that "Paul Murugan told me that they were planning to start a firm in the name of George Street London in my name somewhere during 2010. I vaguely remember that I signed some documents pertaining to George Street London. However, I do not remember any detail in this regard." In his statement, with the respect to the operation of George Street London, it has been stated by the above-named Noticee, "*I do not know any of*

the business activities of George Street London. I am only aware that a firm in the name of George Street London was opened in my name & I used to sign blank cheque books in the name of George Street London on the instructions of Sudar who used to call me from the office telephone number and I used to visit the office of Sudar and sign the blank cheque books from there."

133. Further, the Noticee 17, with respect to the transactions made through the bank account of George Street London, has stated, " I am not aware of these transactions."

134. Upon a holistic consideration of the facts that have emerged in the matter and the examination of transactions between the said Noticee and SIL, it is evident that the said transactions were at the initiation of the Company. Thus, it is clear that the Noticee by starting the proprietorship firm, George Street London; opening a bank account in its name; signing blank cheques for use by the Company has provided active assistance and support to the Company todeviate from the objects of the issue by siphoning off the IPO proceeds. Accordingly, I find that said Noticee by providing assistance and support has become a party to the scheme of deviating from the objects of the issue by siphoning off the IPO proceeds, thereby violating Sections 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3(b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

Noticee 18 (B Ravishankar Pai)

135. As already mentioned in above para of the order, a total amount of Rs. 6 crore was transferred to the bank account (Axis Bank, Bank Account No. 833438270) of B Ravishankar Pai in three tranches of Rs 2 crore on March 23, 2011 for a supposed sale of land. It has already been established that the transfer of the above-mentioned funds was used merely as a front for the diversion of the IPO proceeds and there was in fact no land to be bought.

136. In this regard, B Ravishankar Pai in his statement dated November 02, 2015, upon being questioned on the receipt of Rs. 6 crore from SIL, has stated, “I did not deal with anybody and do not have any details. I only issued cheques to entities as per instructions of Mr Murugan M Thevar.” Further to this, a question was posed to the Noticee as to why he did not object or resist or ask for reasons for receiving such a large amount, and then not returning but making payments to others. To this Noticee has stated, “I did not use my judgment. So I did not ask for any details or resist or object to all that. I did not do so as he was my MD of Sudar Garments.” Furthermore, when he was asked to explain the credit and debit entries appearing in his bank account statement, he stated that “*I do not know any details about all these and as already told earlier I had done all that on instructions of MD of the company viz., Mr Murugan M Thevar*.”

137. The said Noticee, by way of his reply filed with SEBI has taken a stand similar to the stand taken by the Company and stated that the control of the proprietorship concerns and its day to day affairs were in his hands. Also, all transactions that were done by the proprietorship were in accordance with law and there was no irregularity of any kind whatsoever. Further, that the payments were made in respect of legitimate commercial transactions.

138. Upon a holistic consideration of the facts that have emerged in the matter and the examination of transactions between the said Noticee and SIL, it is evident that the said transactions were at the initiation of the Company. Thus, it is clear that the Noticee by effecting debit and credit transactions from his bank account on the instructions of Murugan M Thevar has provided active assistance and support to the Company to deviate from the objects of the issue by siphoning off the IPO proceeds. Accordingly, I find that said Noticee by providing assistance and support has become a party to the scheme of deviating from the objects of the issue by siphoning off the IPO proceeds,

thereby violating Sections 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3(b), (c), (d) and 4(1) of PFUTP Regulation.

Issue V. Whether Noticee Nos. 9 and 10 are in violation of Regulations 3(b), 3(c), 3(d) and 4(1) 4(2)(k) 4(2)(r) of PFUTP Regulations and Sections 12A(a), 12A(b) & 12A(c) of SEBI Act?

139. SCN alleged that SCN Noticee 09, Suresh Hegde enjoyed a personal relationship with SIL and/or its related entities and they are in connivance and in collusion with SIL and/or its related entities concocted the sales figures of the Company for the FY 2008-09 & 2009-10, which was also mis-stated in the Prospectus. Further, it has alleged that Noticee No 09 and Noticee no 10 are certifying the mis-stated Financial Statements of SIL for the FY 2010-11. Therefore, Noticees have violated Section 12A(a), (b) & (c) of SEBI Act, 1992 and Regulations 3(b), (c), (d) and 4(1), 4(2)(k) & (r) of PFUTP Regulation.

140. The Said Noticees contended that SCN has entirely relied upon the assumption of personal relationships and the statement given by certain noticees regarding their business transaction with SIL. Said Noticees further submitted that all the work has been done in the profession capacity. In this regard I note from the records that Noticee enjoys the personal relationship with the Noticee 1 and its director on the basis of following factors:

a. Suresh Hegde vide letter dated September 04, 2015 (sent to SEBI through the legal entity Crawford Bayley & Co, incidentally, the same entity through whom SIL sent its replies) stated that they had been the statutory auditors of SIL during the FY 2001-02 to FY 2014-15.
b. Mrs. Nayanambika Suresh Hegde, w/o Shri Suresh N Hegde, was the witness to the Memorandum & Article of Association of SIL dated January 25, 2002.
c. IT Returns filed in the names of the proprietors of RJ, Elim & Addon for the A. Y’s 2011-12, 2012-13, 2013-14 & 2014-15 share a common email id, *viz*. sureshhegdeandco@gmail.com.

d. Shri Suresh Hegde is the CA for DBS Tradelink & Advisors Pvt Ltd, firm in which Shri Deepak Shenoy is the Director.
e. Shri Suresh Hegde, in his capacity as a friend of Shri Ramesh Andy Thevar for the past 5 years (date of Account Opening Form is February 28, 2005), is the introducer to the Bank Account of A R Fabrics with Corporation Bank (A/c No.01/000078-F, Ghatkopar East Branch)
f. CA issued certificates for RJ, Elim & Addon, Shree Bhagwati International for the purpose of opening of bank accounts. In respect of Addon & Shree Bhagwati (certificates dated May 23, 2011 each), it was certified by Suresh Hegde & Co that the said proprietary concerns were in the business of Whole sale selling of Fabrics. In respect of R J & Elim (certificates dated November 21, 2014 each), it was certified by Suresh Hegde & Co that the said proprietary concerns were engaged in the business trading in Fabrics & Garments.

141. I also note that none of the fact has been disputed by the Noticee 9. It can be inferred from the above facts that Noticee 9 has been related to SIL since 2002. it is also inferred that Shri Suresh Hegde enjoys a personal relationship with certain suppliers of SIL, *viz.* A R Fabrics, R J Traders & Elim Traders. Therefore, it is unlikely that Suresh is unaware of the fact that the proprietors of the entities A R Fabrics, R J & Elim are connected/related to SIL and/or its promoters/directors.

142. Further, Addon & Shalom were indicated as top customers of SIL in the Prospectus of SIL for the FY 2008-09 & 2009-10, contributing collectively 51.73% & 64.22%, respectively, to the total sales of SIL. However, from the perusal of the account statements of Addon, A R , R J, Elim & Shalom, the major transactions observed from the Bank Account Statements of these entities during the relevant period involved majorly entities connected/related to SIL and/or its promoters/directors, *viz.* Shree Bhagwati International, George Street London, etc. The proprietors of the said entities stated that the

proprietorships were used to show transactions with SIL and didn't have any genuine business dealings with SIL. This was corroborated by the statement of the one of the director of the SIL, Shri Deepak Shenoy. Further, it was also observed from the bank account statements of the concerned proprietorships, *viz*. Shalom, Addon, R J, etc. that the IPO proceeds were routed back to SIL. Therefore, the sales figures of Shalom & Addon, as disclosed in the Prospectus is false and inflated.

143. Noticee contended that the same Financial Statement again audited and no fault has been find. Therefore, there is no reason to question the financials. In this regard, I note that, being the statutory auditor, he ought to have independently looked at the financials of SIL and proceeds of IPO rather than blindly relying on the due diligence carried out by anyone else. It is further reiterated that the said Noticee, being the statutory auditor, was expected to report whether the financials of the company depict a true and fair representation. Although being a chartered accountant for the aforesaid entities/ connected persons and SIL, the Noticee 9 failed to disclose the connection between the entities & SIL and its possible impact/outcome on the IPO proceeds.

144. Further, I note that Noticee 9 and Noticee 10 had not acted in bonafide manner and are not unreasonable groped and roped in the captioned proceedings as it is very well proved that there was a nexus in between the said Noticee and the promoters, directors and management of SIL. the said Noticee were indebted to the connected entities of the Promoter of SIL. The said Noticee being closely related to the proprietors of SIL group companies and also being the statutory auditor of SIL had a complete picture of all the fraudulent transactions taking place and being privy to that has made the account statements to misrepresent the people that SIL has a well-run business.

145. I am of the view that being the statutory auditor, the said Noticee were expected to report whether the financials of the company depict a true and fair representation. Although being a chartered accountant for the aforesaid entities/ connected persons and SIL, the said Noticee failed to disclose the connection between the entities & SIL and its possible impact/outcome on the IPO proceeds. The conduct of the Noticee 9 and Noticee 10 were therefore, clearly indicative of an active collusion and connivance with SIL and its related entities.

146. At this juncture, I would like to refer to decision of in **ICAI vs. Mukesh Gang**, wherein Hon'ble High Court of Andra Pradesh held that: *"The Chartered Accountant is a professional whose expertise in accountancy is acknowledged. He is a member of an expert body and of a premier institute in India. The certificate issued by an Auditor has its own impact on the public at large, as it is largely on the basis of this certificate that the general public subscribe to the shares of the company. Reckless certification by an Auditor, which has resulted in the public being misled into subscribing to the shares of the company in the public issue, would undoubtedly amount to gross negligence. Large sections of society rely on the certification by the Chartered Accountants for taking many vital decisions. It is imperative that utmost care and caution is exercised in issuing such certificates, and the objectivity, integrity, reliability and credibility of the information therein is ensured.*

147. Further, Hon'ble High Court of Gujarat in its decision in **C A Rajesh Dudhwala vs Disciplinary Committee** has stated that: *"Chartered Accountant has an obligation, not only statutory but also moral and social, to be absolutely and completely diligent and cautious and careful while preparing, signing and certifying Annual Accounts and/or Audit report. Several Government and private organizations and individuals rely on the report / certificate by Chartered Accountant and once a particular factual aspect or entries, etc. are prepared, signed and certified by Chartered Accountant they are ordinarily accepted*

without further probing or investigation. In such circumstances, the duty and obligation of being absolutely diligent, conscious and careful is multiplied manifold and a Chartered Accountant should not, and cannot take, such obligation or perform his duties lightly or casually."

148. Further, Hon'ble SAT in the matter of **HSBC Securities and Capital Markets (India) Private Ltd. vs. SEBI** decided on February 20, 2008 held that " *an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator.*" Further, Hon'ble SAT in the matter of Brooks Laboratories Ltd. vs. SEBI decided on March 21, 2018 has further held that, "*Failure to disclose material information and making false/ misleading statements in the RHP/ Prospectus constitutes serious violation of the PFUTP/ ICDR Regulations. Appellants who are Chairman, Managing Director, Chief Executive Officer, Chief Financial Officer and Company Secretary of the Company cannot escape*."

149. In the view of the above facts and circumstance I am of the view that, the Statutory Auditor of SIL, Shri Suresh Hegde, in connivance and in collusion with the entities related to SIL/ its promoters/directors has concocted false sales figures for the Financial Years 2008-09 & 2009-10, the same of which has been mis-stated in the Prospectus of SIL dated March 03, 2011. Further, the Company did not disclose the transactions with Addon, A R, Elim, R J, Shree Bhagwathi, George Street & Shalom as related party transaction. Therefore, I find that Noticees 9 and Noticee 10 have violated regulations 3(b), (c), (d) and 4(1) of the PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act.

Issue VI. If yes, whether Noticee 1-18 would attract monetary penalty under Section 15A(b), 15HA of SEBI Act and 23E of the SCRA Act. if so, what quantum of monetary penalty should be imposed on the Noticee?

150. In the present issue, it is pertinent to refer to the decision of the Apex Court in the matter of ***SEBI vs Shri Ram Mutual Fund*** (Appeal Civil 9523-9524 of 2003) dated May 23, 2006, wherein it 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*". Thus, it is clear in view of my findings recorded above that the scheme devised for the deviation from the Objects of the issue by siphoning off the IPO proceeds clearly emerges. Deepak Shenoy, who was a consultant for giving advice to Murugan M Thevar and SIL for the IPO, simultaneously was inducted to the board of SIL, as an independent director. It appears that during this time, the scheme was plotted by the Noticees with an idea to come out with an IPO to siphon off the IPO proceeds. Pursuant to it, several proprietorship firms or paper concerns, namely Addon Exports, Shalom Fashion, SM Construction, AR Fabrics, Elim Traders, RJ Traders, Shree Bhagwati International, and George Street London were set up at the instance of Murugan M Thevar and Deepak Shenoy, with the employees/related parties of SIL (Noticee Nos. 11 to 18) shown as the proprietors. As part of this scheme, money was transferred to these firms back and forth by SIL claiming to be payments for supply of goods and receipt from customers. These circular fund movements on one hand between SIL and the so-called suppliers and on the other, between SIL and the so-called customers, was created to give the impression that SIL had good business with multiple suppliers and customers. With this background, the auditors (Noticee 9 and Noticee 10) of the Company (Noticee 1) projected that the accounts were proper and the books presented a picture of a sound and well-run business.

151. The Company and its directors came out with a dubious IPO scheme, and subsequently, deviated from the objects of the issue by siphoning off the IPO proceeds. Thus, I find that Noticee Nos. 1 to 7 liable for making improper

and misleading disclosures in the Offer Document and by using personal relationships to form proprietorship concerns in the names of Noticee Nos. 11 to 18 and Noticee Nos. 11 to 18 by lending their names to these firms and by receiving/ transferring money from the bank accounts of these firms have jointly played a fraud on the market using the IPO route. Noticee Nos. 9 and 10, who were statutory auditors, with their mandate to state true and correct financials, being in conflict owing to the loan transactions, have miserably failed to do the job of an independent auditor.

152. I am of the view that the aforesaid scheming by the Noticees except needs to be dealt in a strict manner and warrants imposition of monetary penalty under sections 15HA 15A(b)of the SEBI Act and section 23E of the SCRA, the text of which is provided below:

153. Having regard to the factors listed in section 15J of SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules and section 23J of SCRA read with 5(2) SCRA adjudication Rules, which provides that while adjudging quantum of penalty, and in the light of Supreme Court's judgment in the matter of SEBI vs Bhavesh Pabari (2019) 18 SCC 246 it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. There are no investors complaints on record arising out of such defaults. Further, with respect to the repetitive nature of the default, I find that no regulatory action has been taken in past by SEBI against the Noticees.

154. I am aware of the fact that the default in question pertains to the year 2011, and since then considerable amount of time has passed. Further, the Hon'ble SAT in ***P.G Electroplast Ltd. vs. SEBI*** (Appeal No. 281 of 2017), dated August 02, 2019, has held that an order passed in corresponding proceedings before the whole time member should be factored in while fixing

the quantum of penalty. In this regard, I note that, a separate and parallel proceeding was initiated against the Noticees under the provisions of sections 11(1), 11(4), 11A and 11B of the SEBI Act under the same facts pursuant to which the Vide order dated April 20, 2021 was passed. *Vide* the December 2020 Order, the whole time member has *inter alia* passed the following directions with respect to the Noticees in the present matter:

g. The SCN in respect of Noticee No.1 (Sudar Industries Limited) is disposed of considering the liquidation status of the said Company;

h. Noticee No. 2, (Murugan Muthiah Thevar) and Noticee No. 3 (Deepak Shenoy) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 7 years;

i. Noticee Nos. 2 and 3 shall also be restrained for a period of 7 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

j. Noticee No. 4 (Gopi Chellappan Nair), Noticee No. 5 (Sridhar Shetty), Noticee No. 6 (Venkatraman Gopal Nadar), Noticee No. 7 (M S Anand) and Noticee No. 8 (Sapna Karmokar) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 5 years

k. Noticee Nos. 4 to 8 shall also be restrained for a period of 5 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

l. Noticee No. 11 (Ramesh Andy Thevar), Noticee No. 12 (Edwin Joseph), Noticee No. 13 (Reena Nadar), Noticee No. 14 (Santosh Ingle), Noticee No. 15 (Valliammal Murugan Thevar), Noticee No. 16 (Kamlesh Muthappa Nadar), Noticee No. 17 (Stalin Muthappa) and Noticee No. 18 (B Ravishankar Pai) shall be restrained from accessing the securities market, and further prohibited from *buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 4 years ; and*

m. *Noticee Nos. 11 to 18 shall also be restrained for a period of 4 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI.*

n. *Further in exercise of the powers conferred upon me under Section 19, read with Section 11B of the Securities and Exchange Board of India Act, 1992, hereby direct as below:*
    i. *Noticee No. 9 (Suresh Hegde) and Noticee No. 10 (Suresh Hegde and Co.) shall not directly or indirectly issue any certificate of audit of listed companies, compliance of obligations of listed companies or intermediaries registered with SEBI, and the requirements under the SEBI Act, 1992, the SCRA 1956, the Depositories Act, 1996, those provisions of the Companies Act 2013 which are administered by SEBI under section 24 thereof, the Rules, Regulations and Guidelines made under those Acts which are administered by SEBI for a period of 3 years.*
    ii. *Intermediaries registered with SEBI and listed companies shall not engage Noticee Nos. 9 and 10, for issuing any certificate with respect to compliance of statutory obligations which SEBI is competent to administer and enforce, under various laws for a period of 3 years; and*
    iii. *Noticee Nos. 9 and 10 shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 3 years.*

Order

155. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act and section 23-I of SCRA read with rule 5 of the SEBI Adjudication Rules and SCRA Adjudication Rules, I hereby impose penalty on the Noticees as follows:

Noticee	Noticee Name	Penalty
2	Murugan M Thevar	**Jointly and Severally on Noticees 2-7**

Noticee	Noticee Name	Penalty
3	Deepak Shenoy	Rs 12,00,000 /- (Rupees twelve Lakh Only) u/s 15HA of SEBI Act and u/s 15A(b) of SEBI Act
4	Gopi Chellappan Nair	
5	Shridhar Shetty	
6	Venkatraman Gopal Nadar	
7	M S Anand	
8	Sapna Karmokar	Nil
9	Suresh Hegde	**<u>Jointly and Severally on Noticees 9-10</u>** Rs 2,00,000/- (Rupees two Lakh Only) u/s 15HA of SEBI Act
10	Suresh Hegde and Co	
11	Ramesh Andy Thevar	**<u>Jointly and Severally on Noticees 11-18</u>** Rs 8,00,000/- Rupees (Eight Lakh Only) u/s 15HA of SEBI Act
12	Edwin Joseph	
13	Reena Nadar	
14	Santosh Vishnu Ingle	
15	Valliammal Murugan M Thevar	
16	Kamlesh Muthappa Nadar	
17	Stalin Muthappa	
18	B Ravishankar Pai	

156. I note that no penalty has been imposed on the Noticee 1 considering that Noticee 1 is in liquidation and no leave of the court taken as per Section 446 of Companies Act, 1956 read with section 279 of the Companies Act, 2013 with respect to the present adjudication proceeding.

157. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

158. The Noticees shall forward the said demand draft or the details/ confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

159. In terms of rule 6 of the SEBI Adjudication Rules and SCRA Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: May 31, 2022 **VIJAYANT KUMAR VERMA**

Place: Mumbai **ADJUDICATING OFFICER**