

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of

Sl. No.	Name of the Noticees	PAN
1.	Tata Motors Ltd.	AAACT2727Q
2.	Shri K A Chaukar	ABCPC7828D
3.	Shri Subodh K Shah	AALPS7855A
4.	Shri B A Suvarna	AABPS3393K
5.	Smt. Beroz Rumie Gazdar	AAGPG7340D
6.	Shri K N Suntook	ANVPS1947G
7.	Shri Jamshed K Setna	AABPS5096H
8.	Shri B Ramakrishna	ADAPB6171E
9.	Shri B L Passi	AAGPP7029Q
10.	Shri Arun Gandhi	AADPG1145R
11.	Niskalp Infrastructure Services Ltd. (formerly known as Niskalp Investment and Trading Ltd.)	AABCN9239J
12.	Shri Milind S Desai	AADPD0359G
13.	Shri Jose Peter	AAFPJ1317E

In the matter of backdated transaction in the shares of Global Telesystems Limited and Global E-Commerce Services Ltd.

(The above-mentioned entities are individually referred to by their corresponding names/ numbers and collectively referred to as “Notices”)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a complaint dated October 18, 2002 (hereinafter referred to as “**Complaint**”) from Tata Finance Ltd. (hereinafter referred to as “**TFL**”¹) alleging instances of irregular transactions in securities based on back- dated and fictitious contract notes/bills, for sale and purchase of shares of Global Telesystems Ltd., (now known as GTL Ltd. and hereinafter referred to as “**GTL**”) and Global E-Commerce Services Ltd., (an unlisted company which was merged with GTL in 2001 and hereinafter referred to as “**GECS**”) by Shri D.S. Pendse and Shri A. L. Shilotri who executed the trades on behalf of Niskalp Investment and Trading Ltd. (now known as Niskalp Infrastructure Services Ltd. and hereinafter referred to as “**NISL/ Niskalp**”) and TFL, respectively.
2. Pursuant to the said *Complaint*, SEBI conducted an investigation into the alleged back-dated transactions in the shares of GTL and GECS to ascertain possible violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as the “**PFUTP Regulations 1995**”) read with SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the “**PFUTP Regulations 2003**”).
3. Based on the findings during the investigation, a common Show Cause Notice dated January 04, 2019 (hereinafter referred to as “**SCN**”) was issued to the *Notices* asking them to show cause as to why suitable directions under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 should not be issued against them for the violations of the relevant provisions of the PFUTP Regulations, 1995 read

¹ TFL merged with Tata Motors Ltd. (“**TML/ Company**”) vide order dated June 24, 2005, passed by the Hon’ble Bombay High Court in Company Petition No. 257 of 2005 with Company Application No. 178 of 2005, however, for the present proceedings, both the names (i.e., TFL and TML) have been used interchangeably.

with the PFUTP Regulations, 2003. The SCN alleges that TFL, *Niskalp* and the then Board of Directors (“**BoD**”) of TFL and *Niskalp* have falsified the books of accounts of *Niskalp* by back dating the transactions of sale of shares of GTL and GECS in September 2000 and then made reversal of these trades in November/December 2000. Further, they have not disclosed the true and correct financial status to the stakeholders and have concealed material facts in the offer document of the Rights Issue of TFL wherein the financial statements of *Niskalp* was disclosed for the period ending September 2000 in place of December 2000, whereas the financials of other subsidiaries of TFL were disclosed for the period ending on December 2000. Further, while disclosing the financials of *Niskalp*, some fictitious and bogus transaction were carried out by backdating contract notes/bills for sale and purchase of shares of GTL and GECS so as to reflect profit in the accounts of *Niskalp* instead of showing actual loss made by it.

4. The facts as unearthed during the investigation, which are necessary and relevant, are narrated in brief here under:
 - (a) TFL had come out with a Rights Issue of 9% Cumulative Convertible Preference Shares (“CCPS”) aggregating to INR 90.93 Crore in March, 2001. The rights issue of the TFL had opened on March 30, 2001 and closed on April 30, 2001. In terms of SEBI (DIP) Guidelines, 2000 (hereinafter referred to as “**DIP Guidelines**”), TFL was required to furnish the financial statements of its subsidiary companies in its ‘letter of offer/offer document’. *Niskalp* being one of the subsidiary companies of TFL, its financial statements were also required to be incorporated in the offer document.
 - (b) *Niskalp* during the relevant period had suffered huge losses on account of erosion in the value of its investments (to the tune of INR 190 Crore due to fall in the stock market) and due to payment of an interim dividend (@45% for the year 2000-01 resulting into cash outflow of INR 10.81 Crore).

- (c) It is noticed that in order to ensure that *Niskalp*'s accounts did not reflect the aforesaid losses and the fact that its (*Niskalp*) losses and 'non-performing assets' (NPA) provisioning as on September 30, 2000 were better/lower compared to December 31, 2000, the financials of *Niskalp* were disclosed only for the period ending September 30, 2000 in the said offer document instead for the period ending December 31, 2000, whereas financials of other subsidiaries of TFL were disclosed till the quarter ending on December 31, 2000.
- (d) It has been noticed that to show a better picture of the financials of *Niskalp* and making it look profitable backdated and fictitious transactions in the shares of GTL and GECS were engineered and effected in the month of March, 2001 by TFL and *Niskalp* in complicity with the brokers, Bharat J Patel (BJP), Prashant Jayantilal Patel (PJP) and JHP Securities Pvt. Ltd. (JHP) for sale/ purchase of 2,88,400 shares of GTL and 16,35,100 shares of GECS (an unlisted company during the relevant period) in complicity with two unregistered entities viz. Pat Financial Consultants Pvt. Ltd. (hereinafter referred to as "**PFCPL/PAT**") and Superior Financial Consultancy Services Pvt. Ltd. (hereinafter referred to as "**SFCSPL/SUPERIOR**"), which were entities connected to the above registered intermediaries.
- (e) It has been further noticed that 2,88,400 shares of GTL and 16,35,100 shares of GECS were shown to have been sold by *Niskalp* in the month of September, 2000 and the said transactions were further reversed in the month of November- December 2000. Moreover, the above transactions were executed on paper only and not followed by the actual transfer of securities and payment of consideration thereof between the parties, details of which would be discussed in the later part of the order.
- (f) Based on the above noted sale of GTL and GECS shares, *Niskalp* was shown to have booked a profit of INR 26.04 Crore (INR 16.50 Crore in GTL and INR 9.54 Crore in GECS shares) as on September 30, 2000, thereby

converting the actual loss of INR 14.59 Crore into a book profit of INR 11.45 Crore as on September 30, 2000.

- (g) The aforesaid dealings in shares between *Niskalp* and TFL were not genuine but fictitious and were carried out with a view to project a better picture of *Niskalp*'s financial condition in the offer document of the Rights Issue of TFL as the above profit in the hands of *Niskalp* was disclosed in the offer document of TFL for the Rights Issue.
5. Based on the above findings, the SCN alleges that TFL has concealed the true and correct facts from the investors and has disseminated untrue and misleading statement of facts pertaining to financials of *Niskalp* in the letter of offer of its Rights Issue. Further, to show the aforesaid inflated and fictitious profit in the books of account of *Niskalp*, TFL has knowingly engaged in the acts of backdating of the transactions of sale-purchase and accounting entries with respect to the scrip of GTL and GECS in the books of accounts of *Niskalp* and consequently in the offer document of the TFL, in order to give a better picture of the accounts of *Niskalp* in the 'letter of offer' of TFL so as to induce purchase/subscription to the rights issue of TFL by its shareholders. The SCN further alleges that the above acts of entering into the fictitious and non-genuine transaction of securities by the *Noticee no. 1* and *11* and disseminating untrue and misleading information in the 'letter of offer' of TFL knowing them to be not true and correct, are in violation of the regulations 5 (1), 6(a) and 6(d) of the PFUTP Regulations 1995 read with regulation 13 of the PFUTP Regulations 2003. The SCN further alleges that since, the *Noticee nos. 1*(TML) and *11*(*Niskalp*) being artificial persons cannot act on its own, the BoD of these two *Noticees* are alleged to be responsible for the aforesaid falsification of books of accounts and misrepresentation of financial statement in the offer documents of the *Noticee no. 1*(TML).
6. I note from the records before me that the SCN was duly delivered on the *Noticees*. I further note that the *Noticee no. 7* (Shri Jamshed K Setna) and *Noticee no.9* (Shri B L Passi) have passed away during the proceedings details of which

were furnished during the course of the proceedings. Thus, the present proceedings are now being proceeded with in respect of the remaining *Notices* i.e., the *Notice nos. 1 to 6, 8, 10, 11, 12 and 13*.

INSPECTION, REPLY, PERSONAL HEARING AND SUBMISSIONS

7. In response to the SCN, the *Notice nos. 5 and 12* filed their reply vide letters dated January 29, 2019 and January 28, 2019, respectively. Subsequently, SEBI granted an opportunity of inspection to others on dates as requested by them vide their respective reply/letter. Accordingly, they have availed the opportunity of inspection granted on different dates. Further, the respective *Notices* vide their letters dated January 14, 2020, February 12, 2020 and April 30, 2020 have requested for copies of certain documents including the Investigation Report as specified in those letters, which have been responded to by SEBI vide its emails dated April 15, 2020 and June 17, 2020.
8. After completing the process of inspection, SEBI granted an opportunity of personal hearing to the *Notices* on November 24, 2020. However, the Authorised Representative (“**AR**”) of the *Notice nos. 1 to 4, 6, 8, 10, 11 and 13* vide letter dated September 18, 2020 sought cross examination of entities whose statements were referred to and annexed with the SCN. The opportunity of cross examination was granted to the aforesaid *Notices* on November 24, 2020. It is noted that vide separate emails, three of the witnesses have either requested for postponement of cross examination or requested for conducting their cross examination through video conferencing for the reasons stated in the said emails. Further, the AR of the *Notices* vide letter dated November 18, 2020 had also requested to adjourn the cross-examination of the witnesses on account of Covid-19 pandemic. Accordingly, the cross examination scheduled on November 24, 2020 was postponed to March 09, 2021.
9. On the scheduled date of cross examination, the AR of the *Notice nos. 1 to 4, 6, 8, 10, 11 and 13* completed cross examination of one of the witnesses i.e., Shri S Sivaram [Partner, M/s Sahni, Natarajan & Bahl (“**SNB**”)-internal auditor of TFL

and *Niskalp*]. Also, on the said date, the *Noticee no. 5* (Smt. Beroz R. Gazdar) appeared alongwith her son Shri Areez Gazdar (as Authorised Person) and made oral submissions on the lines of her reply dated January 29, 2019. The *Noticee no. 12* (Shri M. S. Desai, the then director of *Niskalp*) appeared in person and made oral submissions on the lines of his earlier reply dated January 28, 2019. Additionally, the *Noticee nos. 5* and *12* filed their post hearing written submissions dated March 23, 2021 and March 21, 2021, respectively.

10. An opportunity of personal hearing was also granted to the *Noticee nos. 1 to 4, 6, 8, 10, 11* and *13* on September 16, 2021. Subsequently, the aforesaid *Noticees* filed their common reply on September 15, 2021. Further, the personal hearing scheduled on September 16, 2021 was adjourned to September 24, 2021 on the request made by the ARs of the aforesaid *Noticees*. Accordingly, on the scheduled date of hearing i.e., on September 24, 2021, the *Noticee nos. 1 to 4, 6, 8, 10, 11* and *13* appeared and made submissions in line with their reply dated September 15, 2021. Subsequently, they also filed post hearing written submissions vide letter dated October 01, 2021.
11. The key contentions/post hearing submissions/replies of the *Noticee nos. 1 to 6, 8, 10, 11, 12* and *13* are as under:

NOTICEE NOS. 1 TO 4, 6, 8, 10, 11 AND 13

Inordinate delay in the issuance of the SCN

- 11.1 Pursuant to a complaint filed in the year 2001-02, SEBI had recorded the statements of Shri Jose Peter and Shri Subodh Shah in the years 2004 and 2005, respectively, and further initiated proceedings against Shri Pendse and Shri Shilotri in the matter by way of show cause notice dated May 04, 2009. Despite this, the instant SCN against the *Noticees* has been issued in 2019, after an inexplicable delay of more than 15 years, warranting disposal on account of the gross and inordinate delay itself.
- 11.2 The *Noticees* are not able to defend properly in the absence of documents as no law in the country requires a person or entity to maintain their financial

records, books of accounts, income tax statements, etc. for a period of eighteen years. For example, Section 128(5) of the Companies Act, 2013 requires a company to maintain its books of accounts and other financial records only for eight years. Rule 6 F (5) of the Income Tax Rules, 1962 requires a person performing a business or professional activity to preserve its records only for a period of six years from the date of the relevant assessment year. In the present matter, it would be unfair and unreasonable to expect the *Notices* to have all the relevant documents and information to adequately defend themselves, even eighteen years after the events occurred.

- 11.3 The *Notices nos. 2 to 4, 6, 8, 10 and 13* (hereinafter also referred to as “**Individual Notices**”), who were directors of TFL or NISL during the relevant period, have since long retired and/or resigned and presently share no association with TML or NISL. On account of the same, essential documents/information (including minutes of some of the relevant BoD meetings and books of accounts) required by them to defend against the allegations in the SCN, are not accessible to them. Furthermore, the *Individual Notices* are all Senior Citizens and are severely prejudiced by the belated issuance of the SCN, nearly two decades after the events occurred.
- 11.4 Although there is no period of limitation prescribed in the SEBI Act or the rules or regulations made thereunder, the power of SEBI to initiate action against the *Notices* must be exercised within a reasonable period. In this regard, reliance is placed on Judgements passed by Hon’ble Supreme Court of India in *Government of India vs. Citadel Fine Pharmaceuticals Madras* (AIR 1989 SC 1771), *Bhavnagar University vs. Palitana Sugar Mill* [(2002) 55 OnLine SC 1169], *State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd* [(2007) 11 SCC 363], *Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors.* [(2015) 3 SCC 695] and *Adjudicating Officer, SEBI vs. Bhavesh Pabari* [(2019) SCC Online SC 294] and orders passed by Hon’ble Securities Appellate Tribunal such as *Bharat J. Patel vs. SEBI* (SAT Appeal No. 154 of 2020, decided on September 08, 2020).

11.5 Moreover, the Hon'ble Tribunal has in a number of judgments, such as *Ashok Shivlal Rupani vs. SEBI* (SAT Appeal Nos. 417 and 440 of 2018, decided on August 22, 2019), *Rajeev Bhanot & Ors. vs. SEBI* (SAT Appeal No. 396 of 2018, decided on July 09, 2021) has dismissed proceedings, at the threshold or otherwise, in which the show cause notice or order thereon was issued after inordinate delay in initiating proceedings against the noticees. Also, in *Bharat J. Patel vs. SEBI* (SAT Appeal No. 154 of 2020, decided on September 08, 2020), there was a delay of seven years on SEBI's part to issue the show cause notice and the appellant had pleaded inability to defend himself for want of records. The Hon'ble SAT held that "*There is no dispute on the principle that if the delay has caused prejudice to the parties then the proceedings are required to be quashed.*"

Allegations are non-specific, vague, lack details and are entirely unsubstantiated

- 11.6 The SCN lacks a whisper and even fails to allege the complicity or knowledge of each of the *Individual Noticees*.
- 11.7 It is trite law that to hold a director vicariously responsible for the fraudulent or criminal acts of the corporation, one needs to demonstrate his/her complicity as a director or person in charge for the activity so alleged. Reliance has been placed on the observations made by the Hon'ble Supreme Court of India in the matter of *Sunil Bharti Mittal vs. CBI*, (2015) 4 SCC 609 and *Afsar Sheikh & Anr. v Soleman Bibi & Ors.*, (1976) 2 SCC 142.
- 11.8 The witness statements (which constitute most of the annexures to the SCN) themselves fail to establish any role in the purported fraudulent acts played by each of the *Noticees* in their role as director or otherwise.
- 11.9 It is well settled that since fraud is a serious offence, the standard of proof must be of a higher degree. A finding as to fraud cannot be based on mere suspicion or conjecture as held by the Hon'ble Supreme Court of India in the matter of *SEBI and Ors. vs. Kanaiyalal Baldevbhai Patel & Ors* (2017) 15 SCC 1.

11.10 The fictitious backdated transactions and the misrepresentations in the offer documents of the Rights Issue were undertaken without the involvement or knowledge of the *Individual Noticees*. In fact, paragraph 14 of the SCN itself state that there is no board resolution or approval or any other documentary evidence to demonstrate that the BoD of TFL approved the repurchase of the said shares of GTL and GECS by *Niskalp* from TFL.

Allegation pertains to the fictitious backdated transactions carried out in the books of NISL and TFL (now TML) and its BoD cannot be held responsible for the same

11.11 The allegations in the SCN pertain to falsification of the books of account of NISL alone, and not those of TFL. There is no allegation in the SCN or annexures thereto that there was any falsification of the books of accounts or records of TFL. The SCN does not establish any nexus between the falsification in the accounts of NISL and complicity of TFL and/or its BoD. Accordingly, TFL along with the *Individual Noticees* who formed part of the BoD of TFL at the relevant time, cannot be held responsible for the fictitious backdated transactions reflected in the books of account of NISL.

No reliance can be placed on the statements of witnesses who have not been cross examined by the Noticees.

11.12 On March 9, 2021, counsel appearing on behalf of the *Noticees* commenced and completed cross-examination of Shri S. Sivaram. Despite the non-appearance of the other witnesses on March 9, 2021, no further opportunity was given to the *Noticees* to cross-examine the remaining witnesses, statements of whose are relied on by SEBI in the SCN.

11.13 The Hon'ble Supreme Court and the Hon'ble SAT have, in a number of decisions such as *Meenglas Tea Estate vs. the Workmen* (AIR 1963 SC 1719), *Appeal No. 8 of 2011-Price Waterhouse vs. SEBI* decided on June 01, 2011, emphasized that the principles of natural justice include the right to cross-examine witnesses.

11.14 Insofar as the statement of Shri Pendse (Annexure-11 to the SCN) is concerned, due to the demise of Shri Pendse in July 2017 his cross

examination could not be conducted. The Courts have held that the weight to be attached to the evidence of a deceased witness depends on the circumstances and the court should look at the evidence carefully to see whether there are indications that by a completed cross examination, the testimony of the witness was likely to be seriously shaken or his good faith successfully impeached. In fact, SEBI has itself in paragraph 14 of the SCN, impeached the credibility of Shri Pendse's testimony.

The SCN is void vis-à-vis the Noticee no. 1 (TML)

- 11.15 It is not appropriate to initiate proceedings at such belated stage against the transferee company (i.e., TML) in respect of violations allegedly committed by the transferor entity (i.e., TFL), which no longer exists. If SEBI were to issue directions of the nature contained in Sections 11(1), 11(4) and 11B of the SEBI Act against TML, the same would be extremely prejudicial to the interest of the shareholders of TML, and its BoD, who had nothing to do with the events to which the SCN pertains and such stage, it is difficult to hold such measure as preventive and remedial one.

Positive remedial measures have been taken by TFL and NISL

- 11.16 TFL and NISL have taken several positive remedial measures for the protection of investor interests. TFL provided all subscribers to the Rights Issue an opportunity to withdraw their subscriptions, on two separate occasions i.e., April 30, 2001 and November 30, 2001. Moreover, all persons involved in the fictitious backdated transactions and in making misrepresentations in the offer documents of the Rights Issue, were removed from TFL and NISL and FIRs against them were filed with the police in Mumbai and Delhi. Additionally, an FIR was also filed against such persons with the Economic Offences Wing of Mumbai Police, which case was subsequently transferred to the Central Bureau of Investigations by the Hon'ble Bombay High Court, on a petition filed by TFL.

Any directions under Sections 11 and 11B of the SEBI Act at belated stage would not be in furtherance of the objectives of the said Sections

- 11.17 For events that transpired more than eighteen years ago, any adverse orders passed against the *Notices* (including, debarment from accessing the securities market or prohibition from dealing in securities) would not be desirable and would tantamount to being punitive in nature.
- 11.18 The Hon'ble SAT in several judgements such as *Anand Rath* vs. SEBI (SAT Appeal No. 52 of 2001, decided on February 28, 2002), *Sterlite Industries (India) Limited* vs. SEBI (SAT Appeal No. 20 of 2001, decided on October 22, 2001), *Mega Resources* vs. SEBI (SAT Appeal No. 49 of 2001, decided on March 19, 2002) has held that directions issued under Sections 11 and 11B of the SEBI Act should be remedial and not punitive in nature.
- 11.19 The *Individual Notices* are all Senior Citizens who have since long retired from TFL and NISL. TFL itself is no longer in existence. Further, issuance of any adverse directions against the *Notices* under Sections 11 and 11B of the SEBI Act today, eighteen years after the alleged events occurred, would not be in furtherance of the objectives of the Sections and would amount to punitive measures. Therefore, the SCN should be set aside and quashed.

TML/TFL and NISL ought not to be held liable for the actions of certain officers (Shri Pendse, Shri Shilotri, and others)

- 11.20 Since the purported fictitious backdated transactions and the misrepresentations in the offer documents of TFL were committed by certain individuals without the knowledge or approval of the BoD of TML and NISL, the said companies cannot be held liable for their acts as held in *Anand Rath* vs. SEBI, where in the context of directions being issued under Sections 11 and 11B of the SEBI Act, the Hon'ble SAT took the view that a company cannot be held vicariously responsible for the acts of its directors which were performed by them in their capacities other than those of directors, when their actions could not be ascribed to the company. In this regard, reliance is also placed on the orders dated January 25, 2017 and September 27, 2018 passed by SEBI in the matters of *United Spirits Limited* and *Surana Corporation Limited*, respectively.

The Individual Noticees had no knowledge of the fictitious backdated transactions and of the consequent misrepresentations in the offer documents of the Rights Issue

- 11.21 Prior to August 04, 2001, the *Individual Noticees* / the BoD of TFL (except the *Noticee no. 3* who learned of the fictitious backdated transactions and the misrepresentations in the letter of offer of the Rights Issue after he became the Managing Director of TFL in June 2001) had no knowledge of the said fictitious backdated transactions or the misrepresentations, leave alone being complicit therein. Further, the *Noticee no. 13* was appointed as a Director of NISL in October 2002, i.e., well after the conclusion of the period during which the illegalities were committed and thus cannot be held liable for the events which resulted in the issuance of the SCN.

The transactions in the shares of GTL and GECS were not approved or ratified by the respective BoD of TFL and NISL

- 11.22 The fictitious backdated transactions and the consequent misrepresentations in the offer documents of the Rights Issue were undertaken without the involvement or knowledge of the *Individual Noticees*. Moreover, there was no movement of monies between TFL and NISL, for said transactions in shares of GTL and GECS. In fact, the actual shares were never delivered. Furthermore, in the books of NISL, TFL was not even reflected as a counterparty to the transactions in GECS shares. Additionally, no evidence has been placed on record to demonstrate that the *Noticees* were otherwise aware of the fictitious transactions or were complicit therein.
- 11.23 The malicious and *mala fide* claim of Shri Pendse is entirely false as the BoD of TFL did not authorise NISL or TFL to undertake any trades in the shares of GTL or GECS in its board meeting dated October 30, 2000, or in any other meeting.

The financial statements of NISL for the quarter ended September 2000 were scrutinized and approved by the concerned statutory auditor and the lead merchant banker for the Rights Issue

- 11.24 In the meeting of the BoD of TFL held on January 04, 2001, while approving the draft letter of offer, the BoD had passed a resolution for forming a committee comprising of Dr. F A Mehta and Shri Pendse, and had bestowed its trust and faith in Dr. F A Mehta and Shri Pendse to conduct the Rights Issue in accordance with the law and Shri Pendse had signed the letter of offer for the Rights Issue. The BoD never authorized nor approved the misrepresentations in the offer documents of the Rights Issue. Further, both the statutory auditor of NISL and the lead merchant banker for the Rights Issue did not raise any concerns with the BoD of TFL or NISL prior to the issuance of the Rights Issue. Therefore, the test of due diligence and care has not been met in this case and violation of regulation 5 of the PFUTP Regulations cannot apply.
- 11.25 SEBI has not placed on record any material or evidence to demonstrate that the *Individual Noticees* had any knowledge of or were complicit in fictitious backdated transactions or making of misrepresentations in the offer documents of the Rights Issue. Therefore, 'knowledge' being a prerequisite for a person to be held liable under the regulation 6(a) of the PFUTP Regulations, the said regulation does not apply to the *Individual Noticees*.
- 11.26 The SCN does not even allege that the *Individual Noticees* played any active role or themselves indulged in the falsification of the financial statements of NISL. Also, at the relevant time, the *Individual Noticees* were not even aware of the alleged falsification of books of NISL and thus regulation 6(d) of the PFUTP Regulations does not apply in this regard.
- 11.27 The statements provided by the brokers (Annexure 4, 5 and 6 of the SCN) and the letters received from PAT (Annexure 2 and 3 of the SCN) also demonstrate that it was not the *Individual Noticees*, but Shri Pendse and Shri Shilotri who engineered and orchestrated the fictitious backdated transactions and the misrepresentation in the financial statements of NISL reflected in the offer document of TFL's Rights Issue.
- 11.28 Moreover, without prejudice to the contention that no reliance can be placed on the witness statements for the reasons stated above, it is submitted that

even the statements of Shri P R Ramesh (partner of SSB, statutory auditor of TFL and NISL), Shri S Sivaram (partner of SNB, internal auditor of TFL and NISL) and Shri A. L. Shilotri (Annexure 8, 9 and 10 of the SCN), do not impute any knowledge or involvement of the *Individual Noticees*.

Submissions of each of the Individual Noticees

- 11.29 The *Noticee no. 13* (Shri Jose Peter) admittedly joined TFL (on July 16, 2001) and NISL (on October 22, 2002) after the relevant period (i.e., March 2001) when the fictitious backdated transactions and the misrepresentations in the offer documents of the Rights Issue are alleged to have been effected and hence he could not be held vicariously liable for violation of the PFUTP Regulations.
- 11.30 During the relevant period, the *Noticee nos. 2 and 6* were Non-Executive Directors and the *Noticee nos. 8 and 10* were Independent Directors of TFL and were involved in broad policy making and were not tasked with managing the day-to-day affairs of TFL. In this regard, the Ministry of Corporate Affairs vide Master Circular No. 1/2011 dated July 29, 2011 had clarified that directors who are not charged with managerial responsibility (including Independent Directors) shall not be held liable for any act of commission or omission by the company or by any officer of the company which constitute a breach or violation of any provision of the Companies Act, 1956 and which occurred without his/her knowledge attributable through board process and without his/her consent or connivance or where he/she has acted diligently in the board process.
- 11.31 Courts and Tribunal too have repeatedly held that Non-Executive Directors and Independent Directors cannot *ipso facto* be held liable for offences committed by a company or certain officials of the company, without any evidence to establish their actual role in the commission of the offences as also held by the Hon'ble SAT in *Appeal No. 133 of 2003-Rahul H Shah vs. SEBI*, decided on September 15, 2004 and *Appeal No. 163 of 2018-Sayanti Sen vs. SEBI*, decided on August 09, 2019 wherein it was held that persons have nothing to do with the day-to-day affairs of the company, cannot be held

guilty of a violation under the PFUTP Regulations, since there is no concept of vicarious liability under the Section 11B of the SEBI Act, 1992.

- 11.32 At the relevant time, though the *Noticee no. 3* (Shri Shah) and 4 (Shri Suvarna) held designations of ‘President and Deputy Managing Director’, and ‘Executive Director (Legal)’ respectively, they had no role insofar as TFL’s Rights Issue was concerned.
- 11.33 Though the *Noticee no. 3* was the President of TFL from January 03, 2000, he was never given any specific responsibility or authority for decision-making until he was appointed as the Managing Director of TFL in June 2001 as evident from his appointment letter and office order. Further, a power of attorney granted by Shri Shah as well as a copy of an agreement placed before the BoD of TFL related to his appointment, clearly show that Shri Shah did not have any decision-making authority in TFL at the relevant time. In any case, Shri P R Ramesh in statement dated June 16, 2004 (Annexure 8 of the SCN) has stated that: it was Shri Pendse who had suggested backdating of transactions between group companies; that he (Shri Ramesh) refused the suggestion; and that thereafter he (Shri Ramesh) along with Shri Shah left the meeting.
- 11.34 The falsifications of the accounts of NISL and the misrepresentation in the offer documents of the Rights Issue were perpetrated without the knowledge, consent or connivance of the *Noticee nos. 3* and 4, and it cannot be attributed to any negligence on their part. In *SEBI vs. Gaurav Varshney* [(2016) 14 SCC 430] the Hon’ble Supreme Court held that liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company.
- 11.35 The penal liabilities of TFL could not have been transferred and/or fastened onto TML pursuant to TFL’s merger with TML, since they are incapable of being transferred in law.
- 11.36 In *Duncan Agro Industries Ltd. vs. Union of India* (1988 SCC OnLine Del 364), the Hon’ble Delhi High Court while dealing with similar facts where one

company had merged into another had an occasion to consider whether the transferee company could be held responsible for wrong/offences committed by the transferor company. The Hon'ble Delhi High Court has held that liability which cannot be transferred in law to a successor would remain the liability of those who committed the offence. In this respect, the relevant finding as relied upon by the *Noticees* is reproduced below:

“56. ...

(viii) ... The allegations are that huge evasion of excise duty took place with the specific directions of the petitioner's company given by the Chairman and top executive and on prima facie material annexed to the show cause notice. These questions require investigation of facts. If there is any liability for penalties, then, prima facie, that cannot be transferred in law to a successor. It remains the liability of those who committed the offence as a producer or manufacturer. The validity or propriety of the orders imposing penalties and fine by the Director (Audit) may have to be considered. They have been left in the Act to be determined by the appellate and the revisional authorities. We, therefore, do not consider it an appropriate case to determine at this stage the question as to the legal effect of the scheme of arrangement or to the liability of Duncans or NTC on the above considerations.” (emphasis supplied)

11.37 Although the aforesaid judgment was delivered in the context of penal liability imposed under the provisions of the Central Excises and Salt Act, 1944, the principles mentioned therein squarely apply to the present case also. The alleged breaches forming the basis of the SCN pertain to the transferor company (i.e. TFL) and occurred much prior to its amalgamation with the transferee company (i.e. TML). It is submitted that in view of the aforesaid judgment, the liability for any such alleged breaches by the transferor company (i.e. TFL), cannot be transferred to the transferee company (i.e. TML). As a result, TML cannot be held liable for the same.

11.38 The alleged wrongdoing in respect of which a complaint was made by TFL to SEBI by its letter dated October 18, 2002 has not been denied by the *Noticees*, and no argument contrary to what has been stated in the said letter

has been advanced by the *Notices*. Therefore, notwithstanding the fact that the witness statements to that extent are irrelevant, it is respectfully submitted that no reliance can be placed on statements of those witnesses who the *Notices* were not given an opportunity to cross-examine.

11.39 Without prejudice to the *Notices*' contention that the witness statements cannot be relied on, it is reiterated that the witness statements do not demonstrate any role played by any of the *Notices* individually in the alleged falsification of the books of account and the misrepresentation in the financial statements as reflected in the offer document of TFL's Rights Issue. There is no mention of any of the *Individual Notices* in the statements provided by the brokers, i.e. Shri Bharat J. Patel, Shri Pankaj J. Patel, and Shri Prashant J. Patel.

11.40 Moreover, it is reiterated that even the statements of Shri Ramesh (partner of SNB, statutory auditor of TFL and NISL), Shri S. Sivaram (partner of SNB, internal auditor of TFL and NISL) and Shri A. L. Shilotri, do not impute any knowledge to any of the natural persons made *Notices in the instant proceedings*, nor allege that the *Notices* or any of them were involved in any manner in the activities to which the SCN pertains, thus, the proceedings deserve to be dropped on that ground alone.

In a recent judgment of the Hon'ble Supreme Court in *Ravindranatha Bajpe vs. Mangalore Special Economic Zone Ltd. & Ors* delivered on September 27, 2021 in Criminal Appeal No. 1047-1048/2021 the Hon'ble Supreme Court, while dealing with offences punishable under the Indian Penal Code, 1860, held that the concerned authority cannot simply hold directors vicariously responsible on the basis of their designation; on the contrary, it has to record its satisfaction about a *prima facie* case against the accused who are directors of the company and the specific role played by them in their respective capacities, which is *sine qua non* for initiating criminal proceedings against them.

NOTICEE NO. 5

- 11.41 She was appointed as an Executive Director of the *Company* on January 29, 2001 and has ceased to be a director of TFL from July 20, 2001.
- 11.42 TFL decided to come out with Rights Issue at its board meeting held on January 04, 2001 which was confirmed in the board meeting held on January 29, 2001.
- 11.43 SCN is defective as allegations are not supported by evidences to even indicate that the *Noticee no. 5* participated and/or was involved in any of the board meeting during which the alleged transactions were discussed and approved.
- 11.44 The *Noticee no. 5* was not part of the BoD of TFL when the purchase and sale of GTL/GECS shares were effected and/or when the decision to come out with the Rights Issue was approved.
- 11.45 None of the said transactions had been flagged by the internal auditor (i.e., SNB) and/or the statutory auditor (i.e., SBB). In fact, in his statement, Shri S Sivaram, Partner SNB has stated that no board resolution authorizing the purchase and sale of GTL/GECS shares was ever brought to the notice of SNB.
- 11.46 The SCN lacks specific allegation against her either as an ED or Company Secretary of TFL.
- 11.47 The SCN has been issued solely because of the adverse observations made by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT/Tribunal**") in its Order dated May 30, 2018.

NOTICEE NO. 12

- 11.48 Being a non-executive director, the *Noticee no. 12* was not concerned with the day to day management of *Niskalp*. The Hon'ble Supreme Court of India in *K K Ahuja vs. V K Vora*(2009) 10 SCC 48 has *inter alia* held that "*to be liable, a person should fulfil the legal requirement of being a person in law, responsible for the conduct of the business of the company and also be in-charge of the same.*" In accordance with the principles set out by the Hon'ble SAT in the matters of *Rahul H Shah* and *Nimisha H Shah vs. SEBI* and *M/s Vijay Remedies Ltd. & Others vs.*

SEBI, no vicarious liability can be imputed on the non-executive person under Section 11B of the SEBI Act, 1992.

11.49 No board meeting was held to discuss or approve the alleged share transactions and hence the *Noticee no. 12* cannot be held responsible.

11.50 The purported backdated and fictitious transactions in the scrips of GTL and GECS were not in the knowledge of the *Noticee no. 12* and no allegation to this effect has been made against him in the SCN.

11.51 The *Noticee no. 12* was located in a different office than that of TFL and *Niskalp* and did not participate in any discussions or meetings related to the backdated and fictitious transaction in the scrips of GTL and GECS as referred in the SCN.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have considered the allegations levelled against the *Notices* in the SCN, written replies received from the *Notices*, submissions made by the *Notices* during the personal hearing, the written submissions filed post the personal hearing as highlighted above and other materials available on record. Before dealing with the submissions made by the *Notices*, it would be appropriate to refer to and reproduce hereunder, the relevant provisions of the PFUTP Regulations, which are applicable to the present proceedings as they were in force at the time of commission of the alleged violations, for ready reference:

THE (PFUTP) REGULATIONS, 1995

Prohibition of misleading statements to induce sale or purchase of securities

5. (1) No person shall make any statement, or disseminate any information which -

(a) is misleading in a material particular; and

(b) is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities, if when he makes the statement or disseminates the information –

(i) he does not care whether the statement or information is true or false; or

(ii) he knows, or ought reasonably to have known that the statement or information is misleading in any material particular.

.....

Prohibition on unfair trade practice relating to securities.

6. No person shall -

(a) in the course of his business, knowingly engaged in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;

d) indulge in falsification of the books, accounts and records (whether maintained manually or in computer or in any other form);

.....

THE (PFUTP) REGULATIONS, 2003

Repeal and savings

13. (1) *The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.*

(2) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of Regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

(3) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations.

13. I have carefully perused the facts narrated in the SCN, the aforesaid replies filed by the *Noticees* as encapsulated above and the materials/details available on the record. After considering the allegations levelled against the *Noticees* in the instant matter as spelt out in the SCN, the issues which arise for my consideration and adjudication in the present proceeding are as under:

- I. *Whether the letter of offer of the Noticee no. 1 contained false and untrue financial statements and for the said purpose books of accounts of the Noticee no. 11(Niskalp) were falsified so as to reflect profit in the books of accounts of the Noticee no. 11(Niskalp) instead of showing the actual loss.*
 - II. *If the answer to Issue no. 1 is in affirmative, then whether the Noticees have violated the provisions of regulations 5 (1), 6(a) and 6(d) of the PFUTP Regulations, 1995 read with the PFUTP Regulations, 2003.*
14. Before I proceed to deal with the case on its merits, I recollect that the charges that have been levelled in the SCN pertained to deliberate dissemination of untrue, false and misleading information in the letter of offer made by the *Noticee no. 1* and the said misrepresentation was allegedly caused by falsification of the books of accounts of the *Noticee no. 11*, by backdating the transactions of sale of shares of GTL and GECS in September 2000 and then making reversal of these trades in December 2000. These actions are alleged to have operated as fraud upon the investors in general and the stakeholders of the *Company* in particular. The SCN also proceeds to allege the misrepresentation of financial statements in the offer documents for the Rights issue of the TFL by disclosing the financial statements of *Niskalp* for the quarter period ending September 2000 in place of quarter ending December 2000 so as to highlight the profit and avoid sharing any loss and disclose better financial results in the accounts of *Niskalp*. In view of the above, it now becomes incumbent to examine as to whether there was any mis-statement in the letter of offer of the Rights Issue of the *Noticee no. 1(TFL)* and whether such mis-statement was due to any falsification of records in the books of the *Noticee no. 11(Niskalp)*, a wholly owned subsidiary of the *Noticee no 1*.
15. I note that the TFL was a Non-Banking Finance Company (NBFC), at the relevant point of time. *Niskalp* was a subsidiary of the TFL and was also an investment company/arm of the TFL which was primarily engaged in investments and share trading activities. Pursuant to approval of its Board in the meeting held on January 04, 2001, TFL had come out with a Rights Issue of 9%

CCPS aggregating to INR 90.93 Crore in March, 2001. In this regards, apart from the other applicable laws, in terms of then DIP Guidelines, TFL was required to disclose/furnish the financial statements of its subsidiary companies in its offer document for the above Rights Issue. *Niskalp*, being one of the subsidiary companies of the TFL at that time, its financials were also required to be incorporated in the above offer document. Accordingly, TFL has disseminated the financials of its subsidiaries for consumption of its stakeholders and also to enable its shareholders to take an informed decision with respect to subscribing to its Rights Issue. Since, the Rights Issue came in the month of March, 2021, TFL had disclosed the financials of its all subsidiaries for the quarter ending on December 31, 2000 except for the financials of *Niskalp* whose financials were considered and disclosed only upto the quarter ending on September 30, 2000.

16. Based on the findings of facts, it has been noticed that *Niskalp*, the investment arm of TFL, was not having sound financials and was undergoing huge losses during the relevant period on account of erosion in the value of its investments to the tune of INR 190 Crore, due to a fall in the stock market. Further, *Niskalp* had declared and paid an interim dividend @ 45% for the year 2000-01 resulting into cash outflow of INR 10.81 Crore. The negative financials of *Niskalp* could have adversely impacted the success of the proposed Rights Issue. Therefore, in order to ensure that *Niskalp*'s account did not reflect the above loss and also keeping in view the fact that the loss and NPA provisioning of *Niskalp* as on September 30, 2000 were lower compared to December 31, 2000, it was thought proper by TFL to disclose *Niskalp*'s financials only upto the period ending September 30, 2000 in the offer document instead of the financials for the period ending December 31, 2000.
17. The SCN also records that to further avoid disclosing the true and correct financials of *Niskalp*, fictitious and backdated transactions in the scrips of GTL and GECS were engineered and effected in the month of March, 2001 (when the Rights Issue of the TFL was to be offered) between the *Notices nos. 1 and 11* with the help of certain entities and as a consequence, the *Notice no. 11* was shown to

have booked a profit of INR 26.04 Crores (INR 16.50 Crore from the transaction in GTL shares and INR 9.54 Crore from the transactions in the scrip of GECS), which was disclosed in the letter of offer pertaining to the Rights Issue of TFL.

18. The SCN further records that to achieve the above objective, transactions in the shares of GTL and GECS were fictitiously entered and in the process, it was shown that in the month of September 2000, 2,88,400 shares of GTL were sold by *Niskalp* to the TFL. Details of trades in the scrip of GTL claimed to have been executed between the said two noticees as contained in the SCN, are as under:

Table no. 1

Date	Broker	Seller	Qty.	Price (in INR)	Buy Client	Qty.	Price (in INR)
20/09/2000	JHP Securities Pvt Limited	Niskalp	32,000	1350 - 1447	TFL	32,000	1405 - 1448 (including brokerage of 7 per share)
25/09/2000	JHP Securities Pvt Limited				TFL	20,000	1183.50 - 1192 (including brokerage of 6 per share)
26/09/2000	JHP Securities Pvt Limited	Niskalp	20,000	1127 (including brokerage of 6 per share)			
27/09/2000	Bharat J. Patel	Niskalp	56,400	1135 (including brokerage of 6 per share)	TFL	56,400	1141 (including brokerage of 6 per share)
27/09/2000	JHP Securities Pvt Limited	Niskalp	20,000	1129 - 1138 (including brokerage of 6 per share)	TFL	20,000	1129 - 1139 (including brokerage of 6 per share)
27/09/2000	Prashant J. Patel	Niskalp	20,000	1119 - 1126 (including brokerage of 6 per share)	TFL	20,000	1125 - 1126 (including brokerage of 6 per share)
28/09/2000	JHP Securities Pvt Limited				TFL	20,000	1134 (including brokerage of 6 per share)
28/09/2000	Prashant J. Patel	Niskalp	20,000	1125 - 1158 (including brokerage of 6 per share)	TFL	20,000	1125 (including brokerage of 6 per share)
29/09/2000	Bharat J. Patel	Niskalp	1,00,000	1160 (including brokerage of 6 per share)	TFL	1,00,000	1166 (including brokerage)
29/09/2000	JHP Securities Pvt Limited	Niskalp	20,000	1160 - 1158 (including brokerage of 6 per share)			

13/12/2000	Bharat J. Patel	TFL	1,30,000	1166 - 1197 (including brokerage of `6 per share)	Niskalp	1,30,000	1172 - 1203
14/12/2000	Bharat J. Patel	TFL	1,58,400	1192 - 1204 (including brokerage of 6 per share)	Niskalp	1,58,400	1184 - 1204 (including brokerage of 6 per share)

19. From the above details, it is observed that towards the end of September 2000, 2,88,400 shares of GTL were reportedly sold by *Niskalp* through the above mentioned three brokers and the same were reportedly purchased by TFL on the same dates through transactions done by the same brokers. Again, in the middle of December 2000, 288,400 shares are shown to have been purchased back by *Niskalp* from TFL through the broker Bharat J Patel. The break-up of the transactions done by said brokers is given below:

Table no. 2

Name of the Brokers	Date of Transaction	Qty sold	Name of Seller	Qty Purchased	Name of Purchaser
Bharat J Patel	27.09.2000	56400	Niskalp	56400	TFL
	29.09.2000	100000	Niskalp	100000	TFL
JHP Sec P Ltd	20.09.2000	32000	Niskalp	32000	TFL
	25.09.2000	20000	Niskalp	20000	TFL
	27.09.2000	20000	Niskalp	20000	TFL
	28.09.2000	20000	Niskalp	20000	TFL
Prashant J Patel	27.09.2000	20000	Niskalp	20000	TFL
	28.09.2000	20000	Niskalp	20000	TFL
Total		288400		288400	
Bharat J Patel	13.12.2000	130000	TFL	130000	Niskalp
	14.12.2000	158400	TFL	158400	Niskalp
Total		288400		288400	

20. The above-listed trades were reportedly executed on different dates and for which separate contract notes were issued by the concerned broking entity. Perusal of the contract notes show that trades were shown to have been executed on the exchange platform, however, on a scrutiny, it has been found that no such trades were executed on the stock exchange platform. Further, the above noted trades wherein *Niskalp* is seen as selling shares of GTL to TFL in the month of September 2000, were subsequently reversed in the month of December 2000, meaning thereby the same quantity of shares were repurchased by *Niskalp* from TFL in December 2000.
21. The SCN has also alleged that, to further recoup the losses and augment the profit of *Niskalp* for the period ended September 30, 2000, TFL and *Niskalp* and other *Notices* appear to have conceived a scheme for undertaking fictitious sale and purchase of shares of GECS (an unlisted entity) in March 2001 at a price of INR 310/- per share. Accordingly, *Niskalp* entered into fictitious and backdated sale/purchase of 16,35,100 shares of GECS indicating sale effected by *Niskalp* in September 2000 and those shares were again bought back by *Niskalp* in November 2000. The details of such transactions in the shares of GECS, as alleged in the SCN, are as under:
- i. PAT vide its letter dated September 29, 2000, intimated to *Niskalp* that 16,35,100 shares of GECS have been sold on its behalf @ INR 310 per share less brokerage of INR 1.65 i.e. a net rate of INR 308.35 per share. The letter also states that the delivery of the shares would be made within a maximum period of two months and payment within 7 days after delivery.
 - ii. SUPERIOR vide its letter dated November 28, 2000, intimated to *Niskalp* that 16,35,100 shares of GECS have been purchased back on its behalf @ INR 310 per share plus brokerage of INR 1.60 i.e. net rate of INR 311.60 per share. The said letter also stated that the delivery of the shares would be made within seven days and payment would be made immediately.

22. From the records and submissions made by the *Noticees*, it is observed that there is no dispute to the fact that in the process of sale and purchase of shares in the scrips of GTL and GECS, neither shares were transferred from the demat account of *Niskalp* to the account of the TFL nor any funds were received in the bank account of the *Niskalp* from the account of TFL so far as transactions in the aforesaid scrips are concerned. However, as a result of the above trades, the profits generated out of this paper transactions through the fictitious book entries got recorded in the books of *Niskalp* and consequently, the said fictitious profit became part of its financial disclosure made in the letter of offer of the Rights Issue of the TFL. It has also been observed that though the claims have been made that trades were executed on the exchange platform, however, no evidence substantiating the same was produced either during the course of investigation or before me. On the contrary, I find very strange and unusual that all the three broking entities, though claimed to have executed trades on the exchange platform and issued contract notes to that effect only, have not been able to produce any evidence in support of such a claim except entries in their ledger book. Even the two noticees, i.e., *Noticee nos. 1 and 11* have not submitted any documents to show that trades were actually placed through stock brokers in the months of September and December respectively in the shares of GTL including the extracts of their books of accounts to show the relevant credit and debit entries so as to substantiate the transfer of shares and funds made by them during the relevant period as claimed by them.
23. Similarly, in respect of the trades of GECS, in order to generate profit through fictitious entries, , the terms and conditions of such fictitious transactions were so stipulated so as to make the transactions appear *bonafide* on their face value but on scrutiny were found to be executed only on paper. In this regard, the first leg of the transaction was shown to have been executed in the month of September, 2000 and as the letter issued by PFSCCL shows, actual delivery of the shares was to be made within a period of two months and payment was to be made within 7 days after the delivery of these shares. The above transaction, which was shown

to have been executed in the month of September 2000 was also subsequently reversed just before the expiry of the two months' period and this time also, an entity connected to the broker issued a similar letter dated November 28, 2000 stating therein that the same quantity of shares of GECS were purchased by it on behalf of *Niskalp* at the rate of INR 310.

24. It is noted that Shri Bharat Jayantilal Patel has stated that no formal orders for buy/sell were placed with broker Bharat J Patel. They were communicated verbally by Shri Shilotri and Shri Pendse stating that certain number of shares at certain pre-decided rates were to be bought and sold between TFL and *Niskalp*. There was no physical/demat transfer of shares through Bharat J Patel. Again, it entered into transactions of GECS, an unlisted company, on request of TFL and *Niskalp* and there was neither any delivery of shares nor any remittance or receipt of funds towards the sale/purchase consideration in these transactions. Bharat J Patel admittedly executed the said off market transactions but did not inform the stock exchange about it and issued contract notes in Form A instead of Form B. In this regard, I note that on a specific query to Shri Bharat Jayantilal Patel as to '*when the said orders were placed*', he has submitted that the orders were placed "on the days of contract". However, the plea taken by Shri Bharat Jayantilal Patel that the orders were placed and executed by Bharat J Patel "on the days of contract" is not supported by any independent verifiable documentary evidence. I note that the journal entries in the books of account of Bharat J Patel cannot be regarded as sufficient proof of the contemporaneous character of the said dealings, especially when Bharat J Patel has admitted to have not received any copy of account or written communication from TFL confirming the above transactions. There is no doubt that, if these transactions had actually been carried on the date of the contract note, these transactions would have been recorded in TFL's books and would have been surely reflected in its published financial results for the quarters ended September and December 2000, which is evidently not so. This indicates that the contract notes issued by the broker were indeed backdated and there was no physical/demat delivery of shares through the broker (Bharat J

Patel) and the consideration for the said dealings was adjusted between TFL and Niskalp mutually by way of journal entries in the books of Niskalp, which further indicates that the said transactions were essentially fictitious and bogus in nature.

25. In this regard, I note that the *Notices* have contended that no reliance can be placed on the statements of witnesses including statement of Shri Bharat Jayantilal Patel who has not been cross examined by the *Notices*. Therefore, it is important to see if it is possible to establish the backdating of the contract notes and entries of those transactions which are fictitious in nature (pertaining to the shares of GTL and GECS), on the basis of some other independent material available on record. In this context, I note from the Statement of Shri Subodh K Shah², Ex-Managing Director of TFL recorded on July 01, 2004 (Annexure 7 to the SCN) that in response to a specific query i.e., “Niskalp was shown to have entered into sale and repurchase of 2,88,400 shares of GTL and 16,35,100 shares of GECS. Are you aware of the above matter? If so, please give details of the above transactions. Also please state how the decisions in respect of the above transactions were arrived at.”, in response he has stated as under:

As far as I remember, I was called for a meeting in the room annexed to Shri D. S. Pendse’s office in TFL sometime in March 2001. I used to sit on the 2nd floor of Dubash House where the office of TFL was located. Mr. Pendse’s office was on the 3rd floor of the above building. When I reached the above meeting room, I found Mr. Pendse, Mr. A.L. Shilotri (CEO of Niskalp), Mr. P. B. Karyekar (Company Secretary of Niskalp) and Mr. P. R. Ramesh (Chartered Accountant — Partner of M/S S. B. Billimoria & Co. who were auditors for TFL and Niskalp) were present. Accounts of Niskalp was being discussed. It transpired that Niskalp could have a loss for the periods ending September 2000 and December 2000. In order to improve the financial position for the period ending September 2000 Shri. Pendse and Shri Shilotri suggested that the shares of GECS held by Niskalp be shown as sold to some broker as on September 2000. As regards the shares of

² It is the case of Shri Subodh K Shah that he was Deputy MD till May 31, 2001 and became MD only with effect from June 01, 2001

GTL which were listed, it was suggested by Shri Pendse that these shares could be shown to have been sold to TFL in September 2000.

However, on being asked about TFL, I said that such a transaction should not be done. Shri Pendse then checked up this matter with Shri Ramanujam (CFO and chief accountant of TFL) on speaker phone and it was informed by Shri Ramanujam that since the RBI returns for TFL for the period ending September and December 2000 have already filed, it was not possible to show such transactions in the books of TFL in September 2000. Shri Ramesh also said that such a transaction between the parent and the subsidiary cannot be done as it went against the arms length principle. Therefore, the decision relating to counterparty for sale of shares of GTL by Niskalp remained unresolved in the meeting.

26. Therefore, it is evident from the aforesaid response of the *Noticee no. 3* as given by/recorded from him in his capacity as Ex-MD of TFL, that the suggestion of cooking up the books of *Niskalp* by backdating the transactions in the shares of GTL and GECS (to September 2000) was contemplated in a meeting held in March 2001. I note that the said statement of the *Noticee no. 3* was given on oath and the same has not been denied by him at any stage either in his reply or during the personal hearing held on September 24, 2021 or in his post hearing submissions made in this regard. Thus, the same statement is binding on him and therefore the said fact as admitted by him in his statement now has become an undisputed fact and evidence strong enough to establish independently that the aforesaid transactions involving the shares of GTL and GECS were back dated deliberately.

27. The aforesaid findings are further invigorated from the statement of the *Noticee no. 13* (Shri Jose Peter) recorded on oath on April 25, 2005 (Annexure 12 to the SCN) wherein he, as director of *Niskalp* and Vice-President of TFL, has stated that *“the Internal Audit reports for the period July 2000 to October 2000, November 2000 to December 2000 and January 2001 to February 2001 covered audit of 100% of the investment transactions of Niskalp during the above periods. The transactions relating to sale and repurchase of shares of GTL and GECS do not feature in these audit reports. This should show that these transactions actually did not take place in the above period. The matter of*

backdating of GECS shares was reported for the first time in the internal audit report for March, 2001 which was submitted on August 23, 2001. This further establishes the fact that the transactions actually took place in March 2001 but were backdated to September and December 2000”

28. As regards transactions effected in the unlisted shares of GECS by PAT and SUPERIOR, I note that for such acts of aiding and abetting and engineering the fictitious trades in the scrip of GTL and GECS, proceedings were initiated by SEBI *inter alia* against them and vide SEBI's order dated June 21, 2016 and for the reasons and findings recorded in that order, the charges were found to be established against them. Being Aggrieved of the order, appeals were preferred by PAT and SUPERIOR before the Hon'ble SAT, wherein the Hon'ble Tribunal vide its order dated May 30, 2018 while disposing of the appeals has *inter alia* held that:

“26. However, conduct of Pat in transferring the sale transaction dated 29.09.2000 (which admittedly did not take place) to Superior cannot be said to be a transaction carried out in the ordinary course of business. If agreement to sell shares set out in the letter dated 29.09.2000 did not go through then the proper course was to cancel the agreement. Very fact that Pat transferred the transaction to Superior and Superior by letter dated 28.11.2000 purported to sell same number of shares to Niskalp with brokerage clearly shows that it was not a genuine transaction. Moreover, very fact that neither Pat nor Superior have initiated proceedings against Niskalp for recovery of the brokerage which they were entitled to under the letters dated 29.09.2000 and 28.11.2000 clearly shows that the transactions recorded in the said letters were not genuine transactions.”

29. In this regard, I note that Shri P R Ramesh, Partner of SBB, statutory auditor of TFL and auditor of Niskalp (in his statement dated June 16, 2004-Annexure 8 to the SCN) has, in response to Q.3. pertaining to decision of entering into the said transactions, *inter alia* has stated as under:

“.....On March 19, 2001 I reached Mumbai by a morning flight from Hyderabad and attended a meeting with Mr. Dilip Pendse along with Mr. Subodh K. Shah and Mr. AL. Shilotri, wherein a number of issues were discussed relating to Niskalp, particularly creation of debenture redemption reserve, provisioning requirements for outstandings due

from TELCO dealers arising out of securitization done with TELCO/TFL, recognition of sales tax benefit of Rs. 11 crores, etc. Mr. Pendse also mentioned that he planned to transfer some of the assets of Niskalp to TFL before March 31, 2001 to ease the pressure on capital adequacy of TFL. I responded by stating that an audit would not recognize any transactions between subsidiaries and holding companies or between subsidiaries inter se or for that matter any transactions if they were not borne out by proper documentation. On March 20, 2001, I was again requested for a meeting with TFL management at Dubash House. I was accompanied by Mr. Subodh K. Shah to the third floor conference room. Mr. Dilip Pendse and Mr. A.L. Shilotri joined in. Mr. Pendse informed me that it had been decided to proceed with the TFL rights issue with the results of Niskalp for the period ended September 30, 2000 instead of for the period ended December 31, 2000. He also mentioned that the accounts for the period ended September 30, 2000 would include sales tax benefit of approximately Rs. 5 crore on windmills and profits on sale of certain shares of GTL and GECS to third parties. He also mentioned about certain provisions which were not necessary for some dues considered as NPAs, I mentioned that I could only react when the accounts and documentation were produced before me. Mr. Pendse desired to know whether he could transfer the shareholding of Niskalp in Tata TD Waterhouse to TFL as of September 30, 2000. I flatly refused and mentioned that any backdated transactions between group companies/ holding company would not be acceptable and in any case the accounts of TFL had been finalized and it was imperative that Niskalp's accounts are given to meet the deadline. I also mentioned that it would be very difficult to complete the verification within such a short time when the period of the financial statements had been suddenly changed to September 30, 2000. Mr. Subodh Shah and I left the meeting at this stage.”

30. From the aforesaid, it is evident that the transactions in the shares of GTL and GECS were not only executed in a fictitious and bogus manner but also were executed under a scheme conceived by the *Notices* in the month of March 2001 so as to show those transactions as executed in September 2000, with the help of backdated contract notes, backdated ledger entries and fabricated sales/purchase so as to strengthen the balance sheet of *Niskalp*, as well as to disclose the said artificially strengthened balance-sheet in the letter of offer of TFL. The aforesaid facts also sufficiently substantiates that the allegation pertaining to backdating of entries can be established on the strength of the aforesaid factual evidence only

without relying on the statement of persons, who were not cross examined by the *Notices*.

31. In addition to the above, I find that the contention that no reliance can be placed on the statements of three stock brokers who were not cross examined by the *Notices* is not tenable for the following reasons: (a) None of the *Notices* has brought any independent documentary evidence before me testifying the actual execution of trades in the shares of GTL and GECS; (b) the *Notices* have also not submitted any evidence to dispel the allegation that disclosure made in the letter of offer pertaining to the financials of *Niskalp* were false, untrue and incorrect; (c) the subscribers of the Rights Issue of TFL were given options twice to exit in case they wish pursuant to the irregularities, misrepresentation and concealment brought on record (d) the *Notices* have not shown any specific prejudice that may be caused to them or have not explained with clarity as to how the allegation cannot be defended by them with the support of any evidence in their possession other than by cross examination only; (d) the statement of witnesses do not testify about the facts stated in the offer document; (e) the allegations are based on documents viz; letter of officer, contract notes etc., and which can be suitably refuted through documentary evidence otherwise than by cross examining the witnesses. It therefore, appears that the *Notices* have merely taken 'cross examination' as an alibi, only to avoid their onus to prove their innocence, if any, by producing any evidence whatsoever to defend their case. The plea for cross examination is merely an evasive tactic adopted by the *Notices*.
32. Under the circumstances, from the aforesaid appreciation of facts one thing that emerges and becomes a solid basis for the extant proceedings is that, the accounts of the *Noticee no. 11* were cooked up through fictitious and bogus entries. As a result of the same, the *Noticee no. 11*, which was in reality incurring heavy losses during the relevant period was presented as earning profit and the said profit that was fictitiously created for it was disseminated to the stakeholders in the form of disclosures made in the letter of offer of the Rights Issue of its holding company i.e., TFL. In the above undisputed backdrop, having gone through the oral and

written submissions of the *Notices*, I am of the considered view that aforesaid evidences and appreciation of the facts (undisputed or otherwise) overwhelmingly establish that the letter of offer by the TFL was actually containing material which were not true and correct and rather were misleading in nature.

33. Having found that the letter of offer of TFL was containing untrue, incorrect and misleading information which were incorporated into it through a well-crafted scheme by backdating the transactions and fabricating the entries with the help of certain persons and as a consequence, inflated profits were generated in the books of *Niskalp* through fictitious sale purchase of shares of GTL and GECS, it is now clear that those fictitiously booked profits were disseminated to the investors through the letter of offer of TFL. Therefore, I find no strength in the contention that the TFL cannot be held liable for the fudging of the books of the *Noticee no. 11*. In this regard, I find it appropriate here to revisit the relevant facts which are not disputed by the *Notices* and which have a strong bearing on the role played by TFL and *Niskalp* as under:

- a) *Niskalp* was a wholly owned subsidiary of TFL as TFL was holding 99% shares of *Niskalp*. The office of *Niskalp* was located in the office premises of TFL. *Niskalp* was managed by the board of TFL of which Shri Pendse was the Managing Director. *Niskalp* had no staff of its own and the books of accounts were maintained by the staff of TFL.
- b) As noted above, *Niskalp* was an investment arm of TFL and its business was to make investments from and out of the funds so provided by TFL. Further, from the statement of Shri S Sivaram, Partner of SNB who was engaged as internal auditor of TFL (from 1988 to March 2001) and of *Niskalp* (from 1998 to May 2001), it is observed that there was no Audit Committee at *Niskalp*. It is pertinent to note here that Shri S Sivaram has been cross examined by TFL on March 09, 2021 wherein the said statement of Shri S Sivaram was not disputed/discredited either by TFL or *Niskalp*.

- c) Admittedly, the name of the person to whom the shares of GECS were sold by PAT on behalf of *Niskalp* was not disclosed in the letter dated September 29, 2000 and undeniably no physical/ demat transfer of GECS shares took place and further no amounts were received by *Niskalp* on account of those fabricated sale of shares.
- d) No evidence has been produced to dispute the fact that *Niskalp* had no staff of its own and all the books of accounts of *Niskalp* were maintained in the regular course of business by the staff who were on the pay roll of TFL only. Further, nothing has been brought on record to deny the observation that the affairs of *Niskalp* was practically managed by the Board of TFL of which Shri Pendse was the MD.

34. I further note that *Noticee no. 1* (TFL) and *11* (*Niskalp*) have placed reliance on the decision of the Hon'ble SAT in the matter of *Anand Rathie vs. SEBI* (SAT Appeal No. 52 of 2001, decided on February 28, 2002) and orders dated January 25, 2017 and September 27, 2018 passed by SEBI in the matters of *United Spirits Limited* and *Surana Corporation Limited*, respectively, to submit that for the acts of individuals, a company cannot be held accountable. On perusal, it is noticed that it has been held in the above referred orders that a company cannot be held vicariously responsible for the acts of its directors which were performed by them in their capacities other than those of directors, when their actions could not be ascribed to the company. Having gone through the orders as well as the records available on record, I find that the findings in the above noted relied upon orders would not be helpful to the two noticees i.e., the *Noticee nos. 1* and *11*. I prefer to seek reliance on the findings made by the Hon'ble Tribunal in the matter of *Cals Refineries Limited vs. SEBI* (Appeal No. 4 of 2014) decided on October 12, 2017). In the above matter (*Cals Refineries*), identical issue was raised by the company concerned contending that it was a victim of the fraud and not a vehicle of fraud and therefore cannot be held liable for the acts of some individual. The Hon'ble Tribunal, while relying on the findings made by the Hon'ble Supreme Court India in the matter of *Iridium India Telecom Ltd. vs. Motorola Inc. & Ors. reported in (2011)*

1 SCC 74, rejected the above contention by holding that a liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In order to establish the above, it would require to be ascertained, whether the degree and control of the person or body of persons was so intense that a corporation could be said to think and act through the person or the body of persons controlling its affairs.

35. In the light of the aforesaid, I proceed to examine as to whether the degree and control of Shri Pendse, Shri Shilotri or other persons was so intense that TFL and/or *Niskalp* could be said to think and act through Shri Pendse, Shri Shilotri or other persons controlling their affairs. As noted above, the BoD of TFL in its board meeting held on January 04, 2001 has resolved as under:

RESOLVED FURTHER THAT, a Committee comprising of Dr. F.A. Mehta and Mr. D. S. Pendse be formed to do all such acts and deeds as may be necessary for the purpose of making the aforesaid Issue, including the power to change the size of the Rights Issue that may arise out of making a private placement of Equity Shares prior to the Record Date and the power to delegate such authority to any officials of the Company.”

36. It is noted from the aforesaid resolution that TFL and its BoD had reposed their trust and complete faith in Shri Pendse to do such acts and deeds as may be necessary for the purpose of making the Rights Issue, including exercise the power to change the size of the Rights Issue and to delegate such authority to any officials of the Company. Thus, it can easily be inferred that Shri Pendse had full authority and backing from TFL and its BoD to take all necessary steps for successful completion of the Rights Issue of TFL. I have also noted above that the issue of *Niskalp* having bad financials was discussed in the meeting held in March, 2001, wherein also the backdating of the transactions in the shares of GTL and GECS to September 2000 was deliberated. There were also discussion and planning to transfer some of the assets of *Niskalp* to TFL before March 31, 2001 to ease the pressure on capital adequacy of TFL and pursuant to those discussions the assets of *Niskalp* were also finally found to have been transferred

on paper to TFL and the investors of TFL were shared with better financials of TFL and *Niskalp* in the letter of offer for Rights Issue. I have also noted above that though *Niskalp* was incorporated as a separate legal entity, from its manner of working as noted above, it is evident that in reality it had no separate and independent existence from TFL as it had no separate office, no independent and exclusive staff and for all practical purposes, its affairs were being managed through TFL only. Further, there is no dispute to the fact that the letter of offer of the Rights Issue of TFL, containing the misleading financials of *Niskalp* and TFL were signed by the MD of TFL and hence, it is nobody's case that the then MD was having no authority to sign the said letter of offer. Thus, from the above discussion, it is evident that despite knowing the fact that *Niskalp* was not having good financials and there was deliberation to do backdating of the transactions involving transfer of assets so as to make the financials of *Niskalp* look better and profitable, TFL failed to take any corrective steps to stop the said misstatement in its offer document and rather deliberately incorporated such financial results of *Niskalp* in its consolidated accounts and in the letter of offer issued to its shareholders. Under the circumstances, it is difficult to believe that TFL was not aware of the above alleged acts more so when it is not disputed that *Niskalp* had no staff of its own and both (*TFL and Niskalp*) were operating their business from the same premises. Therefore, in view of the above stated discussions, it is manifest that the absolute mandate given by TFL and its BoD to Shri. Pendse was strongly indicative of the facts TFL was thinking and acting through Shri. Pendse as far as its Rights Issue was concerned.

37. In addition to the above, I also seek reference to and reliance on the order passed by the Hon'ble Tribunal dated May 30, 2018 passed in the Appeal No. 222 of 2016, wherein while disposing of the appeals filed by PAT and SUPERIOR, the Hon'ble Tribunal have framed an issue "Whether there was any mis-statement in the 'letter of offer' of the rights issue of TFL?" and after considering the materials on records and submissions have answered by holding that "*In view of the above, the WTM of SEBI concluded that TFL had made false disclosures in its letter of*

offer about the financials of Niskalp and that the said false disclosure was corrected by issuing the aforesaid letter dated 30.04.2001. First issue was answered accordingly by holding that TFL had made false disclosures in its letter of offer dated 20.03.2001.” I find that the above findings of the Hon’ble Tribunal have not been challenged by any person before any court of law and have not been reversed or modified. Consequently, the aforesaid findings have attained finality and I see no reason and ground to deviate from the above findings.

38. Considering the foregoing discussions, I am convinced that the charges as alleged against the *Noticee nos. 1* and *11* in the SCN stand proved. Under the circumstances such behaviour and fraudulent conduct displayed by the TFL and *Niskalp* pertaining to mis-statement of financials and disclosure of inflated profits shown in the offer documents of the Rights Issue, by way of converting the actual losses into notional profits (through a series of backdated and fictitious transactions in the shares of GTL and GECS) as established above are held to be violative of the provisions of regulations 5 (1), 6(a) and 6(d) of the PFUTP Regulations 1995 read with regulation 13 of the PFUTP Regulations 2003.
39. Having established above that the false & mis-statements in the offer document of the Rights Issue of the *Noticee no. 1(TFL)* was due to falsification of records in the books of accounts of the *Noticee no. 11(Niskalp)* for which the charges against the two noticees have stood established, it becomes imperative to examine as to who all are responsible for the said mis-statements in the offer documents of TFL and falsification of books of accounts of *Niskalp*. In this regard, I note that the SCN has alleged that since the *Noticee nos. 1(TFL)* and *11(Niskalp)* being artificial persons cannot act on its own, their BoD was to be held responsible for the aforesaid falsification of books of accounts and misrepresentation of financial statement in the offer documents of TFL. Thus, the SCN imputes all the allegations which are levelled against TFL and *Niskalp*, automatically, on the directors of TFL and *Niskalp*.
40. As noted above, the *Noticee nos. 7* (Shri Jamshed K Setna) and *9* (Shri B L Passi) have passed away during the proceedings. In this regard, I note the Death

Certificate dated February 20, 2019 for the *Noticee no. 7* is on record. Accordingly, the present proceedings against the *Noticee nos. 7 and 9* stand abated. Therefore, that leads me now to examine the role of the remaining *Individual Noticees* (i.e., *Noticee nos. 2 to 6, 8 to 10, 12 and 13*).

41. With respect to the charges of the mis-statement in the offer documents of the Rights Issue of the TFL and falsification of records in the books of the *Niskalp*, which are already discussed and stand established in the foregoing paragraphs, the primary contention of the *Noticees* is that the fictitious backdated transactions and the misrepresentations in the offer documents of the Rights Issue of TFL were undertaken without the involvement or knowledge of the BoD of TFL and *Niskalp* and therefore, they should not be held accountable for those alleged violations.
42. In this regard, it is the case of the *Noticees* that in the meeting of the BoD of TFL held on January 04, 2001, while approving the draft offer documents, the BoD had passed a resolution for forming a committee comprising of Dr. F A Mehta and Shri Pendse and had bestowed its trust and faith in Dr. F A Mehta and Shri Pendse to conduct the Rights Issue in accordance with the law. In support of the said contention, copy of the minutes of the said board meeting is placed on record. From the perusal of the same, I note that in the said meeting, it was resolved as follows:

“RESOLVED FURTHER THAT, a Committee comprising of Dr. F.A. Mehta and Mr. D. S. Pendse be formed to do all such acts and deeds as may be necessary for the purpose of making the aforesaid Issue, including the power to change the size of the Rights Issue that may arise out of making a private placement of Equity Shares prior to the Record Date and the power to delegate such authority to any officials of the Company.”

Therefore, admittedly a committee comprising of Dr. F.A. Mehta and Shri D. S. Pendse was formed by TFL Board to take all necessary steps and to do such acts pertaining to the Rights Issue.

43. Thus, the Board of TFL was aware that Shri Pendse along with Dr. F.A. Mehta, Chairman, TFL has been entrusted with the task of doing all necessary acts and

deeds for the purpose of implementing the Rights Issue. However, the moot questions that arise at this stage are how the decision to enter into the backdated and fictitious transactions were taken and whether the BoD of TFL and *Niskalp* i.e., the *Individual Noticees*, had any role to play in executing these fictitious transactions involving the shares of GTL and GECS and consequently in the alleged mis-statement made in the offer documents of Rights Issue of TFL.

44. In this regard, it is noted that Shri P R Ramesh, Partner of SBB, statutory auditor of TFL and auditor of *Niskalp* in his statement dated June 16, 2004 (discussed in detail at para 29 above) while responding the Q.3 has made certain startling revelations viz; (a) in the meeting held on March 19, 2001, Shri Pendse, in the presence of Shri Subodh K. Shah and Shri A L Shilotri discussed a plan to transfer some of the assets of *Niskalp* to TFL before March 31, 2001 to ease the pressure on capital adequacy of TFL, which was objected to by Shri Ramesh stating that an audit would not recognize such transaction between related entities which were not documented or having no paper trail; (b) again in the meeting held on the very next day (i.e., on March 20, 2001), also attended by Shri Subodh K Shah and Shri A L Shilotri, it was informed by Shri Pendse that it had been decided to proceed with the *TFL* Rights Issue with the results of *Niskalp* only for the period ended September 30, 2000 instead of disclosing the same for the period ended December 31, 2000; (c) It was discussed that the accounts of *Niskalp* for the period ended September 30, 2000 would include sales tax benefit of approximately INR 5 Crore on windmills and profits on sale of certain shares of GTL and GECS to third parties; (d) Refusal by Shri Ramesh that any backdated transactions between group companies/ holding company would not be acceptable, as the accounts of *TFL* had been finalized and it was imperative that *Niskalp's* accounts are given to meet the deadline; (e) Shri Subodh Shah and Shri Ramesh left the meeting with statement that completing the verification would be very difficult on account of sudden change of financials of *Niskalp* proposed to be made for the period ending September 30, 2000 and not for the quarter ending of December 31, 2000.

45. I note that the *Noticee no. 3* (Shri Subodh Shah) has confirmed in his reply that he alongwith Shri Ramesh was present in the meeting held on March 19-20, 2001 wherein Shri Pendse had suggested backdating of transactions between group companies and that Shri Ramesh refused to the suggestion and thereafter, both (Shri Shah and Ramesh) left the said meeting. From the above, it can be summarized that the decision to come out with Rights Issue was approved in the meeting held on January 04, 2001, wherein the BoD had also passed a resolution for forming a committee comprising of Dr. F.A. Mehta and Shri D. S. Pendse. The statement of Shri P R Ramesh shows that the backdating the transactions were carried out sometime in March 2001, when the decision to take the financials of *Niskalp* for quarter ending on September 30, 2000 was decided. Admittedly, the letter of offer was signed on March 20, 2001 by Shri Pendse. Thus, the scope of examination to find out the person involved in the alleged violation gets restricted to period January- March 2001.
46. As noted above that pursuant to the approval by the BoD of TFL in its meeting held on January 04, 2001, a committee comprising Shri Pendse and Dr. F A Mehta was constituted *to do all such acts and deeds as may be necessary for the purpose of making the Rights Issue*. The above meeting of TFL was also attended by the *Noticee nos. 2 to 6, 8 and 12* in which resolution for constituting a two-member committee for doing all necessary acts for carrying out the Rights Issue of TFL was passed. This shows that the BoD of TFL had bestowed its trust and faith in the said committee to conduct the Rights Issue. Having gone through the records and submissions advanced by the respective *individual Noticees*, I find that the *Noticee no. 2* was a Non- Executive Director in TFL for the period June 1999 to July 2002 and was not associated with *Niskalp* in any matter during the period. Apart from his involvement in the Board meeting of TFL held on January 04, 2001, the records before me do not show his involvement in any other acts, which could be considered to fasten any accountability on him as a director. The SCN merely states that being a director during the period, he is responsible, however, there is no material placed on record to substantiate the charge against

him for being responsible for the above noted fraudulent actions as a director of TFL. In view of the above and in the absence of any material to show to the contrary or to show his personal involvement, the evidences on record are not sufficient to bring home the charge against the *Noticee no. 2*.

47. Similarly, in respect of the *Noticee nos. 6, 8 and 10*, I note that though they have been made noticees in the capacity of directors of TFL, there is no material to suggest that they have played any role in the alleged acts of backdating the transaction and misrepresentation of financials in the letter of offer of TFL. As per submissions advanced by them, the *Noticee no. 6* was also a Non-Executive Director of TFL for the period September 1998 to October 2001, whereas the *Noticee nos. 8 and 10* were part of the Board of TFL in the capacity of Independent Directors for the period 1997 to 2001 and January 2001 to June 2001, respectively. In addition to the above, there is even nothing on record to suggest that the *Noticee no. 10* had attended the said board meeting dated January 04, 2001. It has been vehemently contended by them that being Non-Executive Directors and Independent Directors of TFL, they had no role in the day to day management of TFL and were involved in broad policy making only. Since, the Board, through its resolution passed in the meeting held on January 04, 2001 had authorized a committee for carrying out the Rights Issue of TFL and had given their approval for the same, for the misdeeds /violations committed by the committee members, they should not be held liable, more particularly, when the allegations against them have been made without any evidence to support the same.

48. The *Noticee nos. 12 and 13*, who were issued SCN for being directors of *Niskalp*, have also made similar submissions stating that, apart from the fact the SCN has been issued after more than 18 years, they are not in position to defend the allegations for the reasons; firstly, they were not the Executive Directors in *Niskalp* and were not involved in managing the day to day affairs; secondly, nothing has ever been brought to their knowledge through board process or otherwise so as to attribute even negligence on their part; thirdly, the *Noticee no.*

12 was Independent and Non- Executive Director of *Niskalp* whereas the *Noticee no. 13* was the Director of *Niskalp* during the period October, 2000 to January 31, 2008; fourthly, since, they have already resigned and not associated with either TFL or *Niskalp*, they are not in position to defend the allegations as they have no access to the records of the companies concerned.

49. Having gone through the submissions made by the above noticees i.e. the *Noticee nos. 6, 8, 10, 12 and 13*, I find that similar to the *Noticee no. 2*, in the case of these *Noticees* also, the SCN does not contain any specific allegation nor any evidence is available on record to show their involvement in the alleged acts. There is nothing available on record to dispute the facts pertaining to these *Noticees* being Non-Executive and Independent Directors who were not involved in the day to day functioning of the two noticee companies i.e., the *Noticee nos. 1 and 11*. Further, the statements of person so recorded during the course of investigation have also not named any of the above named five persons' involvement in any manner in the day-to- day affairs of the said companies and therefore, I see no reason to disagree with submissions made by these five *Noticees*, more so when the evidences available before me have failed to establish the allegations made against them in the SCN.

50. As regards the *Noticee nos. 3, 4 and 5* are concerned, I note that these three noticees did not have a long association with *TFL/Niskalp*. In this regard, the *Noticee no. 3* was president of TFL for the period from January 2000 to February 2001 and became a Managing Director of TFL for brief period of June-October 2001. As per record, he was not associated with *Niskalp* in any manner during the relevant period. The *Noticee no. 4* was an Executive Director of TFL during the period from 1999 to 2001 and the *Noticee no. 5* was the Executive Director for the period from January 2001 to July 2001. These *Noticees* have also assailed the allegations on the ground that the SCN does not make any specific averment and does not provide evidence to show that they were involved in the alleged acts. Like other *Noticee* directors discussed earlier, I find merit in the submissions of these noticees that the SCN does not contain any evidence to show their

complicity in the alleged violation. I cannot ignore the fact that there is no whisper against these noticees in the depositions made during the investigation. None of the three stock brokers has made any aspersion on the above noticees to suggest that the backdating of transactions in the scrip of GTL and GECS were carried out under the instructions of any of the above noted three noticees. Further, the materials on record also do not even indicate their role in the falsification of accounts and mis-statement made in the letter of offer or to show that they had any role to play in the violations as alleged in the SCN. The only evidence to show the involvement of the *Noticee no. 2* in the entire process is related to his presence in the meeting held on March 19-20, 2001. In this regard, the records before me show that at that time, he was not a director of TFL and was only the President in TFL. Further, Shri P R Ramesh in his deposition has categorically stated that after expressing their disagreement to the backdating proposal of Shri Pendse, they had left the meeting. In any event, I find that none of above *Noticee* directors can be placed in a position worse than Shri Shilotri, who having been found guilty by SEBI of his alleged violations, has been exonerated by the Hon'ble Tribunal vide its order dated May 30, 2018 passed in the Appeal No. 281 of 2016. I also note that the findings of the Hon'ble Tribunal have not been assailed either by SEBI or any other person, hence the same have attained finality.

51. Considering the aforesaid, I find that no evidence has been presented to demonstrate and prove that above named *Noticee* directors of TFL and *Niskalp* had knowledge of the mis-statements made in the offer documents of Rights Issue of TFL on account of inflated profits fictitiously created to conceal the actual losses of *Niskalp* by way of backdated and fictitious transactions carried out in the shares of GTL and GECS in the books of *Niskalp*. Therefore, in the absence any clinching evidence, I am constrained to concede that there is a merit in the contentions of the *Individual Noticees* that there is nothing on record in terms of board minutes, resolution etc. to suggest any specific role played by them to record that materials on record are sufficient to establish the complicity and

knowledge of the *Notices nos. 2 to 6, 8 to 10, 12 and 13* in backdating of the transactions in the shares of GTL and GECS in the books of *Niskalp* and for the misstatement in the letter of offer of Rights Issue of *TFL*.

52. To sum up the above discussions in the context of the present proceedings, I note from the SCN that the only time the role of the BoD of TFL and *Niskalp* is discussed in the SCN is when the SCN at its para 20 alleges that TFL and *Niskalp* being artificial persons, cannot act on their own, hence the BoD of TFL and *Niskalp* should be held responsible for the aforesaid falsification of books of accounts and misrepresentation of financial statement in the offer documents of TFL. Thus, I observe that the SCN imputes all the allegations which are levelled against TFL and *Niskalp*, automatically, on the directors of TFL and *Niskalp* without bringing additional facts or findings in the SCN which will show the complicity/knowledge of the *Individual Notices* through any of the Board processes (as far as falsification of books of account of *Niskalp* and mis statement of profits in the offer documents of TFL are concerned) apart from the fact that, in its board meeting held on January 04, 2001, the BoD of TFL constituted a committee comprising of Dr. F A Mehta and Shri Pendse to conduct the Rights Issue in accordance with the law as noted earlier. I note here that Dr. F A Mehta is not a noticee in the present proceedings.

53. Therefore, I find that violations of the PFUTP Regulations, 1995 read with the PFUTP Regulations, 2003 as alleged in the SCN against the above noted directors are general in nature without making out any specific case against these *Individual Notices* which can be said to constitute these violations as alleged against the *Notices*. For example, 'knowledge' is a prerequisite for a person to be held liable under the regulation 6(a) of the PFUTP Regulations however, as recorded above, there is nothing on record to show that it was well within the knowledge of the *Individual Notices* that the said backdated and fictitious transactions were carried out in the books of *Niskalp* and the profits accrued out of the said transactions were deliberately incorporated in the offer documents

of the Rights Issue of TFL despite the fact that *Niskalp* was actually incurring losses.

54. In view of the aforesaid deliberations and findings recorded above, I hold that the charges of executing fictitious backdated transactions in the books of *Niskalp* and consequently the misrepresentations in the offer document of the Rights Issue of TFL as alleged against the *Notices nos. 2 to 6, 8, 10, 12 and 13* are not proved and therefore, the allegations of violation of regulation 5(1) and 6(a) & (d) of the PFUTP Regulations, 1995 are not tenable against the *Notices nos. 2 to 6, 8, 10, 12 and 13*.

55. I also note that the *Notices* have raised certain objections assailing the issuance and maintainability of the SCN in the instant matter. In this regard, one of the contentions of the *Notices* was that the SCN ought to be quashed and allegations be dropped on account of the gross and inordinate delay in the issuance of the SCN. To such a protest, it is noted that there is no provision in the SEBI Act, 1992 that provides for limitation in initiating action for violation of the provisions of the SEBI Act, 1992 and Rules and Regulations made thereunder. At the same time, the issue pertaining to delay in initiating action has also been a subject matter of scrutiny of the Hon'ble SAT as well as the Hon'ble Supreme Court of India from time to time. It is a trite law that in the absence of any provision providing for a statutory limitation, such power needs to be exercised within a reasonable time and what constitutes a reasonable time, would depend upon the facts and circumstances specific to a case including the nature of the default/statute, prejudice caused, and whether any third-party right has been created etc.

56. In the instant matter, I note that the above noted fraudulent transactions pertain to the period of September- December 2000, into which the investigation was initiated after the receipt of a complaint in October 2002. After examining the allegations made in the complaints filed with SEBI, information was collected thereon from various sources and in the process, statements of various persons were also recorded. Based on the examination of materials collected, actions were

initiated against the entities viz; Shri Dilip S Pendse and Shri A L Shilotri, PAT and SUPERIOR. After hearing the parties and considering their responses, the allegations made against them were found to be established and therefore, vide separate orders, they were restrained and prohibited from accessing and otherwise dealing in the securities market for a specific period of time. Further, Shri Dilip S Pendse and Shri A L Shilotri were also restrained from holding Key Managerial positions in any listed company for three years. It has been brought to my notice that Shri Pendse passed away in July 2017 and the said fact is also confirmed by the *Individual Noticees* in their replies as captured in para 11.14 above. Aggrieved by the aforesaid order, Shri A L Shilotri, PAT and SUPERIOR preferred appeals before the Hon'ble Tribunal, which came to be disposed of by the Hon'ble SAT vide its order dated May 30, 2018. While disposing of the appeals, the Hon'ble Tribunal have inter alia recorded the following;

13. At the outset, it is relevant to note that false declaration was made by TFL in its letter of offer, however, instead of taking action against TFL, action is inter alia taken against Mr. Shilotri on the presumption that as CEO of Niskalp he was required to be aware about the financial transactions of Niskalp and that he had not raised his voice or concern when fictitious profits were recorded in the books of Niskalp. It is equally important to note that no action has been taken against Niskalp. Where false declarations/ false entries in the books of account of a company are noticed, invariably SEBI takes action not only against the company but also against its Board of Directors and other connected persons responsible for the false declarations/false entries in the books of account. Why no action has been taken against TFL and Niskalp even after recording that they are guilty of committing serious violations is neither explained in the impugned order nor before us.” (emphasis supplied)

28. In the result, we pass the following order: -

- a) Even after holding that Tata Finance Limited (TFL) is guilty of making false declarations in its letter of offer, SEBI has failed to take action against TFL which is not only unusual but also bound to send wrong signal to the securities market*

b) For the reasons stated above, both appeals are allowed by quashing the directions issued by SEBI against the respective appellants, however, appellants in Appeal No. 222 of 2016 are warned to be careful in future while dealing in securities.”

57. I note that the *Notices* have submitted that the SCN has been issued solely because of the adverse observations made by the Hon'ble Tribunal in its above referred order dated May 30, 2018. In this respect, the perusal of records shows that subsequent to the above order of the Hon'ble Tribunal, the information so collected earlier were further analyzed and consequently, the SCN was issued on January 04, 2019. Considering the same, I am of the view that the contentions of the *Notices* are not tenable, as the SCN in this matter was issued within a reasonable time pursuant to the observations of the Hon'ble Tribunal in the above mentioned order. Therefore, in the facts peculiar to the matter, I see no reason to drop the proceedings only on the ground of delay when the *Notices* have been furnished with all the relied upon documents and have been provided with sufficient opportunity to defend the allegations, which they have already availed and have further filed their detailed post hearing written submissions for my considerations as well. Therefore, I am of the view that delay in issuance of the SCN in the present proceedings is not fatal so as to render the *Notices* incapable of meeting the charges/violations as alleged in the SCN. Hence, from the foregoing narration of sequence of events that ensued pursuant to receipt of the complaint against the *Notices*, and given the specific facts & circumstances of this case where the SCN was issued on January 04, 2019 in the present proceedings, pursuant to the aforesaid observation made by the Hon'ble Tribunal, I am of the view that such delay cannot justify exoneration on this ground alone. Hence, I find no merit in the protest of the *Notices* about the so called undue delay in issuance of SCN from SEBI and the said contention is liable to be rejected. Consequently, the case laws cited above by the *Notices* in support of their contention are also rejected for the reasons recorded above in this regard.

58. It has also been argued that the SCN is void vis-à-vis the *Noticee no. 1*, as TFL ceased to exist as a legal entity and TML as the transferee entity, was not involved

in the events leading up to the SCN in any manner whatsoever. In support of this argument, reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in *Civil Appeal No. 91 of 1976-Saraswati Industrial Syndicate Ltd. vs. Commissioner of Income Tax, Haryana, Himachal Pradesh, Delhi*, [1990(Supp) SCC 675) wherein the Apex Court has held that the corporate entity of a transferor company ceases to exist with effect from the date on which the amalgamation becomes effective, and the transferor company does not continue its entity in a blended form with the transferee company. The *Noticee no. 1* has also contended that the penal liabilities of TFL could not be transferred to/fastened onto TML pursuant to TFL's merger with TML, since they are incapable of being transferred in law.

59. It is a trite law that after amalgamation of two companies the transferor /amalgamating company loses its identity as it does not carry on any business thereafter and thus, the corporate entity of the transferor company ceases to exist with effect from the date of the amalgamation. However, their respective rights or liabilities are determined under the scheme of amalgamation since the true effect and character of the amalgamation will depend on the terms of the scheme of such amalgamation/merger. At this stage, I find it appropriate to refer to and rely on the judgment passed by the Hon'ble Supreme Court of India in *Saraswati Industrial* (Supra) cited and relied upon by the *Noticee no. 1* above. Vide the said judgment, The Hon'ble Supreme Court of India has *inter alia* held that:

“3. When two companies are merged and are so joined, as to form a third company or one is absorbed into the other or blended with another, the amalgamating company loses its entity.

4. After the amalgamation of two companies the transferor company ceased to have an entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets.

5. The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there can be no doubt that when two companies amalgamate and merge into one, the transferor company loses its entity as it ceases

to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective.” (Emphasis supplied)

Further, the Hon’ble Gujarat High Court in *Nirmay Properties (P.) Ltd. in re* (2009) 150 Comp Cases 538(Gujarat) decided on April 27, 2009 has *inter alia* held that:

“In any view of the matter, simply because the court has granted its sanction to such scheme, it would not absolve the petitioner-companies from any liability that may arise in future on violation of any statutory provisions or the scheme would not affect the pending proceedings either before the civil or criminal courts and the liability that may be inflicted upon the petitioners or their directors, would not be affected simply by virtue of the scheme of amalgamation.”

60. Thus, it is evident from the aforesaid judgment that a sanctioned scheme of amalgamation would not automatically absolve the transferor/amalgamating company from any future liability for any of its past violation of any statutory provisions as the respective liability of the transferor/amalgamating (TFL) and transferee/ amalgamated (TML) companies would depend on the details of the scheme of amalgamation which define the true scope and character of amalgamation. In this context, nothing has been brought before me for consideration to suggest that the scheme of merger does not stipulates any such clause or terms and conditions which would prohibit initiation of any action against the transferor company and consequently exempt the transferee company from the liability, if any, arising out of act or omission of the transferor company.
61. In the background of the case laws discussed above pertaining to amalgamation scheme, it is evident that TFL cannot seek immunity from the outcome of the present proceedings merely for the reason that it ceases to exist as having merged with TML. Further, it is viewed that the above defense may be useful in instances where two different or stranger entities amalgamated and where the transferee company seeks to plead ignorance on account of being victim of the fraud committed by the transferor company. Such a fraud may occur despite having

conducted inspection and taken all steps to check the antecedents of the transferor company diligently. However, the same is not the case in the instant matter. Admittedly, both TFL and TML were part of a common group of companies and as per the amalgamation scheme, there was already a synergy of their respective lines of businesses which eventually led to the amalgamation. It is not the case of the TML that it had undertaken all possible due diligence and with the best of its efforts, it was not possible in the course of its due diligence to know the facts stated in the SCN and therefore, in the absence of same, it would not be apposite to fasten it with the liability for the acts and omission of TFL. Under the above circumstances, I do not find merit in the contention of the *Notices* that SCN is void vis-à-vis the *Noticee no. 1* (TML) and the rights and liabilities of TFL are incapable of being transferred to TML in law. Consequently, I find that reliance placed by the *Notices* on the orders of *Duncan Agro* (supra) and *Saraswati Industrial* (supra) is flawed and the said orders do not come to the rescue of the *Notices*.

62. To sum up, I find that the *Noticee nos. 1* (TFL) and *11* (*Niskalp*) have displayed fraudulent conduct and behavior pertaining to mis-statement in the offer document of Rights Issue of TFL wherein inflated/artificial profits were shown by converting the actual losses of *Niskalp* into profits by way of backdated and fictitious transactions carried out in the shares of GTL and GECS. The foundation of the aforesaid falsification/misrepresentations perpetuated by the *Noticee nos. 1* and *11* can be seen to have been laid down in the meeting held on January 04, 2001 wherein Shri Pendse was vested with absolute power and control to carry out and successfully complete the process of Rights Issue. As noted above, Shri Pendse had full authority and backing from TFL and its BoD to take all necessary steps (including the liberty/power to change the size of the Rights Issue) for successful completion of the Rights Issue of TFL and thus, the *Noticee nos. 1* and *11* can be seen to be acting and thinking through Shri Pendse so far as the letter of offer and implementation of Rights Issue were concerned. In furtherance of the said objective and in order to ensure that the books of

accounts of *Niskalp* (Shri Pendse was also the director of *Niskalp* at the relevant point of time) did not reflect the said losses, Shri Pendse in the meetings held on March 19-20, 2001 decided to disclose the financial statement of *Niskalp* only up to September 2000 quarter whereas financial statements of other subsidiaries were disclosed up to December 2000 quarter in the letter of offer of TFL and admittedly, Shri Pendse signed the letter of offer of the Rights Issue of TFL on March 20, 2001.

63. Looking holistically, the *Noticee nos. 1 and 11* now cannot distance themselves from the acts of Shri Pendse who had received decisive authority from them to complete the Rights Issue. Needless to say that other directors/members of BoD of TFL or *Niskalp* did not have any knowledge about the process being followed pertaining to the Rights Issue of TFL by Shri Pendse and in the absence of any additional facts or findings in the SCN showing the complicity/knowledge on their part, the noticee directors except for the *Noticee no. 3* should not be fastened with any liability in this regard. As regards, the *Noticee no. 3*, I am compelled to observe here that since the *Noticee no. 3* (Shri Subodh K Shah) was aware of the sinister design of Shri Pendse pertaining to the Rights Issue of TFL which had taken concrete shape in the meeting held on March 20, 2001 that was also attended by him in his capacity as the Deputy MD of TFL at the relevant time (as per his own admission), he should not have kept his eyes shut and instead should have brought the same to the knowledge/notice of the BoD of TFL.

64. At this point I want to iterate that the SEBI is mandated under the SEBI Act, 1992, *inter alia*, to protect the interests of the investors in the securities market and to promote the development of the securities market. The securities market functions on the premise of fair conduct by the market participants, especially by a listed company. If the listed company fails to keep its acts above board, the market mechanism of fair trade is bound to fail. The listed company is duty bound to act in a fair and equitable manner. In the instant case, as discussed above, the TFL and *Niskalp* have failed to act as such and hence the existing

shareholders were not in a position to take informed decision with regard to their participation in the Rights Issue of TFL.

65. However, at the same time I am aware that the Rights Issue of TFL pertains to the period 2000-01. Admittedly, after certain irregularities committed by Shri Pendse including *inter alia* his misconduct in the affairs of *Niskalp* and TFL came to light, TFL immediately informed SEBI of the same and requested SEBI to investigate the matter by its letters dated July 25, 2001, December 03, 2001 and July 08, 2002. Further, by way of the complaint dated October 18, 2002, the details of the fictitious backdated transactions and consequent misrepresentations in the offer documents of the Rights Issue alongwith the documentary proofs were brought to SEBI's notice by TFL. It is the complaint dated October 18, 2002 on which the SCN is largely based. In addition to the above, I note that TFL had provided all subscribers to the Rights Issue an opportunity to withdraw their subscriptions, on two separate occasions i.e., on April 30 and November 30, 2001.
66. Moreover, TFL and *Niskalp* claim to have removed all the persons involved in the fictitious backdated transactions and in making misrepresentations in the offer document of the Rights Issue of TFL. Further, FIRs against these persons were filed with the police in Mumbai and Delhi. Additionally, an FIR was also filed against such persons with the Economic Offences Wing of Mumbai Police, which was subsequently transferred to the Central Bureau of Investigations by the Hon'ble Bombay High Court, on a petition being filed therefor, by TFL. Therefore, I note that the *Notices* have taken several substantial and positive remedial measures to remedy the mis statement made in offer documents and to protect the interests of investors and shareholders of TFL.
67. Keeping the aforesaid developments in mind, I am of the considered opinion that for the events that accrued more than eighteen years ago, any adverse orders passed against TML at this stage though legally will be valid but may not practically serve any purpose since TFL, which brought the Rights Issue, has been merged with TML 17 years ago with effect from June 24, 2005 and is no

longer in existence. Further, the present BoD of TML is completely different from all the directors of TFL who are all Senior Citizens and have long since retired from the Board of TFL and *Niskalp*. In view of the aforesaid mitigating factors and the facts that substantial and positive remedial measures have been proactively taken by TML and *Niskalp* against the erring officials and the subscribers of the Rights Issue of TFL were given options twice to exit from the said Rights Issue by TFL if they wish to do so, the end of justice would be met if the *Noticee nos. 1*(TML) and *11*(*Niskalp*) are warned to be careful in their future dealings in the securities market.

DIRECTIONS

68. In view of the above, in exercise of powers conferred upon me under sections 11(1), 11(4) and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992, in order to protect the interest of investors and the integrity of the securities market, I hereby pass the following directions:

- i. The Noticee no. 1 i.e., Tata Motors Ltd. (AAACT2727Q) and the Noticee no. 11 i.e., Niskalp Infrastructure Services Ltd. (AABCN9239J) are hereby warned to be more careful in their future dealings in the securities market.
- ii. The SCN dated January 09, 2019 is disposed off without passing any directions against the Noticee nos. 2 to 10, 12 and 13.

69. The Order shall come into force with the immediate effect.

70. A copy of this order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd/-

DATE: JUNE 9, 2022

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA