

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of:

Sr. No./ Noticee No.	Name of the Noticee	PAN
1.	Pankaj Kumar	AAHPS2438K
2.	Prashant Mulekar	AACPM1058Q
3.	Kiran Kulkarni	AAKPK6962F

(The above entities are individually referred to by their corresponding names/ numbers and collectively referred to as "Noticees")

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted an investigation into the affairs of Geodesic Limited (hereinafter referred to as **the "Company"**) for the period of April 01, 2012 to March 31, 2013 (hereinafter referred to as **"Investigation Period / IP"**).
2. The investigation, as aforesaid, revealed the following facts:
 - (a) The *Company* was incorporated in the year 1982 and earlier it was known as Geodesic Information Limited. The *Company* was in the business of providing products and solutions for Content, Communication, Collaboration and Electronic Computing etc.
 - (b) The equity shares of the *Company* got listed on BSE India Limited (hereinafter referred to as "**BSE**") in the year 2001 and on National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") in the year 2004.
 - (c) At the time of investigation, the *Company* was under liquidation and w.e.f May 13, 2014, and Official Liquidator attached to the Hon'ble Bombay High Court had taken the possession of all the books of accounts of the *Company*.
 - (d) The *Company* had the following subsidiaries:
 - i. Chandamama India Limited (Mumbai)
 - ii. Chandamama India Limited (Mumbai)
 - iii. Geodesic Gridpoint Energy Private Limited (Mumbai)
 - iv. Geodesic Holdings Limited (GHL) (Mauritius)

v. Geodesic Technology Solutions Limited (GTS) (Hong Kong)

(e) The following persons, apart from being Promoters of the *Company* were also on the Board of the *Company*, as on April 01, 2012:

Table no. 1

Sr. No.	Full Name	Designation
1	Kiran Kulkarni (Noticee no.3)	Managing Director
2	Pankaj Kumar (Noticee no.1)	Chairman/Director
3	Prashant Mulekar (Noticee no. 2)	Executive Director & Compliance Officer

(f) The details of the promoter shareholding in the *Company* as on March 31, 2013 were as under:

Table no. 2

Sr. No.	Name	No. of shares	% of shareholding	Pledged shares	% of promoter share holding	% of total shareholding
1.	Kulkarni K. Prakash	39,51,122	4.37	1475904	37.35	1.63
2.	Pankaj Kumar	35,00,112	3.87	1433735	40.96	1.59
3.	Prashant Mulekar	13,09,203	1.45	590361	45.09	0.65
4.	Jayashree Mulekar	31,287	0.03	0	0	0
5.	Pramodini Mulekar	14,250	0.02	0	0	0
6.	Rajeshwari K Kulkarni	300	0	0	0	0
7.	Veena Pankaj Kumar	14,158	0.02	0	0	0
TOTAL		88,20,432	9.76	35,00,000	39.68	3.87

(g) The financial results of the *Company* were as under:

Table no. 3

(INR in Crore)

Description	Quarter ended March 2012	Quarter ended June 2012	Quarter ended Sept.2012 (Source: BSE Ltd.)
Total income	172.21	157.51	129.84
Expenditure	94.52	125.45	94.51
Net Profit	30.39	11.63	12.31

	Quarter ended Dec 2012	Quarter ended March 2013	Quarter ended June 2013 (Source Moneycontrol)
Total income	102.23	68.09	516.95
Expenditure	104.70	66.40	381.69
Net Profit	-18.96	-15.57	115.99
	Year ended March 2011	Year ended *June 2012	Year ended June 2013 (Source Moneycontrol)
Total income	729.20	873.00	172.77
Expenditure	820.30	568.40	649.42
Net Profit	-108.90	314.60	-43.13

*The financial year was extended to 15 months by the *Company* for the year 2011-12.

- (h) There was a decrease in the total income and net profit of the *Company* from quarter ended March 31, 2012. The *Company* had shown losses of INR 18.96 Crore and INR 15.57 Crore in the quarter ended December 31, 2012 and March 2013, respectively. However, as per the information available in the balance sheet for the year ended June 2013, there was an increase in other income during June 2013 due to "net gain on exchange fluctuations" and "balances written back" on account of which the *Company* showed profits.
- (i) The *Company* had made certain corporate announcements during the investigation period. Details of certain price sensitive information regarding buy-back of shares and payment of dividends, and their impact on the price and volume of the scrip of the *Company* are presented as under:

Table no. 4

Sr. No.	Date & Time of display on BSE website	Announcement	Price Impact (in INR)/Shares Traded	Remarks																																
1.	August 14, 2012 @ 21:36	The <i>Company</i> had informed BSE that the Board Of Directors at its meeting held on August 14, 2012 has approved the proposal to buy-back of 25% of the equity shares of the <i>Company</i> through open offer and announced a Dividend Policy wherein dividend will be declared in AGM of Shareholders and 14% to 18% of net profits.	BSE August 14, 2012 <table border="1"><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>36.35</td><td>36.60</td><td>35.00</td><td>35.15</td></tr></table> No. of shares traded :54,737 August 16, 2012 <table border="1"><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>36.50</td><td>42.15</td><td>36.35</td><td>42.15</td></tr></table> No. of shares traded :5,95,853 NSE August 14, 2012 <table border="1"><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>36.50</td><td>36.70</td><td>34.95</td><td>35.15</td></tr></table> No. of shares traded :1,98,416 August 16, 2012 <table border="1"><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>36.95</td><td>42.15</td><td>36.95</td><td>42.15</td></tr></table> No. of shares traded :13,24,172	O	H	L	C	36.35	36.60	35.00	35.15	O	H	L	C	36.50	42.15	36.35	42.15	O	H	L	C	36.50	36.70	34.95	35.15	O	H	L	C	36.95	42.15	36.95	42.15	The scrip closed on August 16, 2012, at around 20 % above its previous day closing price. The trading volume increased by around 980% on August 16, 2012, as compared to previous day trading. The scrip closed on August 16, 2012, at around 20 % above its previous day closing price. The trading volume increased by around 560% on August 16, 2012 as compared to previous day trading.
O	H	L	C																																	
36.35	36.60	35.00	35.15																																	
O	H	L	C																																	
36.50	42.15	36.35	42.15																																	
O	H	L	C																																	
36.50	36.70	34.95	35.15																																	
O	H	L	C																																	
36.95	42.15	36.95	42.15																																	

2.	November 12, 2012 @18:41	Board of Directors of the <i>Company</i> in its meeting held on November 12, 2012, <i>inter alia</i> , has discussed the recommendation given by the buy-back Committee and decided to meet on November 22, 2012 to deliberate and announce the decision on the same.	BSE November 12, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>42.80</td><td>43.70</td><td>42.45</td><td>43.00</td></tr></table> No. of shares traded: 54,158 November 13, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>42.20</td><td>42.45</td><td>41.35</td><td>41.60</td></tr></table> No. of shares traded: 26,560 NSE November 12, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>42.90</td><td>43.90</td><td>42.20</td><td>43.05</td></tr></table> No. of shares traded :1,49,210 November 13, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>43.20</td><td>43.55</td><td>41.50</td><td>41.65</td></tr></table> No. of shares traded: 75,330	O	H	L	C	42.80	43.70	42.45	43.00	O	H	L	C	42.20	42.45	41.35	41.60	O	H	L	C	42.90	43.90	42.20	43.05	O	H	L	C	43.20	43.55	41.50	41.65	The scrip closed on November 13, 2012, at around 4% below its previous day closing price. The trading volume decreased by 51% on November 13, 2012, as compared to previous day trading. The scrip closed on November 13, 2012, at around 4% below its previous day closing price. The trading volume decreased by 49.51% on November 13, 2012, as compared to previous day trading.
O	H	L	C																																	
42.80	43.70	42.45	43.00																																	
O	H	L	C																																	
42.20	42.45	41.35	41.60																																	
O	H	L	C																																	
42.90	43.90	42.20	43.05																																	
O	H	L	C																																	
43.20	43.55	41.50	41.65																																	
3.	November 27, 2012 @ 12:54	Board of Directors at their Meeting held on November 27, 2012 have discussed and approved to buy-back upto 25% of the equity shares of the <i>Company</i> at a maximum buy-back price of ₹75/- per share subject to the approval of the shareholders through Postal Ballot.	November 27, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>46.90</td><td>55.00</td><td>44.65</td><td>52.20</td></tr></table> No. of shares traded:25,12,694 November 29, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>53.50</td><td>59.50</td><td>53.20</td><td>56.50</td></tr></table> No. of shares traded:12,87,682 NSE November 27, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>46.95</td><td>55.40</td><td>44.60</td><td>52.15</td></tr></table> No. of shares traded: 60,13,208 November 29, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>53.60</td><td>59.40</td><td>53.60</td><td>56.45</td></tr></table> No. of shares traded :41,02,722	O	H	L	C	46.90	55.00	44.65	52.20	O	H	L	C	53.50	59.50	53.20	56.50	O	H	L	C	46.95	55.40	44.60	52.15	O	H	L	C	53.60	59.40	53.60	56.45	The scrip closed on November 29, 2012 at around 8% above its previous day closing price. The trading volume decreased by around 50% on November 29, 2012 as compared to previous day trading. The scrip closed on November 29, 2012 at around 8% above its previous day closing price. The trading volume decreased by around 34% on November 29, 2012 as compared to previous day trading
O	H	L	C																																	
46.90	55.00	44.65	52.20																																	
O	H	L	C																																	
53.50	59.50	53.20	56.50																																	
O	H	L	C																																	
46.95	55.40	44.60	52.15																																	
O	H	L	C																																	
53.60	59.40	53.60	56.45																																	

4.	December 04, 2012 @ 08.17	Board of Directors of the <i>Company</i> at its meeting held on December 03, 2012, <i>inter alia</i> , have considered and recommended final dividend @ ₹ 2/- per share on the face value of ₹ 2/- each on equity shares of the <i>Company</i> to be paid after approval of shareholders in the AGM.	December 03, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>51.85</td><td>53.85</td><td>50.50</td><td>51.60</td></tr></table> No. of shares traded:2,64,900 December 04, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>52.00</td><td>52.00</td><td>46.45</td><td>48.08</td></tr></table> No. of shares traded: 6,86,449 NSE December 03, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>52.20</td><td>53.90</td><td>50.40</td><td>51.70</td></tr></table> No. of shares traded :7,18,604 December 04, 2012 <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>50.90</td><td>52</td><td>46.55</td><td>46.55</td></tr></table> No. of shares traded :13,49,552 <td> The scrip closed on December 04, 2012 at 7.80 % below its previous day closing price. The trading volume increased by 160 % on December 04, 2012 as compared to previous day trading The scrip closed on December 04, 2012 at 9 % below its previous day closing price. The trading volume increased by 190 % on December 04, 2012 as compared to previous day trading. </td>	O	H	L	C	51.85	53.85	50.50	51.60	O	H	L	C	52.00	52.00	46.45	48.08	O	H	L	C	52.20	53.90	50.40	51.70	O	H	L	C	50.90	52	46.55	46.55	The scrip closed on December 04, 2012 at 7.80 % below its previous day closing price. The trading volume increased by 160 % on December 04, 2012 as compared to previous day trading The scrip closed on December 04, 2012 at 9 % below its previous day closing price. The trading volume increased by 190 % on December 04, 2012 as compared to previous day trading.
O	H	L	C																																	
51.85	53.85	50.50	51.60																																	
O	H	L	C																																	
52.00	52.00	46.45	48.08																																	
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52.20	53.90	50.40	51.70																																	
O	H	L	C																																	
50.90	52	46.55	46.55																																	

O: Opening Price; H: Highest Price; L: Lowest Price; C: Closing Price

- (j) The Board of Directors of the *Company* which comprised of the *Notices* herein, had in its meeting held on November 27, 2012 had approved buy-back of shares to the extent of 25% of paid up capital at a price of INR 75 per share, subject to approval of shareholders through Postal Ballot.
- (k) However, after the aforesaid decision, no further action was initiated by the *Company* in order to obtain the approval of shareholders for the buy-back of shares. The *Company* had informed that it is expected to start the process of Postal Ballot after the redemption of the Foreign Currency Convertible Bonds (FCCBs) issued by it in the year 2008, which (redemption) was due on January 18, 2013. The *Company* had informed that the aforesaid decision of initiation of Postal Ballot after redemption of FCCBs had also been intimated to the shareholders in the Annual General Meeting held on February 11, 2013 and the disclosure for the same has been made by way of submission of Minutes of the AGM to the Stock Exchanges and other announcements made thereafter.
- (l) However, there was no proposal for consideration in the AGM notice, with respect to buy-back of shares. From the Minutes of the AGM dated February 11, 2013, it is noted that the members/shareholders had raised queries regarding the buy-back of shares and in response; the *Company* had informed that the buy-back will be done after redemption of the FCCBs.
- (m) With respect to the redemption of FCCBs, the announcement dated January 18, 2013 made by the *Company* on its website read as under:
- “The FCCB redemption process is on and the company is in discussion with the Bond holders. The redemption process due to structural and regulatory issues, may take around 45 days to complete.”*
- (n) Further, the *Company* had on April 25, 2013, informed on BSE that: *“FCCB redemption process is underway and the company is aggressively working towards resolving regulatory/investment restructuring/asset redemption process to ensure that redemption is completed at the earliest.”*
- (o) However, the *Company* did not take any subsequent steps towards the completion of buy-back of its shares and it eventually defaulted in the redemption of FCCBs also.
- (p) The *Company* had claimed that the funds raised through FCCBs were invested in structured/restructured products through subsidiaries/step down subsidiaries viz., GTSL Hong Kong and Geodesic Holding Limited Mauritius.
- (q) In a petition filed by the Trustee of the FCCBs (Citibank N.A. London Branch), Hon’ble Bombay High Court had in its order dated April 07, 2014, noted that the claim made on behalf of the *Company* that an amount of USD 29.06 Million has been invested (out of FCCBs proceeds through GHL) in the account of Emiloto Associated Inc, is not an

investment and is infact a loan extended to another company viz., Audrain Commercial Corp, Belize (other than the one with which investment was claimed to have made earlier).

- (r) The Hon'ble Bombay High Court, had vide aforesaid order, directed the *Company* to deposit a sum of USD 162 million in a no lien account. As the *Company* did not comply with the said order by the date specified by the Hon'ble High Court, an Official Liquidator was appointed as Provisional Liquidator of the *Company*, on May 13, 2014.
 - (s) Further, the Board of Directors of the *Company* (the *Notices* herein) had, in the meeting held on December 03, 2012, proposed a dividend of INR 2 per share (subject to the consent of the lender banks/ bondholders). In its AGM held on February 11, 2013, the shareholders of the *Company* passed the resolution approving dividend declaration, subject to such declaration coming into effect only upon receipt of a written permission from the ICICI Bank or upon lenders approval or on payment of outstanding loan amount as per the order of the court.
 - (t) On inquiry from the *Company* regarding status of payment of dividend, it was informed that the *Company* was waiting for the approval of the bondholders/lending banks for payment of dividend and after obtaining the approvals, the dividend will stand declared and be paid to the shareholders. It was further informed that the Record date for the payment of dividend would remain the same. However, eventually, the *Company* failed to pay the dividend, as was declared by it.
3. Pursuant to the aforesaid findings from the investigation, a show cause notice (hereinafter referred to as **"SCN"**) dated December 22, 2015 was issued to the *Notices* calling upon them to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act (hereinafter referred to as "the **SEBI Act, 1992**") should not be issued against them for the alleged violations on their part, of Section 12A (a) (b) (c) of the SEBI Act, 1992 and Regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (e), (f), (k) and (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "the **PFUTP Regulations**"). The SCN was issued to the *Notices* alleging, *inter alia*, that:
- (a) The *Company* was constantly misleading the stock-exchanges, FCCBs holders, regarding the utilisation of the proceeds of FCCBs, restructuring process and also regarding the expected proceeds to be realised from the redemption of restructured investments, which did not happen.
 - (b) The *Company* being fully cognizant of the impending obligation towards redemption of FCCBs (for an amount of approximately INR 800 Crore) and was also aware about its dismal financial health, still made announcements for buy-back of shares as well as

proposed for payment of dividends. After making such announcements, the *Company* did not take any step either towards the buy-back or payment of dividends.

- (c) Both the announcements pertaining to buy-back and payment of dividend had positively impacted the price of the scrip of the *Company*. The market price of the scrip of the *Company* on November 21, 2012 (date of notice of Board Meeting) was INR 38.45 and on November 27, 2012 (date of Board Meeting wherein decision to buy-back was taken) the price was INR 52.20. Similarly, the market price of the scrip on November 23, 2012 (one day prior to date of notice of Board Meeting on November 24, 2012, which was Saturday) was INR 38.60 and on December 03, 2012 (date of Board Meeting wherein decision to consider paying dividend was taken) was INR 51.60.
 - (d) The sequence of events indicates that the intention behind making announcements of buy-back and payment of dividend despite knowing the financial incapacity to honour the same, was to positively influence the price of the scrip of the *Company*.
4. The SCN dated December 22, 2015 was served upon the *Notices* by way of registered post and subsequently, a personal hearing of the *Notices* was scheduled on August 08, 2017 and accordingly the hearing notices dated June 28, 2017 were sent to all the *Notices*. In response thereto, emails dated August 02, 2017 and August 03, 2017 were received from the Authorized Representatives of *Notices no. 1* and *3* seeking adjournment of the personal hearing and accordingly, the personal hearing was rescheduled to October 04, 2017. Again, another request for adjournment was made by the *Notices no. 1* and *3*, and accepting the said request, the personal hearing was rescheduled to February 13, 2018 which was later on again rescheduled to April 10, 2019. The said hearing date scheduled for April 10, 2019 had to be again rescheduled to July 17, 2019 and yet again for the said date, the *Notices no. 1* and *3*, requested for an adjournment citing pre-occupation of their counsel who was to appear in the matter. Accordingly, another opportunity of personal hearing was granted on September 17, 2019. This time, vide email dated September 16, 2019, the authorized representatives of *Notices no. 1* and *3* apart from filing written replies to the SCN, also requested for adjournment of the said hearing on the grounds that the counsel appearing for the said *Notices* is required to appear before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") as well as before the Hon'ble Bombay High Court on the said date. Whereas, the *Noticee no. 2* vide its letter dated September 09, 2019, requested for adjournment of his personal hearing on the grounds that he is in judicial custody and is in the process to seek bail, and would be able to present his case once he is discharged on bail. The matter was once again posted for personal hearing on February 04, 2020, in response to which, the *Noticee no. 2*, vide his letter dated January 20, 2020 requested for adjournment of the said hearing by submitting that his bail application is still pending before the Hon'ble Bombay High Court. The Authorized

Representative of the *Notices no. 1 and 3* also once again requested for adjournment citing the same reason that their Counsel has to appear before the Hon'ble SAT and the Hon'ble High Court on the said date fixed for hearing in the present proceedings.

5. After dragging on for so long, the personal hearing of the *Notices* in the matter was finally re-scheduled on July 01, 2020 and this time again, the Authorized Representative of the *Notices no. 1 and 3*, vide his email dated June 26, 2020 expressed his inability to appear even through Video Conferencing due to Covid-19. However, when it was pointed out to the Authorised Representative that there can be no hardship this time for attending the personal hearing through Video Conferencing, he agreed to attend the hearing. Accordingly, the *Notices no. 1 and 3* along with their common Authorised Representative finally appeared before me on the said date through VC and made their oral submissions. Based on the submissions so advanced, certain queries were posed to the said *Notices*. The Authorised Representative vide his email dated July 25, 2020, has filed response to a few of such queries and has cited various reasons for not furnishing their explanations to the other queries for which he sought further time. The reasons cited in the said communication mentioned that the records pertaining to the *Company* are available at its (*Company's*) Registered office and the office as well as the records are in the custody of the Official Liquidator attached to the Hon'ble Bombay High Court. It has further been stated that Hon'ble Bombay High Court has prohibited the *Notices no. 1 and 3* from entering the said premises. Further, vide another email dated September 22, 2020, the *Notice no. 1* had requested for more time due to difficulties caused by Covid-19, again vide his email dated October 24, 2020, the *Notice no. 1* sought further time to submit the remaining details by stating that he has addressed a letter dated October 12, 2020 to the Official Liquidator attached to Hon'ble Bombay High Court seeking copies of the relevant records. However, I find that till the date of passing this order, no further information/response has been received from the said *Notices* nor have they intimated to me any further development in this regard. Therefore, waiting for more clarification or information from the *Notices no. 1 and 3* is going to be a futile exercise. Keeping in view the fact that the proceedings have been a long drawn affair due to repeated adjournment requests made by the *Notices* on one ground or the other, in my view, the principles of natural justice have been essentially complied with, hence, the proceedings deserves to be concluded forthwith, without further delay.
6. Before I proceed to appropriately deal with the replies/submissions of the *Notices*, I find it worthwhile to recall here the charges of statutory violations that have been levelled against the *Notices*. It has been alleged in the SCN that the *Notices* have violated the provisions of Section 12A (a), (b), (c) of the SEBI Act, 1992 and Regulations 3(a), (b), (c), (d) and 4(1), 4(2) (e), (f), (k) and (r) of the PFUTP Regulations, 2003. In order to appreciate the charges levelled against the *Notices*, it would be apposite to refer to the above-stated relevant provisions of the SEBI Act, 1992 and the PFUTP Regulations, 2003 which have a bearing on the allegations made

against the *Notices*. These relevant provisions are reproduced hereunder for facility of easy reference:

SEBI Act, 1992

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

Section 12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

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

PFUTP Regulations, 2003

Regulation 3. Prohibition of certain dealings in securities

“No person shall directly or indirectly –

(a) buy, sell or otherwise deal in the 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 recognised 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 recognised 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 recognised 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:-

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

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

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

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

7. It is noted from the records that the *Noticee no. 2* has not participated in the present proceedings and has addressed certain communications with requests to adjourn the proceedings till the time he is discharged on bail. In this connection, I note that the present matter is very old as the alleged violations pertain to the period of 2012-2013. The SCN was issued in the year 2015, however, based on the repeated requests received from the *Notices*, including the *Noticee no. 2* regarding his inability to present his case, the personal hearing in the matter was adjourned time and again. It is well recognized that any situation of a delinquent being restrained from presenting his case due to certain physical restrictions like being in judicial custody deserves lenient view. However, when the matter is examined holistically, it is observed that adequate opportunities have already been granted to the *Notices* to present their case and in absence of any fixed time frame being indicated to me for removal of physical restrictions on the *Noticee no. 2*, it would not be in the fitness of things to keep the matter pending infinitely. Accordingly, vide letter dated July 06, 2020, the *Noticee no. 2* was provided with a last opportunity to file his response to the SCN. The said letter returned undelivered from the last known residential address of the *Noticee no. 2*, however, the letter has been served to Central Jail, Mumbai (where the *Noticee no. 2* was confined as per his last communication) through post. It is noted from the records that vide an email dated August 04, 2020, the Jail Authorities were requested to confirm whether the *Noticee no. 2* is still confined there, however, no response has been elicited on the said email. I, therefore find that adequate opportunities have been given to the *Noticee no. 2* and in absence of any response on his behalf or about his present status it is not known as to when the *Noticee no. 2* will be available to attend the personal hearing before me. *Noticee no. 2* was at liberty to engage an Authorised Representative/Counsel to present his case in his defence but he has not taken any step in this regard either. Under the circumstances, I have no other option but to proceed to deal with the matter based on the materials available on records.
8. The *Notices no. 1* and *3*, in response to the SCN, have filed a common reply dated September 13, 2019. Further, a post hearing written submission has also been filed on their behalf vide email dated July 25, 2020. The submissions made in the aforesaid replies are summarized hereunder:
 - i. Copy of investigation report has not been provided to the *Notices*.
 - ii. At present, the Official Liquidator has taken the charge of assets and properties of the *Company* and therefore the said *Notices* do not have access to the records pertaining to the

Company and accordingly, the reply is filed based on the limited records/information available with the said *Notices*.

- iii. The *Company* also has 5 foreign subsidiary companies viz., Emiloto Associates Inc. & Zomo Technologies Limited (in British Virgin Islands); GTSL in Hong Kon; GHL in Mauritius; and Geodesic Information Systems Inc. in USA.
- iv. The *Company* got listed on 2002 and from 2004 to 2011, the *Company* had paid dividends every year, total amounting to INR 96 Crore.
- v. The *Company* had numerous innovative products and had clientele in both public as well as private sector. The *Company* had also won numerous international awards during relevant time.
- vi. The decision of buy-back was taken as the Board of Directors felt that the prevailing market price was low and the scrip was undervalued. A similar buy-back of upto 5% equity capital was already undertaken by the *Company* during the year 2010.
- vii. In terms of the FCCB Offering Circular, the proceeds of the FCCBs were invested along with internal accruals in overseas subsidiary companies set up by the *Company* or for acquisition of foreign companies directly or indirectly through the foreign subsidiaries.
- viii. There were total 11 such subsidiaries/step down subsidiaries which included GTSL, Hong Kong, Zomo Technologies and Emiloto Associated Inc (British Virgin Islands). The 100% shareholding of GTSL was with the *Company* and shareholding of rest of the aforesaid two companies was with Geodesic Holding Limited, Mauritius (a subsidiary of Geodesic Limited).
- ix. The aforesaid three subsidiaries/step down subsidiaries had invested part of the money raised through FCCB issue in various funds outside India through certain foreign banks and details of such investment are tabulated herein below:

Table no. 5

Sr. No	Name of subsidiary	Name of fund	Amount in USD	Through/Managed by	NAV (million USD) On Date
1.	GTSL, Hong Kong	Enterprise Emerging Market Fund	82 Million	BSI Bank Singapore	82.02 22.02.2013
2.	Zomo Technologies Limited	Absolute Diversified Growth Fund	87 Million	Credit Suisse Bank, Zurich	94.18 31.01.2013
3.	Emiloto Associated Inc	Various liquid assets including	29 Million	HSBC, Zurich	29.05

		Government securities and bonds#			23.01.2013
Total			198 Million		205.25

A sum of USD 29.03 Million was invested by Emiloto in Audrain Commercial Corp., Belize (“Audrain”) in the form of a loan. As per agreement dated July 31, 2012 executed between Emiloto and Audrain, this loan was to be used by Audrain to search out for companies with innovative products and acquire them. If Emiloto was convinced about the validity of the product/technologies, they would acquire the companies in lieu of the loan/part thereof. Copy of agreement has also been filed in support.

- x. They are not able to obtain copies of bank account statement to show the fund flows for the aforesaid transactions, copy of statements issued by aforesaid banks to show the Net Asset Value of aforesaid investment as USD 205 Million have been filed. Besides, the *Company* also estimated to collect revenue of USD 28 Million from GTSL’s business as on September 30, 2012 and as on September 30, 2012, the NAV of the investments made with HSBC was USD 29 Million.
- xi. On the date of approval for proposal of buy-back (October 27, 2012) and even today, the *Company* has sufficient liquid assets to meet the financial requirements for buy-back amounting to INR 170 Crore. Similarly, in terms of letter dated January 21, 2013, addressed by HSBC to Emiloto Associated Inc (subsidiary of the *Company*), the assets in the account of HSBC are USD 29.05 Million, which shows that the *Company* had the financial strength for the requirement of buy-back.
- xii. Certain events like stay obtained by ICICI Bank and the apprehension created in the mind of the Directors of the *Company* that similar such stay would be obtained for buy-back also; and the difficulty faced in the redemption of FCCBs due to erroneous information furnished by Citibank NA, together made it impossible for the *Company* to carry out the buy-back.
- xiii. Since the *Company* and its subsidiaries were not able to liquidate their investments, the *Company* could not comply with the directions of the Hon’ble Bombay High Court, which led to appointment of Provisional Liquidator for the *Company*.
- xiv. The *Company* never misled the stock exchanges or the FCCBs holders. The proceeds of FCCBs were invested in subsidiaries and well recognized funds in Singapore/Zurich. The investment of USD 176 Million in BIS Singapore and Credit Suisse was open ended and thus liquid. Only 20% of such proceeds were invested to explore and invest in new innovations.
- xv. Due to the actions taken by various banks like ICICI Bank, Axis Bank etc., for recovery of loans, and action of demand initiated by Citibank NA, it resulted in a situation where the subsidiaries of the *Company* could not act to liquidate the assets and repay bondholders.

- Further, due to appointment of Official Liquidator, the Directors lost control of the *Company* due to which the business of *Company* completely stopped.
- xvi. The above shows that there was actual intention of buy-back on part of the *Company*, however, it could not be completed due to reason stated above.
 - xvii. For the purpose of payment of dividend, a sum of only INR 18 Crore was required and the *Company* along with its subsidiaries had USD 200 Million in investments. Till November 24, 2012, there were no legal restrictions on payment of dividends, however, only on December 28, 2012, a stay order against the *Company* from declaring and paying dividend was obtained by ICICI Bank. Therefore, the allegation that the *Company* had no intention to pay dividend is erroneous.
 - xviii. It cannot be said the buy-back or proposal for dividend were the only reasons due to which the price of the scrip increased. The price of the scrip decreased due to various reasons like recovery actions from banks, failure of the key product and loss suffered by the *Company* in derivatives.
 - xix. As per the estimates of the *Company*, INR 838 Crore were required for redemption of FCCBs on January 18, 2013 and around INR 170 Crore (USD 31.80 Million) were required for the buy-back of shares and INR 18 Crore (USD 3 Million) were required for the payout of dividends. The total money for all the said aspects was INR 1,026 Crore (192.50 Million USD by conversion rate of INR 53/- prevalent at relevant time).
 - xx. It is clear that at the time of announcing buy-back of shares and declaration of dividends in November, 2012, the *Company* had sufficient financial requirements to meet the aforesaid disclosures. By the end of February, 2013, the *Company* had sufficient financial resources to meet the aforesaid announcements as well as those of the redemption of FCCBs.
 - xxi. Around December, 2012, a key product which was marketed by the *Company* through GTSL faced certain technical issues. As the technical issues could not be fixed the clients demanded for retraction of invoices for the period of 2011-2013 and also sought return of cheques issued by such clients to GTSL.
 - xxii. In order to retain the clients (who were using other products of the *Company* also), it was decided to forego the amounts due to the *Company* and cheques were not encashed. The same led to damage to the clients of the *Company* as well as its subsidiary GTSL. As the *Company* had raised invoices on GTSL for the said product, the *Company* also suffered a loss of INR 159 Crore. There is no document available in support of all this, except copy of Annual Report for 2012-13, which also mentions these facts.
 - xxiii. The *Company* had taken a loan of INR 55 Crore (Out of the sanctioned limit of INR 130 Crore) in June, 2012 from ICICI Bank for working capital and for the purposes of hedging its exposure to foreign currency by entering into Foreign Currency Derivative Contracts. Certain payments towards interest etc., as demanded by the bank during October/December, 2012 were made by the *Company*. The said loan was due for repayment

- on December 31, 2012, however due to compromised cash flow, the *Company* vide its letter dated February 22, 2013, requested the bank for rescheduling the repayment of loan.
- xxiv. On December 28, 2012, ICICI Bank had obtained a stay order on payout of the proposed dividend by the *Company*. Copy of loan agreement, demand notices, stay order have been filed in support thereof.
- xxv. As the *Company* intended to repay the loan amounts due to ICICI Bank and obtain approval of the shareholders thereafter, such stay order was not challenged by the *Company* in any court of law. In the AGM dated February 11, 2013, the shareholders resolved to approve declaration of dividend subject to permission being obtained from ICICI Bank or payment of the loan due to the bank.
- xxvi. As the *Company* apprehended that a similar stay against buy-back may also be taken by the bank, it decided to defer the payout of dividends till such loan is repaid and FCCBs were redeemed. The *Company* had also decided to reschedule the AGM of shareholders from December 30, 2012 to February 11, 2013 and permission for rescheduling the same was obtained by RoC. In pursuance of said decision, the agenda of buy-back of shares was not included in the list of agendas for said AGM. However, during the AGM, it was clarified to its shareholders that proposed buy-back has only been deferred till completion of redemption of FCCBs.
- xxvii. Till January, 2013, the Trustees of FCCBs holders, viz., Citibank NA, had advised the *Company* that FCCBs could be redeemed by overseas subsidiaries/step down subsidiaries. However, around January 2013, Citibank NA informed the *Company* that the *Company* and not its subsidiaries had to redeem the FCCBs. In order to bring the funds invested in the subsidiaries, the *Company* would have to restructure its holdings which involved valuation of overseas subsidiaries. The said process could not have been completed by January 18, 2013, due to which the *Company* sought 45 days' time for redemption.
- xxviii. Due to circumstances beyond the control of the *Company*, the restructuring could not be achieved within the expected time frame and in May, 2013, the Trustees issued a demand notice for redemption of the FCCBs.
9. At the outset, it is noted that the *Notices no. 1 and 3*, in their common reply, have demanded that a copy of the investigation report be provided to them. In this context, it is noted that all the findings of the investigation conducted in the matter which formed the basis of making imputations against the *Notices* have already been captured and extracted in detail in the SCN. Further, all the documents that have been relied upon in making such allegations in the SCN have also been furnished as annexure to the SCN. At this stage, I note that the Hon'ble SAT was confronted with a similar issue of supply/non-supply of copy of entire investigation report in the matter of *Shruti Vora vs. SEBI (Date of decision: February 12, 2020)*. The Hon'ble SAT have rejected the plea of the appellant to provide copy of investigation report by *inter alia* observing

as: “*In the instant case, the show cause notice relies upon certain documents which have been made available. Thus, the investigation report is not required to be supplied*”.

10. In the instant case copies of all the documents referred to and relied upon in the SCN have already been furnished along with the SCN itself, hence, I find that there is adequate compliance of principles of natural justice, and therefore, the demand for a copy of investigation report is unwarranted and does not have any basis or merit for acceptance.
11. Moving on to the merits of the case, I observe that the allegations in brief against the *Notices* are that despite being well aware of the actual precarious financial health of the *Company*, the *Notices*, comprising the Board of Directors, had announced a buy-back of shares and had also further proceeded with a proposal for payment of dividends to the shareholders of the *Company*. Both the said announcements positively impacted the price of the scrip of the *Company*, however, none of the said announcements were fulfilled.
12. It is noted that the main contention of the *Notices no. 1 and 3* is that the *Company* was never financially incapacitated so as not to honour the announcements of buy-back and also payment of dividends. It has been argued that the investments made by the *Company* out of the issuance of FCCBs alone was sufficient to make the payments towards the redemption of such FCCBs, buy-back as well as payment of dividends. As per the submissions, the redemption of FCCBs required INR 838 Crore/USD 157 Million; process of buy-back required INR 170 Crore/USD 31.80 Million and the payment of dividends required only INR 18 Crore/USD 3 Million to honour the same.
13. As per the calculation submitted by the *Notices no. 1 and 3*, the value of the investments made out of FCCBs proceeds in its subsidiaries/step down subsidiaries during the period of January/February, 2013 was around USD 205.25 Million. By projecting the said calculation and supporting documents, it has been contended that the *Company* had at relevant times, sufficient liquid assets to meet the aforesaid requirements. Despite having financial backing, the *Company* could not complete the buy-back and payment of dividends, due to various reasons like stay obtained by ICICI Bank, fault that occurred in one of the key product etc.
14. I have carefully considered the said submission which may look persuasive on the first flush, however, when the said submissions are confronted with the factual matrix of the case and examined in terms of the extant legal framework governing the key aspects of the matter, I find that the aforesaid claims put forth by the *Notices* are entirely meaningless and devoid of any merit, due to reasoning recorded in the succeeding paragraphs.
15. It is noted from the reply filed on behalf of the *Noticee nos. 1 and 3*, that the stay order dated December 28, 2012, obtained by ICICI Bank against the *Company* preventing it from paying dividend has been presented as one of the major grounds of defense so as to escape the liability

from the present proceedings. I have perused the said order dated December 28, 2012, and the same is being reproduced hereunder for ready reference:

“Mr. Pankaj Kumar, Chairman of defendant Company made a statement that unless the outstanding loan amount of plaintiff-Bank is paid, Company will not pay the dividend to its Shareholders or without obtaining written permission from the Plaintiff-Bank. In view of this submission, advocate submitted that suit may be disposed of. Accordingly, suit disposed of with following order.

ORDER

1. Defendant-Company shall not declare dividend to its shareholders without written permission of the plaintiff-Bank or on payment of outstanding loan amount.

2. Accordingly, suit disposed of with no order as to cost.

16. The *Notices no. 1 and 3*, have submitted that in June, 2012, a loan of INR 55 Crore was taken by the *Company* from ICICI Bank towards working capital as well as for the purpose of entering into Foreign Currency Derivative Contract. The *Notices* have also filed copies of a few documents pertaining to the loan, Non-Disposal Undertaking, demand letters issued by ICICI Bank etc.

17. The perusal of the aforesaid documents indicates the following factors that deserve to be highlighted:

- i. The *Company* was sanctioned a limit of one-time short-term loan (“OTSTL”) of INR 850 Million or INR 85 Crore, out of which, INR 55 Crore was disbursed by the ICICI Bank to the *Company*. Apart from the said short term loan, the ICICI Bank had extended a limit of INR 450 Million (INR 45 Crore) limit for derivative transactions.
- ii. The OTSTL extended by the ICICI Bank was secured by: (a) creating an interest over the Non Disposal Undertaking (NDU) and PoA on shares of the *Company* held by the promoters (*Notices herein*); (b) personal guarantee of the *Notices* herein; and (c) First pari-passu charge on current assets of the *Company*. It is noticed that all products, all cash flows receivable by the *Company*, etc., were hypothecated to secure the said short term loan by the *Company*.
- iii. The OTSTL was to be completely repaid by the *Company* in the following phases: November 30, 2012 (30%); December 15, 2012 (30%) and December 31, 2012 (40%).
- iv. Further, there is a “Mandatory Prepayment” Clause in the said agreement, which reads as: *“The Borrower shall prepay without any prepayment penalty the whole or part of the loan from proceeds of cash/ deposit/ structured deposit of Geodesic Technology Solutions Limited maintained with BSI Bank Ltd., Singapore and/ or HSBC Private Bank, Zuriuch and/ or Clariden Leu, Zurich as an when they mature....”*.

- v. A NDU dated June 15, 2012 was executed through which it was undertaken by the *Notices* that the shares of the *Company* held by the *Notices* shall not be disposed of by them and in the event of default of the guarantee, the shares under reference shall be sold, which comprised 34 Lakh shares of *Noticee no. 1*; 14 Lakh shares of *Noticee no. 2* and 35 Lakh shares of *Noticee no. 3*, aggregating to 83 Lakh shares under the said NDU.
 - vi. As the *Company* defaulted in repayment of the short term loan as well as on the derivative facilities, ICICI Bank vide letter dated December 14, 2012, made a demand of INR 22.94 Crore (approx.) from the *Company*.
 - vii. Further, vide letter dated March 04, 2013 addressed to the *Company* as well as the *Notices* herein, ICICI Bank invoked the guarantee extended by the *Notices* in their personal capacity, and sought a payment of INR 58.59 Crore (approx.). The said letter also informed the *Company* and the *Notices* about the invocation of pledge on 48 Lakh shares which were given as a security, thereby leaving remaining 35 Lakh shares still under pledge. Similarly, vide a separate letter dated March 05, 2013, the personal guarantee of the *Notices* was again invoked for the outstanding amount of INR 12.29 Crore, arising out of the Derivatives Facility provided by the bank.
18. A conjoint reading of all the relevant documents suggest that for the short term loan of INR 55 Crore obtained from ICICI Bank, the *Company* had hypothecated all its current assets, cash receivables, and had also agreed to mandatorily pre-pay the said loan out of the receivables of the investments made by the *Company* in foreign subsidiaries. Moreover, the said amount was also secured by the undertaking that shares of the *Company* shall not be disposed of or encumbered in any manner in pursuance of the NDU executed by the *Notices* herein, who were the Promoter-Directors of the *Company*.
19. From the aforesaid factors governing the loan, the events surrounding the default in repayment of the loan, and subsequent demands made by ICICI Bank, one thing that clearly emerges out is that the financial health of the *Company* was admittedly adversely impacted to such an extent that the *Company* was not able to service its debt liability which was initially limited to only INR 58.59 Crore (short term loan) and INR 12.29 Crore (Derivative Trading Limit). Strangely enough, it has been argued in the present proceedings by the *Notices no. 1* and *3*, that in and around January-March, 2013, the total worth of the investments made by the *Company* out of the FCCBs proceeds was around INR 1,026 Crore. I find it beyond comprehension and acceptance by any stretch of leniency, as to how a company having so much worth of its investments in its foreign subsidiaries, can let happen issuance of a stay order on payment of its dividend for default on repayment of a tiny sum of only INR 70 Crore (approx.). Clearly therefore, such a claim made by the *Notices* before me boasting about the worth of their investment in their foreign subsidiaries to be INR 1026 Crore, without any documentary

support to substantiate the said claim, has no legs to stand on and no basis to be relied upon. Admittedly, as per the post hearing submissions filed by the *Notices no. 1* and *3*, it has been submitted that the said stay order was never challenged by it, as the *Company* intended to repay the said loan. However, surprisingly enough, no details of any such repayment or even part payment, if any, made to the ICICI Bank has been furnished nor the details of any steps taken towards meeting the debt liability to ICICI Bank have been brought to my attention, so as to lead me to believe that the *Company* had indeed the financial capability to honour its two important disclosures viz; payment of dividend and buy back. The silence observed by the *Notices* on this issue clearly suggests that the *Company* was not having sufficient liquidity with it so as to repay the loans taken from the ICICI Bank, due to which the proposed dividend payment could not materialise. I also note that the dividends to the shareholders were to be paid only out of the Profits of the *Company*, in terms of the Section 205 of the Companies Act, 1956. However, the *Notices no. 1* and *3* have not made any efforts to satisfy me that the *Company* was having sufficient profits in that financial year or previous financial years, out of which it could have paid the dividend so declared by it.

20. Notwithstanding the aforesaid, it is also interesting to note here that in terms of the agreements executed with ICICI Bank, even the proceeds of the deposits made through GTSL (subsidiary of the *Company*) out of the FCCBs issue, were agreed upon to be mandatorily used for making prepayment of the loan taken from ICICI Bank by the *Company*. However, there is nothing on record to show, if the *Company* ever used such FCCBs proceeds either towards redemption of such bondholders who had invested in said bonds or for repayment of the loan taken from ICICI Bank.
21. I note that the total cash outflow that was required for the payment of dividend that was declared by the *Company* would have been INR 18 Crore only. However, in terms of the aforesaid discussions, it is clear that the *Company* was not having adequate financial strength so as to discharge its debt liabilities nor was it able to comply with the directions of the Hon'ble Bombay High Court which ultimately led the *Company* to get into liquidation. It is relevant to recall here that the *Company* had on December 04, 2012, made an announcement that the Board of Directors have recommended a final dividend of INR 2 per share on the face value of INR 2 (100%). The dividend was to be paid after approval of shareholders in the AGM to be held on December 30, 2012 (rescheduled to February 11, 2013). In the meanwhile, a stay order was obtained by ICICI Bank. During the said AGM held on February 11, 2013, it was resolved *inter alia* as: “RESOLVED THAT the *Company* do hereby approve dividend declaration, subject to such declaration coming into effect only upon the written permission of the plaintiff in suit or upon lenders approval or on payment of outstanding loan amount as per the order of the court. Record date would remain as 26th December, 2012. In the event consent from the plaintiff/ lender is not received or payment not made this approval shall lapse.”

22. From the chain of events which took place only in a span of 8 months, from the date of the *Company* obtaining loan, to the time ICICI Bank obtained a stay and eventually the *Company* resolving in the AGM that dividend would be paid only after receiving permission from the ICICI Bank or after payment is made to the bank; it becomes glaringly clear that the *Company*, did not seem to have taken any step to either repay the bank loan or to obtain a written consent for payment of dividends from the said bank in terms of the aforesaid stay order. It is obvious that had the *Company* cleared the outstanding dues of the Bank, there would not have been any objection from the bank (ICICI Bank) to payment/distribution of dividend. I would hasten to add here that in terms of the submissions made by the *Company*, it was not only ICICI Bank, but also the other banks like Axis Bank, HDFC Bank had taken action against the *Company*. Though the details of such actions have not been furnished by the *Notices* in the reply, it is noted that the said actions taken by those Banks were also pertaining to non-payment of dues of those Banks. These facts further corroborate the harsh, crude and unpleasant realities that the financial health of the *Company* was not at all upright. The *Notices no.1 and 3* in their common reply have also mentioned about an expected revenue of USD 28 Million from its subsidiary viz., GTSL. However, no details of realization of such revenue from GTSL or using such revenue for discharge of any kind of their financial liabilities have been furnished. Under the circumstances, the claim made by the *Notices no. 1 and 3* that the dividend was not paid by the *Company* only due to the reason that ICICI Bank had obtained a stay order against such payment does not reveal the truth, which has been concealed behind a host of false and misleading claims about the financial condition of the *Company* and therefore, is completely devoid of merit, for the reasons recorded above.
23. It is further noted that the redemption of the FCCBs was due in the January, 2013, however, the *Company* had defaulted on the said redemption. Consequently, on the basis of a petition filed by the Trustees of the FCCB holders before the Hon'ble Bombay High Court, Provisional Liquidator was appointed to take charge of the *Company*, as it (*Company*) had failed to deposit the amount of USD 162 Million, in terms of the directions of the Hon'ble High Court, passed vide order dated April 07, 2014. The said order also records that the default in payment to the FCCB holders led to a summary judgment dated February 07, 2014 of Commercial Court of the Queen's Bench Division of the Royal Court's of Justice wherein the amount decreed against the *Company* was USD 171 Million. I note that during the relevant time, the *Company* was aware about the impending financial liability of INR 838 Crore arising out of the redemption of FCCB, which was due on January 18, 2013, still the *Company* went ahead and made an announcement about the proposed dividend to be paid to its shareholders. Eventually, neither the shareholders were paid the dividend nor the FCCBs holders were paid the redemption amount due to them and finally the *Company* went into liquidation. Thus, the submission of the *Notices no. 1 and 3* that the *Company* had sufficient financial resources to

meet the obligation of the dividends payment in November, 2012, which is largely based on a misplaced reliance on the so called investments made out of the FCCBs issue, was entirely a misleading claim that was devoid of reality, as the *Company* was actually starved of funds and did not have any funds to meet any of its outstanding liabilities hence, the possibility of distributing dividend to shareholders did not arise. The aforesaid claims made by the *Notices* about the financial strength of the *Company* is utterly false and misplaced on ground realities confronting the *Company* during the relevant period , hence has to be rejected .

24. I note that apart from citing the aforesaid stay granted on the basis of a suit filed by ICICI Bank, the *Notices no. 1* and *3*, have also submitted that a technical fault in one of their key products (Continuum- a Customer Relationship Management Software) impacted the financials of the *Company* adversely.
25. In this connection, I observe that the *Notices no. 1* and *3* on the one hand have claimed that the *Company* was so successful that it was competing with companies like Google and Yahoo and was having a long list of clientele and large number of retail customers including 25 Million customers using the cell phone of the *Company*; while on the other hand, it is surprising that some technical problems faced only in one product out of their long list of products, turned out to be the main reason which badly impacted its financials. Nonetheless, the submissions made by the *Notices no. 1* and *3* on this issue was considered on merits, and a careful examination shows that there are gross deficiencies in the reply filed by the said *Notices* with respect to their claim about the technical glitches/issues pertaining to the said product.
26. In their reply to the SCN, it has been claimed by the *Notices* that the said product (Continuum) had faced technical problem in December, 2012, and in order to maintain their client relationships, who were also using other products of the *Company*, the *Company* not only returned the cheques so received by it from the users, but also reversed all the sales made to the customers of such products since April, 2011. In this connection, it may be fairly accepted that due to the technical faults that was noticed in December, 2012, the *Company* might not have en-cashed the cheques which were pending with it for that particular period or for the immediate future period so as to redress and mitigate the customers' grievances. However, it is quite strange to note that a *Company*, for a technical fault arising in December, 2012, had to reverse the sales of the said product made retrospectively since April, 2011. I would like to add here that the issue of reversal of sales and consequent impact on the books of accounts is not the subject matter of the present proceedings, however, to say the least, such an eventuality cannot be accepted as a defence of the *Notices* for the charges levelled in the SCN.
27. As noted earlier, the *Company* had declared a dividend of INR 2 per share on the face value of INR 2, i.e., 100% of the face value. I note that the decision of a listed company to pay the dividend of 100% of the face value of shares acts in itself as an inducement, strong enough to

attract more investing public in the shares of the *Company*. In the present case, it is noted from the contents of the SCN that the market price of the scrip of the *Company* was INR 38.60 on November 23, 2012, i.e., one day prior to the date of notice of Board Meeting on November 24, 2012, which was Saturday. On the date of the Board Meeting when the decision to consider paying the dividend was taken up for decision, the price of the scrip went up to INR 51.60. It is noted that the announcement made by the *Company* on December 04, 2012 positively impacted the trading volume of the scrip, as the same witnessed an increase of 160% on BSE and 190% on NSE, as compared to respective trading volumes of previous days.

28. Based on the above discussion, I observe that the *Notices no. 1 and 3* have not been able to demonstrate any cogent reasons supported by documentary evidence nor have they been successful in persuading me to accept the reasons cited by them while answering to the allegations made in the SCN with respect to the non-payment of dividend. It is noted that the tall claims that have been made by the *Notices no. 1 and 3* with respect to the financial capacity of the *Company* during the relevant time, have lost their grounds and credibility on the face of the established facts of the matter, as discussed above, which have strongly tilted the preponderance of probabilities against such claims and in support of the allegations made in the SCN.
29. I note that the next allegation made in the SCN is similar to the one discussed in the foregoing paragraphs. It is noted from the SCN that the *Company* had on August 14, 2012, informed BSE that its Board of Directors, at the meeting held on August 14, 2012, have approved the proposal to buy-back 25% of the equity shares through open offer. Subsequently, on November 27, 2012, another announcement was made that the Board of Directors at their meeting held on even date, have approved buy-back of 25% of shares of the *Company* at a maximum buy-back price of INR 75/- per share subject to approval of the shareholders. However, after making the aforesaid announcement, the *Company* did not take any step towards obtaining the approval of the shareholders and eventually, it was informed by the *Company* that the process for Postal Ballot would be initiated only after completing the redemption of the FCCBs, which was due on January 18, 2013. The relevant portion from the minutes of the said AGM is reproduced hereunder:

“...Replying to the queries relating to FCCBs, Mr. Kiran Kulkarni informed the members that the Company is in the process of restructuring of its foreign step-down subsidiaries in order to facilitate the redemption of its Bonds. Thus, the redemption of FCCBs was postponed. This restructuring would require time and is expected to be completed within 45 days. Replying to shareholders queries on buyback, the Chairman informed the members that since the Board have proposed buyback upto 25% of equity shares, the same has to be approved by the shareholders through Postal Ballot process. The Chairman further informed the members that the Company expects to commence the buyback process post the redemption of FCCBs and completion of necessary formalities.”

30. The *Notices no. 1* and *3* in their reply to the SCN, have submitted that it was apprehended by the *Company* that ICICI Bank will obtain a stay order on the proposed buy-back also, similar to the one obtained by the bank on payment of dividends. In this context, I have already recorded my detailed observations with respect to the reasons cited by the *Notices* to explain the inability expressed by the *Company* for non-payment of dividend taking the plea of the stay order. I have already noted how the *Company* did not have any financial strength or liquidity to meet its outstanding dues to the Bank, hence the question of it obtaining any consent from the Bank to pay dividend to the shareholders did not arise at all. Had the *Company* possessed adequate liquidity to repay its loans to ICICI Bank, contrary to the claims made by the *Notices*, the necessity for ICICI Bank to obtain a stay order would not have arisen. The *Notices* are trying to avoid the hard reality that despite knowing that payment of dividend by the *Company* was not feasible; still the *Company* made a false announcement to the shareholders which it could not execute, given its delicate financial position at that time. The aforesaid findings of mine are further fortified for the issue of buy-back, where there was even no actual stay and based on a mere apprehension, the *Company*, did not take any further step in the direction of meeting the announcement made for buy-back of its equity shares. The mis-conceived assumption on the part of the *Company* apprehending similar stay action from the ICICI Bank, coupled with the fact that it did not take any step to make any payment to other banks as well, speaks volume about the conduct of the *Notices*, who being Directors of the listed company, were under an obligation to clear the dues of banks and move forward to honour the announcements made by the *Company*, to the shareholders.
31. It is an undisputed fact that the financial liability of the *Company* towards redemption of FCCBs was INR 838 Crore (USD 157 Million). The *Notices no. 1* and *3* have attributed the failure to redeem the FCCBs to the wrong advice given by Citibank NA till January 12, 2013 (Trustee to the issue of FCCBs), who supposedly advised them that the FCCBs could be redeemed by the overseas subsidiaries/step down subsidiaries. It has further been submitted that around January 13, 2013, it was informed by Citibank NA that the FCCBs need to be redeemed by the *Company* and not by its subsidiaries and further the subsidiaries need to be restructured which would require merger/acquisitions of subsidiaries into the *Company*. The *Notices no. 1* and *3* in their reply filed in the present proceedings, have submitted that the said restructuring of subsidiaries could not be 'completed', however during the personal hearing, despite specifically asking for the details of the said restructuring proposed for the subsidiaries, the *Notices no. 1* and *3* kept stating that all the books and records of the *Company* are with the Official Liquidator and a letter dated October 12, 2020 has been addressed by them to Official Liquidator seeking copies of Minutes of Board Meeting, other committee meetings etc. Thus, the *Notices* have not been able to furnish any details with respect to the proposed restructuring of its subsidiaries and admittedly till date, no whisper regarding any step taken towards such purported

restructuring has been made in support of the claim made by the *Notices*. Under the circumstances, the explanations offered by the *Notices* taking the alibi of misguidance by the Citibank NA and the advice received by them from the Citibank NA to carry out restructuring of the overseas subsidiaries remain only a claim on paper without any supporting details or substance to rely upon.

32. As noted above, the process of buy-back was halted by the *Company* and the delay was attributed to the impending redemption of FCCBs. However, admittedly, neither the FCCBs were redeemed nor any step towards buy-back was taken by the *Company*. As noted earlier, the *Company* defaulted in the redemption of the FCCBs and went into liquidation on the orders of the Hon'ble High Court of Bombay. Therefore, looking at the events that took place in the affairs of the *Company* due to its finances which were in shambles, it clearly indicates that the claim of the *Notices* no. 1 and 3 that the *Company* was having adequate funds so as to discharge its obligations towards the bond holders and also towards the proposed buy-back, is completely imaginary, misleading, false, hence devoid of merit and is therefore rejected. I observe that, had the announcement made by the *Company* with respect to the buy-back contained even an *iota* of *bonafide* or true intent to exercise the same, the failure of the *Company* towards redemption of the FCCBs would not have had any bearing whatsoever on such buy-back of equity shares, as both the issues are not inter connected. Moreover, at the time of making such announcement of buy-back, the *Company* was well aware of its impending liability towards redemption of FCCBs. Further, the contention regarding the wrong advice given to the *Company* by Citibank NA with respect to redemption of the FCCBs is not only a bald assertion having no documentary proof to substantiate the same, but is also completely irrelevant for adjudication of the charges made in the present proceedings.
33. In view of the foregoing discussion, I note that the *Company* had not only misled the investors about the issues governing the FCCBs but had also made the announcement of buy-back of equity shares despite being clearly aware of its precarious financial status and lack of liquidity to fructify such public announcements, which shows that the said announcement was made with no intention to fulfil the same and predictably, no step whatsoever towards such buy-back was taken by the *Company* after making such an announcement.
34. It is also noted from the SCN that the aforesaid announcement about the buy-back positively impacted the market price of the scrip of the *Company* which shows that an artificial inducement was created in the minds of the investors by making such an announcement. On November 21, 2012 (date of notice of Board Meeting) the market price of the scrip of the *Company* was INR 38.45, which on November 27, 2012 (date of Board Meeting wherein decision to buy-back was taken) rose to INR 52.20. Thus, the announcement of buy-back, made at a time when the financial situation of the *Company* was in an extremely poor condition and absence of any step taken towards complying with such an announcement is indicative of the fact that the

intention of the *Notices* (Promoter-Directors of the *Company*) was to create an artificial positive market sentiment about the *Company* and to inflate the price of the scrip by making such false announcements to the public.

35. To sum up the discussions, I observe that the *Company* had made two back to back corporate announcements pertaining to buy-back of its equity shares and payment of 100% dividend, which were intended to be fulfilled but the failure to fulfil such announcements have been attributed to several reasons like a stay order, product failure etc., none of which is found to be reliable and convincing enough to drop the charges of fraudulent acts levelled against the *Notices*. The *Notices* have miserably failed to demonstrate the financial strength of the *Company* during the relevant time so as to prove that the same was adequate enough to discharge the *Company's* liabilities towards such announcements. An unsuccessful attempt has also been made by the *Notices* no. 1 and 3 wherein a reference has been made to the investment of FCCBs proceeds made in the overseas subsidiaries of the *Company* to suggest that the worth of such investment was more than INR 1000 Crore, but the *Notices* have not been able to explain as to why despite having such huge investments, even a small portion of those investments could not be utilised for the redemption of such FCCBs.
36. In view of the foregoing observations, I am constrained to observe that the SCN has been successful in bringing home the charge that the announcements of buy-back as well as of declaring dividend by the *Company* were indeed misleading in nature which were never meant to be honoured and behind such misleading announcement, it was the natural persons viz., the *Notices* herein, who were at the helm of day to day affairs of the *Company* and were also the promoters of the *Company* who were responsible for such fraudulent announcements. Thus, based on the detailed reasoning recorded above, I observe that the *Notices* have violated Section 12A(a),(b),(c) of the SEBI Act and Regulations 3(a),(b),(c),(d), 4(1) & 4(2)(e), (f),(k),(r) of the PFUTP Regulations.
37. It is to be appreciated that being Promoter-Directors of the *Company*, the *Notices* were supposed to adhere to the highest standards of governance so as to protect the interest of shareholders who had invested in the scrip of the *Company*. However, as discussed above, the *Notices* played a clear fraud on the shareholders by making two important specious announcements and fulfilling none of them, indicating that the announcements were nothing but used as a subterfuge to artificially increase the price of the scrip of the *Company*. It is imperative that such violators, who by their intricate scheme, play with the faith reposed in them by the shareholders of the *Company* need to be dealt with stern hands. Therefore, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B(1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby restrain all the *Notices* from accessing the securities market and further prohibit them from buying, selling or

otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, for a period of two (02) years from the date of this order.

38. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Notices* shall remain frozen.
39. The obligation of the aforesaid debarred *Notices*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Notices* debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
40. The Order shall come into force with the immediate effect.
41. A copy of this order shall be forwarded to all the *Notices*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: APRIL 19TH , 2021.

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA