

WTM/ AB / SEBI / ERO / 16 / 2019-20

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER
CONFIRMATORY ORDER**

UNDER SECTIONS 11(4), 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 35 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

IN RESPECT OF

Noticee No	Entity's Name	PAN
1	Guinness Securities Limited	AAACG9843L
2	Mr. Kamal Kumar Kothari	AKYPK8782D
3	Mr. Dharmendra Kothari	AFGPK6680M
4	Mr. Soumen Chatterjee	AKFPC1442D
5	Mr. Tarun Kanti Sengupta	AJDPS7741N
6	Mr. Kunal Vasumallik	ABFPV8759F
7	Mr. Dipak Rudra	ACHPR3694J
8	Mr. Deepak Parakh	AFPPP0732C
9	Mr. Shree Kumar Jhanwar	ACIPJ0418R
10	Mr. Babulal Nolkha	ADHPN4106A
11	Mr. Asish Kumar Ray	ADEPR1722M
12	Ms. Sunita Kothari	AFNPK8049P
13	Mr. Pradeep Kumar Sarkar	ABVPS7800E
14	Mr. Kalyan Mukherjee	AHQPM8981K
15	Mr. Prasant Ray	AANPR2831B
16	S K B Securities Ltd.	AAHCS3335G
17	Mr. Provat Mitra	ANDPM9486G
18	Mr. Somnath Bhattacharjee	ADXPB0019J
19	Ms. Lipika Bhattacharjee	ASSPB2706Q
20	Mr. Hemant Kothari	AFOPK6638P
21	Mr. Krishna Maheswari	NA
22	Mr. Aman Mohan Kothari	AUOPK5221B
23	Param Commodities Pvt. Ltd.	AAFCP0003L
24	Mr. Pawan Kumar Modi	AESPM0259F
25	Mr. Murlidhar Sharma	AJMPS1405N
26	Paramarth Agro Marketing Private Limited	AAFCP0005N
27	Apurva Commodities Pvt. Ltd.	AAGCA3264P
28	Mr. Ram Avtar Sharma	ALGPS0914E
29	Awadhoot Marketing Pvt. Ltd.	AAECA9172C
30	Mr. Sudarshana Mitra	AHBPM6874G

31	Mr. Shyamal Mitra	AHBPM6875H
32	Mr. Abhijit Pal	NA
33	Mr. Gaurav Choudhary	AFSPC6498P
34	Superfast Tours And Travels Pvt. Ltd.	AAECS4607A
35	Mr. Mahabir Chand Jain	ACHPJ8058N
36	Mr. Jayant Kumar Jain	AGUPJ4377R

(The aforesaid entities are hereinafter referred to individually by their respective names/Noticee numbers, and collectively as “the Noticees”)

1. The Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) examined irregularities in the conduct of affairs of Guinness Securities Limited (hereinafter referred to as ‘GSL’/ ‘Stock Broker’) as a Stock Broker as brought to its notice by the National Stock Exchange of India Limited (hereinafter referred to as ‘NSE’) vide its email dated October 22, 2018. Subsequently, NSE vide letter dated November 21, 2018 submitted a report regarding activities of GSL, to SEBI wherein *inter alia* it was observed that there was a shortfall in value of client securities held by GSL amounting to Rs. 212.17 Crores and shortfall in client funds to the tune of Rs. 9 Crores. Considering these facts, SEBI passed an ex-parte ad-interim order dated December 19, 2018 (hereinafter referred to as ‘interim order’) *inter alia* restraining GSL and its directors from accessing the securities market till further directions for *inter alia* misappropriating client securities, falsifying books of accounts, non-settlement of funds/ securities of clients etc. Companies and persons associated with GSL who aided and abetted the violations committed by GSL were also *inter alia* restrained from accessing the securities market till further directions. The Noticees to the Ex-parte Ad-Interim Order cum Show Cause Notice were advised to file their replies within twenty one days of receipt of the said interim order and were also granted an opportunity of hearing.
2. The interim order was served on all the Noticees through Speed Post except Noticee no. 11, 16, 17, 21, 23, 25, 26, 28, 29, 30, 31 and 34 namely, Mr. Asish Kumar Ray, S K B Securities Ltd., Mr. Provat Mitra, Mr. Krishna Maheswari, Param Commodities Pvt. Ltd., Mr. Murlidhar Sharma, Paramarth Agro Marketing Pvt. Ltd., Mr. Ram Avtar Sharma,

Awadhoot Marketing Pvt. Ltd., Mr. Sudarshana Mitra, Mr. Shyamal Mitra and Superfast Tours And Travels Pvt. Ltd., respectively, as the same returned undelivered. As the interim order could not be served on all the Noticees through Speed Post, the same was published in the English language newspaper - Times of India (all editions), the Hindi language newspaper - Sanmarg (Kolkata edition) and Bengali language newspaper - Anand Bazar Patrika on February 14, 2019.

3. The Noticees namely, Noticee no. 1, GSL, Noticee no. 2, Mr. Kamal Kumar Kothari, Noticee no. 3, Mr. Dharmendra Kothari, Noticee no. 4, Mr. Soumen Chatterjee, Noticee no. 8, Mr. Deepak Parakh, Noticee no. 9, Mr. Shree Kumar Khanwar, Noticee no. 10, Mr. Babulal Nolkha, Noticee no. 12, Ms. Sunita Kothari, Noticee no. 15, Mr. Prasant Ray, Noticee no. 18, Mr. Somnath Bhattacharjee, Noticee no. 19, Ms. Lipika Bhattacharjee, Noticee no. 20, Mr. Hemant Kothari, Noticee no. 22, Mr. Aman Mohan Kothari, Noticee no. 24, Mr. Pawan Kumar Modi, Noticee no. 32, Mr. Abhijit Pal, Noticee no. 33, Mr. Gaurav Chaudhary, Noticee no. 35, Mr. Mahabir Chand Jain and Noticee no. 36, Mr. Jayant Kumar Jain submitted an inventory of their assets as directed at para 14 (e) of the said interim order.
4. The Noticees were granted an opportunity of personal hearing before me on February 12, 2019. Mr. Kamal Kumar Kothari (Noticee No. 2) appeared before me and made submissions on behalf of GSL (Noticee No.1), Mr. Dharmendra Kothari (Noticee No. 3), Ms. Sunita Kothari (Noticee No. 12) and himself. He made submission on the lines of replies filed by him. In the said hearing, Mr. Kamal Kumar Kothari undertook to submit a plan to revive GSL and redress investor complaints. Apart from the aforesaid Noticees, eleven Noticees namely, Mr. Soumen Chaterjee (Noticee No. 4), Mr. Kunal Vasumallik (Noticee No.6), Mr. Dipak Rudra (Noticee No. 7), Mr. Shree Kumar Jhanvar (Noticee No. 9), Mr. Babulal Nolkha (Noticee No. 10), Mr. Pradeep Kumar Sarkar (Noticee No. 13), Mr. Hemant Kothari (Noticee No. 20), Mr. Aman Mohan Kothari (Noticee No. 22), Mr. Gaurav Choudhary (Noticee No. 33), Mr. Mahabir Chand Jain (Noticee No. 35) and Mr. Jayant Kumar Jain (Noticee No. 36) appeared at Eastern Regional Office of SEBI at Kolkata and made submissions through tele-cum-video conferencing.

5. Seven Noticees i.e. Mr. Tarun Kanti Sengupta (Noticee no. 5), Mr. Deepak Parakh (Noticee no. 8), Mr. Kalyan Mukherjee (Noticee no. 14), Mr. Prasant Ray (Noticee no. 15), Mr. Somnath Bhattacharjee (Noticee no. 18), Ms. Lipika Bhattacharjee (Noticee no. 19) and Mr. Abhijit Pal (Noticee no. 32), did not attend the hearing scheduled on February 12, 2019 for various reasons as mentioned in their respective requests for adjournment. Therefore, another opportunity of hearing was granted to the said Noticees on May 09, 2019. The said Noticees appeared before me on the said date and made their submissions.
6. Mr. Kamal Kumar Kothari submitted reply dated March 28, 2019 on behalf of GSL. In the said reply, he sought another personal hearing which was granted on May 12, 2019. On May 12, 2019, the Noticee, Mr. Kamal Kumar Kothari appeared before me and made submissions on behalf of Noticee no. 1 i.e. GSL.

Consideration of submissions made in replies filed and personal hearing:

7. I shall now proceed to deal with the replies filed by the Noticees and submissions made by them during the hearing. GSL has raised certain contentions which are in the nature of preliminary objections which I shall deal with first and then proceed to decide the matter on merits.
8. GSL in its preliminary submissions has stated that the ex-parte interim order has been passed in violation of principles of natural justice and violates its fundamental rights recognized under Articles 14, 19(1) (g) and 21 of the Constitution of India as the same has been passed without affording due opportunity to GSL to be heard and without disclosing all underlying material. As regards violation of principles of natural justice, I note that the interim order has been passed under sections 11 (4), 11B and 11C of the SEBI Act on the basis of prima facie findings observed during the preliminary examination/inquiry undertaken by SEBI, and they have been given an opportunity of hearing before passing of this confirmatory order. The facts, circumstances and the reasons necessitating issuance of directions by the interim order have been examined and dealt with in the said interim order.

The interim order has also been issued in the nature of a show cause notice affording the Noticees a post-decisional opportunity of hearing. I also note that the power of SEBI to pass interim orders flows from sections 11 and 11B of the SEBI Act which empower SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. The relevant provisions of the aforesaid sections are reproduced as under:

Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

...

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

...

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

...

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation;

...

...

...

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

Power to issue directions.

11B. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

- (i) in the interest of investors, or orderly development of securities market; or*
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or*
- (iii) to secure the proper management of any such intermediary or person, it may issue such directions,—*

- (a) to any person or class of persons referred to in section 12, or associated with the securities market; or
- (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

While passing such directions, it is not always necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing. The law with regard to doing away with the requirement of pre-decisional hearing in certain situations is also well settled. The following findings of the Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others v. Union Of India & Other* (1984) 3 SCC 465 are pertinent:

“It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party have, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request.”

Therefore, considering the facts and circumstances of this case, an ad-interim ex-parte order could be passed by SEBI in the interests of investors or the securities market. Further, it is pertinent to note that the interim order was passed under sections 11(4) of the SEBI Act. The second proviso to section 11(4) clearly provides that *“Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned”*. I note that various courts while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an interim order is passed and a post-decisional hearing is provided to the affected entity. Further, the Rajasthan High Court in *M/s Alpha (India) & Ors v. Union of India & Ors.* held that the argument that provisions of sections 11(4)(b) and 11B of the SEBI Act eliminates the principles of natural justice in violation of Article 14 and 19(1)(g)

of the Constitution of India is not tenable as the second Proviso to Section 11(4) of the SEBI Act does not eliminate principles of natural justice, rather it provides for an opportunity of hearing to the intermediaries or persons concerned.

In this case, I note that all the Noticees were given an opportunity of file their reply and submit their response within a period of 21 days from the date of receipt of the order. The Noticees have also been given an opportunity to place their case before me in the hearing scheduled on February 12, 2019. Pursuant to GSL's reply dated March 28, 2019 received with all the annexures by SEBI on April 01, 2019 wherein the Noticee, GSL has requested for a personal hearing, the same was provided on May 12, 2019.

9. GSL has also contended that the interim order violates its fundamental right to carry on trade and business under the Constitution of India. In this regard, I note that Article 19(1)(g) of the Constitution of India guarantees to all citizens, the right to practice any profession or to carry on any occupation, trade or business. However, clause (6) of Article 19 authorises reasonable restrictions on this right in the interest of general public through legislation. SEBI Act, 1992 is a special Act enacted by the Parliament conferring on SEBI the duty to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. I note that the interim order has been passed by SEBI in exercise of the powers conferred upon it by law and towards fulfilment of the duties cast under the SEBI Act. As noted in the interim order, GSL has *prima facie* acted in violation of SEBI Regulations and various Circulars issued by SEBI from time to time, and therefore, has been restrained from accessing the securities market and dealing in securities till further directions. It is a settled law that the fundamental rights to trade ensured under the Constitution are subject to restrictions stemming out of legal requirements mandated in other statutes. In view of the above, I note that GSL's submission that the interim order has been passed without following principles of natural justice and violates the fundamental rights of the Noticee enshrined under Article 14, 19(1) (g) and 21 of the Constitution of India is not acceptable.

10. GSL in its reply dated March 28, 2019 has submitted that none of the materials and documents referred to and relied upon in the interim order have been supplied to GSL. I note that the observations mentioned in the interim order are based on (a) the records and documents supplied by GSL to the Market Infrastructure Institutions (hereinafter referred to as “MIIs”) during inspection and (b) the data uploaded by GSL on the Stock Exchange system under the Enhanced Supervision Mechanism. As the said records and documents are available with GSL, its contention that the underlying documents have not been supplied to it is untenable.
11. GSL has submitted that the interim order has been passed solely on the basis of the initial findings of the inspections conducted by NSE. In this regard, I note that at paras 6 and 7 of the interim order it is clearly stated that SEBI had issued letter dated November 9, 2018 to GSL seeking information pertaining to its functioning as a Stock Broker. GSL vide email dated November 13, 2018 furnished their reply admitting shortfall of client funds and securities worth Rs. 160 crores as on November 9, 2018. It was observed that the reply of GSL was incomplete and vague. With respect to GSL’s reply vide email dated November 13, 2018, SEBI sought the following information from GSL vide email dated November 15, 2018 which is awaited till date:
- i. *On perusal of the debtor’s data furnished by GSL, it is seen that the amount recoverable is wrong as in all cases the recoverable amount is reflected as either debit/credit balance or stock position of the clients instead of net amount receivable by the Stock Broker. GSL was advised to furnish the correct data, however, no reply has been received till date.*
 - ii. *GSL has proposed to sell SME stocks worth about Rs. 50 crores to make good the shortfall. GSL was asked to inform how and when the said SME stocks were acquired by it and how did it fund the purchase/acquisition of these SME shares. No reply has been received till date.*
 - iii. *GSL has mentioned that it will restrict pay out of 81 HNI clients who are creditors and closely associated with it and to whom it owes around Rs. 83 crores of funds and securities. GSL was asked to furnish the confirmation letters from each of the 81 clients that they are agreeable to their proposal. No reply has been received till date.*
 - iv. *As GSL had admitted shortfall of Rs. 160 crores of client securities and funds, which indicates misuse of client funds. Therefore, GSL was advised to furnish its reply, however, no reply has been received till date.*

I note that the Noticee cannot argue that SEBI has conducted no independent verification of data supplied by NSE when GSL has itself failed to provide the information sought by SEBI. Further, as noted in para 9 of the interim order a meeting with NSE, Bombay Stock Exchange Limited (hereinafter referred to as “BSE”), Multi Commodity Exchange of India Ltd. (hereinafter referred to as “MCX”), National Commodity & Derivatives Exchange Limited (hereinafter referred to as “NCDEX”), Metropolitan Stock Exchange of India Limited (hereinafter referred to as “MSEI”), Central Depository Services Limited (hereinafter referred to as “CDSL”) and National Securities Depository Limited (hereinafter referred to as “NSDL”) was convened on November 12, 2018 by SEBI at its Eastern Regional Office, and an Inter-Exchange and Depository Team was constituted to examine the irregularities of GSL. These MIIs were also advised to continuously monitor the activities of GSL. In the said meeting, NSE was advised to collect the data from other MIIs and furnish a report to SEBI. NSE vide letter dated November 21, 2018 submitted a joint report of the Inter-Exchange and Depository Team. The said report was examined by SEBI which noted the violations as mentioned in paragraphs 9 and 10 of the interim order. Therefore, GSL’s submission that SEBI has not relied solely on the initial findings of investigation and inspection by NSE is incorrect.

12. GSL has submitted that NSE’s inspection is based on raw data collected directly from the computers of the company and that the data including the trial balance was generated by NSE inspection team from the back office system of GSL on October 25, 2018. According to GSL, the data/records had never been finalized, and there had not been enough time to complete the accounting process for the previous year records. I note that findings at para 9(iii)(b) of the interim order are based on the data submitted by GSL to the stock exchange i.e. NSE in terms of SEBI Circular dated September 26, 2016, and not on the data collected by NSE’s inspection team. Further, I note that the interim order is based on the data submitted to SEBI and NSE by GSL. Therefore, I am unable to accept the submission of GSL that correct data has not been considered for the purpose of passing the interim order.
13. GSL has submitted that NSE’s findings and SEBI’s interim order are based on random data taken from extract of certain funds movements while ignoring complete ledger of the given

entities. I note that at para 9 of the interim order, it is clearly stated that GSL, itself, vide email dated November 13, 2019, had admitted to a shortfall of Rs. 160 crores. In this connection, SEBI sought details regarding when the shortfall has arisen and the purpose for which the client funds and securities were used vide email dated November 15, 2018. However, the said information is yet to be furnished by the Noticee i.e. GSL to SEBI. Even now, GSL has not brought forward any correct data in this regard, except for making a bald contention that the data relied upon by SEBI is wrong. In view of this, GSL's submission that SEBI's interim order is based on incomplete data is untenable.

14. GSL has submitted that the order refers to different amount of shortfall of client securities at different paras of the interim order drawing attention to the amounts mentioned at paras 5(a), 6 and 9 of the interim order. In this regard, I note that observations with respect to shortfall amount in paras 5(a) and 6 of the interim order are in connection with the NSE's inspection. I note that in order to ascertain the extent of misappropriation/shortfall of client securities by GSL, SEBI obtained trade data from BSE and NSE from date January 01, 2008 to August 31, 2018. Out of this, the top six clients where net sale were undertaken in the 1,139 scrips identified in NSE report of October 26, 2018 were perused. Subsequent to the examination undertaken by SEBI with respect to the trading of the above 6 clients, it was observed that the total value of client securities misappropriated by GSL through these 6 clients during this period was at least Rs. 233.75 crores across 959 scrips. Therefore, I note that the findings in the interim order are consistent and not contradictory in nature.
15. I find that GSL at para III (A) (20) of its reply dated March 28, 2019 has admitted that trading was done through the 6 identified clients 'to maintain the securities in the pool account and to maintain the shortfall/surplus of securities in the client pool as needed'. According to GSL, 'transactions were made in order to reduce the impact on pay in and pay out obligations of the client as well as to mitigate the losses incurred in the company in the transactions undertaken by GSL'.
16. In its reply dated March 28, 2019, GSL has submitted that the complaints of 7 out of 10 persons pending at the exchange level had been filed by the same group/ family referred to

in the reply as the ‘Saraf Group’. According to GSL, these complaints were false and the IGRP without hearing the GSL admitted the claim of 3 complainants to the tune of Rs. 20,82,55,000.54 which caused a shortfall of deposits and led to suspension of GSL’s trading terminal. It has stated that the members of the IGRP had fixed the hearing on November 05, 2018 to adjudicate the matter. In this regard, I note from the IGRP’s order dated November 05, 2018 that GSL vide letter dated October 25, 2018 requested extension of time till November 02, 2018 to resolve the matter in the proceedings before the IGRP. However, on the next date of hearing i.e. November 05, 2018, GSL requested for further extension of time till November 09, 2018. The IGRP in its order observed that quarterly settlements were not done in the account of the complainant since long and adequate time was given to GSL to resolve the complaints by November 02, 2018 but no concrete steps were taken by it. Moreover, GSL itself in its email dated November 13, 2018 had admitted to a shortfall of Rs. 160 Crores. Further, in its revival plan which will be discussed in the following paragraphs has admitted a shortfall of Rs. 173 Crore.

17. Pursuant to the submission made by the noticee, Mr. Kamal Kumar Kothari in the personal hearing before me on February 12, 2019, vide email dated March 04, 2019, the Noticee, Mr. Kamal Kumar Kothari has forwarded a plan to revive GSL and redress the complaints of various investors. In the said revival plan (hereinafter referred to as “RP”), GSL has stated that according to its records there is a total shortfall of Rs. 173 Cr. (stock shortfall of Rs. 164 Cr. and fund shortfall of Rs. 9 Cr.). GSL proposes to take the following steps for fund infusion:”

Steps	Description	Fund Infusion	Timeline	No. of days (approx.)	Remarks
Step 1	A renowned investor has been identified to be inducted as promoter for taking over GSL	60 Cr.	Immediately on acceptance of RP.	20 Cr. forthwith. Next 40 Cr by 15 to 20 days after acceptance of RP by Regulator.	On acceptance of RP, Mr. Kamal Kothari will step down.
Step 2	Resumption of normal operations of GSL		Immediately after funds are		Normal operations to

	including DP, request to grant pardon and immunity to GSL & its directors for all past violations and penalties.		brought in by new investor/promoter.		commence under supervision of Regulator & Exchanges
Step 3	Realisation out of Debtors List of 69 Cr.	20 Cr realisable immediately	Within 15 days of resumption of normal operations	15 days	-
Step 4	Obtaining NOC from identified HNI clients	100 Cr.	20Cr forthwith and remaining within 30 days of resumption of normal operations	30 days	NOC of 20cr will be produced from HNI clients within 2 days from resumption of the Trading Terminal.
Total		180 Cr.			

18. After receipt of the RP, SEBI vide email dated March 13, 2019 sought the following details.”

- (a) Data sought vide SEBI's email dated November 15, 2018 which includes details of client wise & security wise shortfall of funds and securities, details of utilization of client securities, source of funding for SME stocks, confirmation letters from 81 HNI clients etc.
- (b) Steps taken by GSL till date, for returning the client securities in terms of the proposals indicated in its email dated November 13, 2018.
- (c) With regard to admitted shortfall of Rs. 160 crores (as on November 09, 2018) vide its email dated November 13, 2018, details when the shortfall has arisen and the purpose for which the client funds and securities were used.

However, no response has been received till date in respect of the said email. In view of this, I note that the RP submitted by Mr. Kamal Kumar Kothari on behalf of GSL is incomplete as GSL has not submitted the details/information sought by SEBI.

19. Even assuming that GSL gives a reasonable RP to set the things right, the fact of the matter remains that the conduct of GSL has been in complete violation of law and its continuation in market till the completion of proper investigation/ examination would adversely affect the interest of the investors and securities market.

20. In view of the above, I note that GSL has violated various norms laid down by SEBI under the SEBI (Stock Broker) Regulations and Circulars, as discussed at length in the interim order. Further, even after providing an opportunity to file a reply and granting a personal hearing, GSL has not furnished any reasons to justify revocation of the interim directions passed against it in terms of the interim order. Furthermore, the revival plan submitted by GSL is not tenable due to the reasons discussed above. Therefore, I find no reason to recall the directions against GSL in the interim order.
21. Vide email dated May 24, 2019, the Noticee no. 2 i.e. Mr. Kamal Kumar Kothari has forwarded a notice of demand dated April 20, 2019 received by him from Punjab National Bank (hereinafter referred to as “PNB”). As per the said notice of demand, noticee no. 2 has been asked to pay Rs. 2,46,88,415.10 within 60 days from the date of the notice, failing which the security available with the bank would be enforced. PNB holds two residential flats as security against the loan availed by GSL. In his email dated May 24, 2019, the Noticee no. 2, Mr. Kamal Kumar Kothari has submitted that he would like to clear the dues towards the clients of GSL by selling his personal properties mentioned in the notice of demand dated April 20, 2019. I note that the Noticees have not submitted a concrete viable Revival Plan till date to clear the dues of the clients of GSL. I also observe from the notice of demand that the security interest in the property proposed to be sold to clear the dues of GSL by Mr. Kamal Kumar Kothari was created in April 2013. In this regard, I observe that the request to SEBI to sell the properties already secured under the SARFAESI Act is untenable.
22. Vide email dated May 10, 2019, Noticee no. 2 i.e. Mr. Kamal Kumar Kothari has submitted that GSL has received Rs. 32 lakhs (approx.) from its clearing member, IL&FS which was lying with them as margin money. The company has submitted that it wants to use the said money to make payment to its 3600 small/ marginal clients whose credit balance is Rs. 3000/- and less. In this regard, I find that the interim order itself allows GSL to use its assets for settling the claims of investors under the supervision of the Stock Exchanges.
23. Mr. Kamal Kumar Kothari vide email dated May 13, 2019 has informed SEBI that the Member Selection Committee (hereinafter referred to as “MSC”) of NSE through its order

dated May 06, 2019 has declared GSL as a defaulter in terms of the Bye Laws of the Exchange and expelled under NSEIL Rules with effect from May 06, 2019. The Noticee vide email dated May 14, 2019 has forwarded a review application filed by it before the MSC against said order dated May 06, 2019 of NSE on the grounds as raised before SEBI vide its letter dated March 28, 2019. In this regard, I find that the said proceedings shall be held and concluded by the NSE in accordance with its Bye-Laws made in this regard.

24. Observations made in this order regarding shortfall/misuse/non-settlement of funds and securities by GSL, are *prima facie* observations for the purpose of ascertaining requirement of preventive/remedial/prohibitory action to be taken against GSL, pending completion of forensic audit, for violation of provisions of securities laws. These observations may not on their own give rise to any cause of action for making any claim/counter claim before SEBI by any person. Any claim/counter claim against GSL may be initiated by any claimant, if any, before the appropriate forum such as arbitrator in accordance with the bye-laws of the Stock Exchanges or before a Civil Court, as the case may be.
25. The interim order had also restrained the present and past directors of GSL and other persons associated with GSL from accessing the securities market till further directions for inter alia misappropriating client securities. The aforesaid persons were also directed to file their replies within 21 days of receipt of the interim order and avail an opportunity of hearing before me on the scheduled date. Some of these persons have filed their replies and have availed personal hearing before me on February 12, 2019 and May 09, 2019, and reiterated the submissions made in their respective replies.
26. Noticee no. 11 i.e. Mr. Ashish Kumar Ray was the director of GSL from September 05, 2012 to November 28, 2013. The copy of the order forwarded to the Noticee, returned undelivered. On perusing the MCA records, it is learnt that Noticee no. 11 ceased to be the director of GSL on account of his death in 2013. The Death Certificate of Noticee no. 11 was obtained from the Kolkata Municipal Corporation by SEBI. As per the death certificate issued by the Kolkata Municipal Corporation, Noticee no. 11 died on June 16, 2013. Therefore, the proceedings against Noticee no. 11, Mr. Ashish Kumar Ray under this order shall abate.

27. In the following sub - paragraphs, I deal with the replies filed by the past and present directors of GSL:

- a. Noticee no. 4 i.e. Mr. Soumen Chatterjee in his reply dated January 21, 2019 submitted that he was not in control of day to day running of GSL. He was working in GSL as a Research Analyst and was later appointed as 'Director-Research' with effect from December 29, 2015. He served the company twice during the period May, 2010 to November, 2014 and October 26, 2015 to November 27, 2018. Although his resignation has not been accepted, he has uploaded Form DIR-11 dated January 15, 2019 in MCA portal. Mr. Soumen Chatterjee has also submitted that GSL was a family run company, directly supervised by Mr Kamal Kumar Kothari (Managing Director of GSL) and that even he was reporting to Mr. Kamal Kumar Kothari directly. The Noticee no. 4 has stated that during his tenure as director he attended a few board meetings where there were no discussions of trading activities of any individual clients including the 6 clients mentioned in the interim order. The Noticee also submitted that at every board meeting, a statement of statutory compliances prepared by the respective departmental heads counter signed by the Managing Director was placed by the MD, confirming that there were no non-compliance / violations of any rules, regulations of exchanges and SEBI. The Noticee no. 4 has provided a copy of "Statement of Statutory Compliance for Quarter ended September 30, 2016". The Noticee has submitted that he could not have distrusted the statements of statutory compliances by the different departments heads, placed by the MD. It was also submitted that every half yearly there was an internal audit report prepared and filled by the internal auditors of GSL and that none of these reports was there any such irregularities shown or mentioned by the auditors in support of which, the Noticee no. 4 has enclosed copy of an Interim Internal Audit Report. The Noticee no. 4 has stated that he had no knowledge of the securities laws violations committed by GSL.
- b. Noticee no. 5, Mr. Tarun Kanti Sengupta in his reply dated January 16, 2019, has stated that he was a non- executive/ independent director of GSL and that he attended board

- meetings as convened from time to time. He has also submitted that he had not performed any executive administrative function at any point of time.
- c. Noticee no. 6, Mr. Kunal Vasu Mallik in his reply dated January 04, 2018 has stated that he was a non-executive director of GSL from July 25, 2012 to June 20, 2018. His role as director in GSL was limited only to tender advises to the other directors. The Noticee no. 6 also submitted that apart from receiving the director's sitting fees for the attending the board meetings, he has never received any other pecuniary benefits neither from GSL nor any other directors or the management of GSL. He also submitted that a statutory compliance certificate was submitted to him in the board meetings which did not reveal any non-compliance. The statutory auditors' report also did not reveal any such non-compliance or fraud committed by the company and/or the management of GSL which would indicate any obvious misuse of client funds or securities.
- d. Noticee no. 7 i.e. Mr. Dipak Rudra in his reply dated January 04, 2019 has submitted that he is a retired officer of the Indian Administrative Service. He joined the board of GSL in September 09, 2008 as an independent director, and resigned on June 20, 2017. The Noticee no. 7 also submitted that during his tenure as director he acted purely in an advisory capacity in respect of matters brought before him and the board. Mr. Dipak Rudra has also stated that GSL regularly submitted, through its MD, statutory compliance certificates duly countersigned by the concerned departmental officials. During his tenure there were few investor complaints that were brought to the notice of the board of directors and which were resolved by the management. The Noticee no. 7 also submitted that the statutory auditors of GSL did not report anything irregular or unusual to the board during his tenure as an independent director of GSL. The Noticee no. 7 also submitted that trade data are part of day to day operations, and do not/ did not ever come up to the Board. As an independent director it was not possible for him to know that GSL and its officials/shareholders were doing business illegally.

- e. Noticee no. 8 i.e. Mr. Deepak Parakh in his reply dated January 07, 2019 has submitted that he joined the company as a marketing head and that his job was limited to the franchisee and branch network of GSL. The Noticee no. 8 submitted that he was appointed as an additional director in 2012 and attended a few board meetings where the irregularities alleged in the order were never discussed. The Noticee no. 8 resigned from the directorship in 2016. The Noticee no. 8 has submitted that he has not received any other benefit/ amount except his salary and remuneration.
- f. Noticee no. 9, Mr. Shree Kumar Jhanwar in his reply dated January 21, 2019 has submitted that he was not in control or charge of day to day running of GSL. He joined GSL on March 20, 2006 as Manager (DP Division). According to the Noticee, he was forced to become a director of GSL by the MD of GSL on November 25, 2013 and resigned from directorship on November 25, 2015 which became effective from December 31, 2015. Noticee no. 9 also submitted that statutory compliance certificate was submitted to him during board meetings which did not reveal any non-compliance. The statutory auditors' report also did not reveal any such non-compliance or fraud committed by GSL and/or the management of GSL which would indicate any obvious misuse of client funds or securities.
- g. Noticee no. 10 i.e. Mr. Babulal Nolkha in his reply dated January 21, 2019 submitted that he joined GSL on May 1, 2004 as Manager. In the year 2010, he was appointed as the Marketing and Business Development Head of GSL. According to Noticee no. 10, his role was limited to acquisition of new business. He was a Director of GSL from November 28, 2013 to September 23, 2014 i.e. a period of six months. During his tenure as director, he attended only one board meeting in which statutory compliance certificate were placed where it was stated that all the compliances had been met. The Noticee no. 10 also submitted that there was a half yearly internal audit report prepared and filed by the internal auditors of GSL which did not speak of any non – compliances.
- h. Noticee no. 13, Mr. Pradeep Kumar Sarkar in his reply dated January 04, 2019 has stated that he joined the board of GSL on April 26, 2010 as an independent director and resigned from the post on February 25, 2012. He also stated that he had attended eight

- board meeting during his tenure in which the Managing Director regularly submitted Statutory Compliance Certificates. He submitted that nothing of significance ever came to his notice which would give rise to any suspicion of wrong doing on the part of GSL. Noticee no. 13 also submitted that nothing unusual or irregularities, were observed by the internal auditors/statutory auditors. He has stated that being an independent Director, he was in no way connected with the operations of GSL, which were being performed by the Managing/Executive Directors and the employees of the Company.
- i. Noticee no. 14 i.e. Mr. Kalyan Mukherjee in his reply dated January 04, 2019 has submitted that he was appointed as a non-executive director on November 19, 2009 w.e.f. November 17, 2009 and that he has resigned from GSL as director on February 20, 2012. The Noticee no. 14 has also stated that during this time his role was purely advisory.
 - j. Noticee no. 15 i.e. Mr. Prasanta Ray in his letter dated January 09, 2019 has submitted that he is a retired Indian Revenue Service Officer. He consented to act as a non-executive director in late 2009 and resigned it in mid-2012. He has stated that his role and association with the GSL was limited to participating in GSL's Board Meetings that took place periodically. The pecuniary benefits received from GSL were limited to sitting fees only. The Noticee submitted that the frauds, misdeeds and misappropriations alleged in the order were not of a kind that would be obvious to anyone taking only a superficial look at its affairs.
 - k. Noticee nos. 2, 3 and 12 have not submitted any reply. However, Noticee no. 2 i.e. Mr. Kamal Kumar Kothari appeared on behalf of himself and Noticee nos. 3 and 12 namely, Mr. Dharmendra Kothari and Ms. Sunita Kothari in the hearing held on February 12, 2019. During the hearing before me, Mr. Kamal Kumar Kothari admitted to a shortfall of funds and undertook to submit a Revival Plan which was submitted vide email dated March 04, 2019.
28. I have considered the replies of Noticee nos. 4, 5, 6, 7, 8, 9, 10, 13, 14 and 15. One of the main contention raised by these Noticees except Noticee no. 4, 8, 9 and 10, is that they

were either independent directors and/ non – executive directors, and as such they were not involved in the day to day functioning of GSL. It has also been contended that they relied on the statutory compliance certificate and internal audit report which never pointed out towards any non-compliance by GSL and on the contrary these statutory compliance certificates affirmatively mentioned regarding GSL’s compliance with all laws. On perusal of the statutory compliance certificates furnished by the Noticees, I observe that the statement of statutory compliances contains the details of applicable statutes and nature of compliances and signature of the nodal officer certifying compliances with the applicable statutes. As regards the compliances with respect to securities laws, I observe that the company secretary of GSL has certified that provisions of all the regulations applicable have been complied with. The company secretary of GSL has also certified that there have been no non-compliance/ violations of any regulations. Further, the Internal Audit report furnished by the Noticees also states that no material fraud/ non-compliance/ violation by GSL is observed during the course of the audit. These certificates/ reports submitted to the board of directors coupled with the fact that these Noticees were either independent and/ or non-executive directors of GSL, *prima facie* shows that they might not be aware of the day to day functioning and wrongdoings of GSL in connection with misappropriation of client securities, falsification of books of accounts, non-settlement of funds/ securities of clients etc. I also note that forensic audit by NSE and BSE is presently underway which will bring out the role played by these Noticees and if found liable these Noticees shall always be proceeded against in accordance with law. However, at this stage, I find no reason to continue the directions issued vide interim order dated December 19, 2018.

29. As regards, Noticee nos. 4, 8, 9 and 10, these Noticees have submitted that they were handling important departments of GSL such as Marketing and Business Development but, they were aware of only their respective area of operations. I note that the said Noticees were employees of GSL who were promoted to the post of executive director and as such were aware of and were involved in the day to day operations of GSL particularly in the respective areas of their activities/ responsibilities, as claimed by them. I note that being executive directors, the Noticees cannot take the plea that they entirely relied on the statutory compliance certificate and internal audit report circulated during the board

meetings. Therefore, at this stage, I find no reason to revoke the directions against Noticee nos. 4, 8, 9 and 10 who are executive directors of GSL.

30. In the interim order, the 6 clients of GSL namely S K B Securities Ltd., Param Commodities Pvt. Ltd., Paramarth Agro Marketing Pvt. Ltd., Apurva Commodities Pvt. Ltd., Awadhoot Marketing Pvt. Ltd. and Superfast Tours And Travels Pvt. Ltd. through whom the total value of client securities misappropriated by GSL was at least Rs. 233.75 crores across 959 scrips and their directors were also restrained from accessing the securities market till further directions. These persons/ Noticees were also directed to file their replies within 21 days of receipt of the interim order and avail an opportunity of hearing before me. The said Noticees have furnished their replies and made the following submissions:

- a. Noticee nos. 18 and 19 namely Mr. Somnath Bhattacharjee and Ms. Lipika Bhattacharjee in their separate replies dated January 21, 2019 have submitted that they are non-executive and independent directors of S K B Securities Ltd. (hereinafter referred to as “SKB”) and were not involved with the share trading of the said company. They have also stated that the Delivery Instruction Slip and cheques were all signed blank in advance and handed over to the personnel of GSL. I note that being non-executive and independent directors, the Noticees were not required to engage in such activities which relates to day to day business operations of the company. Business operations of the company have been found to be in violation of securities laws and the matter is being looked into by forensic auditors. Therefore, I find no reason to revoke the directions issued against Noticee nos. 18 and 19 namely Mr. Somnath Bhattacharjee and Ms. Lipika Bhattacharjee in the interim order.
- b. Noticee no. 20 i.e. Mr. Hemant Kumar Kothari in his reply dated January 02, 2019, has submitted that he was the director of SKB from November 18, 1999 to July 03, 2012. He stated that his father Late Mr. Jhawar Lal Kothari died in 2001, leaving behind six brothers namely, Mr. Pradeep Kothari, Mr. Kamal Kumar Kothari, Mr. Dilip Kothari, Mr. Dharmendra Kothari, Mr. Rajesh Kothari and himself. As GSL and SKB Securities

- Ltd. were promoted by his family, he received nominal shareholding in the GSL. According to the Noticee, his brother Mr Kamal Kothari being the majority shareholder of SKB was controlling and managing the affairs of the company. He has also submitted that no trading activity in SKB was undertaken before his resignation from SKB on July 03, 2012. The Noticee has submitted the financial statements of SKB for the period 2007-08 to 2012-13 and Bank Account statement for the period January 01, 2008 to July 03, 2012 to substantiate his claim. I note that on perusal of trading data provided by exchanges (NSE & BSE) it is observed that trading has taken place during the months of January, 2008 as well as June, 2012. Further, on perusal of holding and transaction data provided by Depositories it is observed that misappropriation of securities has happened through SKB Securities including period prior to July 03, 2012 i.e. during the directorship of Mr. Hemant Kumar Kothari. Therefore, I find no reason to revoke the directions issued against Noticee no. 20 i.e. Mr. Hemant Kumar Kothari in the interim order.
- c. Noticee no. 22 i.e. Mr. Aman Mohan Kothari has submitted that he was the director of SKB Securities Ltd. during the period June 01, 2012 to July 10, 2012 i.e. for a period of 40 days which was for a very short stint without having any bearing on the misappropriation of client securities during his directorship. On perusal of trading data provided by exchanges (NSE & BSE), it is observed that trading in question has taken place during the month of June, 2012. Further, on perusal of holding and transaction data provided by Depositories, it is observed that misappropriation of securities has been effected through SKB Securities, when Mr. Aman Mohan Kothari was one of the directors of SKB. The matter is being presently looked into by the forensic auditors. Therefore, at this juncture it would not be appropriate to revoke the directions issued vide interim order, against the Noticee.
- d. Noticee no. 32 i.e. Mr. Abhijit Pal in his reply dated January 22, 2019 has submitted that he was compelled to become a non-executive independent director of Awadhoot Marketing Pvt. Ltd. (hereinafter referred to as “Awadhoot”) to fill up the vacancy on its board. It was also submitted that he was not involved in the business of GSL. The Delivery Instruction Slip and cheques were all signed blank, in advance and handed

- over to the personnel of GSL. I note that the Noticee being a non- executive and independent director was not required to engage in such activities which relates to day to day business operations of the company. Business operations of the company have been found to be in violation of securities laws and the matter is being looked into by forensic auditors. Therefore, I find no reason to revoke the directions issued against Noticee no. 32 i.e. Mr. Abhijit Pal in the interim order.
- e. Noticee no. 33 i.e. Mr. Gaurav Chaudhary in his letter dated January 28, 2019, has submitted that he was a director of Awadhoot from February 18, 2014 to April 30, 2015. He has submitted that during his tenure, no securities of clients of GSL were used for trading through the demat account of Awadhoot. I note that on perusal of trading data provided by exchanges (NSE & BSE) it is observed that trading has taken place during the period from March, 2014 to April, 2015 in the demat account of Awadhoot. Further, on perusal of holding and transaction data provided by Depositories it is observed that misappropriation of securities has been effected through Awadhoot during the said period i.e. during the directorship of Mr. Gaurav Chaudhary. Therefore, I find no reason to revoke the directions issued against Noticee no. 33 i.e. Mr. Gaurav Chaudhary in the interim order.
- f. Noticee nos. 35 and 36 namely, Mr. Mahabir Chand Jain and Mr. Jayant Kumar Jain vide separate replies dated January 14, 2019 have denied their involvement directly or indirectly with GSL or its day to day working. Mr. Mahabir Chand Jain and Mr. Jayant Kumar Jain are directors of Superfast Tours and Travels Pvt. Ltd. (hereinafter referred to as “Superfast”). The Noticees have submitted that SEBI has drawn its observations based on the transactions made in the books of accounts of GSL but it is necessary to see whether there are any payments if made by the opposite parties to GSL and bank / cheque involvement etc. and the different correspondences that might have been gone into the course of the transactions to justify the nature, conduct and genuineness of the transaction. I note that on perusal of trading data provided by Stock Exchanges and holding and transaction data provided by Depositories, it is observed that misappropriation of client securities has been effected through Superfast Tours &

Travels during the directorships of Mr. Mahabir Chand Jain and Mr. Jayant Kumar Jain. In its reply dated December 28, 2018, the Noticee no. 34 i.e. Superfast has stated that it was aware of some irregularities in the demat account of the company and warned GSL of the same. In this regard, Superfast has enclosed letters dated March 30, 2017 and May 12, 2018 issued by it to GSL stating that GSL had carried out certain malpractices in its account. However, apart from the aforesaid letters Superfast has not shown any other steps taken by the company to detect the irregularities or actions taken by it against GSL. In view of the above, the culpability of Superfast and its directors in aiding the misappropriation of client securities through the account of Superfast is clearly seen. Therefore, I find no reason to revoke the directions issued against Noticee nos. 34, 35 and 36 namely, Superfast, Mr. Mahabir Chand Jain and Mr. Jayant Kumar Jain respectively in the interim order.

DIRECTIONS:

31. Considering the above, I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, read with Sections 11(1), 11(4) and 11D thereof , -
- a. hereby confirm that the directions issued vide ex parte ad interim order dated December 19, 2018 as against the following Noticees:

Sr. no.	Noticee Nos.	Name of the Noticee	PAN
1	1	Guinness Securities Limited	AAACG9843L
2	2	Mr. Kamal Kumar Kothari	AKYPK8782D
3	3	Mr. Dharmendra Kothari	AFGPK6680M
4	4	Mr. Soumen Chatterjee	AKFPC1442D
5	8	Mr. Deepak Parakh	AFPPP0732C
6	9	Mr. Shree Kumar Jhanwar	ACIPJ0418R
7	10	Mr. Babulal Nolkha	ADHPN4106A
8	12	Ms. Sunita Kothari	AFNPK8049P
9	16	S K B Securities Ltd.	AAHCS3335G
10	17	Mr. Provat Mitra	ANDPM9486G
11	18	Mr. Somnath Bhattacharjee	ADXPB0019J
12	19	Ms. Lipika Bhattacharjee	ASSPB2706Q
13	20	Mr. Hemant Kothari	AFOPK6638P
14	21	Mr. Krishna Maheswari	NA

15	22	Mr. Aman Mohan Kothari	AUOPK5221B
16	23	Param Commodities Pvt. Ltd.	AAFCP0003L
17	24	Mr. Pawan Kumar Modi	AESPM0259F
18	25	Mr. Murlidhar Sharma	AJMPS1405N
19	26	Paramarth Agro Marketing Pvt. Ltd.	AAFCP0005N
20	27	Apurva Commodities Pvt. Ltd.	AAGCA3264P
21	28	Mr. Ram Avtar Sharma	ALGPS0914E
22	29	Awadhoot Marketing Pvt. Ltd.	AAECA9172C
23	30	Mr. Sudarshana Mitra	AHBPM6874G
24	31	Mr. Shyamal Mitra	AHBPM6875H
25	32	Mr. Abhijit Pal	NA
26	33	Mr. Gaurav Choudhary	AFSPC6498P
27	34	Superfast Tours And Travels Pvt. Ltd.	AAECS4607A
28	35	Mr. Mahabir Chand Jain	ACHPJ8058N
29	36	Mr. Jayant Kumar Jain	AGUPJ4377R

b. revoke the ex-parte ad - interim order dated December 19, 2018 against the following

Noticees:

Sr. no.	Noticee Nos.	Name of the Noticee	PAN
1	5	Mr. Tarun Kanti Sengupta	AJDPS7741N
2	6	Mr. Kunal Vasumallik	ABFPV8759F
3	7	Mr. Dipak Rudra	ACHPR3694J
4	11	Mr. Asish Kumar Ray	ADEPR1722M
5	13	Mr. Pradeep Kumar Sarkar	ABVPS7800E
6	14	Mr. Kalyan Mukherjee	AHQPM8981K
7	15	Mr. Prasant Ray	AANPR2831B

32. This order is without prejudice to any enforcement action that SEBI may deem necessary to take against the Noticees, pursuant to the investigation or forensic audit, in the matter. This order shall continue to be in force till further directions/ orders.

33. A copy of this order shall be served on all the Noticees, recognized Stock Exchanges, Registrars and Transfer Agents and depositories to ensure compliance with above directions.

Place: Mumbai

Date: July 31, 2019

Sd/-
ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA