

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

**Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India
Act, 1992**

**In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and
Unfair Trade Practices Relating to Securities Market) Regulations, 2003**

In respect of:

S.No.	Name of the Entity	PAN / Address
1.	Seagull Leafin Limited	AAFCS3157A
2.	Sitaram R Pujari	AKEPP4211G
3.	Philip Amolik	ADWPA6586C
4.	Rajkumar Sharma	AOTPS8037A
5.	Vinodbhai D Patel	404, Manjula Apartment, HIG 123&4, Dharmareddy-1, KPHB Colony, Hyderabad- 500072

In the matter of Seagull Leafin Limited

BACKGROUND

1. Seagull Leafin Limited (hereinafter referred to as '**SLL / company**') was originally incorporated as Study Financiers Private Limited and subsequently converted into a public limited company on January 31, 1995. The name was changed to Seagull Leafin Limited with effect from May 2, 1997. The company was listed on BSE Ltd. and erstwhile Hyderabad Stock Exchange. The company was engaged in the business of

investment and financial services related activities and had been operating in the capital market.

2. As per the annual report for the financial year 2004-2005, Shri S R Pujari, Shri Philip Amolik, Shri Rajkumar Sharma and Shri Vinodbhai D Patel were the Directors of the company. The shareholding pattern of the company was as under:

Category of shareholder	September 30, 2004		March 31, 2005	
	No. of Shares	% to total share holding	No. of Shares	% to total share holding
Promoter Holding	700	0	700	0
PAC	13259300	7.57	13259300	7.57
Non-Promoter Holding	160179459	91.44	144429615	82.45
Indian Public	1738541	0.99	17488385	9.98
Total Share Holding	175178000	100.00	175178000	100.00

3. From the investigation report (hereinafter referred to as '**IR**'), it is noted that the company was generating income for the quarters ending December, 2004 till June, 2005, on account of interest earned.
4. BSE Ltd. had received a letter dated January 25, 2005 from the Income Tax Department wherein it was stated that the officers of Narcotic Control Bureau, Mumbai had seized approximately 32 lakh share certificated (3.2 crore shares of paid up value of ₹ 1/-) of SLL from the business premises of Shri Gopal Aulia on November 29, 1996. Income Tax Department also requested the Exchange to not allow any transactions with the said shares as they have been seized. Upon enquiry, BSE Ltd. suspended the trading in the scrip with effect from February 7, 2005.
5. Pursuant to the aforesaid reference, an investigation was carried out by Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') to ascertain *inter alia* due diligence from depositories in conversion of excess physical shares in demat mode and to see whether there was any violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and the Rules and Regulations made thereunder and possible violation of provision of SEBI

(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). The investigation period in the matter was from October 25, 2004 to February 6, 2005.

INTERIM ORDER

6. Subsequent to the investigation, an interim order dated October 15, 2009 was passed. In the said interim order, the following *prima facie* findings were recorded:
- i. The company came out with an initial public offering for an issue of 25,00,000 equity shares of ₹ 10/- each at par on February 28, 1996. These shares along with the originally allotted 25,17,800 shares, totaling 50,17,800 shares were permitted to be listed on BSE Ltd. from May 17, 1996.
 - ii. During June 2002, the shares of the company underwent a share split and the face value of the shares were reduced to ₹ 1/- from ₹ 10/-. Accordingly, the total number of shares of the company increased from 50,17,800 to 5,01,78,000.
 - iii. Later, pursuant to an amalgamation scheme approved by the Hon'ble High Court of Andhra Pradesh, Bhamti Finance Limited merged with the company. The shareholders (4 individuals and 11 corporate bodies) of Bhamti Finance Limited were allotted a total of 12,50,00,000 shares. However, the said shares have not been listed as the listing application in respect of the said shares, is still pending with the stock exchange.
 - iv. Thus, the total equity capital issued by the company was to the tune of ₹ 17,51,78,000/- (17,51,78,000 shares x ₹ 1/-) only of which 5,01,78,000 was the listed equity capital of the capital.
 - v. During November 1996, the Narcotics Control Bureau, Mumbai, had *inter alia* seized 32 lakh share certificates of face value of ₹ 10/- each from the premises of one Shri Gopal Auliya. After investigations, the Narcotics Control Bureau, Mumbai, handed over the said certificates to the Income Tax Department on January 23, 2002 for taking necessary action. The Assistant Commissioner of Income Tax, Mumbai, vide letter dated January 25, 2005 had informed BSE Ltd.

of the said seizure and requested the stock exchange not to allow any transactions in those shares. The details of the share certificates including their numbers and distinctive numbers were also furnished to BSE Ltd. by the Income Tax Department.

- vi. After making an enquiry, BSE Ltd. found that the total listed equity share capital of the company is 5,01,78,000 shares. As the shares in the custody of the Income Tax Department were 3,20,00,000, the equity shares in the dematerialised form could not be more than 1,81,78,000 shares $[5,01,78,000 - 3,20,00,000 = 1,81,78,000]$. On a confirmation received from both the depositories, National Securities Depository Limited and Central Depository Services (India) Limited, it was found by BSE Ltd. that the total shares held in the depositories were 2,63,87,260 shares. This indicated that the shares that have been dematerialized were in excess of the quantity that was eligible to be in the dematerialised mode. Therefore, BSE Ltd. suspended the trading in the scrip with effect from February 7, 2005.
- vii. Aggrieved by this decision of BSE, the company filed an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in Appeal No. 32 of 2005. As the company had contended that the shares seized by the Income Tax Department through the Narcotics Control Bureau, were not genuine, the Hon'ble SAT appointed a Court Commissioner to assist it and to submit a report as to whether the said shares were genuine or not. The Court Commissioner submitted a detailed report, with a finding that the share certificates in possession of the Income Tax Department were genuine. After hearing the parties, the Hon'ble SAT while dismissing the appeal filed by the company vide Order dated February 08, 2006 had observed as follows:

"From the aforesaid information it is clear that out of the total of 5,01,78,000 shares, 2,63,87,260 shares had been dematerialized and the remaining shares were still in the physical form held by the shareholders in the form of share certificates. As per the report of the Court Commissioner the remaining shares

were also in the process of being dematerialized through the Company when the BSE stopped trading in the scrip of the Company. It is thus obvious that out of the listed capital of 5,01,78,000 shares, 3.2 crore shares had been seized by the NCB and Income Tax Department in physical form because that Department had share certificates in it. That being so only 1,81,78,000 shares could be in the dematerialized form in the accounts with the two depositories but a total of 2,63,87,260 shares as per the information received from the two depositories had already been dematerialized. This obviously means that a large number of the seized shares had also been dematerialized and this could happen only through the company after it had issued duplicate share certificates to the shareholders. The Court Commissioner after inspecting the records of the Company has found in his report that the Company had issued duplicate sets of share certificates in regard to the 32 lac shares which had been seized by the Income Tax Department. The Court Commissioner also found that out of the 32 lac seized shares 15,60,300 shares were held in physical mode and about 15,34,800 shares were held in demat mode. It is therefore clear that about 50% of the seized shares have already been put in the demat mode and were being traded in the market...

...In this view of the matter with almost 50% seized shares being traded in the demat mode which cannot be traced, the BSE had no option but to stop the trading of all the share scrips of the Company lest the seized shares are also traded. No fault can thus be found with the impugned action of BSE in suspending the trading in the equity shares of the Company.”

- viii. As already mentioned above, the total listed equity capital was ₹ 5,01,78,000/- (5,01,78,000 shares of face value of ₹ 1/-). The quantity of share certificates seized by the Income Tax Department was 32,00,000 (32,00,000 certificates of face value of ₹ 10/- = 3,20,00,000/-). Therefore, the quantity eligible for dematerialisation would be 1,81,78,000 shares (50178000 - 3,20,00,000 = 1,81,78,000). However, the information from the depositories indicated that 2,67,15,000 shares were in the dematerialised mode. The details are as below:

Particulars	As on February 1, 2005		As on February 7, 2005	
	No. of shares	%	No. of shares	%
With NSDL	23148720	13.21	23211275	13.25
With CDSL	3566280	2.04	3503725	2.00
In physical	148463000	84.75	148463000	84.75
Total Capital	175178000	100.00	175178000	100.00

- ix. It needs to be noted that 12,50,00,000 shares issued to the shareholders of Bhamati Finance Limited (pursuant to the scheme of amalgamation) were allotted in physical form and were not allowed listing in any of the stock exchanges. As aforesaid, the total holding in the dematerialised mode as on February 7, 2005 was 2,67,15,000 shares instead of 1,81,78,000 shares. This *prima facie* indicates that excess shares have been issued by the company, over and above the issued capital. *Prima facie*, the excess dematerialization could have happened only on the basis of fake/duplicate share certificates issued by the company.
- x. The Court Commissioner appointed by the Hon'ble SAT in Appeal No. 32 of 2005, had observed that the company had issued duplicate of share certificates in regard to the 32,00,000 shares which had been seized. The Court Commissioner had also found that out of the 32,00,000 seized shares, 15,60,300 shares were held in physical mode and about 15,34,800 shares were held in demat mode. Thus, nearly 50% of the shares contained in the seized share certificates have already been dematerialised and were being traded in the market.
- xi. The information from Sharepro Services (India) Private Limited (received during the course of investigation) was not of any use, as it had submitted that its association with the company was only in the capacity of a '*Connectivity Agent*' and not as its '*registrar and transfer agent*' as the share transfer and registry work was done 'in-house' by the company.
7. Based on the aforesaid findings, it was *prima facie* held that the company and its Directors who were in charge of the affairs of the company and responsible for the business of the company have played a fraud on the shareholders and the investing

public by issuing duplicate share certificates, thereby enabling excess dematerialization. Thus, the company and its Directors, Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma and Shri Vinodbhai D Patel, have *prima facie* violated the provisions of the PFUTP Regulations, the Depositories Act, 1996 and the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996. It was further held that *prima facie*, the act of issuing such duplicate share certificates by the company and its Directors would tantamount to fraud or deceit on the shareholders of the company in particular and the investors in general, which is in contravention of Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) of PFUTP Regulations. Further, since the company and its Directors are *prima facie* found to have issued counterfeit security in physical form, they have contravened Regulation 4(2)(h) of PFUTP Regulations.

8. In view of the *prima facie* findings on the violations, the company and its Directors namely Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma and Shri Vinodbhai D Patel, were restrained from accessing the securities market and are also prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly and in any capacity whatsoever, till further orders.
9. Copy of the interim order was sent to the company and its Directors. Shri Philip Amolik and Shri S. R. Pujari vide their letters dated October 28, 2009 and Shri Rajkumar Sharma vide his letter dated October 27, 2009 sought time to respond to the order.
10. Shri Rajkumar Sharma vide his letters dated May 7, 2012 and June 28, 2012 requested to vacate the directions imposed on him vide the aforesaid interim order and *inter alia* submitted as follows:
 - i. He was approached by the company to act as an Independent Director on its Board of Directors and hence he was appointed as a Non-Executive Independent Director on the Board of Directors of the company with effect from October 15, 2004.
 - ii. Due to certain unavoidable personal reasons / problems, he could not attend much of the proceeding of the Board and due to the same unavoidable personal reasons /

problems, he resigned from the company vide letter dated February 1, 2005. The same was received and acknowledged by Shri Sitaram Pujari on behalf of the company.

iii. During his brief association with the company, i.e. between October 15, 2004 and February 1, 2005, he did not attend any meetings of the Board and nor did he pass any reports, balance sheets, resolutions or any other document pertaining to the meetings of the board or the day-to-day working of the company.

iv. His association with the company was in the capacity of Independent Non-Executive Director and by virtue of the same, he could not interfere / engage in day to day working or affairs of the company.

v. He was not connected / associated with the company when the Narcotic Control Bureau seized the shares.

vi. It is only through SEBI's order dated October 15, 2009 that he came to know about the company has not filed Form 32, even after four years of him tendering the resignation. He immediately requested the company to do the needful. However, after a reasonable period when the company did not act on his request, he had sent legal notice to Shri Philip Amolik and Shri S. R. Pujari, followed by reminder notice.

SHOW CAUSE NOTICE

11. Considering the facts and circumstances of the matter, a common Show Cause Notice (hereinafter referred to as 'SCN') dated December 17, 2015 was sent to the company and its Directors namely Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma and Shri Vinodbhai D Patel in the matter to show cause as to why suitable directions in terms of Sections 11 and 11B of the SEBI Act should not be initiated against them for the alleged violation of the provisions of Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) and 4 (2) (h) of PFUTP Regulations by them. The SCN reiterated the findings of the interim order.

REPLY & HEARING

12. In response to the SCN, Shri Rajkumar Sharma vide his letter dated January 8, 2016

requested four weeks' time to submit a reply to the SCN. He vide his letter dated February 13, 2016 reiterated his submissions made vide his letter dated May 7, 2012 and *inter alia* submitted as follows:

- He is currently a Director in 3 companies and overall has been a Director in 10 companies.
- The information regarding seizure of shares by the Narcotics Control Bureau was not disclosed to him before he became a Director of the company.
- He has never traded in the scrip of the company.
- With regard to genuineness of the shares, he would like to state that before he joined the company, he was only informed about 50,17,800 shares of the company.
- He did not receive any sitting fee for any of the Board Meetings from the company. He was also not involved in any activity relating to Registrar and Share Transfer and therefore, he does not have any knowledge about the same.

13. In response to the SCN, Shri Philip Amolik vide his letter dated January 27, 2016 submitted as follows:

- He learnt in the year 2005 that during November, 1996 the Narcotics Control Bureau, Mumbai had seized 32 lakh share certificates of face value of ₹ 10/- each from the premises of one Shri Gopal Aulia and later on 23rd January, 2002, the said shares were handed over to Income Tax Department for taking further action. Thereafter, Income Tax Department has informed BSE Ltd. regarding the seizure of these shares and provide them all the necessary information regarding the same.
- As far issue of informing to BSE about the seizure of these large quantity of share is concern, no fault can be attributed to the company or its Directors as they were not aware of the said fact as Narcotics Bureau who had actually seized those shares, had transferred those shares directly to the Income Tax Department without informing him. He had absolutely no knowledge about the said seizure till the time when the Show Cause Notice was issued by the BSE. Further after seeking clearance from all the authority the said scheme of amalgamation was approved

by the Hon'ble High Court, Andhra Pradesh and at that time no objections were raised by the Income Tax authority regarding the seizure of these 32 lakh shares.

- The report submitted by the Commissioner to the Hon'ble SAT was erroneous and perverse. The finding of fact by commissioner that seized shares were genuine is without any basis and not supported by any evidence. Secondly books of the company does not reflect that any duplicate shares were issued by the company during relevant period and there is no record also available with Registrar of Companies regarding the issue of duplicate shares. Issue of duplicate shares requires certain procedure to be followed and entire records of the company does not support the finding of Court Commissioner that duplicate shares were issued by the company. The alleged owner of the said seized shares never approached company for transferring those shares in his name and therefore company was not aware about the same and therefore, Directors of the company were not aware about the transaction of those shares, as those transactions were not reported to the company. The alleged seized shares by Narcotics Control Bureau are not genuine as original shareholders who have allegedly sold these seized shares to claimant, have already sold their shares to the company.
- The alleged irregularity in the company has been done prior to his induction i.e., before year 2002 and from the record of the company it can be ascertain that no such record were available to the present Directors regarding the issue of duplicate shares by the company prior to their induction and hence it is very difficult for them to offer any help to BSE Ltd. in respect of present matter. Therefore present Directors cannot be held responsible for any irregularities if any done by the company prior to their induction.
- Moreover, alleged owner of the seized shares only contacted company in the year 2002 for transfer of those seized shares. As he kept quiet almost for more than 5 years which shows the *mala fide* intention of the alleged owner of the shares. If it is accepted for sake of arguments that JB shares and Stock Limited are the owner of these seized shares then it is important to note that total value of the seized

shares exceeds 5% of the share capital of the company and before purchasing those shares they were duty bound to inform the SEBI about the same, which JB Shares and Stock Limited has not done and this shows the *mala fide* intention of JB Shares and Stock Limited.

14. Vide hearing notice dated February 23, 2016, Noticees were granted an opportunity of hearing on March 29, 2016 at SEBI Bhavan, Mumbai. The hearing notice was served on the Noticees via post / newspaper publication. In response to the hearing notice, Shri Philip Amolik vide his letters dated March 18, 2016 and March 23, 2016 requested for certain documents in the matter and inspection of the same. Shri Rajkumar Sharma also vide his letter dated March 25, 2016 requested for certain documents in the matter including inspection of the same. The other 3 Noticees in the matter namely, SLL, Shri S.R. Pujari and Shri Vinodbhai D Patel failed to attend the scheduled hearing.
15. In the meantime, Shri Philip Amolik submitted additional reply to the SCN vide his letter dated April 18, 2016 wherein he *inter alia* made the following submissions;
 - SCN suggest that period of investigation is October 25, 2004 to February 6, 2005. While alleged second set of shares may have been issued before that period. During that period management of the company was governed by other group of Directors.
 - SEBI has issued SCN on the basis of cherry picked extraction from Court Commissioner's report, without application of mind.
 - 20 years after seizure of shares by Narcotics Control Bureau ownership of these shares is not yet established. This suggests that those shares are fake.
 - In Para 3 of SCN, it is alleged that in November, 1996 Narcotics Control Bureau seized 32 lakh shares and in 2002 it was handed over to IT Department. Neither Narcotics Control Bureau nor Income Tax Department had informed these facts to the company nor have they advised to company to take cognizance of these shares. The company was first informed regarding this in 2005. Hence Narcotics Control

Bureau is silent from 1996 to 2016 and Income Tax Department was silent from 2002 to 2005. Income Tax Department has never contacted company till date.

- When company's shares were split up from ₹ 10/- to ₹ 1/- paid upon June 28, 2002, all the shares of ₹ 10/- each lost its relevance as fresh shares of ₹ 1/- was issued in lieu of old shares. Trading in shares having face value of ₹ 1/- at BSE Ltd. was initiated only after credit/dispatch of demated/physical shares to shareholder. Hence company had issued physical shares to those shareholders whose name was in register of member on record date. Company acted *bona fide* on that date by issuing shares to shareholders whose name was in the register of member. It is possible that few of the shareholders who may have sold the shares still they receive the shares as the shares in their name may be lying with buyer in bearer form with TD. It is buyer's duty to lodge the shares for transfer before Record Date (RD). In our case Income Tax Department or anyone did not lodge the shares for transfer before or after Record Date. Even as rightly mentioned in Court Commissioner's report shares were lying there unattended since 1996. How company will know that there were certain bearer certificates lying with Income Tax Department?
- SEBI itself is not clear whether the shares are fake or duplicate. There is no evidence that the company had printed fake/duplicate shares. The entire theory of excess dematerialization is on assumption that shares lying with IT are genuine as well as shares issued after sub-division is not genuine. SEBI has failed to establish both.
- During inspection of shares at Income Tax Department, Court Commissioner found that share certificates in running order without being separated and in continuous untorn condition in bunches. This suggests that fake certificates were printed in continuous stationary which are identical with the original. It is evident from this that share lying with the Income Tax Department are fake.
- As per page 10 4(x) of Court Commissioner's report "*whether the directors of the company- past and present- played any role and/or whether or not were they involved (or whether they had any knowledge) in the matter of duplicate 32 lakh*

*shares (or 2nd set of share certificates) of the company and consequent dematerialization of some part of 32 lakh shares and sale in the market thereof has to be **ascertained through as separate exercise.**"* This suggests that Court Commissioner has never established who was involved in this matter of so called duplicate set. Then how SEBI was able to conclude that company and its Directors are involved in the matter of duplicate shares.

- As a Non-Executive Independent Director of the company he was not involved in the day to day exercise of the company. Also he was never involved nor handled the Share Transfer Department of the company.

16. Vide letter dated April 25, 2016, Shri Philip Amolik was granted an opportunity of inspection on May 10, 2016 in the extant matter. Further vide emails dated March 28, 2016 and April 20, 2016, Shri Rajkumar Sharma was advised to submit a list of documents that he wanted to inspect in the matter. Vide an email dated May 5, 2016, Shri Rajkumar Sharma submitted an indicative list of documents that he wanted to inspect. In response to the said email, Shri Rajkumar Sharma was advised vide an email dated May 9, 2016 to conduct the inspection on May 17, 2016.

17. Shri Philip Amolik vide his letter dated May 9, 2016 requested to adjourn the scheduled inspection as he will be out of station during that period. Shri Rajkumar Sharma conducted the inspection on the scheduled date and copy of certain documents were also provided to him. However, vide his letter dated May 18, 2016, he submitted that he is reserving his right to inspect all the documents collected by SEBI in the extant matter.

18. Shri Philip Amolik was advised vide letter dated June 24, 2016 to conduct the inspection in the matter on July 8, 2016. He conducted the inspection on the scheduled date and copy of certain documents were also provided to him.

19. Vide hearing notice dated July 29, 2016, Shri Philip Amolik and Shri Rajkumar Sharma were granted an opportunity of hearing on September 21, 2016. On the day of scheduled hearing, Shri Rajkumar Sharma appeared along with his authorised representatives, Ms. Rishika Harish and Shri Amit B Dey and made oral submissions.

Shri Philip Amolik was represented by Shri Amit Shah and Ms. Akansha Jain, who made oral submissions on his behalf. Both the Noticees were granted a week's time to make additional written submissions through an Affidavit.

20. Pursuant to the hearing, Shri Philip Amolik vide his letter dated October 13, 2016 made additional submissions wherein he reiterated his earlier submissions and *inter alia* submitted as follows:

- He was appointed as Non-Executive Independent Director in the company on July 31, 2004. Hence, the event has occurred before his appointment. Therefore, he should not be held responsible for any act done by the company prior to his appointment.
- Pre IPO, company's share capital was 25,17,800 shares. During IPO, 25,00,000 shares were allotted by the company. It is implied that both the above mentioned lot of approximately 25 lakh shares are printed in different stationery. Hence, 32 lakh shares lying with Income Tax Department cannot be identical. Only 25 lakh shares can be identical and other 7 lakh need to be different as it is from different lot. But actually those 32 lac shares lying with IT are identical. This suggests that shares lying at Income Tax Department are bogus/fake.
- In November, 1996 Narcotics Control Bureau raided drug dealer Shri Gopal Auliya and found shares of different 5 companies including SLL. As per Narcotics Control Bureau these shares belongs to Shri Niranjan Shah another drug dealer. As per Income Tax Department these shares are claimed by one Shri Jasmin Shah (Defaulter Broker of BSE Ltd.). Till date his claim has not been approved by Income Tax Department. It was Shri Jasmin Shah who made Income Tax Department write to SEBI. It is not clear on whose behalf or against which recovery of Income Tax Liability that Income Tax is holding the said shares?
- It is not established that shares already dematerialized are fake. Even it is not established that company and its Directors are responsible and have played fraud. There is no excess dematerialization. Total number of dematerialized shares were 2,67,15,000 while listed equity was 5,01,78,000 while In-Principal listing approval was already received for 12,50,00,000 shares.

- Letter of Deputy Commissioner of Income Tax dated January 20, 2010 to SEBI that states that Income Tax Department has never communicated with BSE Ltd. and company in this regard. This raises the question on the truth of letter dated January 25, 2005 written by Assistant Commissioner of Income Tax. On raising this query during personal hearing before WTM, it is explained that Income Tax Department may have missed this fact. SEBI has received this letter from Deputy Income Tax 5 years prior to issuing of SCN still SEBI has not taken cognizance of this letter and also has never confirmed with Income Tax Department regarding whether they had any communication with company or not. This shows negligence on part of SEBI. During investigation SEBI should have considered and checked with Income Tax Department regarding the availability of the shares with them.
- Cause of action has arisen by one Shri Jasmin Shah claiming to be the owner of 32 lakh shares, lying with the Income Tax Department seized from Shri Gopal Auliya by Narcotics Control Bureau and as per Narcotics Control Bureau these shares belong to Shri Niranjana Shah. As per BSE Ltd. / SEBI if these shares are genuine, it will create the problem of excess dematerialization.
- Who has created this problem? Definitely company has not created this problem. The company has issued the shares during Public Issue and name of these individuals do not appear in the list of shareholders. Hence this is a secondary market purchase sale transaction between so called buyer, Shri Jasmin Shah on one side and sellers, Aditya Investment Limited, Galaxy Stock & Securities Ltd. Lotus Fiscal Services Ltd., Multiplus Resource Ltd. and Ruswoday Securities Ltd. (Source Court Commissioner's Report).
- It is a secondary market transaction between buyer Shri Jasmin Shah on one side and 5 different sellers on other side. Company is not part of this transaction. If any dispute is arising it is between the buyer and seller. Ideally buyer who is in possession of shares should approach the company with a request to transfer the shares along with proper and valid transfer instrument/form. Till date we have not received any such request. SEBI should advise claimant of shares to approach

the company for the transfer of shares. Company will check the genuineness of these shares and will do the needful. If after that the claimant is not satisfied with the verdict of the company it is open to the claimant to approach proper forum for the justice.

21. Subsequent to the hearing, Shri Rajkumar Sharma vide his letter dated October 17, 2016 submitted an Affidavit wherein he *inter alia* submitted as follows:

- Noticee submitted a copy of the Form-32 showing that he was appointed as a Director in the company on October 15, 2004.
- The report issued by Court Commissioner provides the total number of dematerialized shares of the company as available with the depository from time to time. The said report at Part V on page 18 provides that as of September 30, 2004 the total number of dematerialized shares of the company was 2,67,15,000 shares. The balance of shares available with the depositories is a question of fact and the validity of the same remains undisputed and uncontroverted.
- The above analysis makes it clear that the alleged issuance of fake and duplicate share certificates and the purported excess dematerialization of 2,67,15,000 shares (as opposed to 1,81,78,000 shares) pursuant thereto, as impugned in the SCN, was complete prior to September 30, 2004 prior to him even being appointed as a Director on the Board of Directors of the company. It is an uncontroverted fact that he was appointed as an Independent Non-Executive Director on the company's board only on October 15, 2004 i.e. after the alleged excess dematerialization of shares was already complete. It is therefore clear and unambiguous that he could not and in fact did not have any role to play in the alleged fraud committed by the company and its officers to dupe the investing public and the company's shareholders.

22. Post hearing, SEBI received an email dated October 19, 2016 from Shri Jigar Patel claiming to be an authorized person of the company. In the said email, Shri Jigar Patel denied all the allegations made against the company in the SCN and requested for certified true copy of all the evidence in the matter. Further, he requested for a

personal hearing in the matter. Vide an email dated October 21, 2016 Shri Jigar Patel was advised to submit a letter from the company authorising him to act on its behalf. It is noted from material made available on record that there is no further correspondence from Shri Jigar Patel / company subsequent to the email dated October 21, 2016.

23. Following the principles of natural justice, a fresh opportunity of hearing was granted to the Noticees in the matter on November 11, 2018. The same was communicated to them vide hearing notice dated October 10, 2018. In response to the said hearing notice, Shri Rajkumar Sharma requested to adjourn the scheduled hearing as his lawyer had some pre scheduled commitments.

24. On the day of the scheduled hearing, Shri Amit Shah and Ms. Parinati Jian appeared for the hearing as authorized representatives of Shri Philip Amolik (hereinafter referred to as '**ARs**') and submitted as follows:

The ARs submitted that the affairs of the company was managed by the then MD, Shri Sitaram Pujari, who has passed away. The ARs submitted that one Shri Jasmin Shah is claiming to be the owner of the seized 32 lakh shares but as per Income Tax Department, the alleged owner is one Shri Niranjana Shah. The said seized share certificates have names of different people.

The ARs submitted that letter dated January 25, 2005 written by Income Tax Department to BSE Ltd. requests BSE to stop the listing of 12.50 crore shares allotted to the shareholders of Bhamti Finance Ltd. instead of taking action with respect to the seized shares. This indicates that there was some other motive behind sending that letter to BSE Ltd. Further, a letter dated January 20, 2010 from the Office of Dy. Commissioner of Income Tax, Mumbai written to SEBI states that as per their record there was no correspondence from the said office to the company or to BSE Ltd.

The ARs submitted that SEBI has not carried out its own independent investigation in the extant matter and has solely relied upon the Court Commissioner's report.

The ARs submitted that even the Court Commissioner in his report has stated that he is not sure about the involvement of the past and present Directors of the company

in the matter of duplication of 32 lakh shares and subsequent dematerialization of some of the said 32 lakh shares and sale in the market thereof.

The ARs submitted that the shares were dematted in June, 2001. The entity had joined the company on July 31, 2004 as a Non- Executive Director. The alleged irregularities have taken place before he joined the company. Further, the company was not aware of the said 32 lakh shares seized by Narcotics Control Bureau, Mumbai. The company could have acted on it only if the company had received a transfer request or a letter received by the company informing it about the same.

The ARs were advised to submit the following information on or before November 25, 2018:

- Background of the client and his relationship with Shri Sitaram Pujari.
- What made the entity join the company as a Director?
- When did the entity resigned from the company?
- Reconciliation of shares happened on March 19, 2005. What steps were taken by the company / entity subsequent to it w.r.t. seized shares?

25. It was noted from the records that hearing notices were served on SLL and Shri Vinodbhai Patel through newspaper publication. The said Noticees failed to attend the scheduled hearing without providing any reason. In view of the same, the hearing with respect to the said Noticees was concluded.

26. Considering the request of Shri Rajkumar Sharma and due to non-publication of hearing notice in the vernacular language newspaper with respect to Shri Sitaram Pujari, another opportunity of hearing was granted to them on January 22, 2019.

27. Post hearing, Shri Philip Amolik vide his letter dated November 26, 2018 made the following written submissions:

- He knows Shri Sitaram Pujari through a common friend. Apart from that he does not have any relation with Promoter / Director of the company. It was explained to him that company is in need of Non-Executive Independent Director for better composition of Board of Directors and also to comply with the legal

provisions/clause 49 of listing agreement related to corporate governance in which needs 2/3rd of Board should comprise of Non-Executive Independent Director.

- SEBI does not have the original copy of Court Commissioner's Report or Certified True copy of Court Commissioner's Report and as per the Evidence Act, photocopy of the documents cannot be used as evidence against me.
- Para IV on Page No. 7 of Court Commissioner's Report mentions that it appears that the original Promoters sold the company by selling of 32 lakhs shares of Study Financiers Ltd. and they only can throw light about the modus operandi, consideration and identity of buyer(s) etc. details in the matter." At that time he was not a Director in the company so why SEBI has not approached the original Promoters who can clarify the matter? (As suggested by Court Commissioner).
- In most of the points in Court Commissioner's Report words like 'roughly speaking', 'may', 'appear' are used which clearly shows the report is based on guesses and assumptions.
- Para VII on Page No. 15 of Court Commissioner's Report mention that "*During the years 1996 to 2005 while original share certificates were in the possession and custody of the Income Tax Department, someone fraudulently (?) printed (when ?) duplicate share certificates...*" Here Court Commissioner has itself questioned about the identity of person who is involved in the matter. Then how SEBI was able to conclude that company and its Directors are involved in the matter of duplicate shares.
- Part IV on Page No. 16 and 17 of Court Commissioner's Report highlight the observation of Court Commissioner "*From the above it appears that during the years 1998-2001, a large number of shares got transferred and so recorded in the books of the company.*" This clearly indicates that he was not a Director during this time and does not have any knowledge of the same.
- It is alleged in the SCN that company has not taken cognizance of 32 lakh shares lying with Income Tax Department but how it is expected from company from 1996-2005 to do the same when it was never requested to company from any

Department to transfer the shares or stop the transfer of specific shares. Company did not have any knowledge about these fake shares lying with Income Tax Department till 2005. Hence company could not take cognizance of the same.

28. After the newspaper publication of hearing notice of Shri Sitaram Pujari neither the Noticee nor its Authorised Representative had any correspondence / approached SEBI. Therefore, the hearing with respect to Shri Sitaram Pujari was deemed to be concluded.

29. The hearing which was scheduled on January 22, 2019 for Shri Rajkumar Sharma was adjourned due to official exigencies and a fresh date of hearing was granted to him on February 7, 2019. The same was communicated to him vide an email dated February 1, 2019. In response to the same, the Noticee vide his email dated February 3, 2019 requested to adjourn the hearing as his counsel was not available to represent him on that particular date. Acceding to the request of the Noticee, he was granted a final opportunity of hearing on February 27, 2019.

30. On the day of hearing, Ms. Rishika Harish, Ms. Akshaya Bhansali and Ms. Nirali Mehta appeared for the hearing as authorized representatives of Mr. Rajkumar Sharma (hereinafter referred to as “**ARs**”). The ARs reiterated the submissions made by the entity vide his reply dated February 13, 2016 and his affidavit dated October 17, 2016 and *inter alia* submitted as follows:

- The Noticee joined the company on October 15, 2004. He was approached by the Executive Director of the company to become the Independent Director of the company.
- The Noticee resigned from the company on February 1, 2005 as no agenda for meetings, notices etc. were forthcoming from the company.
- As Noticee's resignation letter was not submitted by the company to the RoC within the stipulated time, the Noticee has sent legal notices to the Executive Directors of the company.
- As per Court Commissioner's report, as on September 30, 2004 i.e., before the entity joined the company, excess share capital was already in existence.

Therefore, the Noticee has no role in the alleged fraud committed by the company.

The ARs were advised to submit the following information on or before March 14, 2019:

- What made the Noticee join the company as a Director including who approached him?
- What information was in the public domain about the company, when the Noticee joined the company?
- What due diligence the Noticee carried out before joining the company?
- Under what circumstances, did the Noticee resigned from the company?
- To submit evidence with respect to the Noticee being Non- Executive Independent Director of the company.

31. Post hearing, Shri Rajkumar Sharma vide letter dated March 13, 2019 *inter alia* made the following submissions:

- He was approached by one Mr. Sitaram Pujari who was already a Director of the company and he had acquaintance with him. At that time, he was not actively pursuing any employment and therefore agreed to become an Independent and Non- Executive Director of the company.
- During the course of hearing, the Noticee was asked to provide any evidence to show that he was appointed as a Non-Executive and Independent Director of the company. In reply to the said query it is submitted that at the prevalent time, there was no requirement of classification of a Director as an Independent Director under the Companies Act, 1956 at the time of his appointment. The classification flows from the requirement under Clause 49 of the erstwhile listing agreement. Thus, he has no other document besides Form 32 which pertains to his appointment as an additional Director of the company.
- It is pertinent to note that the Annual Report of the company for the year 2004-2005 alleged to be signed by him is in fact a forged signature on the face of itself. The same can be verified by his signature on the PAN Card and various other documents which have been signed by him while making submissions to SEBI. A perusal with naked eye by any ordinary person would reveal that the signature on

the Annual Report is not his. In this context, he is ready to bear the expenses of a forensic examination of the signature on the Annual Report and his signature elsewhere. In this regard it is reiterated that not a single document was signed by him as a Director of the company and he has not attended a single board meeting of the company.

- With regard to the query that whether he was aware of the search and seizure done by Narcotics Control Bureau, it is submitted that during his tenure, he was not aware of any such incident that has occurred way back in the year 1996. It is submitted that he was never informed about the alleged search and seizure. Here it is pertinent to note that the information of the search and seizure done by Narcotics Control Bureau and the subsequent transfer of shares to Income Tax Department and BSE Ltd. was not a matter of public record which he could have found during his due-diligence since he was not apprised about this particular sequence of events.
- Further in respect of the query regarding perusal of the statement of Reconciliation of Share Capital Audit Report under Regulation 55A of the SEBI (Depositories and Participants) Regulations, 1996, it is submitted that he was not able to peruse the same as he did not attend any meeting of Board or Committee nor were the same circulated to him. Without prejudice of the aforesaid, it is submitted that even if he would have been able to peruse the said statement, he would not have been able to decipher the discrepancies as he was not aware about the search and seizure operation of the Narcotics Control Bureau, seizure of the share certificates of the company and the subsequent alleged issue of the duplicate share certificates.
- It is submitted that Section 27 of the SEBI Act states that a person is deemed to be guilty of an offence on condition that he was in charge and responsible to the company. It is reiterated that in the present case the excess dematerialization of shares as alleged herein was completed prior to September 30, 2004 prior to his appointment as a Director and accordingly he was neither in charge or responsible

for the alleged offence nor could he have done any due diligence in to the alleged violative act as he was not associated with the company at the relevant time.

FINDINGS & CONSIDERATIONS

32. I have perused the SCN, replies, oral submissions and other materials available on record. On perusal of the same, the following issues arise for consideration:

- (i) Whether the shares of the company were dematerialized in excess of number of shares eligible to be dematerialized?
- (ii) If answer to issue No. 1 is in affirmative, whether, the company and its Directors namely Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma and Shri Vinodbhai D Patel are liable for the excess dematerialization of the shares?
- (iii) If answer to issue No. 2 is in affirmative, whether the company and its Directors namely Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma and Shri Vinodbhai D Patel have violated the provisions of PFUTP Regulations?
- (iv) If answer to issue No. 3 is in affirmative, what directions, if any should be issued against the Noticees?

33. **Issue No. 1** - *Whether the shares of the company were dematerialized in excess of number of shares eligible to be dematerialised?*

34. It is noted from the records that pre IPO, originally allotted shares were 25,17,800. The company came out with an IPO on February 28, 1996 and allotted 25,00,000 shares at ₹ 10/-. Post IPO, BSE Ltd., listed 50,17,800 equity shares of ₹ 10/- each of the company from May 17, 1996. Thus, the listed capital of the company was ₹ 5,01,78,000/-. In June, 2002, equity shares of paid-up value of ₹ 10/- were split to ₹ 1/- by the company, thereby increasing the number of shares to 5.01 crore.

35. Pursuant to the amalgamation of Bhamti Finance Ltd. with SLL in terms of order dated July 25, 2002 of Hon'ble High Court of Andhra Pradesh, SLL issued 12,50,00,000 equity shares of ₹ 1/- each to the shareholders of Bhamti Finance Ltd. thus, the equity capital of SLL became ₹ 17,51,78,000/- (₹ 5,01,78,000 + ₹

12,50,00,000). BSE Ltd. gave its in-principle listing approval to the aforesaid 12,50,00,000 shares but did not grant trading permission. In other words, the said 12.50 crore shares could not be sold / delivered in the market.

36. In the meantime, Narcotics Control Bureau, Mumbai, during November 1996 had *inter alia* seized 32 lakh share certificates of face value of ₹ 10/- each from the premises of one Shri Gopal Auliya. After investigations, the Narcotics Control Bureau, Mumbai, handed over the said certificates to the Income Tax Department on January 23, 2002 for taking necessary action. The Assistant Commissioner of Income Tax, Mumbai, vide letter dated January 25, 2005 had informed BSE Ltd. of the said seizure and requested the stock exchange not to allow any transactions in those shares.
37. BSE Ltd. made its own enquiry in the matter and found that the total listed equity share capital of the company is 5,01,78,000 shares. As the shares in the custody of the Income Tax Department were 3,20,00,000, the equity shares in the dematerialised form could not be more than 1,81,78,000 shares $[5,01,78,000 - 3,20,00,000 = 1,81,78,000]$. On a confirmation received by BSE Ltd. from both the depositories namely National Securities Depository Limited and Central Depository Services (India) Limited, it was found by BSE Ltd. that the total shares held in the depositories were 2,63,87,260 shares. This indicated that the shares that have been dematerialized were in excess of the quantity that was eligible to be in the dematerialised mode.
38. Thus, before arriving at the conclusion that the shares of the company were dematerialized in excess of the eligible quantity, the question that needs to be addressed is whether the 32 lakh shares that were seized by the Narcotics Control Bureau, Mumbai during November, 1996 and subsequently handed over by it to the Income Tax Department were genuine or not?
39. The said issue has already been addressed by Hon'ble SAT vide its order dated February 8, 2006. The said order was passed based on the appeal filed by the company pursuant to the suspension of trading of its equity shares by BSE Ltd. During the course of the appeal proceedings, Hon'ble SAT appointed a Court

Commissioner to assist the Tribunal and submit a report on the genuineness of the shares seized by the Narcotics Control Bureau and lying with the Income Tax Department. On the submission of the report by the Court Commissioner, Hon'ble SAT observed as follows:

"...The Court Commissioner sought the necessary information from all the concerned Departments and has furnished a detailed report in which it has been categorically found that the share certificates in possession of the Income Tax Department are genuine..."

40. The aforesaid findings of the Hon'ble SAT was not challenged by the company and therefore the same has attained finality. Seen in the light of the finding that 32 lakh shares seized by Narcotics Control Bureau were genuine, it is noted that the total listed equity capital was ₹ 5,01,78,000/- (5,01,78,000 shares of face value of ₹ 1/-). The quantity of share certificates seized by Narcotics Control Bureau was 32,00,000 (32,00,000 certificates of face value of ₹ 10/- = ₹ 3,20,00,000/-). Therefore, the quantity eligible for dematerialization would be 1,81,78,000 shares (50178000 - 3,20,00,000 = 1,81,78,000). However, the information from the depositories indicated that 2,67,15,000 shares were in the dematerialised mode. The details are as below:

Particulars	As on February 1, 2005		As on February 7, 2005	
	No. of shares	%	No. of shares	%
NSDL	2,31,48,720	13.21	2,32,11,275	13.25
CDSL	35,66,280	2.04	35,03,725	2
In Physical	14,84,63,000	84.75	14,84,63,000	84.75
Total Capital	17,51,78,000	100	17,51,78,000	100

41. From the aforesaid, it can be seen that the total holding in the dematerialised mode as on February 7, 2005 was 2,67,15,000 shares instead of 1,81,78,000 shares. Therefore, it is held that shares were dematerialized in excess of number of shares

eligible to be dematerialised.

42. Although, this is not the right forum to question the genuineness of the seized shares as Hon'ble SAT has already given its finding with respect to that and the same has attained finality as no appeal has been filed against Hon'ble SAT's order, but without prejudice to the said finding, I would like to address the objections raised by Shri Philip Amolik regarding the same.
43. Shri Philip Amolik has submitted that books of the company do not reflect that any duplicate shares were issued by the company during the relevant period. The submission of the Noticee is liable to be rejected as non-maintenance of record of issuing of duplicate shares cannot be the sole criteria to determine whether the company had issued duplicate shares or not. It is noted from the Court Commissioner's report that the company itself has admitted that it had issued duplicate share certificates for 63,800 shares. Further, in the extant matter it is a matter of fact that 32 lakh shares which are in the old name of the company after the initial public offer on February 28, 1996 were seized by the Narcotics Control Bureau, Mumbai on November 29, 1996 and were in their custody till January 22, 2002. The same were then handed over by Narcotics Control Bureau, Mumbai to Income Tax Department on January 23, 2002 and are lying with the Income Tax Department since then. As a result, the entire lot of 32 lakh shares could not have been dematted. It is also a fact that these shares combined with dematted shares, exceed the issued and listed capital of the company. As per Court Commissioner's report, significant dematerialisation of seized shares was done during 2001. Thus, based on preponderance of probability, it can be held that the custody of 32 lakh shares being first in point of time compared to the dematerialisation of shares that were later on dematted, indicates that a second set of identical certificates came into existence at a later point in time and were converted into demat shares.
44. The Noticee has also submitted that since the ownership of the seized shares is not yet established, it suggests that the shares are fake. The suggestion of the Noticee is not acceptable as dispute in ownership of the shares has no bearing on the

genuineness of the shares. Moreover, Hon'ble SAT has already held that the shares lying in the custody of Income Tax Department are the genuine shares of the company.

45. Shri Philip Amolik has further submitted that 25,17,800 shares were issued pre IPO and 25,00,000 shares were allotted during IPO. It is implied that both the above mentioned lots of approximately 25 lakh shares were printed on different stationery. Hence, 32 lakh shares lying with Income Tax Department cannot be identical. The said submission of the Noticee is not supported by any evidence. There is a distinct possibility that shares that were allotted at the time of IPO were printed on the same stationery as those of pre IPO shares. Therefore, the submission of the Noticee is not acceptable.
46. The Noticee has contended that there is no excess dematerialization. Total number of dematerialized shares were 2,67,15,000. Listed equity was 5,01,78,000 while In-Principal listing approval was already received for 12,50,00,000 shares. In this regard, it is noted that the Noticee has not submitted any documentary evidence to show that the shares that were dematted in excess were the ones that were allotted to the shareholders of Bhamti Finance Ltd. Rather, no evidence has been submitted by the Noticee that any share allotted to the shareholders of Bhamti Finance Ltd. were submitted for dematerialization. Noticee is only making a bald statement. Further, pursuant to merger, shares of SLL were allotted to 15 shareholders of Bhamti Finance Ltd. on September 17, 2002. It is noted from the dematerialization data received from National Securities Depository Limited that none of the shareholders of Bhamti Finance Ltd., post September, 2002 have made a demat request to the company except Eastwood Investments Pvt. Ltd. Eastwood Investments Pvt. Ltd. had made a request for dematerialization on December 22, 2004 which was accepted on February 22, 2005. Considering shares held by Eastwood Investments Pvt. Ltd. were dematerialized in February 22, 2005, it was not taken into account while arriving at the finding of excess dematerialisation as BSE Ltd. upon enquiry had already suspended the trading of the shares of SLL with effect from February 7, 2005. Moreover, Eastwood Investments Pvt. Ltd. is also a

shareholder of SLL prior to the merger also. Therefore, the shares submitted for dematerialization by it, can be of SLL prior to the merger with Bhamti Finance Ltd. furthermore, it is noted from the Court Commissioner's report that at the time of inquiry by him, the company has submitted that physical shares allotted to Bhamti Finance Ltd. were yet to be dematerialized.

Issue No. 2 - If answer to issue No. 1 is in affirmative, whether, the company and its Directors namely Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma and Shri Vinodbhai D Patel are liable for the excess dematerialization of the shares?

47. It has already been held in the preceding paragraph that shares were dematerialized in excess of the issued and listed capital of the company. Considering that the register of members of the company was maintained in-house and all the share work of the company was done by the company in-house, a natural corollary to that is that the company is liable for the excess dematerialization of the shares. It is also noted from the Court Commissioner's report that at the time of the inquiry done by the Court Commissioner, the company had stated that it had issued duplicate share certificates for 63,800 shares. Out of the said 63,800 shares, the Court Commissioner noted that 35,800 shares for which duplicate share certificates were issued by the company, the original share certificates were seized by the Income Tax Department. The company has not offered any explanation or evidence to establish the bona fide of the issuance of duplicate share certificates viz., public notice, if any issued by the company for lost share certificates, indemnity / affidavit submitted by the shareholder, copy of FIR filed by the shareholder etc. This also indicates that the company had issued fake / non-genuine duplicate shares. Therefore, it is held that the company is liable for the excess dematerialization of the shares.

48. However, in order to arrive at a finding that Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma and Shri Vinodbhai D Patel were liable for the excess dematerialization of the shares of the company, it needs to be determined when the dematerialization of excess shares took place and at that relevant point in time whether they were in charge of the affairs of the company.

49. It is noted from the material available on record that out of 32 lakh seized shares, 15,60,300 shares were held in physical mode and about 15,34,800 shares were held in demat mode. Further, it is noted from the Court Commissioner's report that it appeared to him that out of 15,34,800 shares a large number of shares were dematted in June, 2001 after it was transferred by the original shareholders to the transferees. He also observes that it appears that during the years 1998-99 and 2001, a large number of shares got transferred and so recorded in the books of the company. Moreover, it is noted from the details furnished by the Depositories that as on September 30, 2004, 2,67,15,000 shares were already dematerialized as opposed to a maximum of 1,81,78,000 shares that could have been dematerialised.
50. Based on the Court Commissioner's report and data on dematerialization from National Securities Depository Limited, it is noted that 15,34,800 shares which were held in demat mode (physical shares lying with Income Tax Department) would have been transferred during the period 1996 to 2001 and after getting recorded in the books of the company, were dematted. As per National Securities Depository Limited data, in the month of June, 2001, 13,80,000 shares were dematerialised which corroborates the finding of Court Commissioner's report which states that most of the 15,34,800 shares were dematerialised in the month of June, 2001. Thus, based on preponderance of probability, it can be held that excess dematerialisation happened prior to September 30, 2004.
51. Company though a legal entity cannot act by itself, it can act only through its Directors. Therefore, in order to hold Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma or Shri Vinodbhai D Patel liable their tenure of directorship in the company is also relevant. It is noted from the submission of Shri Philip Amolik that he became the Director of SLL on July 31, 2004. He has submitted Annual Reports / Annual Return of the company prior to 2004 and an affidavit deposing that he was the appointed as a Director in the company on July 31, 2004. Shri Rajkumar Sharma has submitted his Form-32 showing that he became the Director in the company on October 15, 2004. The other 2 Directors have neither submitted any response to the SCN nor have attended the hearings.

52. It is noted from the Court Commissioner's report that the same has stated that whether the past and present Directors have played any role or not, has to be ascertained through separate exercise. Further, as noted above, the IR is silent on the period when the excess dematerialization took place. The IR has also not delved into the role played by the Directors, past or present in the entire episode of excess dematerialization of shares. Be that as it may, it is noted from the Annual Report for the financial year 2002-2003 that Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma and Shri Vinodbhai D Patel were not the Directors of the company during that time. It is noted from the Annual Report of 2003-2004 of SLL that Shri Philip Amolik and Shri S. R. Pujari were the Directors of the company. Further, from the copy of the Form-32 submitted by Shri Rajkumar Sharma shows that he and Shri Vinodbhai D Patel were appointed as Director on October 15, 2004. The said Form-32 has the acknowledgment and seal of the company. Moreover, there is nothing on record to establish that the aforesaid 4 entities were the Directors of the company prior to March, 2003.
53. From the material available on record, it cannot be said in certain terms when the excess dematerialisation took place (Court Commissioner's report states that out of 32 lakh seized shares, 15,34,800 shares were mostly dematerialised in June, 2001) and in the absence of any contradictory evidence, it can be said that Shri Philip Amolik and Shri S. R. Pujari would have become the Directors of the company post March, 2003. Thus, considering the facts and circumstances of the case and in the absence of any material available to connect them to the episode of excess dematerialization of shares of the company, a benefit of doubt can be given to Shri Philip Amolik and Shri S. R. Pujari. With respect to Shri Rajkumar Sharma and Shri Vinodbhai D Patel, it is noted that they were appointed as Directors on October 15, 2004. Considering, excess dematerialisation happened prior to September 30, 2004 and in the absence of any material available to connect them to the episode of excess dematerialization of shares of the company, Shri Rajkumar Sharma and Shri Vinodbhai D Patel cannot be made liable for excess dematerialisation. Therefore, I am of the considered view that the aforesaid four Noticees cannot be made liable for

excess dematerialization of shares of the company.

Issue No. 3- *If answer to issue No. 2 is in affirmative, whether the company and its Directors namely Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma and Shri Vinodbhai D Patel have violated the provisions of PFUTP Regulations?*

54. Before embarking upon the necessary discussions, I would like to reproduce the relevant provisions of PFUTP Regulations:

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

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

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(h) selling, dealing or pledging of stolen or counterfeit security whether in physical or dematerialized form;

55. At this juncture, I would like to quote the order of Hon'ble SAT in the matter of *Umashankar Agarwal vs. SEBI* decided on May 4, 2018 wherein the Hon'ble SAT observed as follows:

"... Issuing shares in excess of authorised share capital and further dematting those unauthorized excess shares and allowing those shares to be sold on-market to innocent investors is a serious fraud on the securities market..."

56. Thus, in view of the conclusion that the company is liable for excess dematerialization of shares and in light of the observations of Hon'ble SAT in the aforesaid matter, it can be held that the actions of the company have played fraud on the innocent investors and are in violation of the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) of PFUTP Regulations.

57. The second allegation against the company is that it has issued counterfeit security in physical form. In this regard, it has already been noted in preceding paragraphs that out of 32 lakh seized shares, 15,34,800 shares were dematted after getting transferred from the original shareholders. Thus, if the original shares were with Shri Gopal Auliya / Income Tax Department, shares that were approved for transfer by the company were counterfeit / fake. Moreover, out of 63,800 duplicate share certificates issued by the company, 35,800 shares for which duplicate share certificates were issued by the company, were the shares seized by the Income Tax Department. The company has not offered any explanation or evidence to establish the bona fide of the issuance of duplicate share certificates viz., public notice, if any issued by the company for lost share certificates, indemnity / affidavit submitted by the shareholder, copy of FIR filed by the shareholder etc. Considering that the original share certificates were lying with Income Tax Department, 35,800 duplicate share certificates issued by the company, cannot be genuine.

58. In light of the above, it is held that the company has dealt in counterfeit securities in physical form. Hence, the company has violated Regulation 4(2) (h) of PFUTP

Regulations.

Issue No. 4- *If answer to issue No. 3 is in affirmative, what directions, if any should be issued against the Noticees?*

59. Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorised to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude. Pursuant to the said objective, PFUTP Regulations have been framed. The said Regulations apart from other things aims to preserve and protect the market integrity in order to boost investor confidence in the securities market. By dematerializing shares in excess of the issued listed capital and some the said shares being traded on the Exchange, as has been done by the company in the instant matter, compromises the integrity of the system. It also has an adverse impact on the fairness and transparency of the stock market. In view of the same and considering the violations committed by the company, I find that it becomes necessary for SEBI to issue appropriate directions against the company.

ORDER

60. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992, hereby dispose of the show cause notice dated December 17, 2015 including the interim order dated October 15, 2009 served on Shri Philip Amolik, Shri S. R. Pujari, Shri Rajkumar Sharma and Shri Vinodbhai D Patel. without any directions. Further, in the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby restrain the company Seagull Leafin Ltd. (PAN: AAFCS3157A) from directly or indirectly, accessing the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and the company is further restrained and prohibited from buying, selling or

otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of five years from the date of this order.

61. A copy of this order shall be served upon all the Noticees, Stock Exchanges, Registrar and Transfer Agents and Depositories for necessary action and compliance with the above directions.
62. This order is without prejudice to any other actions that SEBI may take in accordance with securities laws.

-Sd-

DATE: April 26, 2019

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA